1983-84
HOUSE LABOR & COMMERCE COMMITTEE
LIST OF FILES (PAGE 1) MICROFICHE #

COMMITTEE INFORMATION

MISCELLANEOUS MATERIALS

ALASKA POWER AUTHORITY

GOVERNOR'S APPOINTMENTS-
BOARDS & COMMISSIONS

GOVERNOR'S APPOINTMENTS-
BOARDS & COMMISSIONS (RESUMES)

SUNSET REVIEW - BOARD OF ARCHITECTS,
ENGINEERS & LAND SURVEYORS

SUNSET REVIEW - BOARD OF BARBERS &
HAIRDRESSERS

SUNSET REVIEW - BOARD OF CHIROPRACTIC
EXAMINERS

SUNSET REVIEW - EXAMINERS IN OPTOMETRY

SUNSET REVIEW - PUBLIC ACCOUNTANCY

EO 58

HB 1

HB 7

HB 16

HB 22

HB 25

HB 26

HB 51

HB 66

HB 93

HB 99

HB 111

HB 126

HB 131

HB 141

1983-84
HOUSE LABOR & COMMERCE COMMITTEE
LIST OF FILES (PAGE 2) MICROFICHE #

HB 142

HB 154

HB 181

HB 182

HB 197

HB 211

HB 220

HB 223

HB 236

HB 241

HB 257

HB 258

HB 274

HB 281

HB 282

HB 283

HB 304

HB 308

HB 311

HB 319

HB 331

HB 338

HB 341

HB 342

HB 343

HB 344

HB 346

1983-84
HOUSE LABOR & COMMERCE COMMITTEE
LIST OF FILES (PAGE 3) MICROFICHE #

HB 347

HB 389

HB 426

HB 457

HB 475

HB 486

HB 497

HB 505

HB 508

HB 509

HB 535

HB 540

HB 545

HB 569

HB 589

HB 610

HB 611

HB 633

HB 654

HB 680

HB 683

HB 684

HB 689

HB 703

HB 704

HB 705

HB 706

1983-84
HOUSE LABOR & COMMERCE COMMITTEE
LIST OF FILES (PAGE 4) MICROFICHE #

HB 711

HB 716

HB 719

HB 720

HCR 21

HCR 52

SB 55

SB 67

SB 78

SB 134

SB 174

SB 182

SB 184

SB 188

SB 281

SB 286

SB 296

SB 434

SB 435

SB 438

SB 456

SB 470

SB 481

SB 517

SB 525

SB 532

SB 546

SCR 18

Misc. Materials

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

January 10, 1984

To: House Labor and Commerce Committee Members

From: Rep. John Cowdery, Labor and Commerce Committee Chairman J.C.

RE: Committee Staff

Due to the change of chairmanship of the House Labor and Commerce Committee, the committee staff has also changed. The committee aide for the coming session will be Ken Johnson. Linda Firestone has been appointed committee secretary. Either of these staff members would be glad to assisst you or answer any questions you may have concerning the Labor and Commerce Committee. The office phone number for the committee is 465-3873.

Homer Electric Association, Inc.

CENTRAL OFFICE: P.O. BOX 429 • HOMER, ALASKA 99603-0429 • (907) 235-8167

March 7, 1984

The Hon. John J. Cowdery, Chairman
House Labor & Commerce Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneu, Alaska 99811

Dear Mr. Cowdery:

House Bill #683, presently in the Labor and Commerce Committee, would authorize Bradley Lake as a State project. It requests no funding. Bradley Lake must be authorized in order for the Alaska Power Authority to file for a FERC license. Filing for an FERC license should be done concurrently with development of a financing plan and power sales agreements.

Approval of HB #683 does not conflict with the four-dam pool, and Bradley Lake is not competition to Susitna. Power from Bradley Lake is needed for the winter of 1988/89. Without Bradley Lake natural gas generation facilities must be added. I believe all studies thus far show no negative impact of Bradley Lake on Susitna feasibility or financing.

We need your support! HB #683 should be passed out of its assigned Committees for full House consideration as soon as possible to keep the project on schedule. Funding will be requested only after a financing plan is developed. Funding is not requested in HB #683.

Thank you in advance for your consideration. Please let us know if we can answer any of your questions.

Sincerely yours,

HOMER ELECTRIC ASSOCIATION, INC.

B. Kent Wick
General Manager

BKW:em

Alaska State Legislature

Representative Milo Fr.
District 5
P.O. Box 158
Anchor Point, Alaska 99556
(907) 235-8366

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4833

House of Representatives

MILO FRITZ

MEMORANDUM

TO: Representative John Cowdry
Labor & Commerce Chairman

FROM: Representative Milo Fritz
Finance Committee Member

DATE: March 13, 1984

SUBJ: HB 683

I would greatly appreciate your springing HB 683 out of your Committee. As I look at it, there is no threat to the Susitna Damn and with the population of the Kenai Peninsula growing in the neighborhood of between nine and ten percent every year, we will need the power from Bradley Lake within the next two years. Your consideration in getting HB 683 out of your Committee and on to the next Committee of referral will be very greatly appreciated. If there is anything about this matter that you would care to discuss with me I am at your service.

cc: D. Kent Wicke
Mr. Leo Rhode

AK.
POWER
AUTHORITY

Alaska State Legislature

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE LABOR AND COMMERCE COMMITTEE
HOUSE SPECIAL COMMITTEE ON LOANS
HOUSE FINANCE SUBCOMMITTEE FOR NATURAL RESOURCES, FISH AND GAME AND ENVIRONMENT CONSERVATION

KETCHIKAN
3855 EVERGREEN
KETCHIKAN, ALASKA 99901

(DURING SESSION)
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4644

House of Representatives

REPRESENTATIVE
RON WENDTE

MEMORANDUM

WHO IS RESPONSIBLE FOR FINANCING OF TYEE LAKE?

To: Representative Furnace, Chairman
Labor and Commerce Committee
House of Representatives

From: Representative Ron Wendte G.W.W.

Date: March 9,1982

Re: Review of Alaska Power Authority

In recent weeks, there has been much discussion concerning Alaska Power Authority, the Tyee Hydro Project, Susitna, etc. in legislative committees and in the news. The Alaska Power Authority (APA) and hydro power in themselves are viable concepts. However, the questions surrounding APA leave considerable doubts in the mind of the public. I believe that we, in the House Labor and Commerce Committee, should begin a review of the Alaska Power Authority in order to outline what the problems are and to make recommendations to resolve those problems.

Because Tyee is only nine months from completion and has been very nearly an APA project from inception, I feel that it would be an extremely good example for review.

It is my suggestion that the Labor and Commerce Committee appoint a sub-committee of one-month duration to look into Alaska Power Authority and the Tyee Project with a final report and recommendations due on April 15, 1983. Because of the vast amounts of material and the workload already placed on most staff people, I would also suggest that an aide or researcher be hired to serve as staff to the sub-committee during that one-month.

The Sub-committee should do an overview of Tyee that would consist of the following points:

1) Were the proper feasibility studies done, in particular, were they rechecked when the original cost estimates of the project were shown to be too low?

2) Did APA look carefully at alternat[illegible]ites, smaller projects, or even alternative power sources?

3) Has APA followed legislative mandate in all annual reports and project status reports?

   a) On the basis of what information did the Legislature approve the funding of Tyee?

   b) [illegible] statements made to the Legislature been consis[illegible]h development of information on Tyee as the [illegible]ogressed?

4) Was managem[illegible]orough in using correct contracting procedures?

   a) The problem of wrap-up has been discussed and legislation has been recommended. However, further study should be done on wrap-up as one element of the total project and what impact wrap-up had on cost over-runs and contracting procedures.

   b) What were the trade-offs in the decision to not relieve the engineer of responsibility for the project?

4) What procedures are used in developing cost estimates and how thorough is management in checking those estimates?

   a) What is the explanation for significant differences in the various estimates on the project costs?

   b) Do we know with certainty at this time what the final costs of the project will be?

5) Did the project costs get out of control and, if so, at what time did the project costs get out of control?

   a) What steps were taken to control the escalating costs of the project?

   b) There are excessive numbers of change orders in the Tyee project. Were all of these necessary and what could have been done to prevent this problem?

6) Has the Legislature been at fault by constantly changing the ground rules by which APA operates or allowing too much latitude in the operation of APA?

7) What has been the specific impact of each legislative change

as the Tyee project progressed (i.e., "Blackmail Clause, SB 25 and 26, HB 9, etc.)?

8) What steps are necessary to resolve the crisis we face with the Tyee project?

a) Do the problems with Tyee apply to other APA projects?

b) Who should bear the burden for the cost over-runs -- the utilities, municipalities (customers) or the State of Alaska?

And finally and most importantly,

9) What recommendations or legislation should be adopted by the Labor and Commerce Committee to prevent these problems from arising again?

Increased energy usage throughout the State, declining oil revenues and an eventual end to fossil fuels demand a workable energy plan for Alaska. Some corrections have been made within APA by changes in legislation, by the APA board and by the APA management. This review should not be a surgical procedure, but rather, an examination, diagnosis and cure.

35,000,000

cuts def 44.83.230 (2) p-23

27-10 ERIC YOULD

44.83.176 operation P-29

Reports Needed

AP/A	44.83.080 (3)	bylaws	P-2
	(4)	Rules & Regulations	P-2
	(10)	Contracts (copies of all entered)	P-3
	(16)(B)	Pledge made - where & on what Basis	P-3
44.83.100			
←	44.83.190	Annual Audit	P 21
	44.83.380	Energy Program	P-27
	44.83.382 & 384	Power Development Fund	P-27
	44.83.388	Allotment to Projects	P-28
Dept. of Commerce	44.83.284	Long Term Energy Plan	P-22
	44.83.394	Revenues	P-29
L-B+A	44.83.105 (a)	Bonds	P-7
	44.83.170 (2)	Power Project Fund [How Much]	P-14
→	44.83.185 (2-c)	Submission to Legislature	P-19
	44.83.190	Annual Audit	P 21
	44.83.177 (d)	Financial assistance	P-18
	44.83.361 (2)	revolving Loan Fund	P-26
*	44.83.191	Limitation on Bonds	P-21
	44.83.382	Power Fund	P-27
	44.83.394	Revenue Requirements	P-29
Legislature	44.83.105 (f)	certificate for capital reserve fund	P 7
	44.83.183(c)	Project approval	P 19
*	44.83.200	Annual Report	P-21
	44.83.210 (b)	Appropriations & Reports	P-22
Regulation	44.83.170 (c)	Regulations - Power Project Fund	
	44.83.177 (c)	Regulations - Feasibility Study	P17

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: All members of the Special Committee on State Loans
FROM: Representative Rick Uehling, Chairman
DATE: February 14, 1983

RE: Committee schedule for week of February 14

The House Special Committee on State Loans will meet on Tuesday, February 15, 1983, at 3:00 p.m., in Capitol Room 504 (Senate HESS Committee).

The first witness will be Bert Wagnon, Executive Director of Alaska Industrial Development Authority. Mr. Wagnon will present an overview of AIDA and its many individual programs. A copy of the AIDA annual report is attached.

The second witness will be Don Hostak, Director of the Division of Business Loans and Veterans' Affairs. Mr. Hostak will present an overview of his agency and the many programs it offers. Individual programs within the Division of Business Loans include Alternative Technology and Energy, Bulk Fuel, Child Care Facility, Commercial Fishing, Fisheries Enhancement, Historical District, Mining, Residential Energy Conservation, Small Business, Tourism, Veterans', and Water Resources Revolving Loan Funds. Although the Division of Business Loans and Veterans' Affairs has no pre-printed annual report, Mr. Hostak is preparing a special hand-out for the committee's use.

I look forward to seeing you at the meeting tomorrow.

Attachment: AIDA Annual Report

LOANS

2/14/83

REQUESTING WENTE

- LOANS / SHORT TERM FINANCING / HOW ARE THE DEBTS ARE GOING TO PAID
- 45-50 MILLION FOR PROJECT
- TYEE PROJECT WAS DEEMED AS UPON OVER - THOMPSON LAKE;
- OVER-RUN ON PROJECTS
- STATE AND CLEAR-UP
- DEBT SERVICE;
- DIRECT APPROPRIATION REQUESTED FROM LEGISLATURE
- REVENUE BONDS; POSSIBLE - FLOAT REVENUE - A.R.A.
- 100% INCREASE IN UTILITY RATES; City of Ketchikan
- IMPACT ON KETCHIKAN
- INTENT ON ALASKA POWER AUTHORITY
- ADDITIONAL CONTROLS ON ALASKA POWER AUTHORITY / WE CAN DEVELOP
- WHAT STAGE IS THE PROJECT IN RIGHT NOW!
- FINANCING PLAN! REVIEW / STAFF ASSIGNMENTS
- (BUDGET - AUDIT) INVESTIGATE;

Development of Hydro-project - alternative power project/
(SB-25)(SB-26)

Gojkovich

LOANS | WHERE ARE THEY GOING! TRUST Agreements |

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ROBERT L. HARTIG (1928-1980)

JAMES D. RHODES
JOHN K. NORMAN
ROBERT J. MAHONEY
G. KENT EDWARDS
BERNARD J. DOUGHERTY
MICHAEL W. SHARON
ROGER H. BEATY
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SPENCER C. SNEED
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L. ANDREW ROBINSON

REPLY TO:

FEB 4 1983

January 26, 1982

The Honorable Joe L. Hayes, Speaker
Alaska House of Representatives
P.O. Box 1821
Anchorage, Alaska 99510

RE: Alaska Power Authority
Wrap-up Insurance
Contract
Our File: 4306-2

Dear Mr. Speaker:

Our office has completed its review and evaluation of the materials furnished us by the House Labor and Commerce Committee relating to the Alaska Power Authority's "wrap-up" insurance contract with Marsh and McLennan-Corroon & Black/Dawson & Co. as insurance brokers for the Alaska Power Authority and Pacific Marine as workers' compensation insurers. For reasons more fully explained below, it is our belief that a legislative lawsuit on the matter does not appear advisable at this time, even though one could argue that several state laws may have been violated.

Before explaining the basis of our opinion, a brief description of the process through which our analysis evolved is in order. In April of last year, we were given an oral briefing by Mr. Jeff Barry, Legislative Assistant for Representative Terry Martin, Chairman of the House, Labor and Commerce Committee. Mr. Barry brought with him a few basic documents which we reviewed. Legislative subpoenas were then issued by you, as Speaker of the House, to Marsh and McLennan-Corroon & Black/Dawson & Co. who had contracted to broker the wrap-up insurance and provide risk management services for the Alaska Power Authority. You also issued a legislative subpoena to Pacific Marine the insurance carrier selected by Marsh and McLennan-Corroon & Black/Dawson & Co. to provide workers' compensation insurance for the Alaska Power Authority projects. In May, we completed some basic research in the area of public finance, competitive bidding, monopoly and restrain of trade, and the general scope of powers of the Alaska Power Authority. We

also collected some background information concerning problems encountered with the Alaska Pipeline wrap-up insurance program.

It was determined that we should await receipt of the subpoenaed information before continuing further. This information was brought to us on July 19, 1982 by Mr. Barry. It consisted of four large boxes of documents which were not organized in any fashion and had not been indexed in any way. As a consequence, we had to review, sort and index the material and it proved to be very time consuming process. A summary of the contents of the boxes and the files in which they are now organized is set forth in the attached memorandum of August 26, 1982 by Mr. Wev Shea of our office together with two related memoranda of September 9, 1982. After reviewing the documents and categorizing them according to their importance, a brief summary of major documents and points was compiled. The legal authority cited by counsel for both the Alaska Power Authority and Insurance Brokers was studied and analyzed as were the legal briefs and memoranda surrounding the Alaska Pipeline decision issued by the Director of Insurance in April 1970. A summary of some of the select documents and a brief background summary was then prepared. A copy of the memorandum of October 6, 1982 with exhibits is attached for your perusal. An "Indemnity Agreement", Exhibit "F", to this memorandum is particularly disturbing since it appears to require the State of Alaska to indemnify APCOP (Marsh and McLennan-Corroon & Black/Dawson & Co.) for its own negligence. The problem is compounded since the agreement is unsigned and in draft form. It was one of hundreds of documents received pursuant to your legislative subpoenas which we examined.

Upon learning that legislative audit had compiled a report addressing the Alaska Power Authority wrap-up insurance program, we refrained from issuing our opinion until a copy of that report could be obtained and studied. The report was not delivered to us until November 10, 1982. After reviewing the report and documents subpoenaed, it would appear the problems identified and the questions raised in this matter would best be addressed through dealing directly with the executive branch or holding legislative hearings and adoption of remedial legislation.

This approach is especially applicable in light of the numerous factual, legislative and administrative changes since the initial wrap-up issue was addressed by us last April. Perhaps most important is the decision by the Alaska Power Authority to limit the wrap-up insurance brokerage by Marsh and McLennan-Corroon & Black/Dawson & Co. to the Tyee Lake construction. Initially Marsh and McLennan-Corroon & Black/Dawson & Co. had an open-ended contract with the Alaska Power Authority. Secondly, the recent Superior Court ruling in Barnes v. Palmer, et al., holding that the legislature and taxpayers lack

standing to challenge violations of the Alaska competitive bidding statutes. Thirdly, the revision of the competitive bidding statutes by the legislature effective last July. Finally, the election of Bill Sheffield as Governor and your success in dealing with the executive branch in Barnes. All of the foregoing affected our analysis and influenced our conclusion regarding the superiority of informal administrative remedies to judicial alternatives.

In addition to the standing problem in the Barnes ruling, the nebulous complex areas of the law that surround the Alaska Power Authority wrap-up insurance program are neither clear-cut nor easily determined. They overlap each other in various shades of gray rather than black or white definitive areas. Illustrative of this problem is that despite the overwhelming volume of material supplied, we find that a few of the possible legal violations could not be adequately analyzed due to a lack of relevant information; these issues included the questions of possible:

1. Fictitious group insurance violations.
2. Worker's Compensation insurance violations.
3. Anti-trust violations.

The key issue of lack of competitive bidding in contracting the wrap-up insurance brokerage with Marsh and McLennan-Corroon & Black/-Dawson & Co. is illustrative of the myriad of legal arguments which can be raised on both sides of this entire matter without arriving at a clear cut conclusion. The following analysis of competitive bidding is also illustrative of the complexity of the legal issues surrounding the Alaska Power Authority wrap-up insurance program.

The contracting provisions of AS 37.05, the Fiscal Procedures Act, were until July 22, 1982 applicable to only state agencies and departments which were defined in AS 37.05.320(2) to mean:

> ...department, officer, institution, board, commission, bureau, division, or other administrative unit forming the state government and includes the Alaska Pioneer's Home and the University of Alaska.... (emphasis added)

AS 44.83.020 declares the Alaska Power Authority:

> ...is a public corporation of the State in the Department of Commerce and Economic Development but with separate and independent legal existence. (emphasis added)

Further insight into the legal significance of the Alaska Power Authority is provided by the following citation in AS 44.83.010(3):

> ...establishing and operating power projects in the state will be accelerated and facilitated by the creation of an instrumentality of the state with power to construct, acquire, finance and operate power projects. (emphasis added)

Since the University of Alaska is also a public corporation like the Alaska Power Authority with separate and independent legal existence, one could argue that the specific listing of the Pioneer's Home and the University of Alaska in the definition section of AS 37.05.320(2) exhibits legislative intent to exclude all other public corporations having separate and independent legal existence. This conclusion would be based upon the statutory construction doctrine of "expressio unius est exclusio alterius" (the express mention of one thing implies exclusion of all other of similar nature). If the intent had been to make the University of Alaska only an example of the type of public corporations included within the definition it should have been phrased: "including all statutorially created public corporations such as the University of Alaska."

Despite the above, one could readily argue on the other hand that by being an "instrumentality of the State" the Alaska Power Authority is an "administrative unit forming state government". The addition of the word "authority" to the definition of a state agency in AS 36.98.080(5) effective July 22, 1982, made applicable to Title 37 by virtue of AS 37.05.230(10), makes a slightly stronger case for the applicability of competitive bidding laws to the Alaska Power Authority. However, it certainly does not totally negate the applicability of the expressio unius doctrine mentioned above.

Even if one were to assume the applicability of Title 37 to the Alaska Power Authority, it does not necessary follow that any provision of that title has been violated since there are two very broad exclusions to the competitive bid requirements. It is provided in AS 37.05.230(1) that the competitive bids need not be required for "professional services" and the department may negotiate directly if it finds pursuant to AS 37.05.230(2) that it is in the "best interests of the state".

Unfortunately at the time of the brokerage contract between the Alaska Power Authority and Marsh and McLennan-Corroon & Black/Dawson & Co. when the wrap-up insurance program in question arose, the statut[illegible] were not explicit as to what constituted "professional services". T[illegible] phrase was not defined in Title 37. However, some insight may be

drawn from the definition set forth in the Alaska Corporation Act in AS 10.45.250(1), wherein it is stated that:

> 'Professional Services' means a type of highly skilled, technical, and specialized personal service rendered to the public by persons licensed by the state.

Insurance brokers are required to be licensed by virtue of AS 21.27.040. This fact, creates an argument that the insurance expertise provided by Marsh and McLennan-Corroon & Black/Dawson & Co., falls into the professional service exclusion of AS 37.05.230(1) and, was not subject to the competitive bidding requirements until the enactment of the "Professional Service Contract" statutes in Title 36 effective July . , 1982, which provide in AS 36.98.080(2):

> 'Profess.onal Services' means professional, technical, or consultant services that are predominately intellectual in character and that
>
> (a) include analysis, evaluation, prediction, planning or recommendation; and
>
> (b) result in the production of a report of the completion of a task.

AS 36.98.030 effective July 22, 1982 specifically governs the procedure for "Solicitation of Proposals". However, irrespective of the enactment of Chapter 98 of Title 36 governing "Professional Service Contracts", a serious question still exists as to whether under any statutory definition of "professional services", the legislature intended to include the activities engaged in by insurance brokers Marsh and McLennan-Corroon & Black/Dawson & Co. on behalf of the Alaska Power Authority. It appears the activities in which the brokers have engaged are much broader in scope than the mere giving of "analysis and recommendations" or the "production of a report or task" as set forth in AS 36.98.080(2), supra. The insurance brokers have entered into contracts for everything from public safety to legal services to public relations on behalf of the Alaska Power Authority's project at Tyee Lake. Thus, while their insurance brokerage services to Alaska Power Authority may fit within the professional services exclusion, it is arguable whether the legislature intended or even envisioned insurance brokers entering such a broad range of contracts on behalf of the State.

The intended scope and meaning of the "best interests" exception of AS 37.05.230(2) adds even greater uncertainty to the competitive bid issue. The State has only issued guidelines concerning the use of

this exception and has not transformed these guidelines into actual regulations. The guidelines require:

> The Commissioner of Administration or his designee may consider waiving the requirement of issuing invitations to bid when it can be substantiated by the requested department and confirmed by the department of administration that such action would be in the best interest of the State. To be considered, a request for waiver must be fully justified on an individual basis. A previously approved waiver will not be justification for additional purchases of the same item. Request for waiver may not be approved, regardless of the situation where it is apparent that poor or no planning was exercised or as a routine expediting service. (Emphasis added) (Department of Administration, Purchasing Regulations, Chapter 3, Section 6)

As near as we could determine from the documents provided us, the Alaska Power Authority did not comply with the requirements of the above-cited guidelines. However, there is no judicial precedent in Alaska for determining whether such failure negated the availability of such exemption. While a line of case authority can be found mandating the presentation of objective criteria on which to base such a finding there does appear to be data of record from which the State arguably could conclude that it was in the "best interests" of the State (Alaska Power Authority) to follow the procedure in question. This argument centers around the fact that Marsh and McLennan-Corroon & Black/Dawson & Co. have been providing insurance coverage to the State of Alaska and that it was therefore logical to have those insurance brokers handle the Alaska Power Authority wrap-up insurance program. While we would not reach a similar conclusion, we cannot say with any degree of certainty that a court would concur in our belief.

Given the nature of the argument that can be raised on both sides of the issue and the inordinate amount of time required for judicial litigation, it would seem that executive or legislative action would be a much speedier remedy. While such remedies may not change the Tyee Lake contract, the availability and practicality of judicial remedies for the Tyee Lake contract is quite questionable. In fact, given the Superior Court's ruling in the case of Barnes concerning the lack of legislative and taxpayer's standing to challenge State violation of the competitive bidding laws, one cannot even be certain that a court would decide the issues in question unless they were raised by one of the aggrieved bidders on the Tyee Lake project.

The other issues identified on page 3 of this letter, certainly warrant further scrutiny and the involvement of the Director of Insurance since we have been advised by Mr. Barry that no filings had been made with the Director of Insurance as required by statute. The report of the legislative audit tends to indicate certain filings were made. Various arguments and issues relevant to the fictitious group and workers' compensation insurance violations are set forth in the memorandum of November 22, 1982 attached hereto. Another memorandum relating to the issue of anti-trust violations dated November 22, 1982 is also attached for your perusal. Both of these memoranda have been synopsized for purposes of this letter. While we are inclined to think that the likelihood of violations of the above referenced areas are quite possible we feel that since a new administration is in power, it would be prudent for discussions to ensue with the Director of Insurance, Department of Administration, and Department of Law as to each of the various questions.

The Insurance Director's office should be able to handle the insurance issues concerning fictitious group insurance and worker's compensation. The Department of Administration could review the competitive bid waiver authorizations and perhaps revoke those which still are prospective in effect. The Department of Law could address the "Indemnity Agreement" problem as well as the anti-trust issues. The state liability arising from its potential exposure from it's "Indemnity Agreement" with Marsh and McLennan-Corroon & Black/Dawson & Co. might very well justify filing a judicial action to have the agreement declared void on any one or more of the grounds mentioned in this letter and attached memoranda. On the other hand, the State may prefer to wait until actual demand is made on the State for payment under the "Indemnity Agreement" before challenging its legality so as to avoid the expense of litigation without knowing whether the loss experienced from the Tyee Lake project will ever be high enough to bring the "Indemnity Agreement" into play. If more information is needed, or if the Legislature is desirous of pursuing its own investigation of these matters it could do so through the Legislative hearing process. This approach appears more appropriate now that Alaska Power Authority has amended it's brokerage contract with Marsh and McLennan-Corroon & Black/Dawson & Co. so that it is no longer open-ended, but instead is restricted only to the Tyee Lake project.

As you might well appreciate, the volume of factual data and the various nuances of each major legal issue is quite considerable. Thus, not all of them could be readily summarized in this letter when combined with the changing facts, administrations and statutory authority. Accordingly, if you have any questions, please do not hesitate to contact us. This letter and attached memoranda constitute work completed pursuant to the attorney-client relationship and

attorney work-product. Dissemination of this letter and attachments may waive the related privileges and we would request that you contact us prior to making the letter and attachments available to others. In the meantime, we will await your further instructions as to whatever action, if any, you wish us to pursue in this matter.

Please let us know if you need the subpoenaed documents we have retained. If litigation is desired we stand ready to undertake it. If assistance is desired for structuring of legislative hearing inquiries or contacts with the various executive branch we will be happy to assist you in any way you see fit.

Sincerely,

HARTIG, RHODES, NORMAN,
MAHONEY & EDWARDS

BY: G. Kent Edwards

GKE:WWS:ndv
Enclosures

ALASKA INDUSTRIAL DEVELOPMENT AUTHORITY

February 2, 1983

The Honorable Walt Furnace, Chairman
House Labor & Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Furnace:

While appearing before your committee on H.B. 26 several questions were asked that I was unable to answer at the time. I indicated these questions would be resolved and answers provided to the committee in writing.

Question: (from Representative Malone)

Please provide asset base, cash flow and amount pledged for bonds as of 12/31/82.

Answer:

Total assets as of 12/31/82 are $344 million. All assets of the Authority are pledged as payment for the bonds (i.e. full faith and credit of the Authority). Cash flow projections on appropriated and federal guaranteed loans are prepared twice a year (6/30 and 12/31). Attachment "A" was compiled using 6/30 figures. I will furnish updated 12/31 figures in approximately 2 weeks. Cash flows representing repayment of loans from bond proceed and from other investments are updated when required for Official Bond Sale Statements. Attachment "A" is from a December 1982 Official Statement.

Question:

Would you please furnish a written position paper on H.B. 26 & H.B. 22.

Answer:

Attached are position papers on H.B. 26 and H.B. 22.

In addition your committee requested extra copies of our annual report which I have included. If I can furnish any further information please advise.

1577 "C" STREET • SUITE 304 • ANCHORAGE, ALASKA 99501-5177 • (907) 274-1651

Sincerely,

Bertram L. Wagnon
Executive Director

BLW:mr

Enclosure(s)

CC: Catherine Wallen, Information Officer
Division of Administrative Services

Aggregate Debt Service and Estimated Coverage Schedule

The following table sets forth, for each respective annual period ending June 30, the total Debt Service Requirements for the outstanding Economic Development Bonds, Series 1-231 and Consolidated Bonds, Series A-D, and includes estimated Debt Service Requirements for the Bonds and $3,335,000 Economic Development Bonds expected to be issued concurrently with the Bonds. The estimated total Net Income of the Authority, and the estimated Debt Service Coverage are calculated by dividing estimated total Net Income (including projected loan repayments) by the total Debt Service Requirements.

	Annual Debt Service Requirements				Estimated Net Income					
Period Ending June 30	Outstanding Bonds Principal & Interest	Current Issues Principal	Current Issues Interest	Total Debt Service Requirements	From repayment of loans made from bond proceeds of Outstanding Bonds(1)	From repayment of loans made from bond proceeds of Current Issue(1)	From repayment of loans appropriated to the Authority (2)	From investment of certain assets and annual excess net revenues (3)	Estimated total Net Income	Estimated Coverage (4)
1983	$13,559,480	$ -	$ 274,599	$13,834,079	$13,419,745	$ 409,269	$24,731,541	$ 3,210,270	$41,770,826	3.02
1984	14,059,573	195,000	1,157,412	15,402,986	14,430,691	1,302,113	22,991,260	5,465,580	44,189,645	2.87
1985	13,378,248	210,000	1,137,912	14,726,161	13,720,306	1,366,229	23,362,228	7,051,367	45,500,131	3.09
1986	12,841,305	235,000	1,116,912	14,193,217	13,158,814	1,306,229	21,354,447	8,711,374	44,623,865	3.14
1987	12,354,036	265,000	1,093,412	13,712,448	12,605,217	1,300,229	19,346,384	10,418,432	43,730,263	3.19
1988	11,542,667	285,000	1,060,912	12,894,580	11,871,306	1,306,229	18,239,918	12,070,309	43,547,813	3.38
1989	11,272,388	175,000	1,038,412	12,485,801	11,602,306	1,228,575	16,609,092	13,760,299	43,080,273	3.45
1990	11,109,131	175,000	1,020,912	12,305,043	11,480,441	1,228,575	15,295,406	15,439,592	43,150,015	3.53
1991	11,147,550	215,000	1,003,412	12,365,962	11,489,666	1,228,575	14,738,209	17,151,456	44,607,907	3.61
1992	10,819,300	230,000	981,912	12,031,212	11,122,101	1,228,575	13,094,154	18,921,944	44,366,778	3.69
1993	10,325,343	250,000	956,912	11,531,256	10,768,005	1,228,575	11,916,947	20,703,620	44,616,447	3.87
1994	10,104,262	280,000	930,475	11,384,737	10,574,412	1,223,575	10,235,238	22,524,096	44,557,322	3.91
1995	10,057,406	305,000	897,487	11,259,893	10,504,422	1,228,575	10,224,628	24,349,200	46,306,819	4.11
1996	10,081,925	355,000	862,793	11,299,718	10,513,334	1,228,575	2,058,627	26,270,250	41,070,703	3.63
1997	9,027,768	385,000	822,412	10,835,181	10,031,189	1,228,575	1,661,424	27,910,221	40,831,413	3.77
1998	8,731,612	415,000	778,016	9,928,312	9,233,914	1,213,330	1,235,892	29,559,792	41,242,929	4.15
1999	8,695,975	425,000	731,412	9,852,387	9,194,308	1,107,596	1,101,715	31,281,610	42,745,235	4.34
2000	8,678,356	405,000	683,068	9,826,425	9,207,950	1,107,596	795,324	33,091,072	44,201,948	4.50
2001	8,718,600	515,000	630,175	9,863,775	9,252,602	1,107,596	405,827	34,984,528	45,870,553	4.65
2002	8,226,950	590,000	571,593	9,388,543	8,710,315	1,107,596	183,237	36,964,088	47,025,836	5.01
2003	7,100,387	635,000	504,431	8,239,808	7,001,330	1,107,596	147,732	39,035,056	47,954,714	5.82
2004	6,915,643	725,000	432,250	8,072,793	7,436,573	1,107,596		41,218,080	49,822,249	6.17
2005	6,903,487	705,000	340,781	8,108,268	7,482,390	1,107,596		43,514,912	52,104,898	6.43
2006	6,958,050	800,000	259,350	8,108,000	7,515,373	1,107,596		45,937,408	54,560,377	6.74
2007	5,824,325	875,000	158,112	6,857,437	6,092,869	1,039,065		48,495,248	55,628,082	8.11
2008	1,428,337	480,000	58,581	1,966,918	1,594,200	530,057		51,177,792	53,302,050	27.38
2009		55,000	6,250	61,250		62,087		54,001,008	54,063,095	882.57

(1) Revenues are net of all fees and expenses on a fiscal year basis.

(2) Represents revenues from the loans appropriated to the Authority, net of all fees, plus estimated holding period interest calculated at 6.5% and other revenues. Principal and interest on loans delinquent more than 90 days are not included. This column includes Small Business Administration loan repayments.

(3) Includes income from investment of certain assets and excess net revenues of the Authority at an assumed rate of 5.50% compounded annually for periods after December 1, 1982.

(4) There are currently outstanding $6,035,000 principal amount of Economic Development Bonds which may be tendered for payment by the holders thereof commencing on April 1, 1987. If all of such Bonds were tendered on April 1, 1987 estimated coverage for the period ending on June 30, 1987 would decline from 3.19 to 2.21. However, the reduction in annual debt service requirements thereafter would result in higher coverage multiples than those shown above.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
ALASKA INDUSTRIAL DEVELOPMENT AUTHORITY

Position Paper

Sponsor Substitute for House Bill Number 22

We appreciate the opportunity to comment on SSHB22. The effect of the bill would be to preclude utilizing the credit of the Authority for any loan in which the applicant was not a resident of the state. The current statutes of the Authority require that the "project" be located within the state (44.88.070). The purpose of the Authority is to promote, develop and advance the general prosperity of the people of Alaska. By having "non-resident" corporations construct facilities within the state and accordingly have the construction and operation employment within the state seems an appropriate way of furthering that purpose.

SSHB22 does not define residents so regulations would be needed. The constitutional questions regarding residency are well known and to what extent regulations could limit residency and still pass a legal challenge are unknown. A considerable portion of the benefit of utilizing financing though the Authority is obtained by Federal law regarding tax-exemption. It is possible that a definition of residency would have to be of a very short duration in that the benefits flow from federal legislation.

A review of our loan report indicates that out of 266 loans that pledged the full faith and credit of the Authority 6 were to possible non-residents. These 6 loans supposedly created or retained 65 jobs within the State of Alaska.

While we certainly understand the desire to ensure that benefits of the program are provided to Alaskans, rather than outside corporations, we believe that the present program already generates this result.

Richard A. Lyon, Commissioner

Date

Bertram Wagnon, Executive Director

Jan 24, 1983
Date

ALASKA INDUSTRIAL DEVELOPMENT AUTHORITY

Department of Commerce & Economic Development
Alaska Industrial Development Authority

Position Paper
House Bill No. 26

Thank you for the opportunity to comment on HB 26. This bill changes the Statutes of both the Alaska Industrial Development Authority as well as the Alaska Permanent Fund. Our comments will consider the impact only on the authority, as we assume the Permanent Fund will be presenting their own testimony on the bill.

The initial effect of this bill is that any qualifying business having an outstanding loan with an interest rate in excess of 10.9% will seek refinancing under the program. As the interest rate on an eligible loan is set at the lesser of 10.9% or 1% above prime, should the prime rate fall below 9.9% the demand for refinancing will be correspondingly greater. Furthermore, any new qualifying borrowers would undoubtedly prefer this program over existing higher priced alternative financing. It is impossible to accurately estimate volume, but it seems reasonable to expect that within two years the 25% Permanent Fund allotment will have been exhausted, and the program will be reduced to a much lower level (25% of annual Permanent Fund Contributions).

Another possible effect of the interest rate ceiling is that if the prime rate drops below 9.6%, AIDA would have to begin subsidizing loans. For instance, if prime is 9%, then the loan rate is 10%, with .6% going to a bank for servicing fees, and 9.4% going to AIDA. However, AIDA is required to pay 10% to the Permanent Fund on its bonds, or a loss of .6%.

Another feature of the bill is that it appears to preclude AIDA from making any credit decisions on loans, but rather requires that the authority purchase any loan that a bank certifies is eligible.

The combination of the above factors, when coupled with the requirement that these loans must be guaranteed by the authority most likely means that AIDA will no longer be able to issue any other bonds based on the general obligation of the authority. This results from the fact that the general credit worthiness of the authority will have been so weakened that it will no longer be possible to sell bonds at any reasonable rates.

Unfortunately, this bill seems to follow the historic patterns of State loan programs. Phase one begins with a program put in place that provides a source of funds requiring no ongoing subsidy yet structured to provide an attractive interest rate to borrowers. Phase two is the expansion of a successful program to include other forms of borrowing and allow a larger number of individuals access to the program, often with some form of slightly below market interest rates. Phase three is additional liberalization and

subsidization resulting in a massive increase in loan volume. This is eventually followed by Phase four, the demise of the program brought about because of the now large costs that can no longer be sustained.

In our opinion, not only does the bill jeopardize the continued useful functioning of one of the authority's main programs, it does not appear to be necessary. Presently the authority can finance a significant portion of small business expansion with tax-exempt bond financing. For much of the demand for financing that is ineligible for bond financing, the authority also has the small enterprise loan account (AS 44.88.156).

This program provides funds ($47 million thus far) for business refinance, working capital, inventory, acquisition and expansion of business. First lien position is not required since these loans are guaranteed by the federal government. Banks and financial institutions originate the loans and the authority purchases the guaranteed portion without underwriting delay. The interest rate is fixed and the loan term may be as long as 25 years and may be prepaid without penalty. The maximum loan is $500,000; however, there is no limit as to the number of loans a business may have. The authority collects no fee and the banks are allowed a 1 or 1-1/2 percent fee depending on loan size. The authority's interest rate is set as the Aa corporate bond rate, which is currently 12.25%.

Although this program is not as lucrative to a borrower as the proposed program, it does provide for a wide variety of financing uses at a competitive interest rate, and, further, is a sustainable program that complements, rather than jeopardizes other programs of the authority.

Bertram L. Wagnon, Executive Director

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.

TITLE PAGE ONLY HAS BEEN FILMED.

ALASKA INDUSTRIAL DEVELOPMENT AUTHORITY

1982 ANNUAL REPORT AND FINANCIAL STATEMENT

1577 "C" STREET, SUITE 304, ANCHORAGE, ALASKA 99501

Gov.'s Appointments - Boards & Commissions

#1

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811

BOARDS AND COMMISSIONS RESUMÉ

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. The initial determination of whether you qualify for the position specified will be based on this application.

Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying:
Board of Barbers and Hairdressers

Please list any other Board or Commission on which you serve:

Name	Previous Name applied under
Carolyn S. Janzen	
Mailing Address	**Residence Address**
SR Box 2586-A	
City, State and Zip Code	
Anchorage, AK 99516	
Home Telephone	**Business or Message Telephone**
344-9885	337-1244

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter before the last general election:

Are you a registered voter? ☒ YES ☐ NO

Voter Registration Number (Optional) Democrat (HD #08) Social Security Number (Optional)

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? ☐ YES ☒ NO

If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required authorized meetings? ☒ YES ☐ NO

If "YES", explain on a separate sheet of paper and attach to this application.

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating?

No

CONFLICTS OF INTEREST. Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so? ☐ YES ☒ NO

Could you or any member of your family be affected financially be decisions to be made by the Board or Commission for which you have applied?
☐ YES ☒ NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion or Parenthood.

01-012(2/81)

TRAINING & EXPERIENCE: (If résumé attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

Licensed Hairdresser - Alaska
Trained at Anchorage Beauty School

B. List both formal and informal education and training experiences: (Use additional paper if necessary)

High School graduate

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensat and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the positions.

N/A

D. Employment work history: paid, unpaid or voluntary: (Use additional paper if necessary)

Owner/operator - Hair Rack for 4 years

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX
☐ Male
☒ Female

ETHNIC BACKGROUND
☒ White ☐ Black ☐ Hispanic ☐ Alaska Native ☐ Asian or Pacific Islander ☐ American Indian

Date of Birth	Military Service (If applicable, give dates)
11/05/42	N/A

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature In Ink	Date

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

FEB 03

February 3, 1984

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Pursuant to applicable law, I submit the following names for legislative confirmation of appointment to the positions noted:

BOARDS AND COMMISSIONS

(with Appt/*Reappt/Term)

Alcoholic Beverage Control Board

*Perkins, Jane - Nome, 83/10/19 - *84/01/31 - 87/01/31

Architects, Engineers & Land Surveyors, State Board of

Menzies, Malcolm - Juneau, 83/10/19 - 86/07/01
Sampson, Sandra - Anchorage, 83/10/19 - 89/07/01

Barbers & Hairdressers, Board of

Ashcraft, Retha - Anchorage, 83/10/19 - 86/07/01
Janzen, Carolyn - Anchorage, 83/10/19 - 84/07/01
Slaven, Roger - Ketchikan, 83/10/19 - 86/07/01

Commercial Fisheries Entry Commission

Smith, Philip - Anchorage, 83/08/19 - 87/07/01

Dental Examiners, Board of

Buxton, DDS, Paul - Soldotna, 83/09/21 - 87/02/01
Zemlicka, DDS, Jerry - Juneau, 83/09/21 - 85/02/01

Education, Board of

*Kito, Sam - Anchorage, 82/12/28 - *84/01/31 - 89/01/31
*Schaeffer, Mary - Kotzebue, 82/12/28 - *84/01/31 - 89/01/31

Fisheries, Board of

Angasan, Val - Dillingham, 84/01/23 - 86/01/31
Blake, Robert - Cordova, 83/07/20 - 85/01/31
Bonney, Bix - Anchorage, 83/07/20 - 86/01/31
Foster, Jesse - Quinhagak, 83/07/20 - 86/01/31
Garner, John - Juneau, 84/01/23 - 87/01/31
Jolin, Ron - Kodiak, 84/01/23 - 87/01/31
Museth, Jerene - Juneau, 84/01/31 - 87/01/31

Judicial Conduct, Commission on

Dale, Barbara - Juneau, 83/08/31 - 86/12/31
Lincoln, Georgianna - Fairbanks, 83/08/31 - 85/12/31

Judicial Council

Murray, Renee - Anchorage, 83/08/08 - 89/05/18

Marine Pilots, Board of

Brady, Judith - Anchorage, 83/12/02 - 87/06/01
Hodgman, James - Ketchikan, 84/01/23 - 87/06/01

Nursing, Board of

Hartz, RN, Lynn - Anchorage, 83/10/19 - 88/03/31
Solomon, Alice - Barrow, 83/11/25 - 86/03/31

Nursing Home Administrators, Board of

Deater, Eloise - Anchorage, 83/12/27 - 85/10/01

Personnel Board

Humphries, Ben - Anchorage, 83/08/23 - 88/06/20
Johnson, Marlene - Hoonah, 83/10/19 - 86/06/20

Pharmacy, Board of

Donelson, Joy - Anchorage, 83/12/27 - 86/03/31
Nielson, Christy - Fairbanks, 83/12/27 - 87/03/31

Professional Teaching Practices Commission

Adkison, Perry - Dillingham, 83/10/19 - 86/07/01
Jorgensen, Spike - Tok, 83/10/19 - 86/07/01
Nelson, James "Tom" - Anchorage, 83/10/19 - 86/07/01
Ryals, Karen - Juneau, 83/09/23 - 85/07/01
Trent, Darleen - Anchorage, 83/10/19 - 84/07/01
Van Flein, Margaret - Fairbanks, 83/10/19 - 84/07/01

Real Estate Commission

Anders, Ed - Fairbanks, 83/12/02 - 87/01/31
Benson, John - Ketchikan, 83/10/19 - 85/01/31
Collins, LaVerne - Anchorage, 83/05/20 - *84/01/31 - 88/01/31
Serrano, Gilbert - Eagle River, 83/10/19 - 87/01/31

Worker's Compensation Board

Pruhs, Delia - Fairbanks, 83/08/19 - 86/07/01
Richards, David - Juneau, 83/08/19 - 86/07/01
Thomas (II), Joe - Fairbanks, 83/08/19 - 84/07/01
Thompson, Jack - Anchorage, 83/08/19 - 85/07/01

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811

BOARDS AND COMMISSIONS RESUMÉ

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. The initial determination of whether you qualify for the position specified will be based on this application.

Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying:
Barber and Hairdressers' Board

Please list any other Board or Commission on which you serve:

Name	Previous Name applied under
LETHA BRAY ASHCRAFT	
Mailing Address	**Residence Address**
3609 Richmond Avenue, Anch, AK 99504	Same
City, State and Zip Code	
Anchorage, AK 99504	
Home Telephone	**Business or Message Telephone**
907-277-9219	

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter before the last general election.

Are you a registered voter? ☒ YES ☐ NO

Voter Registration Number (Optional)

Social Security Number (Optional) 574-18-4591

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? ☐ YES ☒ NO

If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required authorized meetings? ☐ YES ☒ NO

If "YES", explain on a separate sheet of paper and attach to this application.

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating? No

CONFLICTS OF INTEREST Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so? ☒ YES ☐ NO

Could you or any member of your family be affected financially be decisions to be made by the Board or Commission for which you have applied?
☐ YES ☒ NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion or Parenthood.

01-012(2/81)

TRAINING & EXPERIENCE: (If résumé attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

State of Alaska Hairdresser & Cosmetologist Instructor, owner and operator licenses. 1963-83

B. List both formal and informal education and training experiences: (Use additional paper if necessary)

SEE ATTACHED RESUME

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensated and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the positions.

SEE ATTACHED RESUME

D. Employment work history: paid, unpaid or voluntary: (Use additional paper if necessary)

SEE ATTACHED RESUME

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX
☐ Male
☒ Female

ETHNIC BACKGROUND
☒ White ☐ Black ☐ Hispanic ☐ Alaska Native ☐ Asian or Pacific Islander ☐ American Indian

Resident of Alaska since 1946---37 years

Date of Birth
14 June 1944

Military Service (If applicable, give dates)
None

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature in Ink
Bethe J. Bray Ashcraft

Date
9 February 1983

PERSONAL DATA

LETHA BRAY ASHCRAFT
3609 Richmond Avenue
Anchorage, AK 99504
907-277-9219

LETHA BRAY ASHCRAFT was raised in Anchorage and was educated in the Anchorage School System. She has been an Alaskan resident since 1946. Her initial cosmetology training was taken at MAXINE'S BEAUTY COLLEGE, 1010 Fireweed Lane, Anchorage, Alaska. She then took advance training at BEETCH'S BEAUTY COLLEGE in Enid, Oklahoma. Letha worked as a cosmetologist for several years while continuing her advanced training to become a licensed cosmetology instructor.

She has served as an instructor for several beauty colleges. She feels that membership in professional organizations is an important part of any cosmetologist's career. She has been a member of Anchorage Affiliate #293 and a member of the Alaska State Hairdresser & Cosmetologists Association since 1963. During that time she has served in many capacities, among these are: Alaska State Styles Director and Chairman of the Alaska State Hair Fashion Committee. As a member of the National Hairdressers and Cosmetologists Association, she has a[illegible] many national conventions and shows both as a participant, delegate and as a c[illegible]ion instructor. In 1975, she became Alaska's first representative on the Official Hair Fashion Committee. She is extremely interested in helping Alaskans keep up-to-date with the latest trends in hair styling. Membership on the OHFC of America is based on a comprehensive three-day competitive examination. The committee is not only honorary, but serves as the educational body to relay the current trends to each state. Membership on the committee also makes the individual member eligible to serve as a guest artist for any state hairdresser & cosmetologists convention.

Letha was the owner of the Nordstrom Beauty Salon from 1975 til 1982. She is married and has two children.

PERSONAL DATA SHEET

LETHA BRAY ASHCRAFT
3609 Richmond Avenue
Anchorage, Alaska 99504

EDUCATION:

1962	Graduated from East Anchorage High School.
1963	Graduated from Maxine's Beauty College, Anchorage, AK.
1963	Received State of Alaska Operator's License.
1964	Received State of Alaska Manager's License.
1964	Received 400 hours of instructor training at Beetch's Beauty College, Enid, OK then returned to Anchorage to complete 200 hours of instructor training at Maxine's Beauty College.
1965	Received State of Alaska's Instructor's License.
1973	Received State of Alaska, Department of Education, Teacher Certificate, Type D, Vocational T&I, (Cosmetology).

ADDITIONAL ADVANCED TRAINING:

1964	Raphal (Official Hair Fashion Committee of U.S.)
1964	Buddy Francis (Official OHFC OF U.S.)
1964	Grace Doran (Official OHFC OF U.S.)
1965	Otto of Vienna (Official OHFC OF U.S.)
1965	Sim Simpson (Official OHFC OF U.S.)
1965	Leo Passage (OHFC OF U.S.)
1966	Sally Ponce (OHFC OF U.S. & U.S. OLYMPIC TEAM TRAINER)
1966	Peter Hantz (OHFC of U.S.)
1966	Salvatore (OHFC OF U.S. & Originator of Trend Setter Method)
1967	Vera Slater (OHFC of U.S & U.S. OLYMPIC TEAM TRAINER)
1968	JHeri Redding (RedKen Seminar)
1968	Paul Morrey (OHFC of U.S & Olympic Team Alternate)
1969	Paul Morrey (OHFC of U.S & Olympic Team Alternate)
1969	Jay Austimuhl (OHFC of U.S.)
1969	Leonard Benner (OHFC of U.S.)
1970	Paul Morrey (OHFC of U.S & Olympic Team Alternate)
1970	Mary Lou Augustine (Directional Hair Design Originator)(OHFC)
1970	Bill Wright (OHFC of U.S)
1970	Bernard de Jardine (OHFC of U.S)
1971	Paul Morrey (OHFC of U.S. & Olympic Team Alternate)
1971	Gaines Pressley (OHFC of U.S.)
1972	Esther Richardson (OHFC of U.S)
1972	Don Carr (Pivot Point International Training Director)
1972	Alan Thayne (AK State Hair Fashion Committee/Current Trends and Pivot Point Training.)
1973	Alan Thayne (AK State OHFC--Current Trends & Pivot Point Training.)
1973	Paula Kent (RedKen Seminar, Seattle, WA)

LETHA BRAY ASHCRAFT
Personal Data Sheet
19 August 1979

ADDITIONAL ADVANCED TRAINING:

1973 Don Morris (RedKen Seminar)
1973 Tony Beckerman (Vidal Sasson Haircutting Techniques)
1973 Ditmar Planer (European Styles Director for Pivot Point)
1974 Alan Thayne (AK State OHFC Styles Director)
1974 JHeri REdding (Jherimack Seminar)
1974 Theresa Pupilli (OHFC of U.S.--Received my first seal towards Pivot Point Master Hair Designer Degree(April)
1974 Received Masters Degree in Quick Service (May)
1974 Received training in European Techniques in Haircutting from Don Carr, (OHFC of U.S. & International Director of Training for Pivot Point)(December)
1974 Attended fall & winter release at annual convention of NHCA at Dallas, Texas.
1975 (Jan) Michael Nealeigh (Director of Education & OHFC) Received training "Skin Care and Make-Up"
Margaret Vinci Heldt (OHFC) "Quick Service Techniques"
Richard Hertel (OHFC) "State & National Competition"
Leslie Bryner (OHFC) "Guide to Coiffure Creation"
Reba Roy (OHFC) "Guide to Coiffure Creation"
Michael Nealeigh (OHFC) "Advanced Techniques in Permanent Waving & Creative Hair Coloring"
Lyal McCaig (OHFC) "Short Looks Hair Fashion"
Michael Taylor (OHFC) "Empahsis on Fashion Form Haircutting"
Attended the L.A. California Convention "Total Fashion Release for Spring & Summer of 1975"
Took THE OFFICIAL HAIR FASHION COMMITTEE OF THE U.S. competitive examination and was admitted as a member of the Official Hair Fashion Committee of the U.S." The only member from ALASKA.
(Feb) Jim Ramona (RedKen Educator) "Structure & Chemistry of the Hair"
Denise McCloud (AK HFC & State Styles Director) "Spring & Summer Release for 1975"
(Mar) Don Carr (OHFC) "Unisex Haircutting & Advanced Permanent Waving."

1976 Attended the National Convention & Classes at Omaha, Nebraska
Was a member of the OHFC qualification examination committee.
Took the following training:
"Master Judging Symposium" Vera Slater (OHFC)
"OHFC Continuing Education Day" taught by the National Coiffure Design Committee composed of Sue Lack, Hayden Hitchcock, Jackie Holt, and Matt Mattison.
"State Hair Fashion Committee Seminar" CDC Committee
"NHCA Legislative Seminar" Doris Vernon

LETHA BRAY ASHCRAFT
Personal Data Sheet
19 August 1979

ADVANCED TRAINING CONTINUED:

1976	"Creative Coloring"	Evelyn Quick, John Desiderio, Tom Emery, Bob Johnson (All OHFC
	"Progressive Perming"	Barbara Leachman, Louis Schmidt, Frank Friia, Lea Sterns (ALL OHFC
	"Skin Care-Face Color"	Grace Doran, Peg Guadian, Rita Georais, Mary Francis Myer.
	"Progressive Education--Chemistry 101"	Dorothy Wellery
	"Progressive Education--Intro to Art Principles 102,	Lyal McCaig, Betty Bagwell
	"Spring & Summer Release Class"	"Premiere 2000: CDC Members
	'Competition Contestant Class"	Lyal McCaig (Nat'l Styles Director
	"Progressive Perming"	Letha Ashcraft, Ray Macarenas, Marilyn Wilcox, Sonny Stewart
1977	San Francisco Convention:	
	"Art Principles 204"	Max Matteson
	"Sculpturing"	Marguerite Buck
	"OHFC Continuing Education"	Lyal McCaig, Alida Wengang, Michael Taylor, Shirley Gossett, Leslie Bryner
	"State Hair Fashion Committee Seminar"	
	"OHFC Qualifying Examination"	Letha Ashcraft (OHFC)
	"Competition Concepts"	Lyal McCaig
	"Fall & Winter Release Class"	CDC Members
	"Hair Color Concepts"	Lois Lackey
	"Art Principles 201-212-213"	Max Matteson
	"Education Overview"	Grace Doran Francis
	"Concepts of Permanent Waving"	Rita Georais
	"Special OHFC Seminar in Chemistry & Nutrition at JHERIMACK.	
1978	"Models Committee"	Letha Ashcraft, Linda Miller, Pearl Lowman, Leila Cohoon, Joyce Smith, Kathy Young, Dick Spencer, Rita Georvais
	"OHFC Education Day"	CDC Members-John Amici, Olive Benson, Richard Hertel, Michael Nealeigh
	"State Hair Fashion Committee Seminar"	CDC Members & Dr. Everett G. McDonough
	"Hair Color Concepts"	Lois Lackey & Letha Ashcraft
	"Skin & Cosmetic Concepts"	Raphael
	"Chemical Control Concepts"	Tom Serra, Tom Hayden, Charlene Rusteberg, Barbara Leachman
	"Art in Commercial Hair Design"	Marguerite Buck, Lyal McCaig
	"Dollars & Sense for Hairdressers Seminar"	David Bagwell
	"Competition Class"	Leo Passage

LETHA BRAY ASHCRAFT
Personal Data Sheet
19 August 1979

ADVANCED TRAINING CONT'D:

1978 (July) Attended NHFC National Convention at Atlanta, Georgia and received the following training;
"OHFC CONTINUING EDUCATION" Coiffure Design Committee
"State Hair fashion Committee Seminar" CDC Committee
"Permanent Waving concepts" Teresa Pupilli & Charlene Rustenberg
"Creative Coloring" Leslie Bryner
"Skin Care Concepts" Denise Miller
"Fall & Winter Release 1978-79" CDC Members
"Motivation Class" Michael Sweeney
"Nutrition" Michael Nealeigh
"Competition Concepts" Alida Wiergang & CDC Members

Attended all Alaska State Shows & Conventions. Served as State Styles Director for 1976-77-78.

1979 (January) Attended NHCA CONVENTION in LAS VEGAS.
"Hair Happenings Release" (OHFC MEMBERS) CDC COMMITTEE
"Hair Color Concepts" Leslie Blanchard
"OHFC Self-Education" Doris Williams, Leslie Blanchard, Connie Rubin
"Competition Class" Louise Cotter, Sam Cappelli
"State Hair Fashion Committee Seminar"
"Skin Care Concepts" Luella Bailey
"Face Designs & Make-up Concepts" Grace Doran
"Chemical Control Permanent Wave Concepts" Bernard Des Jardins
"Nutrition for Beauty" Michael Nealeigh
"Art Principles" Carl Reese, Marquerite Buck
"Dollers & Sense for Hairdressers" Peg Gaudian
"Cosmetic Chemistry for Pros" Art Smith

1979 (July) Attended NHFC CONVENTION AT CHICAGO, ILL.
"OHFC HAIR HAPPENINGS" CEC Members
"Hair Color Concepts" Michael Tayler & Letha Ashcraft
"Perming" Max Matteson
"OHFC Seminar-SKIN" Luella Bailey
"OHFC Seminar-MAKE-UP", Grace Doran
"OHFC Seminar-COLOR", Michael Taylor & Letha Ashcraft
"State Hair Fashion Committee Seminar" Alida Wiergang
"State Hair Fashion Committee Participation Class:, Alida Wiergang.
"Art Principles" Marguerite Buck
"Dollars & Sense" Jonnie McCoy
"Public Relations-How to Promote Yourself & Your Business" Sharon Esche
"Gerontology" Jerri Redding
"Competition" Bernard Des Jardine
"Cosmo-Chemistry for Pros" Art Smith
"Motivation" Mchael Nealeigh
"Fashion Apparel for the Total Look"
"Merchadising-Marketing-Retailing" Frankl Liquoir
"Model for National Coiffure Championship" Letha Ashcraft

LETHA BRAY ASYCRAFT
ADVANCED TRAINING (contd)

1980 January--attended the annual NHCA Educational Seminar held at Las Vegas, Nevada and received the following additional training and assisted with the presentation of the program:

"Chemical Styling" Paul Barnes
"Color Clasics" Vincent Farricielli & Letha Ashcraft
"Long Hair Braiding & Weaving" John Marsala
"Art & Principles of Hair Fashion Illusion" Mario Caruso
"Long Hair Balance & Design" Don Estes
"Hair Fashion Direction for Spring & Summer" 1981 CDC Committee
"Creating Fabulous Faces" Larry Parish
"SHFC/Participation Workshop" Same Cappelle & Letha Ashcraft
"How to be a Competitive Winner" Michael Diano
"Teaching Techniques for Instructors" Jean Redd
"Salon Up-Date Forum" Thomas Berger
"Self-Preservation (Exercise & Nutrition") Jan Murphy
"Male Services" Antonio Trapani
"Dollars & Sense for Cosmetologists" Betty Tallen
"Skin Care Motivation" Carlene Barefoot
"Motivation" Robert Willison
"Salon Chemistry" Taylor Burgess
"Creating Your Client's Best Image" Larry Walker

1981 January--attended the annual NHCA educational seminar held at Las Vegas, Nevada and received the following additional training and assisted with the presentation of the program:

"Color Classic" Letha Ashcraft
"Chemical Styling" Paul Barnes
"OHFC Directions -Spring & Summer 1981" Sam Cappelle, Charlene Rustenberg, Michael Schuh, Diane Sherrill
"OHFC Educational-Teaching Seminar" Sames as above
"Braiding & Weaving" Olive Benson, Richard Hertel
"Balance & Design" Linda Gazoway, Hayden Hitchock
"State Hair Fashion Seminar-Participation Workshop" Letha Ashcraft
"Teaching Techniques for Instructors" Jean Redd
""Train with Competition Winners" Leo Passage, Gloria DiSanga
"Hair Fashion Direction" Bill Hill
"Salon Up-Date Forum" Thomas Berger
"Self-Preservation-(exercise & nutrition)" Kurt Thomas, Peter Lupus
"Long Hair Design & Balance, Phase II" Linda Gazoway, Hayden Hitchock
"Creating Fabulous Faces" Larry Parrish
"Male Services" Antonio Trapani
"Dollars & Sense for Cosmetologists" Michael Swiger, Betty Tallen
"Art Principles of Hair Fashion Illusion" Mario Caruso
"Skin Care Motivation: Carlene Barefoot
"Motivation" Marilyn Van Derbero--former Miss America

1982 January--attended the annual NHCA Educational Seminar held at Anaheim, California:

"America Images" Doris Williams
"Men's Hair Cutting" Bill Hill
"Make-Up" Ron Renee, Ann Bray
"Salon Up-date Forum" Buddy Walton
"Competition Class" Michael Taylor, Gary Bray

LETHA BRAY ASHCRAFT
ADVANCED TRAINING (contd)

1982 Anaheim, California (contd):

"OHFC Examination Up-date" Art Waters
"Perming Images" Teresa Pupillo
"Skin Care" Luella Hubbard, Jean Tierney
"Participation Class for State Styles Directors" Letha Ashcraft, Mel Tozier
"OHFC Education" Vincent Farricielli, Gary Bray
"Long Hair Image" Micheal Schuh, Rapheal, Don Estes
"Motivation: Michael Sweeney
"Teen-Age Images" Jeri Hearne
"American Woman--Tips for Maturing" Larry Walker
"Jewelry & Hair Ornaments" Marium Haskell
"Evening Images" Candi Ekstrom

1983 January--attended the annual NHFC educational seminar held at New Orleans, Louisianna and received the following additional training plus assisted with the presentation of the program:

"Spring Images Release" Diane Narron, Dennis Mattos
"How to be Successful" Kevin McKowen
"Latest Techniques & Advice in Fetting & Attaching Wigs & Hairpieces", Larry Bucheit
"How to Prepare a Class, Platform Presentation, Voice Projection, & Self-Motivation" Micheal Diano
"Wholeistic Wellness, Health Awareness" Dr. George Milne
"Participation for Styles Directors & Chairmen Only" Letha Ashcraft
"Hairfashion Direction" Michael Diano
"Perming Technology" Pauline McCloud
"Hair Color Today" Carolyn Fruia
"Salon Technology" Peggy White
"Competition" Candi Ekstrom, Gary Bray
"Skin Care" Denise Miller
"Men's Trend Class" Herb Haller, Daniel Ruidant
"Premier Class" Sam Cappella, Letha Ashcraft

LETHA BRAY ASHCRAFT
Personal Data

REFERENCES: Professional and Character

Joe D. Montgomery
1048 Beech Lane
Anchorage, AK 99501

Ms. Connie Millhouse
407 East Northern Lights Blvd.
Anchorage, AK 99503

Mr. Charles Maletta
Paris Beauty Supply
P.O. Box 3774
Seattle, WA 98124

Mrs. Joy Donelson
908 R Street
Anchorage, AK 99501

Mrs. Maxine Reed
1361 W. 12th Street
Anchorage, AK 99501

Ms. Iyllamae Olsonoski
1317 Crescent Avenue
Anchorage, Ak 99504

LETHA BRAY ASHCRAFT
Personal Data
17 February 1982

EXPERIENCE:

February 1963 to December 1963	Operator, Maxine's Beauty Salon 809 4th Avenue Anchorage, AK 99501
January 1964 to May 1964	Operator-Manager Maxine's Beauty Salon 809 4th Avenue Anchorage, AK 99501
June 1964 to August 1964	Student-Instructor Beetch's Beauty College Enid, OK 73701
September 1964 to November 1964	Student-Instructor Maxine's Beauty College Anchorage, AK
December 1964 to December 1965	Manager-Operator Maxine's Beauty Salon Anchorage, AK
January 1966 to August 1970	Corporate Owner-Instructor-Operator Maxine's Beauty College Anchorage, AK
September 1970 to March 1972	Manager-Instructor D.J.'s School of Hair Design Anchorage, AK
April 1972 to March 1975	Manager-Instructor Alaska Accredited Beauty School Anchorage, AK
April 1975 to August 1982	Corporate Owner-Manager-Operator Instructor, H.G.B. Inc., dba Nordstrom Beauty Salon 603 D Street Anchorage, AK 99501
September 1982 to Present	Unemployed

RESUME

Name: Barbara Jean (Silberer) Hill

Born: December 7, 1931, Akron, Ohio

Married: 31 Years, 5 children, 2 gandchildren

Alaskan Resident: 36 years

Real Estate
Profession: 29 years

Broker: Gene's Realty 11 years

Education: Anchorage High
Southern Oregon College
University of Alaska, Fairbanks
Colorado College

Membership: Anchorage Board of REALTORS
Alaska Association of REALTORS
National Association of REALTORS
Anchorage Chamber of Commerce
Alaska Chamber of Commerce
U. S. Chamber of Commerce
Pioneer's of Alaska
Alaska Golf Association
International Institute of Valuers
National Morgage Reviewers

Professional Appointments:
Alaska Real Estate Commission, 4 years
Anchorage Planning and Zoning Commission, 6 years
Anchorage Board of Equalization, 2 years

Awards: Realtor of the Year, 1979
President of Anchorage Board of REALTORS, 1981
Designations: R. E. M., CRA

RESUME FOR ROGER D. SLAVEN
February 4, 1984

Date & Place of Birth:	Janaury 16, 1955 Eugene, Oregon
Social Security Number:	557-11-2144
Business Address & Phone:	310 Front Street Ketchikan, Alaska 99901 (907) 225-3022
Resident of Alaska:	8 Years

I attended the Modern School of Hairstyling and Barbering in Seattle, Washington from June 1979 through March 1980, completing all the requirements for Washington and Alaska. I took the Alaska Board Exam in Anchorage in April of 1980. I was owner/operator of the Windward Barber Shop in Petersburg from May 1980 through June 1981. He moved to Ketchikan and worked for Elmo's Hair Design from June 1981 through July 1981. Then I opened the Stedman Barber and Styling where I am presently the owner and operator. This gives me a total of four years of barbering in Alaska.

Previous to barbering I was a commercial fisherman for 2 years and worked for the U.S. Forest Service for 4 years.

ROGER D. SLAVEN

Alaska State Legislature

COMMITTEES
OIL & GAS—(CO-CHAIR)
STATE OF AFFAIRS—(VICE-CHAIR)
LABOR & COMMERCE
RESOURCES

House of Representatives

REPRESENTATIVE
JOHN J. COWDERY
DISTRICT EIGHT

ANCHORAGE
P.O. BOX 10-1623
ANCHORAGE, AK 99511
(907) 344-0950

JUNEAU
POUCH V
JUNEAU, AK 99811
(907) 465-4905
465-4906

March 6, 1984

Ms. Bonnie Butler Novaky
P.O. 4-253
Anchorage, Alaska 99509

Dear Bonnie:

Enclosed you will find some Alaskan walrus pins. I thought you might like to have a few for yourself and would like to give some to your associates-compliments of the State of Alaska.

Best wishes,

John Cowdery

John Cowdery
Representative

lf

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

MEMORANDUM

February 20, 1984

To: All Committee Members

From: Rep. John Cowdery, Chairman JC

RE: Confirmation Hearings

As you are aware, a number of the Governor's appointments to boards and commissions have been referred to the Labor and Commerce Committee for confirmation. While the committee is in Anchorage on the 24th of this month, it is my intention to hold confirmation hearings for those appointed by Governor Sheffield who live in the Anchorage area. It is also my intention to reserve taking action on these appointments until a later date. The confirmation hearings have been scheduled for 2:30pm, Feb. 24, 1984, at 1024 W. 6th Ave. in downtown Anchorage. The Labor and Commerce Committee staff has prepared a file for each committee member which contains information on all the appointments referred to the committee for confirmation.

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 16, 1984

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Pursuant to applicable law, I submit the following names for legislative confirmation of appointment to the positions noted:

BOARDS AND COMMISSIONS

(with Appt/*Reappt/Term)

Human Rights Commission

*Solomon, Morgan - Barrow, 81/12/11 - *84/02/15 - 89/01/31

Real Estate Commission

*Hill, Barbara - Anchorage, 80/02/21 - *84/02/15 - 88/01/31 No Resume

Sincerely,

Bill Sheffield
Governor

Joy Holloman Donelson
908 R. Street
Anchorage, Alaska

Home 277-5018
Business 561-1964

BORN- Slaton, Lubbock County, Texas November 28, 1930
Widow- Ralph W. Donelson; Three daughters- Cynthia, Cecelia and Elizabeth

EDUCATION- B.S. Pharmacy; University of New Mexico, 1951

RESIDENT- State of Alaska Since November 1962

BUSINESS AFFILIATION- President and Principal Stockholder Alaska Medical Center Pharmacies Inc. Medical Arts Pharmacy and Professional Center Pharmacy

PROFESSIONAL ORGANIZATIONS-

American Parmaceutical Association- Delegate to National meetings 15 years; Chair of Professional Relations, Public Relations, and House Assessment Committee

National Association of Retail Druggists- Delegate to National Meeting 15 years; member several committees

American College Apothecaries- Alaska Director

Alaska Pharmaceurical Association- Member founding Board of Directors; Past President 1974

Professional Recognition- Recipient Bowl of Hygeia, Alaska Pharmcies highest honor

BUSINESS ORGANIZATIONS-

Anchorage Chamber of Commerce 20 years
Chamber of Commerce Retail Division

American Society of Women Business Owners

SERVICE ORGANIZATIONS-

Soroptimist International of Cook Inlet- Past President 1978 and Chair of each Committee during the past 15 years

Member Advisory Board Salvation Army

Member Advisory Board Booth Memorial Home

POLITICAL AFFILIATION- Republican

POLITICAL ORGANIZATIONS- Alaska Political Caucus
N.O.W.

RESUME

Christy C. Woolschlager (Nielsen)

Birth date: 10/23/55
Birth place: Waltham, Mass.

Address: SR BOX 20124-A
Fairbanks, Alaska 99701

EDUCATION:

Omak High School
Omak, Washington 98841
Graduated: June 1973

Washington State University
Pullman, Washington 99163
Graduated: June 1979
Degree: Bachelor of Pharmacy

QUALIFICATIONS:

Board certified to practice pharmacy by the state of Washington August 1979. Washington State License #PL 10804

Board certified to practice pharmacy by the state of Alaska February 1980. Alaska State License # AA 0648

EXPERIENCE AND TRAINING:

1. Fairbanks Memorial Hospital
   1650 Cowles Street
   Fairbanks, Alaska 99701

   Dates: 6/80 to present

   Title: Staff Pharmacist
   Educational Coordinator

2. Foodland Pharmacy
   Lacey and Gaffney
   Fairbanks, Alaska 99701

   Dates: 5/80-6/80

   Title: Retail Pharmacist

3. Teamster Pharmacy
   Old Rich Hwy.
   Fairbanks, Alaska 99701

   Dates: 3/80-5/80

   Title: Retail Pharmacist
   Relief Work only.

4. Fred Meyer Pharmacy
   College Road
   Fairbanks, Alaska 99701

   Dates: 2/80-4/80

   Title: Retail Pharmacist
   Part-time/relief work only.

5. Alaska Native Health Service
   Alaska Native Medical Center
   Anchorage, Alaska 99501

   Dates: 1/4/80-2/1/80

   Title: Pharmacist, Volunteer

6. Alaska Native Health Service
PHS Hospital
Kotzebue, Alaska 99752

Dates: 10/1/79-1/1/79

Title: Pharmacist
Relief duty

7. Alaska Native Health Service
PHS Hospital
Mt. Edgecumbe, Alaska 99835

Dates: 7/5/79-9/23/79

Title: Pharmacist
Volunteer, intern

8. Alaska Native Health Service
PHS Hospital
Kotzebue, Alaska 99752

Dates: 2/6/79-4/12/79

Title: Pharmacy Intern

ORGANIZATIONS:

1. AMERICAN SOCIETY OF HOSPITAL PHARMACY
2. AMERICAN PHARMACEUTICAL ASSOCIATION
3. ALASKA STATE PHARMACEUTICAL ASSOCIATION
4. FAIRBANKS PHARMACEUTICAL ASSOCIATION, SECRETARY-TREASURER
5. TOP OF THE WORLD JAYCEETTES
6. PHARMACY-NURSING COMMITTEE
7. STATE CONTINUING EDUCATION ADVISORY BOARD-1983

ADDITIONAL INFORMATION:

1. Inservice provider for nursing and pharmacy staff
2. Health Fair: 1982, 1983
3. Public speaking and media appearances on drug related areas of Poison Prevention, Drugs and the Elderly, and Drug and Alcohol Abuse
4. Alcohol Awareness Inc. 1981, 1983
5. Edit monthly pharmacy newsletter for hospital.

TO: COMMITTEES
FROM: CHIEF CLERK
DATE: March 5, 1984

The Governor has made appointments to the following boards and commissions, Commissioners and changes in military rank and they have been referred by the Speaker to these committees for confirmation:
(* indicates resumes have not yet been received & forwarded to committees)

HESS

Board of Education
- Kito, Sam
- Schaeffer, Mary

Board of Nursing Home Administrators
- Deater, Eloise

Board of Regents
- Hensley, Willie
- Shaver, Beatrice Lynn (Student)

Professional Teaching Practices Com.
- Adkison, Perry
- Jorgensen, Spike
- Nelson, James "Tom"
- Ryals, Karen
- Trent, Darleen
- Van Flein, Margaret

JUDICIARY

Alcoholic Beverage Control Board
- Perkins, Jane
- Smith, William

Judicial Conduct, Commission on
- Dale, Barbara
- Lincoln, Georgianna

Judicial Council
- Murray, Renee

LABOR & COMMERCE

Architects, Engineers & Land Surveyors
- Menzies, Malcolm
- Sampson, Sandra

Barbers & Hairdressers, Board
- Ashcraft, Letha
- Janzen, Carolyn
- Slaven, Roger

Dental Examiners, Board
- Buxton, Paul
- Zemlicka, Jerry

Nursing, Board of
Hartz, Lynn
Solomon, Alice

Pharmacy, Board of
Donelson, Joy
Nielson, Christy

Real Estate Commission
Anders, Ed
Benson, John
Collins, LaVerne
Serrano, Gilbert
Hill, Barbara

Worker's Compensation Board
Pruhs, Delia
Richards, David
Thomas (II), Joe
Thompson, Jack

Medical Board
Hughes, Dolores

RESOURCES/FISHERIES

Fisheries, Board of
Angasan, Val
Blake, Robert
Bonney, Bix
Foster, Jesse
Garner, John
Jolin, Ron
Museth, Jerene

Commercial Fisheries Entry Commission
Smith, Phillip

RESOURCES

Game, Board of
Bennett, Joel
Huntington, Sidney
Jackson, Nicholas
Scanlan, Sarah

STATE AFFAIRS

Personnel Board
* Humphries, Ben
Johnson, Marlene

Human Rights Commission
Solomon, Morgan

TRANSPORTATION

Marine Pilots, Board of
Brady, Judith
Hodgman, James

COMMISSIONERS:

COMMUNITY & REGIONAL AFFAIRS

COMMUNITY & REGIONAL AFFAIRS
Notti, Emil
(Report received 1/20/84)

TRANSPORTATION & FINANCE

DOT/PF
Knapp, Richard

CHANGE IN ALASKA NATIONAL GUARD RANK

STATE AFFAIRS

MAJOR GENERAL
Pagano, Edward

BRIGADIER GENERAL
Hoyt, John
(Report received 2/22/84)

RESUME

Sandra L. Benson, A.I.A. — Sampson
P. O. Box 104757
Anchorage, Alaska

Licensed: Alaska - No. A6747, 1978
Degree: Bachelor of Architecture - 1973
University of Oregon

Alaska Resident since 1977

INTEREST

Interest in serving on the State of Alaska Board of Registration stems from a desire to assist in organizing the process by which interm architects and engineers are admitted to the profession. Working with several persons currently involved in the registration process has led to a conviction that clear communications between the Board and potential registrants are of utmost importance.

EMPLOYMENT

Kumin Associates, Inc.
Architects and Planners
3301 Denali Suite 200
Anchorage, Alaska 99503
1977 To The Present

Project architect experience in work located throughout Alaska, comprising a variety of occupancy groups and building types such as schools, dormitory and camp facilities, offices and commercial buildings, clinics and residential construction.

PROFESSIONAL ACTIVITIES

American Institute of Architects - Anchorage Chapter.
International Conference of Building Officials
Governors Task Force on Fire Prevention and Control 1981-1982

REFERENCES

Jonathan Kumin, AIA
Kumin Associates, Inc. (907) 276-4311

Daphne Brown, AIA
CCC Architects (907) 272-3567

Mark Premo
URS Engineers, P.E. (907) 278-3695

Others on request.

R&M CONSULTANTS, INC. [illegible] BOX 1786 JUNEAU, ALASKA 99801 PH. 907-789-0880 TLX. 090-45375

ENGINEERS
GEOLOGISTS
PLANNERS
SURVEYORS

June 22, 1983

Honorable Bill Sheffield
Governor of Alaska
Pouch A
Juneau, Alaska 99811

Re: Board of Registration for Architects,
Engineers, and Land Surveyors
Willingness to Serve

Dear Governor:

It is my understanding that the Board of Examiners for Architects, Engineers, and Land Surveyors has a vacancy. I would like to express, at this time, my desire to serve on said board.

A brief summary of qualifications is as follows;

- Registered Land Surveyor - Alaska (1410S), 1965
- Registered Civil Engineer - Alaska (1855E), 1969
- Registered Civil Engineer - Washington (22222), 1970 (Reciprocity)
- U.S. Mineral Surveyor, 1982

The writer is one of the founders and a principal member of the firm R & M Consultants, Inc. This firm has offices in Juneau, Anchorage, and Fairbanks, Alaska, and has expanded to Salt Lake City, Utah, and Irvine, California. The firm was founded in Alaska in 1969. The writer is a vice president of said firm and manages the Juneau office. Prior to forming R & M, the writer was employed by the Alaska Department of Highways for a period of six years as Southeast Alaska area resident engineer, construction project engineer, and district location engineer. In addition, two years were spent with the U.S. Army, Corps of Engineers, and seasonal work in Alaska for the U.S. Bureau of Public Roads.

In addition, the writer is a member fo the following societies: American Society of Civil Engineers (and the Alaska Section), the National and

Alaska Societies of Professional Engineers (past state secretary and treasurer), the Alaska Society of Professional Land Surveyors (past vice chairman, secretary, and treasurer), the American Congress of Surveying and Mapping, the Alaska Section of the American Congress of Surveying and Mapping (past chairman, vice chairman, secretary, and board of directors), the American Society of Photogrammetrists, as well as the Canadian Institute of Surveying.

The writer has served for a period in excess of seven years as a member and presently chairman of the City and Borough of Juneau's Planning and Zoning Commission, Platting Board, and Board of Adjustment.

A personal history is as follows;

- A graduate of the school of special advanced studies for surveying in the U.S. Army, Corps of Engineers, Fort Bolvoir, Virginia.
- A graduate of Chicago Technical College with a Bachelor of Science degree in Civil Engineering - 1963 (cum laude).
- A part-time Alaska resident working seasonal in Alaska from 1960 to 1963, and a full-time resident of Alaska since 1963 having resided for 15 of those years in Juneau, and the remaining time being spent in Petersburg, Ketchikan, and Fairbanks.
- The writer is married and has three children; the oldest (Scot) is attending the University of Alaska--Fairbanks as a civil engineering major on a partial academic scholarship. The second oldest (RobRoy) is a student in Juneau-Douglas High School, while the youngest (Holly) is attending first grade.

I desire to serve both the State of Alaska and my chosen profession by being a member of the Board of Examiners for Architects, Engineers, and Land Surveyors. Should there be questions with regard to my professional or personal history, please do not hesitate to contact me at your convenience.

Sincerely,

R & M CONSULTANTS, INC.

Malcolm A. Menzies

fej

Jack L. Thompson
SRA 1451 P
550 High View
Anchorage, Alaska 99502

SUMMARY OF QUALIFICATIONS

Three (3) years Board of Directors of the Alaska Conference of Employers (ACE). This is a non-profit corporation structured solely to study Workman's Compensation problems and/or laws in Alaska.

Three (3) years Vice-President of the Workers Compensation Committee of Alaska (WCCA). This is a political action committee (PAC) to effect changes in the Workers Compensation laws and/or system:

An original and continuing member of the ad-hoc Labor/Management committee formed by member companies of the WCCA and a number of labor union leaders to work together to effect needed changes in the Workers Compensation system. HB 311 signed by Govenor Sheffield on 7-15-83 was the product of this committee.

Knowledgeable in labor/management relation and have been a member of many boards of arbitration and greivances at the request of several Alaskan employers.

My past three and one/half years of intense involvement in the Workers Compensation system and my past six years as General Manager of Air Van Lines, Inc., which had serious Workers Compensaion loss problems, has given me a broad overview of the system. My involvement with Teamster Local 959 as an employer has given me an area of expertise vis-a-vis worker safety, safety programs and labor/management objectives in a Workers Compensation system.

EDUCATION

1948-1950	Graduated	Gonzaga High School-Spokane, Washington
1954	Attended	University of California at Santa Barbara, California
1955	Attended	Gonzaga University-Spokane, Washington
1962	Attended	Sophia University-Tokyo, Japan

EMPLOYMENT HISTORY

1977 - Present	Air Van Lines, Inc. - Anchorage, Alaska
Position:	Vice-President and General Manager

Six years domiciled in Japan as Far East Manager with a major transportation company.

Six years domiciled in Germany as European Area Manager with a major transportation company.

PERSONAL DATA

Birthdate: February 18, 1933

Married - wife: Fuuko Nakajima Thompson

Health - Excellent

REFERENCES

Mr. Whitey Gregory - President
Alaska Trucking Association

Mr. Frank Chapados - President
H & S Forwarders
Fairbanks, Alaska

Mr. David Roderick
Chief Consul
Alaska Railroad

Mr. Dick Pittenger - Manager
Alaska Associated General Contractors
276-5354
Anchorage, Alaska

Mr. Ike Waldrop - President
National Electrical Contractors Association
Alaska Chapter

LABORERS INTERNATIONAL UNION OF NORTH AMERICA

LOCAL NUMBER 942

FAIRBANKS OFFICE: 315 BARNETTE ST., FAIRBANKS, ALASKA 99701-4566, PHONE (907) 456-4584
JUNEAU OFFICE: 369 SOUTH FRANKLIN, SUITE 201, JUNEAU, ALASKA 99801, PHONE (907) 586-2860

WILLIE LEWIS
President

JOE J. THOMAS
Business Manager
Secretary-Treasurer

RESUME

JOE J. THOMAS II

PERSONAL DATA:

Born: October 17, 1948, Fairbanks, Alaska

Marital Status. Married 11 years
Wife-Julie, Son-Damion, Age 7,
Daughter-Natalie, Age 4

Present Address: 879 Vide Way, Fairbanks, Alaska 99701

EDUCATION:

Lathrop High School, Fairbanks, Alaska
University of Alaska, Fairbanks, Alaska
West Virginia University, B.A. - Psychology

WORK HISTORY:

1967 - 1974	Construction Laborer Various Fairbanks Construction Companies
1974 - 1978	Business Agent and Executive Board Member Laborers Local Union 942 Fairbanks, Alaska
1978 - Present	Business Manager/Secretary-Treasurer Laborers Local Union 942 Fairbanks, Alaska

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811

BOARDS AND COMMISSIONS RESUMÉ

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. The initial determination of whether you qualify for the position specified will be based on this application.

Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying:
Workmen's Compensation Board

Please list any other Board or Commission on which you serve:
None

Name	Previous Name applied under
DELIA I. PRUHS	n/a
Mailing Address	**Residence Address**
P.O. Box 1735	2915 Westgate Place
City, State and Zip Code	
FAIRBANKS, ALASKA 99707	
Home Telephone	**Business or Message Telephone**
(907) 456-4743	(907) 456-2945

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter before the last general election:

Are you a registered voter? ☒ YES ☐ NO

Voter Registration Number (Optional)

Social Security Number (Optional) 033-20-9972

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? ☐ YES ☒ NO

If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required authorized meetings? ☐ YES ☒ NO

If "YES", explain on a separate sheet of paper and attach to this application.

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating? Any that would be beyond my control.

CONFLICTS OF INTEREST: Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so? ☒ YES ☐ NO

Could you or any member of your family be affected financially be decisions to be made by the Board or Commission for which you have applied?
☐ YES ☒ NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion or Parenthood.

01-012(2.81)

TRAINING & EXPERIENCE: (If résumé attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

R.N. in 1949

BSN in 1979

B. List both formal and informal education and training experiences: (Use additional paper if necessary)

Graduate from St. Vincent School of Nursing, Worcester, Mass R.N. degree

Attended 2yrs at Univ. of Alaska - Fairbanks

Bachelor of Science in Nutrition from Donsbach Univ. in Huntington Beach, Ca

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensated and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the positions.

Pres. Fairbanks Heart Association - 2yrs

American Cancer Society - Events Chrm. 2yrs - Award received

Kila, Inc Board of Directors + Exec. Bd. - 3yrs.

Commissioner WICHE - 4yrs

Board of Directors B.C.D.C. 5yrs - Treasurer

B.C.D.C. - B.E. on data services for 5 yrs.

D. Employment work history: paid, unpaid or voluntary: (Use additional paper if necessary)

Administrator - Breast Cancer Detection Ctr 1982 - Fairbanks

School Nurse - Public Health - 2½yrs - Fairbanks

Palpator - BCDC - 4½yrs - volunteer - Fairbanks

Office Nurse - E.E.N.T - 2½yrs - Fairbanks

Surgical Nurse - 3yrs - Phila

General duty Nurse - Alaska Native Service - 2yrs - Pt. Barrow

Stewardess for 1 yr. - Anchorage

Mental Health - 2 1/4yrs - State Institutions in Mass.

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX

☐ Male
☒ Female

ETHNIC BACKGROUND

☒ White ☐ Black ☐ Hispanic ☐ Alaska Native ☐ Asian or Pacific Islander ☐ American Indian

Date of Birth	Military Service (If applicable, give dates)
7/4/28	n/a

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature In Ink	Date
Julia A. Rhodes	July 29, 1983

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811

RECEIVED
AUG 08 1983
GOVERNOR'S OFFICE

BOARDS AND COMMISSIONS RESUMÉ

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. The initial determination of whether you qualify for the position specified will be based on this application.

Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying:

Workers' Compensation Board, Southeastern Panel - Labor Representative

Please list any other Board or Commission on which you serve:

N/A

Name	Previous Name applied under
David William Richards	N/A
Mailing Address	**Residence Address**
3112 Wildmeadow Lane	Same
City, State and Zip Code	
Juneau, AK 99803	
Home Telephone	**Business or Message Telephone**
(907) 789-9825	789-9825

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter before the last general election:

Are you a registered voter? ☒ YES ☐ NO

Voter Registration Number (Optional)

Social Security Number (Optional)
563-48-6911

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? ☐ YES ☒ NO

If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required authorized meetings? ☐ YES ☒ NO

If "YES", explain on a separate sheet of paper and attach to this application. (Missed only one hearing during my tenure as a Board member over past 6 years.)

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating? No - I have attended hearings in Anchorage and Fairbanks on many occasions to fill in for absent Board members

CONFLICTS OF INTEREST: Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so? ☒ YES ☐ NO

Could you or any member of your family be affected financially be decisions to be made by the Board or Commission for which you have applied?
☐ YES ☒ NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion or Parenthood.

01-012(2/81)

TRAINING & EXPERIENCE: (If résumé attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

Vested member of Local 2247 Brotherhood of Carpenters and Joiners of America

B. List both formal and informal education and training experiences: (Use additional paper if necessary)

Graduated Pacific Grove High School, Pacific Grove California
2 Yrs. Jr. College M.P.C., Monterey, California
6 Yrs. Military Obligation fulfilled, Honorable Discharge

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensated and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the positions.

N/A

D. Employment work history: paid, unpaid or voluntary: (Use additional paper if necessary)

20 Years Union Member Local 2247 Juneau

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX
☒ Male
☐ Female

ETHNIC BACKGROUND
☒ White ☐ Black ☐ Hispanic ☐ Alaska Native ☐ Asian or Pacific Islander ☐ American Indian

Date of Birth	Military Service (If applicable, give dates)
4-16-37	US Army, Ft. ORD, California E-4 Rating

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature In Ink	Date
[signature]	7-30-83

Delia I. Pruhs
P.O. Box 1735
Fairbanks 99707

Attachment to resume for Worker's Compensation Board

Part-owner of Pikes Landing, and officer in Corporation

RESUME

LaVerne F. Collins
221 East 7th Avenue #215
Anchorage, Alaska 99501

Telephone: Home - 276-1299
Bus. - 276-2955x230

Resident of Alaska: 14 1/2 yea

EDUCATION

University of Southern California, Masters of Public Administration, 1980

University of Alaska, Anchorage, B.A., Management, 1977

University of Alaska, Anchorage, Associate Degree, Political Science, 1973

SPECIALIZED TRAINING

Air Traffic Control Training
Private Pilot Ground School
Real Estate
Appraisal of Real Estate

EMPLOYMENT HISTORY*

Program Analyst:	August 1981 to Present	Minerals Management Ser Alaska OCS Region P.O. Box 1159 Anchorage, Alaska 9951(
Program Analyst:	March 1981 to August 1981	Federal Aviation Admi Office of Aviation Sa 800 Independence Aven Washington, D.C. 2002
International Aviation Analyst	June 1980 to March 1981	Federal Aviation Admir Office of Internationa Affairs 800 Independence Aven Washington, D.C. 200
Special Assistant to Regional Director	January 1979 to September 1979	Federal Aviation Admir Alaskan Region Anchorage, Alaska
Realty Specialist	August 1975 to Jan. 1979	FAA, Alaskan Region Logistics Division Anchorage, Alaska
Air Traffic Controller	June 1972 to August 1975	FAA, Alaskan Region ARTCC, Air Traffic Div Anchorage, Alaska

Realty Assistant	May 1969 to August 1971	FAA, Alaskan Region Airway Facilities Di Anchorage, Alaska
Teller	August 1968 to May 1969	Elmendorf Federal Credit Union Elmendorf AFB, Alask

* Detailed Job Descriptions provided upon request.

COMMUNITY INVOLVEMENTS

Past: Board of Directors: Alaska Children Services, KAKM.
Federal Executive Association, Chairman, Civil Rights Committee
FAA, Equal Employment Opportunity Advisory Board
Past President, Alaska Federation of Business and Professional Women Cl

Present: Member, Shiloh Missionary Baptist Church
North to the Future Business and Professional Women's Club
Anchorage League of Women Voters

Addendum to Resume - LaVerne F. Collins

A. Real Estate related training

1. University of Alaska courses

Real Estate Law
Real Estate Investments
Real Estate Financing
Feasibility Studies

2. American Institute of Real Estate Appraisers

Principles of Appraising
Capitalization, Theory, and Techniques

3. American Right-of-Way Association

R-O-W Negotiations
Interpersonal Relations

4. Alaska State License Real Estate Course

B. Real Estate Experience

1. Real estate positions with the Federal Government

Realty Assistant - 3 years
Realty Specialist - 4 years

Served as a Contracting Officer and Staff Appraiser for the Federal Aviation Administration, Alaskan Region. Responsible for acquisition, management, disposal, and appraisals for FAA real property throughout the State of Alaska.

2. Management of personal real estate investments since 1977.

February 14, 1983

State of Alaska
Department of Commerce and
Economic Development
Attention: Mr. Richard A. Lyon
Commissioner
Pouch D
Juneau, Alaska 99811

Dear Mr. Lyon:

I desire appointment as a Public Member to the State of Alaska, Real Estate Commission. I have eleven years of real estate experience both for the Federal Government and that gained from personal investments. My real estate experience includes the appraisal and acquisition of sites for navigational and communication aviation facilities throughout the State of Alaska. I have also learned much about commercial real estate matters while acquiring and managing a variety of real estate for myself, i.e. four-plex, mobile home, condos, single family residences.

I believe these and other experiences and the training listed on the addendum to my resume uniquely qualifies me to serve on the Real Estate Commission. I appreciate the opportunity to use my real estate experience in service to my State.

Respectively submitted,

LaVerne F. Collins

Enclosure - Resume with addendum

cc: Office of the Governor
Attn: Ms Carol Derfner

RESUME

ED ANDERS
SR Box 51130
Fairbanks, Alaska 99701
Phone: (907) 488-6547

PERSONAL

Marital Status: Married
Children: Three
Date of Birth: 10/21/43
Health: Excellent

EXPERIENCE AND EDUCATION

1975 - Present Business Development

After leaving the Governor's Office late in 1974, my family and I returned to our home in Fairbanks, and became involved in small business development which included:

1. Chena Valley Development - a small earth-moving and construction company which my wife and I purchased in the spring of 1975.

2. Anders Transportation, Inc. - a small school bus contracting company started by my parents in 1959. In 1975, I purchased the company following my father's death, and have worked to expand its operations.

3. Valley Center - a retail business located at mile 23, Chena Hot Springs Road. Includes retail grocery, liquor and full-service garage. It holds the Chevron dealership and other miscellaneous retail functions such as propane, tire repair, etc.

1972 - 1974 Administrative Assistant to Governor Egan

The primary duties of that position were:

1. Responsibility for the organization, managerial, and fiscal responsibilities of the office.

2. With the executive assistant, coordinate the short-range and long-range program development with the various department heads.

3. Serve on the Governor's Budget Review Committee, and coordinate the development and completion of departmental budgets.

4. Review and supervise all bidding and contractual arrangements for the Governor's Office and for other departments when necessary.

EXPERIENCE AND EDUCATION (Continued)

1971 - 1972 — Alaska Administrative Code Coordinator
Carried out the complete revision of the A.A.C. This had been mandated by legislation, and assumed by then Lieutenant Governor H.A. "Red" Boucher. Acted as liaison with all state departments and the Department of Law in the publication, review and submission of materials for publication in the Alaska Administrative Code. Also had responsibilities for speech writing, personnel management and the Division of Elections.

1971 — Academic Counselor, Deputy Director of Career Planning and Placement, University of Alaska, Fairbanks.
Responsible for academic and personal counseling; worked with potential employers to arrange job interviews. Also had some staff supervisory responsibilities.

1967 - 1971 — Undergraduate - University of Alaska, Fairbanks
B.A. degree in political science, cum laude with a minor in economics and a minor in history. Have done some graduate studies in political science.

1964 - 1967 — Department of Highways (DOT/PH)
Worked in Fairbanks and Valdez in maintenance operations.

ED ANDERS

OVERVIEW

The areas where I believe my background can best be applied are:

1. Governor's Office - policy and program management; legislative experience.

2. Education - University of Alaska and rural Alaska education programs. (Have been a board member of University of Alaska Alumni Association for approximately six years.)

3. Administration - personnel management experience.

4. Community and Regional Affairs - good working relationship with and appreciation for rural Alaska.

5. Transportation and Public Facilities - good working knowledge of personnel and programs - Fairbanks office.

CAPITAL INVESTMENT REALTY, INC.

P. O. Box 7076
2208 Tongass Avenue
Ketchikan, Alaska 99901
907 225-9651

February 3, 1984

TO WHOM IT MAY CONCERN:

RESUME: John E. Benson, Real Estate Broker
P. O. Box 7076 Ketchikan, Alaska

I was born in Roseau, Minnesota on March 21, 1913. I attended grade and high school in Roseau. I attended the University of Minnesota taking courses in Civil Engineering and worked toward a minor in Business Administration.

My father was in the real estate business working with the Great Northern Railroad locating a land grant railroad in Northern Minnesota and locating immigrant farmers on land in that area. This was my early exposure to engineering and real estate and influenced my future endeavors.

On completing school I entered the field of Construction and Civil Engineering mainly in the field of Bridge and Highway construction. In 1941 I joined Morrison-Knudsen Company, Inc as their Chief Cost Engineer on their wartime projects in South America, Puerto Rico and finally in Travis Air Force Base in California leaving them in 1949.

For the next two years I was in Construction Engineering in Northern Minnesota for the County and State Highway Departments.

In 1951 I accepted an assignment to Alaska from the Alaska Public Works Department (Federal) and was located in Ketchikan, Alaska. I was the Construction Engineer on the street widening, bridges, sewer, water, health centers, schools and related facilities.

With Statehood in 1959 I accepted an offer from the State of Alaska as their Construction Engineer in Juneau. I supervised their statewide public facilities construction travelling extensively and advancing to the top position as Director of the Division of Buildings.

In 1964 I passed the Real Estate Examination and became a licensed Broker with license number 0064. I practiced Real Estate part time in Juneau with the firm of Capital Realty.

In 1976 I returned to my home in Ketchikan and opened a Real Estate Office as Broker and Owner. This practice has been very successful. I have supervised a staff of four Associate Brokers and two salesmen. I have also tutored several people who are now licensed to practice real estate.

I would appreciate being confirmed as a member of the State Real Estate Commission as I feel that my experience is very valuable to this commission.

John E. Benson

RESUME

Gil Serrano

600 E. Northern Lights Blvd.
Anchorage, Alaska 99504
(907) 278-9607

Marital Status: Unmarried

Children: Four (ages 5-21 years)

Age: 44

WORK EXPERIENCE & QUALIFICATIONS:

Served in the United States Army and came to Alaska in 1959, residing here since that time. Honorable Discharge in 1961.

1963 Managed Gottstein Vending and later became a partner with the company. Gottstein Vending was sold in 1969.

1969 Started Alaska Film Studio, Advice and Consent Public Relations;

1973 Started The Land Company with Carr-Gottstein Properties. Serving as President and Broker until the present.

ACTIVITIES AND ORGANIZATIONS

Alaska JC's - Vice President/Anchorage Chapter (1964-1970)
LULAC - President (1980-1981), State Director (1983-1985)
Democratic Party District "D" - Chairman (1968)
Member of the Anchorage Board of Realtors
Served on the Mayoral Task Force (Social Services - 1982)
Candidate for the State Senate - 1970

Lynn E. Hartz
SRA Box 1563-B
Anchorage, AK 99507

AK. RN #6966
ANP #6966-0006
Calif. RN #N234743

Professional Resume

I. Education

1977 - Sonoma State University, Department of Nursing, B.S.N.
Public Health Nursing - Certificate
Family Nurse Practitioner - Certificate

1973 - Ventura Junior College, Department of Nursing, A.S.

II. Work Experience

1982 - Consultant, UAA - School of Nursing

Over a six-week period, I served as a co-investigator in research on a sexually transmitted infection.

1978 to Present - Family Nurse Practitioner, Municipality Family Planning Clinic.

My duties include physical exam, diagnosis and management of common gynecologic complaints, and prescribing birth control methods. For two years I have been acting as a preceptor for WAMI medical and UAA nursing students on rotation through the family planning clinic. Other activities include: starting a sickle-cell screening program for the clinic, writing and instituting an adult health screening program, writing and updating nursing protocols, and representing the clinic at the Board of Nursing meetings.

1980 - Executive Director, Alaska Nurses Association Continuing Education, Approval and Recognition Program

As staff support for the continuing education committee, I processed educational programs and classes for approval, supervised and updated office organization, and coordinated fundraising activities.

1974 to 1978 - Director of Inservice
Director of Employee Health
Staff Nurse - ICU
Warrack Medical Center, Santa Rosa, CA.

Following graduation, I assumed responsibility for continuing education for the nursing staff. I designed and implemented an in-patient, out-patient diabetic teaching program which was the first of its kind in the area. With the administration's backing, I began an employee health program which included counseling and yearly screening physical exams.

1977 - Family Nurse Practitioner, Common Health Club

On a contractural basis I provided screening physicals and health education for members.

1973 to 1974 - Staff Nurse
Intensive Care Unit
University of California Medical Centers
UCLA - UCSF

1971 to 1973 - Nurses' Aide, Ventura County Hospital, Ventura, CA.

1969 to 1970 - Nurses' Aide, Oxnard Convalescent Home, CA.

III. Other Professional Training and Experiences

1978 to 1982 - Certificate of Achievement - Alaska CEARP. This requires 60 or more hours of continuing education every two years.

1982 - Rural Nursing - I assisted a local nurse practitioner on her yearly visit to an Eskimo village, providing women's health care.

1980 - Authorization to practice as an Advanced Nurse Practitioner through the Alaska Division of Occupational Licensing.

1979 - Certification by examination as a Family Nurse Practitioner through the American Nurses Association.

1977 - Certification as a continuing education instructor by the California Board of Registered Nurses.

1974 - Coronary Care Certification

IV. Professional Involvement

1982 to Present - Advisory Committee for the nurse practitioner component of UAA School of Nursing Master's Program.

1978 to Present - California Coalition of Nurse Practitioners.

1978 to Present - "PEER" Group - statewide association of nurse practitioners in Alaska.

1976 to Present - American Nurses Association:
A. Council of Primary Health Care Nurse Practitioners

1978 to Present - Alaska Nurses Association:
A. State Convention Committee - 1982-3
B. District Nominations Committee - 1982-3
C. District Program Committee - 1981-82
D. State Continuing Education Committee - 1978-1980

V. Community Involvement

1978 to 1982 - Member KAKM, public TV.

1982 - Member KSKA, public radio.

1982 - Member, Unitarian Universalist Fellowship.

VI. Personal

Born March 5, 1952
Alaska resident since 1978
Married 8 years
One 3-year-old son

LHI:lp

ALICE SOLOMON
BOX 235
BARROW, ALASKA 99723

ORGANIZATIONS AND COMMITTEES	DATES
UIC Board Member	1981-1983
UIC Arctic Slope Inupiat Foundation Board member	1982-1983
Barrow Health Board (Member)	1974-1983
Prudhoe Communication (Board Member)	1982-1983
American Society for Circumpolar Health (Member)	1981-1983
Alcoholism Program (Board Member)	1961-1970's
North Slope Borough Assembly Member	19? -1978
Utkeagvik Presbyterian Church Elder	1978-1982
Utkeagvik Presbyterian Church Deacon	1976-1978
Utkeagvik Presbyterian Church Trustee	
Utkeagvik Presbyterian Church Chair Member	
Utkeagvik Presbyterian Church UPW Association officer	

Employment

PHS Hospital Barrow Alaska, as nurse's aid	14 Years Retired

1) Member of Advisory Committee
2) E.E.O. Counselor while employed

North Slope Borough

Part-time Inupiat Language Commission Translator and Interpreter

Belong to the Mother's Club

Ikayuqtit Board Member for Family Presbyterian Church counseling and alcohol Program	1983-

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811

BOARDS AND COMMISSIONS RESUMÉ

INSTRUCTIONS

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Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying: Board of Dental Examiners

Please list any other Board or Commission on which you serve:

Name	Previous Name applied under
Paul Stuart Buxton	NA
Mailing Address	**Residence Address**
Bx 1376	Tischer Ave.
City, State and Zip Code	
Soldotna, Ak. 99669	
Home Telephone	**Business or Message Telephone**
907-262-4685	907-262-5454

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter before the last general election:

Are you a registered voter? ☑ YES ☐ NO

Voter Registration Number (Optional)

Social Security Number (Optional) 515 44 8136

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? ☐ YES ☑ NO

If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required authorized meetings? ☐ YES ☑ NO

If "YES", explain on a separate sheet of paper and attach to this application.

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating? No

CONFLICTS OF INTEREST: Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so? ☑ YES ☐ NO

Could you or any member of your family be affected financially be decisions to be made by the Board or Commission for which you have applied?
☐ YES ☑ NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion or Parenthood.

01-012(2/81)

TRAINING & EXPERIENCE: (If résumé attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

Licensed in the State of Washington

Licensed in the State of Alaska

B. List both formal and informal education and training experiences: (Use additional paper if necessary)

Dental Continuing Education in the Areas of:
- Periodontal Diagnosis & Treatment
- Dental Materials
- Restorative Dentistry
- TMJ & Equilibration treatment

Hypnosis Training
CPR Training
Kenesiology Seminar

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensated and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the positions.

ESI Standard Training Guest Seminar Leader
Road Service Area Supervisor
Past President of Kenai-Kodiak Dental Society
Past Member of the Alaska Dental Society Executive Council
Gave Free Dental Clinic at the Kenai Wellness Fair
A past member of the School Nutritional Advisory Committee
Donates time for Elementary Dental Education each year

D. Employment work history: paid, unpaid or voluntary: (Use additional paper if necessary)

Active Duty in the US Army; August 1972-August 1975
Rank: Captain - Major

Self-Employed General Dentist 1975-Present

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX
☑ Male ☐ Female

ETHNIC BACKGROUND
☑ White ☐ Black ☐ Hispanic ☐ Alaska Native ☐ Asian or Pacific Islander ☐ American Indian

Date of Birth	Military Service (If applicable, give dates)
12 JAN 1947	Aug 72 – Aug 75 U.S. Army active duty

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature In Ink	Date
P S Buxton	16 Aug 83

01-012(1/81) Back

Resume:

Dr. Jerry F. Zemlicka
9191 Lee Smith Drive
Juneau, Alaska 99801

Personal History

Age 39

Birthdate 6/18/44, San Francisco, California

Married 19 years to Karen Zemlicka

2 children - Darcy age 17, will attend University of Colorado in fall 1983

Eric age 12, will attend 7th grade in fall 1983.

Resident of Juneau, Alaska for 13 years.

Educational History

High School - Grants Pass, Oregon - graduated 1962

College - University of Oregon - graduated 1966-67

Dental School - University of Oregon Dental School - graduated 1970

Professional History

State Board License - Alaska - 1970 - current, active

Oregon - 1970 - current, inactive

Practiced in Juneau 13 years.

Member American Dental Association since 1970

Member of Alaska Dental Society since 1970

Reorganized Juneau Dental Society and chaired group from 1970-1978

Organized Southeast Alaska Study Group with Dr. McKrill. This organization promotes post graduate education in Southeast Alaska.

Social & Religious History

Active in Glacier Valley Rotary in the 70's, past president

Organized and worked 5 years on the Eaglecrest Advisory Committee which was responsible for formation of Eaglecrest Board of Directors.

Served as Trustee and presently an Elder at Presbyterian Church - Chapel by the Lake, Auke Bay, Alaska.

Cindy Spurlock

Nursing

BARBARA Miller

① Lynn Hartz – Anc
31 yrs old – Registered Nurse – works for UAA as consultant and w/ Municipality's Family Planning Clinic – very active in community

---

Pharmacy

① Joy Donelson – Anc Be there
53 yrs old – widow – 22 yrs in AK – 20 yrs in Anc Chamber of Commerce – has been president of AK Pharmacy Ass. – 33 yrs in the Business.

Real Estate Commission

① La Verne Collins – Anc Be there 261-2226
Age – 15 yrs in Alaska
several degrees – works for FAA as program analyst – handling FAA real propeties – second appointment

② Gilbert Serrano – Eagle River
No info

~~HAIRDRESSERS~~ HAIRBRAIDERS

① CAROLYN S. JANZEN - ANC
41 ~~37~~ YRS old - TRAINED IN ALASKA
OWNER of the HAIR RACK (4 YRS)
LIVES IN YOUR district

② LETHA ASHCRAFT - ANC BE THERE
39 ~~29~~ YRS old - LICENSED SINCE 1963
37 YRS IN AK CURRENTLY ~~UNEMPLOYED~~ ~~STAY~~

DENTAL EXAMINERS

① PAUL BUXTON - SOLDOTNA 262-5454
37 YRS old - LICENSED IN WA & AK
MILITARY dentist for 3 YRS - PRIVATE
PRACTICE SINCE '75 - NO RESUME

ARCHITECTS, ENGINEERS, LAND SURVEYORS

① SANDRA SAMPSON - ANC IN JUNEAU
? AGE - LICENSED IN AK SINCE '78
WORKS FOR KUMIN & ASS'S IN ANC.
SHE'S AN ARCHITECT

Worker's Compensation

① Jack Thompson — Anc Be there
51 yrs old — 3 yrs on Board
of Directors AK Conference
of Employees — 3yrs VP of
the Workers Compenstion Commitee.
of AK. — Gen. Manager of Air
Van Lines

Gov.'s Appointments - Boards & Commissions Resumés

#2

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

April 16, 1934

To: Rep. Joe Hayes, Speaker of the House
From: Rep. John Cowdery, Chairman
RE: Confirmation of Appointments to Boards and Commisssions

Pursuant to your request, the House Labor and Commerce Committee has held public hearings on the confirmation of appointments to State Boards and Commissions made by Governor Sheffield. Appointments to eleven boards and commissions were referred to this committee for confirmation. It is the recommendation of the House Labor and Commerce Committee that the following appointments be confirmed:

Architects, Engineers, and Land Surveyors
- Malcom Menzies
- Sandra Sampson

Barbers and Hairdressers
- Letha Ashcraft
- Carolyn Janzen
- Roger Slaven

Dental Examiners
- Paul Buxton
- Jerry Zemlicka

Nursing
- Lynn Hartz
- Alice Solomon

Pharmacy
- Joy Donelson
- Christy Nielson
- William Larson

Public Accountancy
- Marianne Burke
- Michael Cook
- Ida Mc Mahon
- Edward Mecham

Medical
- Delores Hughes

Veterinary Examiners
Stephen Mersch
Pamela Tuomi

Worker's Compensation
Delia Pruhs
David Richards
Jack Thompson
Joe Thomas, II

Real Estate Commission
Ed Anders
LaVerne Collins
Barbara Hill
Gilbert Serrano
John Benson

Sam Pestinger
Rick Kelly
Walter Tomack
Ron Landeros
Tito Kopperud
John Painter
John J. Cannelenes
John J. Cannelenes
Chairman

Architects, Engineers, and Land Surveyors
Malcolm Menzies
Sandra Sampson

Barbers and Hairdressers
Letha Ashcraft
Carolyn Janzen
Roger Slaven

Dental Examiners
Paul Buxton
Jerry Zemlicka

Nursing
Lynn Hartz
Alice Solomon

Pharmacy
Joy Donelson
Christy Nielson
William Larson

Public Accountancy
Marianne Burke
Michael Cook
Ida McMahon
Edward Mecham

Medical
Dolores Hughes

Veterinary Examiners
Stephen Mersch
Pamela Tuomi

Worker's Compensation
Delia Pruhs
David Richards
Jack Thompson
Joe Thomas II

Real Estate Commission
Ed Anders
LaVerne Collins
Barbara Hill
Gilbert Serrano
John Benson

and recommends confirmation. The report was signed by Cowdery (Chairman) and concurred in by Pestinger, Uehling, Furnace, Wendte, Koponen and Ringstad.

The Transportation Committee has reviewed the qualifications of the following individuals who have been appointed by the Governor to serve on the Board of Marine Pilots:

James A. Hodgman
Judith M. Brady

and recommends confirmation. The report was signed by Cato (Chairman) and concurred in by Abood, Herrmann, Flood, M. W. Miller and Szymanski.

CSSB 382(Fin)(title am)

The Finance Committee has had COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 382 (Finance) (title amended) (relating to the payment of costs of post mortem examinations, autopsies, embalming, and related services; effective date) under consideration, recommends it be replaced with HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 382 (Finance) (same title) and reports it back as follows: Adams (Chairman), Martin, Furnace, Grussendorf, Duncan and Fritz recommend do pass. A new fiscal note was attached.

CSSB 382(Fin)(title am) was referred to the Rules Committee for placement on the calendar.

The fiscal note appears in House Journal Supplement No. 121.

CSSB 456(L&C)

The Labor & Commerce Committee has had COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 456 (Labor & Commerce) (relating to embalmer and funeral director trainees) under consideration, recommends it be replaced with HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 456 (Labor & Commerce) (same title) and reports it back as follows: Cowdery (Chairman), Uehling, Furnace, Ringstad and Koponen recommend do pass.

CSSB 456(L&C) was referred to the Rules Committee for placement on the calendar.

HJR 14

The Judiciary Committee has had HOUSE JOINT RESOLUTION NO. 14 (proposing amendments to the Constitution of the State of Alaska providing for ratification of appropriations by the qualified voters of the state) under consideration, and reports it back as follows: Bussell (Chairman), Liska, Barnes and Hayes recommend do pass; Wendte, Clocksin and Malone recommend do not pass.

HJR 14 was referred to the Finance Committee.

HB 279

The Finance Committee has had HOUSE BILL NO. 279 (authorizing participation by magistrates in the judicial retirement system; effective date) under consideration,

APRIL 16, 1984

TO: JOHN

FROM: KEN

RE: CONFIRMATION HEARINGS

OVER THE PAST YEAR GOVERNOR SHEFFIELD HAS MADE A CONCERTED EFFORT TO FILL VACANCIES ON STATE BOARDS AND COMMISSIONS. A LARGE NUMBER OF APPOINTMENTS HAVE BEEN MADE. AS IS OFTEN THE CASE, MOST OF THOSE APPOINTMENTS ARE BEFORE THE HOUSE LABOR AND COMMERCE COMMITTEE FOR CONFIRMATION. THE CONFIRMATION OF 29 APPOINTMENTS MUST BE ADDRESSED BY THIS COMMITTEE.

LAST WEEK THE RESUMES OF EACH OF THE PEOPLE APPOINTED TO A BOARD OR COMMISSION BY THE GOVERNOR WAS PLACED IN A PACKET AND DELIVERED TO EACH MEMBER OF THE COMMITTEE. I HOPE EVERYONE HAS HAD A CHANCE TO REVIEW THESE RESUMES AND ARE READY TO PROCEED WITH THE CONFIRMATION PROCESS.

CHAIRMAN
HOUSE SPECIAL COMMITTEE
ON STATE LOANS

VICE-CHAIRMAN
HOUSE RESOURCES COMMITTEE
HOUSE LABOR AND COMMERCE COMMITTEE

MEMBER
JOINT OIL & GAS COMMITTEE
HOUSE FINANCE SUBCOMMITTEE ON
ADMINISTRATION, REVENUE
AND THE GOVERNOR'S OFFICE

Alaska State Legislature

House of Representatives

Representative
RICK UEHLING

ANCHORAGE
DISTRICT 12-SEAT A
1634 JUNEAU DRIVE
ANCHORAGE, ALASKA 99501
(907) 274-4256

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4821

Date: April 12, 1984

To: Rep. John Cowdery, Chair
House Labor & Commerce Committee

From: Rep. Rick Uehling, Vice-Chair
House Labor & Commerce Committee

Subject: Confirmations

Because I am unable to attend the Confirmation Hearings of the Governor's appointments to the Boards and Commissions before the House Labor & Commerce Committee, I would like to express my full support of the following appointments:

Joy Donelson to the Board of Pharmacy
Jack Thompson to the Worker's Compensation Board

I have known both Joy Donelson and Jack Thompson for some time and believe that the Governor made excellent choices in their appointments.

APRIL 9, 1984

TO: JOHN

FROM: KEN

RE: BARBERS AND HAIRDRESSERS

THE HOUSE LABOR AND COMMERCE COMMITTEE HAS CONDUCTED THREE WORK SESSIONS AND HELD ONE PUBLIC HEARING ON LEGISLATION RELATING TO THE BOARD OF BARBERS AND HAIRDRESSERS. THIS ISSUE HAS PROBABLY CONSUMED MORE OF THE COMMITTEE'S TIME THIS SESSION THAN ANY OTHER SINGLE ISSUE. STILL, THE PROBLEMS OF THE BOARD AND THE INDUSTRY THAT NEED TO BE ADDRESSED IN LEGISLATION HAVE NOT BEEN RESOLVED. THE SENATE LABOR AND COMMERCE COMMITTEE HAS SUGGESTED THE BOARD BE GRANTED A ONE YEAR EXTENTION AND THAT A COMMITTEE BE APPOINTED TO WORK WITH THE BOARD AND MEMBERS OF THE INDUSTRY DURING THE COMING INTERIM. THE GOAL OF THIS COMMITTEE WOULD BE TO DRAFT COMPREHENSIVE LEGISLATION WHICH MEETS THE REQUIREMENTS AND NEEDS OF THE BOARD, THE PROFESSIONALS OF THE INDUSTRY, AND THE PUBLIC. IN AN EFFORT TO CLOSE COMMITTEE BUSINESS AS SCHEDULED I WOULD ASK THE COMMITTEE MEMBERS TO CONSIDER THIS APPROACH.

RESUME

Pamela A. Tuomi, D.V.M.

2036 E. Northern Lights Blvd.
Anchorage, Alaska 99508

907-274-5623 (work)
907-345-1450 (home)

Date of birth-January 23, 1946
-Portland, Oregon

Married- five children (ages 12 to 1½ yrs.)
- husband-Jack O. Tuomi, D.V.M.

EDUCATION:

Evergreen High School, Vancouver, Washington
Graduated 1964-Salutatorian

Washington State University, Pullman, Washington
Graduated 1970- Doctor of Veterinary Medicine-"with Distinction" -

HONORARY SOCIETIES:
National Honor Society-1962-1964

Phi Zeta (National Veterinary Honor Society)-1969-1970

PROFESSIONAL LICENSES:

Alaska(#53)-1971 to present
Washington(#1669)-1970 to present
Montana(#532)-1970 to present
Oregon-1970 (inactive)

BUSINESS AFFILIATIONS:

1970-1971 -Relief Veterinarian -Northern Lights Animal Clinic
-Arctic Animal Hospital
-College Village Animal Clinic
-Kenai Veterinary Clinic

1971-present-Practicing Veterinarian-College Village Animal Clinic
2036 E. Northern Lights Blvd.
Anchorage, Alaska 99508

1973-1982-Partnership with A.L. Andersen, D.V.M. and Jack O. Tuomi,D.V.M.
operating Highland Animal Clinic
SRA Box 1404
Anchorage, Alaska 99502

1977-present-Shareholder-Pet Emergency Treatment, Inc.
3315 Fairbanks. St.
Anchorage, Alaska, 99502

1978-1980-Partnership with Dr. Stephen Hersch
operating under lease at College Village Animal Clinic

1980-1982-Sole Owner-College Village Animal Clinic

1982-present-Shareholder/Secretary-Treasurer-Veterinary Associates, PC.
dba Highland Animal Clinic
dba College Village Animal Clinic

PROFESSIONAL ASSOCIATIONS:

American Veterinary Medical Association-1970-present

American Animal Hospital Association-1974-present
Hospital Accreditation-1976-present

Womens' Veterinary Medical Association-1980-present
Nominee-Outstanding Women Veterinarian-1981

Association of Avian Veterinarians-1982-present

Intermountain Veterinary Medical Association-1976-present

Western States Veterinary Examining Boards-1982-present

Alaska State Veterinary Medical Association-1970-present
President-1974-75

Washington State Veterinary Medical Association-1970-present

Southcentral Alaska Veterinary Medical Association-1970-present
Past President and Secretary-Treasurer
Current member-Public Relations Committee
Legislative Affairs Committee

South Puget Sound Veterinary Medical Association-1979-present

OTHER PROFESSIONAL ACTIVITIES:

Member-Alaska State Board of Veterinary Examiners-1980-present
President-1980-1982

Chairman-Mayors Ad Hoc Committee on Animal Control-1976-1977

Alumni Representative-Washington State University-Veterinary Class of 1970

Pet Emergency Treatment, Inc.-Building Committee-1977
-Medical Board-1978-1980
-Board of Directors-1982-present

Anchorage School District-guest speaker for classroom presentations on animal care and health, and veterinary careers.
-Scientist in the Schools Program

PERSONAL ACTIVITIES:

-member-St. Elizabeth Ann Seton Parish

-member-St. Elizabeth Ann Seton School Parent Service Club
Treasurer-1982-1983
Active in multiple fund raising drives.

member-Anchorage Mothers of Twins Club

-member- Anchorage Hockey Association
-Anchorage Figure Skating Club

-Treasurer-Keno Hills Homeowners' Association

REFERENCES:

Dr. Berton Gore
Alaska State Veterinarian
P.O. Box 1088
Palmer, Ak. 99645

Ken Sperling, D.V.M.
Secretary-Treasurer
Alaska State Veterinary Medical Association
8235 Jewel Lake Road
Anchorage, Alaska 99502

Patrick Heaux, C.P.A.
Suite 506
310 K St.
Anchorage, Alaska 99501

John Middaugh, M.D.
State Epidemiologist
Department of Health and Social Services
3601 C Street, Suite 540
Anchorage, Alaska 99503

Alaska House of Representatives
MEMO

Phone: 465-3725
Room: 214 Capitol

From the desk of CHIEF CLERK

TO: Labor & Commerce DATE: 4/11/84

Appointee Pamela A. Tuomi had been referred to your committee for approval to the Board of Veterinary Examiners.

Enclosed Resumes
~~The resume willbe forwarded when received from the Governor's office.~~

BILL SHEFFIELD
GOVERNOR

APR 1 0 1984

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 9, 1984

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Pursuant to applicable law, I submit the following names for legislative confirmation of appointment to the positions noted:

BOARDS AND COMMISSIONS
(with Appt/*Reappt/Term)

Board of Veterinary Examiners

Pamela A. Tuomi, DVM - Anchorage, 84/04/09 - 88/01/31 L+C

Board of Examiners in Optometry

John A. Demske, DO - Soldotna, 84/04/09 - 88/06/15
Robert D. O'Connell, DO - Kenai, 84/04/09 - 87/06/15 H+S

Violent Crimes Compensation Board

Carol B. Eastaugh - Juneau, 84/04/04 - 86/12/15 SA

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

RESUME

Sandra L. Benson, A.I.A. — Sam 200
P. O. Box 104757
Anchorage, Alaska

Licensed: Alaska - No. A6747, 1978
Degree: Bachelor of Architecture - 1973
University of Oregon

Alaska Resident since 1977

INTEREST

Interest in serving on the State of Alaska Board of Registration stem from a desire to assist in organizing the process by which interm architects and engineers are admitted to the profession. Working with several persons currently involved in the registration process has led to a conviction that clear communications between the Board and potential registrants are of utmost importance.

EMPLOYMENT

Kumin Associates, Inc.
Architects and Planners
3301 Denali Suite 200
Anchorage, Alaska 99503
1977 To The Present

Project architect experience in work located throughout Alaska, comprising a variety of occupancy groups and building types such as schools, dormitory and camp facilities, offices and commercial buildings, clinics and residential construction.

PROFESSIONAL ACTIVITIES

American Institute of Architects - Anchorage Chapter.
International Conference of Building Officials
Governors Task Force on Fire Prevention ~~and Control~~ 1981-1982

REFERENCES

Jonathan Kumin, AIA Kumin Associates, Inc.	(907) 276-4311
Daphne Brown, AIA CCC Architects	(907) 272-3567
Mark Premo URS Engineers, P.E.	(907) 278-3695

Others on request.

R&M CONSULTANTS, INC. [illegible] P.O. BOX 1796 ■ JUNEAU, ALASKA 99802 ■ PH [illegible] ■ TLX 090-45375

ENGINEERS
GEOLOGISTS
PLANNERS
SURVEYORS

June 22, 1983

Honorable Bill Sheffield
Governor of Alaska
Pouch A
Juneau, Alaska 99811

Re: Board of Registration for Architects,
Engineers, and Land Surveyors
Willingness to Serve

Dear Governor:

It is my understanding that the Board of Examiners for Architects, Engineers, and Land Surveyors has a vacancy. I would like to express, at this time, my desire to serve on said board.

A brief summary of qualifications is as follows;

- Registered Land Surveyor - Alaska (1410S), 1965
- Registered Civil Engineer - Alaska (1855E), 1969
- Registered Civil Engineer - Washington (22222), 1970 (Reciprocity)
- U.S. Mineral Surveyor, 1982

The writer is one of the founders and a principal member of the firm R & M Consultants, Inc. This firm has offices in Juneau, Anchorage, and Fairbanks, Alaska, and has expanded to Salt Lake City, Utah, and Irvine, California. The firm was founded in Alaska in 1969. The writer is a vice president of said firm and manages the Juneau office. Prior to forming R & M, the writer was employed by the Alaska Department of Highways for a period of six years as Southeast Alaska area resident engineer, construction project engineer, and district location engineer. In addition, two years were spent with the U.S. Army, Corps of Engineers, and seasonal work in Alaska for the U.S. Bureau of Public Roads.

In addition, the writer is a member fo the following societies: American Society of Civil Engineers (and the Alaska Section), the National and

Alaska Societies of Professional Engineers (past state secretary and treasurer), the Alaska Society of Professional Land Surveyors (past vice chairman, secretary, and treasurer), the American Congress of Surveying and Mapping, the Alaska Section of the American Congress of Surveying and Mapping (past chairman, vice chairman, secretary, and board of directors), the American Society of Photogrammetrists, as well as the Canadian Institute of Surveying.

The writer has served for a period in excess of seven years as a member and presently chairman of the City and Borough of Juneau's Planning and Zoning Commission, Platting Board, and Board of Adjustment.

A personal history is as follows;

- A graduate of the school of specia advanced studies for surveying in the U.S. Army, Corps of Engineers, Fort Bolvoir, Virginia.
- A graduate of Chicago Technical College with a Bachelor of Science degree in Civil Engineering - 1963 (cum laude).
- A part-time Alaska resident working seasonal in Alaska from 1960 to 1963, and a full-time resident of Alaska since 1963 having resided for 15 of those years in Juneau, and the remaining time being spent in Petersburg, Ketchikan, and Fairbanks.
- The writer is married and has three children; the oldest (Scot) is attending the University of Alaska--Fairbanks as a civil engineering major on a partial academic scholarship. The second oldest (RobRoy) is a student in Juneau-Douglas High School, while the youngest (Kolly) is attending first grade.

I desire to serve both the State of Alaska and my chosen profession by being a member of the Board of Examiners for Architects, Engineers, and Land Surveyors. Should there be questions with regard to my professional or personal history, please do not hesitate to contact me at your convenience.

Sincerely,

R & M CONSULTANTS, INC.

Malcolm A. Menzies

fej

RESUME

Name: Barbara Jean (Silberer) Hill

Born: December 7, 1931, Akron, Ohio

Married: 31 Years, 5 children, 2 gandchildren

Alaskan Resident: 36 years

Real Estate
Profession: 29 years

Broker: Gene's Realty 11 years

Education: Anchorage High
Southern Oregon College
University of Alaska, Fairbanks
Colorado College

Membership: Anchorage Board of REALTORS
Alaska Association of REALTORS
National Association of REALTORS
Anchorage Chamber of Commerce
Alaska Chamber of Commerce
U. S. Chamber of Commerce
Pioneer's of Alaska
Alaska Golf Association
International Institute of Valuers
National Morgage Reviewers

Professional Appointments:
Alaska Real Estate Commission, 4 years
Anchorage Planning and Zoning Commission, 6 years
Anchorage Board of Equalization, 2 years

Awards: Realtor of the Year, 1979
President of Anchorage Board of REALTORS, 1981
Designations: R. I. M., CRA

CAPITAL INVESTMENT REALTY, INC.

P. O. Box 7076
2208 Tongass Avenue
Ketchikan, Alaska 99901
907 225-9651

February 3, 1984

TO WHOM IT MAY CONCERN:

RESUME: John E. Benson, Real Estate Broker
P. O. Box 7076 Ketchikan, Alaska

I was born in Roseau, Minnesota on March 21, 1913. I attended grade and high school in Roseau. I attended the University of Minnesota taking courses in Civil Engineering and worked toward a minor in Business Administration.

My father was in the real estate business working with the Great Northern Railroad locating a land grant railroad in Northern Minnesota and locating immigrant farmers on land in that area. This was my early exposure to engineering and real estate and influenced my future endeavors.

On completing school I entered the field of Construction and Civil Engineering mainly in the field of Bridge and Highway construction. In 1941 I joined Morrison-Knudsen Company, Inc as their Chief Cost Engineer on their wartime projects in South America, Puerto Rico and finally in Travis Air Force Base in California leaving them in 1949.

For the next two years I was in Construction Engineering in Northern Minnesota for the County and State Highway Departments.

In 1951 I accepted an assignment to Alaska from the Alaska Public Works Department (Federal) and was located in Ketchikan, Alaska. I was the Construction Engineer on the street widening, bridges, sewer, water, health centers, schools and related facilities.

With Statehood in 1959 I accepted an offer from the State of Alaska as their Construction Engineer in Juneau. I supervised their statewide public facilities construction travelling extensively and advancing to the top position as Director of the Division of Buildings.

In 1964 I passed the Real Estate Examination and became a licensed Broker with license number 0064. I practiced Real Estate part time in Juneau with the firm of Capital Realty.

In 1976 I returned to my home in Ketchikan and opened a Real Estate Office as Broker and Owner. This practice has been very successful. I have supervised a staff of four Associate Brokers and two salesmen. I have also tutored several people who are now licensed to practice real estate.

I would appreciate being confirmed as a member of the State Real Estate Commission as I feel that my experience is very valuable to this commission.

John E. Benson

Real Estate Commission

RESUME

Gil Serrano

600 E. Northern Lights Blvd.
Anchorage, Alaska 99504
(907) 278-9607

Marital Status: Unmarried

Children: Four (ages 5-21 years)

Age: 44

WORK EXPERIENCE AND QUALIFICATIONS:

Served in the United States Army and came to Alaska in 1959, residing here since that time. Honorable Discharge in 1961.

1963 — Managed Gottstein Vending and later became a partner with the company. Gottstein Vending was sold in 1969.

1969 — Started Alaska Film Studio, Advice & Consent Public Relations.

1973 — Started the Land Company with Carr-Gottstein Properties. Served as President and Broker until the present.

ACTIVITIES AND ORGANIZATIONS

Alaska JC's - Vice President/Anchorage Chapter (1964-1970)
LULAC - President (1980-1981), State Director (1983-1985)
Democratic Party District "D" - Chairman (1968)
Member of the Anchorage Board of Realtors
Served on the Mayoral Task Force (Social Services-1982)
Candidate for the State Senate - 1970.

RESUME

ED ANDERS
SR Box 51130
Fairbanks, Alaska 99701
Phone: (907) 488-6547

PERSONAL

Marital Status: Married
Children: Three
Date of Birth: 10/21/43
Health: Excellent

EXPERIENCE AND EDUCATION

1975 - Present — Business Development

After leaving the Governor's Office late in 1974, my family and I returned to our home in Fairbanks, and became involved in small business development which included:

1. Chena Valley Development - a small earth-moving and construction company which my wife and I purchased in the spring of 1975.

2. Anders Transportation, Inc. - a small school bus contracting company started by my parents in 1959. In 1975, I purchased the company following my father's death, and have worked to expand its operations.

3. Valley Center - a retail business located at mile 23, Chena Hot Springs Road. Includes retail grocery, liquor and full-service garage. It holds the Chevron dealership and other miscellaneous retail functions such as propane, tire repair, etc.

1972 - 1974 — Administrative Assistant to Governor Egan

The primary duties of that position were:

1. Responsibility for the organization, managerial, and fiscal responsibilities of the office.

2. With the executive assistant, coordinate the short-range and long-range program development with the various department heads.

3. Serve on the Governor's Budget Review Committee, and coordinate the development and completion of departmental budgets.

4. Review and supervise all bidding and contractual arrangements for the Governor's Office and for other departments when necessary.

EXPERIENCE AND EDUCATION (Continued)

1971 - 1972 — Alaska Administrative Code Coordinator
Carried out the complete revision of the A.A.C. This had been mandated by legislation, and assumed by then Lieutenant Governor H.A. "Red" Boucher. Acted as liaison with all state departments and the Department of Law in the publication, review and submission of materials for publication in the Alaska Administrative Code. Also had responsibilities for speech writing, personnel management and the Division of Elections.

1971 — Academic Counselor, Deputy Director of Career Planning and Placement, University of Alaska, Fairbanks.
Responsible for academic and personal counseling; worked with potential employers to arrange job interviews. Also had some staff supervisory responsibilities.

1967 - 1971 — Undergraduate - University of Alaska, Fairbanks
B.A. degree in political science, cum laude with a minor in economics and a minor in history. Have done some graduate studies in political science.

1964 - 1967 — Department of Highways (DOT/PH)
Worked in Fairbanks and Valdez in maintenance operations.

ED ANDERS

OVERVIEW

The areas where I believe my background can best be applied are:

1. Governor's Office - policy and program management; legislative experience.

2. Education - University of Alaska and rural Alaska education programs. (Have been a board member of University of Alaska Alumni Association for approximately six years.)

3. Administration - personnel management experience.

4. Community and Regional Affairs - good working relationship with and appreciation for rural Alaska.

5. Transportation and Public Facilities - good working knowledge of personnel and programs - Fairbanks office.

February 14, 1983

State of Alaska
Department of Commerce and
Economic Development
Attention: Mr. Richard A. Lyon
Commissioner
Pouch D
Juneau, Alaska 99811

Dear Mr. Lyon:

I desire appointment as a Public Member to the State of Alaska, Real Estate Commission. I have eleven years of real estate experience both for the Federal Government and that gained from personal investments. My real estate experience includes the appraisal and acquisition of sites for navigational and communication aviation facilities throughout the State of Alaska. I have also learned much about commercial real estate matters while acquiring and managing a variety of real estate for myself, i.e. four-plex, mobile home, condos, single family residences.

I believe these and other experiences and the training listed on the addendum to my resume uniquely qualifies me to serve on the Real Estate Commission. I appreciate the opportunity to use my real estate experience in service to my State.

Respectively submitted,

LaVerne F. Collins

Enclosure - Resume with addendum

cc: Office of the Governor
Attn: Ms Carol Derfler

RESUME

LaVerne F. Collins
221 East 7th Avenue #215
Anchorage, Alaska 99501

Telephone: Home - 276-1299
Bus. - 276-2955x230

Resident of Alaska: 14 1/2 yea

EDUCATION

University of Southern California, Masters of Public Administration, 1980

University of Alaska, Anchorage, B.A., Management, 1977

University of Alaska, Anchorage, Associate Degree, Political Science, 1973

SPECIALIZED TRAINING

Air Traffic Control Training
Private Pilot Ground School
Real Estate
Appraisal of Real Estate

EMPLOYMENT HISTORY*

Program Analyst:	August 1981 to Present	Minerals Management Ser Alaska OCS Region P.O. Box 1159 Anchorage, Alaska 9951(
Program Analyst:	March 1981 to August 1981	Federal Aviation Admi Office of Aviation Sa 800 Independence Aven Washington, D.C. 2002
International Aviation Analyst	June 1980 to March 1981	Federal Aviation Admir Office of Internationa Affairs 800 Independence Aven Washington, D.C. 2002
Special Assistant to Regional Director	January 1979 to September 1979	Federal Aviation Admir Alaskan Region Anchorage, Alaska
Realty Specialist	August 1975 to Jan. 1979	FAA, Alaskan Region Logistics Division Anchorage, Alaska
Air Traffic Controller	June 1972 to August 1975	FAA, Alaskan Region ARTCC, Air Traffic Div Anchorage, Alaska

Realty Assistant	May 1969 to August 1971	FAA, Alaskan Region Airway Facilities Di Anchorage, Alaska
Teller	August 1968 to May 1969	Elmendorf Federal Credit Union Elmendorf AFB, Alask

* Detailed Job Descriptions provided upon request.

COMMUNITY INVOLVEMENTS

Past: Board of Directors: Alaska Children Services, KAKM.
Federal Executive Association Chairman, Civil Rights Committee
FAA, Equal Employment Opportunity Advisory Board
Past President, Alaska Federation of Business and Professional Women Cl

Present: Member, Shiloh Missionary Baptist Church
North to the Future Business and Professional Women's Club
Anchorage League of Women Voters

Addendum to Resume - LaVerne F. Collins

A. Real Estate related training

1. University of Alaska courses

Real Estate Law
Real Estate Investments
Real Estate Financing
Feasibility Studies

2. American Institute of Real Estate Appraisers

Principles of Appraising
Capitalization, Theory, and Techniques

3. American Right-of-Way Association

R-O-W Negotiations
Interpersonal Relations

4. Alaska State License Real Estate Course

B. Real Estate Experience

1. Real estate positions with the Federal Government

Realty Assistant - 3 years
Realty Specialist - 4 years

Served as a Contracting Officer and Staff Appraiser for the Federal Aviation Administration, Alaskan Region. Responsible for acquisition, management, disposal, and appraisals for FAA real property throughout the State of Alaska.

2. Management of personal real estate investments since 1977.

RESUME FOR ROGER D. SLAVEN
February 4, 1984

Date & Place of Birth:	Janaury 16, 1955 Eugene, Oregon
Social Security Number:	557-11-2144
Business Address & Phone:	310 Front Street Ketchikan, Alaska 99901 (907) 225-3022
Resident of Alaska:	8 Years

I attended the Modern School of Hairstyling and Barbering in Seattle, Washington from June 1979 through March 1980, completing all the requirements for Washington and Alaska. I took the Alaska Board Exam in Anchorage in April of 1980. I was owner/operator of the Windward Barber Shop in Petersburg from May 1980 through June 1981. He moved to Ketchikan and worked for Elmo's Hair Design from June 1981 through July 1981. Then I opened the Stedman Barber and Styling where I am presently the owner and operator. This gives me a total of four years of barbering in Alaska.

Previous to barbering I was a commercial fisherman for 2 years and worked for the U.S. Forest Service for 4 years.

ROGER D. SLAVEN

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811

BOARDS AND COMMISSIONS RÉSUMÉ

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. The initial determination of whether you qualify for the position specified will be based on this application.

Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying:
Board of Barbers and Hairdressers

Please list any other Board or Commission on which you serve:

Name	Previous Name applied under
Carolyn S. Janzen	
Mailing Address	**Residence Address**
SR Box 2586-A	
City, State and Zip Code	
Anchorage, AK 99516	
Home Telephone	**Business or Message Telephone**
344-9885	337-1244

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter before the last general election.

Are you a registered voter? ☒ YES ☐ NO

Voter Registration Number (Optional) Democrat (HD #08) Social Security Number (Optional)

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? ☐ YES ☒ NO

If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required authorized meetings? ☒ YES ☐ NO

If "YES", explain on a separate sheet of paper and attach to this application

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating?

No

CONFLICTS OF INTEREST. Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so? ☐ YES ☒ NO

Could you or any member of your family be affected financially be decisions to be made by the Board or Commission for which you have applied?
☐ YES ☒ NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion or Parenthood.

01 01212.81)

TRAINING & EXPERIENCE: (If résumé attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

Licensed Hairdresser - Alaska
Trained at Anchorage Beauty School

B. List both formal and informal education and training experiences: (Use additional paper if necessary)

High School graduate

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensated and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the positions.

N/A

D. Employment work history: paid, unpaid or voluntary: (Use additional paper if necessary)

Owner/operator - Hair Rack for 4 years

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX
☐ Male
XX Female

ETHNIC BACKGROUND
☒ White ☐ Black ☐ Hispanic ☐ Alaska Native ☐ Asian or Pacific Islander ☐ American Indian

Date of Birth	Military Service (If applicable, give dates)
11/05/42	N/A

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature In Ink	Date

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811

BOARDS AND COMMISSIONS RESUMÉ

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. The initial determination of whether you qualify for the position specified will be based on this application.

Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying:
Barber and Hairdressers' Board

Please list any other Board or Commission on which you serve:

Name	Previous Name applied under
LETHA BRAY ASHCRAFT	
Mailing Address: 3609 Richmond Avenue, Anch, AK 99504	Residence Address: Same
City, State and Zip Code: Anchorage, AK 99504	
Home Telephone: 907-277-9212	Business or Message Telephone:

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter before the last general election:

Are you a registered voter? ☒ YES ☐ NO

Voter Registration Number (Optional)

Social Security Number (Optional) 574-18-4591

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? ☐ YES ☒ NO

If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required authorized meetings? ☐ YES ☒ NO

If "YES", explain on a separate sheet of paper and attach to this application.

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating? No

CONFLICTS OF INTEREST: Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so? ☒ YES ☐ NO

Could you or any member of your family be affected financially be decisions to be made by the Board or Commission for which you have applied?
☐ YES ☒ NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion or Parenthood.

01-0120(2/81)

TRAINING & EXPERIENCE: (If résumé attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

State of Alaska Hairdresser & Cosmetologist Instructor, owner and operator licenses. 1963-83

B. List both formal and informal education and training experiences: (Use additional paper if necessary)

SEE ATTACHED RESUME

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensated and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the positions.

SEE ATTACHED RESUME

D. Employment work history: paid, unpaid or voluntary: (Use additional paper if necessary)

SEE ATTACHED RESUME

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX

☐ Male
☒ Female

ETHNIC BACKGROUND

☒ White ☐ Black ☐ Hispanic ☐ Alaska Native ☐ Asian or Pacific Islander ☐ American Indian

Resident of Alaska since 1946---37 years

Date of Birth	Military Service (If applicable, give dates)
14 June 1944	None

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature in Ink	Date
Bethel Brant Ashcraft	9 February 1983

01-012(1/83) Back

PERSONAL DATA

LETHA BRAY ASHCRAFT
3609 Richmond Avenue
Anchorage, AK 99504
907-277-9219

LETHA BRAY ASHCRAFT was raised in Anchorage and was educated in the Anchorage School System. She has been an Alaskan resident since 1946. Her initial cosmetology training was taken at MAXINE'S BEAUTY COLLEGE, 1010 Fireweed Lane, Anchorage, Alaska. She then took advance training at BEETCH'S BEAUTY COLLEGE in Enid, Oklahoma. Letha worked as a cosmetologist for several years while continuing her advanced training to become a licensed cosmetology instructor.

She has served as an instructor for several beauty colleges. She feels that membership in professional organizations is an important part of any cosmetologist's career. She has been a member of Anchorage Affiliate #293 and a member of the Alaska State Hairdresser & Cosmetologists Association since 1963. During that time she has served in many capacities, among these are: Alaska State Styles Director and Chairman of the Alaska State Hair Fashion Committee. As a member of the National Hairdressers and Cosmetologists Association, she has attended many national conventions and shows both as a participant, delegate and as a convention instructor. In 1975, she became Alaska's first representative on the Official Hair Fashion Committee. She is extremely interested in helping Alaskans keep up-to-date with the latest trends in hair styling. Membership on the OHFC of America is based on a comprehensive three-day competitive examination. The committee is not only honorary, but serves as the educational body to relay the current trends to each state. Membership on the committee also makes the individual member eligible to serve as a guest artist for any state hairdresser & cosmetologists convention.

Letha was the owner of the Nordstrom Beauty Salon from 1975 til 1982. She is married and has two children.

PERSONAL DATA SHEET

LETHA BRAY ASHCRAFT
3609 Richmond Avenue
Anchorage, Alaska 99504

EDUCATION:

1962	Graduated from East Anchorage High School.
1963	Graduated from Maxine's Beauty College, Anchorage, AK.
1963	Received State of Alaska Operator's License.
1964	Received State of Alaska Manager's License.
1964	Received 400 hours of instructor training at Beetch's Beauty College, Enid, OK then returned to Anchorage to complete 200 hours of instructor training at Maxine's Beauty College.
1965	Received State of Alaska's Instructor's License.
1973	Received State of Alaska, Department of Education, Teacher Certificate, Type D, Vocational T&I, (Cosmetology).

ADDITIONAL ADVANCED TRAINING:

1964	Raphal (Official Hair Fashion Committee of U.S.)
1964	Buddy Francis (Official OHFC OF U.S.)
1964	Grace Doran (Official OHFC OF U.S.)
1965	Otto of Vienna (Official OHFC OF U.S.)
1965	Sim Simpson (Official OHFC OF U.S.)
1965	Leo Passage (OHFC OF U.S.)
1966	Sally Ponce (OHFC OF U.S. & U.S. OLYMPIC TEAM TRAINER)
1966	Peter Hantz (OHFC of U.S.)
1966	Salvatore (OHFC OF U.S. & Originator of Trend Setter Method)
1967	Vera Slater (OHFC of U.S & U.S. OLYMPIC TEAM TRAINER)
1968	JHeri Redding (RedKen Seminar)
1968	Paul Morrey (OHFC of U.S & Olympic Team Alternate)
1969	Paul Morrey (OHFC of U.S & Olympic Team Alternate)
1969	Jay Austimuhl (OHFC of U.S.)
1969	Leonard Benner (OHFC of U.S.)
1970	Paul Morrey (OHFC of U.S & Olympic Team Alternate)
1970	Mary Lou Augustine (Directional Hair Design Originator)(OHFC)
1970	Bill Wright (OHFC of U.S)
1970	Bernard de Jardine (OHFC of U.S)
1971	Paul Morrey (OHFC of U.S. & Olympic Team Alternate)
1971	Gaines Pressley (OHFC of U.S.)
1972	Esther Richardson (OHFC of U.S)
1972	Don Carr (Pivot Point International Training Director)
1972	Alan Thayne (AK State Hair Fashion Committee/Current Trends and Pivot Point Training.)
1973	Alan Thayne (AK State OHFC--Current Trends & Pivot Point Training.)
1973	Paula Kent (RedKen Seminar, Seattle, WA)

LETHA BRAY ASHCRAFT
Personal Data Sheet
19 August 1979

ADDITIONAL ADVANCED TRAINING:

1973 Don Morris (RedKen Seminar)
1973 Tony Beckerman (Vidal Sasson Haircutting Techniques)
1973 Ditmar Planer (European Styles Director for Pivot Point)
1974 Alan Thayne (AK State OHFC Styles Director)
1974 JHeri REdding (Jherimack Seminar)
1974 Theresa Pupilli (OHFC of U.S.--Received my first seal towards Pivot Point Master Hair Designer Degree(April)
1974 Received Masters Degree in Quick Service (May)
1974 Received training in European Techniques in Haircutting from Don Carr, (OHFC of U.S. & International Director of Training for Pivot Point)(December)
1974 Attended fall & winter release at annual convention of NHCA at Dallas, Texas.
1975 (Jan) Michael Nealeigh (Director of Education & OHFC) Received training "Skin Care and Make-Up"
Margaret Vinci Heldt (OHFC) "Quick Service Techniques"
Richard Hertel (OHFC) "State & National Competition"
Leslie Bryner (OHFC) "Guide to Coiffure Creation"
Reba Roy (OHFC) "Guide to Coiffure Creation"
Michael Nealeigh (OHFC) "Advanced Techniques in Permanent Waving & Creative Hair Coloring"
Lyal McCaig (OHFC) "Short Looks Hair Fashion"
Michael Taylor (OHFC) "Empahsis on Fashion Form Haircutting"
Attended the L.A. California Convention "Total Fashion Release for Spring & Summer of 1975"
Took THE OFFICIAL HAIR FASHION COMMITTEE OF THE U.S. competitive examination and was admitted as a member of the Official Hair Fashion Committee of the U.S." The only member from ALASKA.
(Feb) Jim Ramona (RedKen Educator) "Structure & Chemistry of the Hair"
Denise McCloud (AK HFC & State Styles Director) "Spring & Summer Release for 1975"
(Mar) Don Carr (OHFC) "Unisex Haircutting & Advanced Permanent Waving."

1976 Attended the National Convention & Classes at Omaha, Nebraska
Was a member of the OHFC qualification examination committee.
Took the following training:
"Master Judging Symposium" Vera Slater (OHFC)
"OHFC Continuing Education Day" taught by the National Coiffure Design Committee composed of Sue Lack, Hayden Hitchcock, Jackie Holt, and Matt Mattison.
"State Hair Fashion Committee Seminar" CDC Committee
"NHCA Legislative Seminar" Doris Vernon

LETHA BRAY ASHCRAFT
Personal Data Sheet
19 August 1979

ADVANCED TRAINING CONTINUED:

1976	"Creative Coloring"	Evelyn Quick, John Desiderio, Tom Emery, Bob Johnson (All OHFC
	"Progressive Perming"	Barbara Leachman, Louis Schmidt, Frank Friia, Lea Sterns (ALL OHFC
	"Skin Care-Face Color"	Grace Doran, Peg Guadian, Rita Georais, Mary Francis Myer.
	"Progressive Education--Chemistry 101"	Dorothy Wollery
	"Progressive Education--Intro to Art Principles 102,	Lyal McCaig, Betty Bagwell
	"Spring & Summer Release Class" "Premiere 2000: CDC Members	
	'Competition Contestant Class" Lyal McCaig (Nat'l Styles Director	
	"Progressive Perming"	Letha Ashcraft, Ray Macaronas, Marilyn Wilcox, Sonny Stewart
1977	San Francisco Convention:	
	"Art Principles 204"	Max Matteson
	"Sculpturing"	Marguerite Buck
	"OHFC Continuing Education"	Lyal McCaig, Alida Wengang, Michael Taylor, Shirley Gossett, Leslie Bryner
	"State Hair Fashion Committee Seminar"	
	"OHFC Qualifying Examination"	Letha Ashcraft (OHFC)
	"Competition Concepts"	Lyal McCaig
	"Fall & Winter Release Class"	CDC Members
	"Hair Color Concepts"	Lois Lackey
	"Art Principles 201-212-213"	Max Matteson
	"Education Overview"	Grace Doran Francis
	"Concepts of Permanent Waving"	Rita Georais
	"Special OHFC Seminar in Chemistry & Nutrition at JHERIMACK.	
1978	"Models Committee"	Letha Ashcraft, Linda Miller, F Lowman, Leila Cohoon, Joyce Sn Kathy Young, Dick Spencer, Rita Georvais
	"OHFC Education Day"	CDC Members-John Amici, Olive Benson, Richard Hertel, Michael Nealeigh
	"State Hair Fashion Committee Seminar"	CDC Members & Dr. Everett G. McDonough
	"Hair Color Concepts"	Lois Lackey & Letha Ashcraft
	"Skin & Cosmetic Concepts"	Raphael
	"Chemical Control Concepts"	Tom Serra, Tom Hayden, Charlene Rusteberg, Barbara Leachman
	"Art in Commercial Hair Design"	Marguerite Buck, Lyal McCaig
	"Dollars & Sense for Hairdressers Seminar"	David Bagwell
	"Competition Class"	Leo Passage

LETHA BRAY ASHCRAFT
Personal Data Sheet
19 August 1979

ADVANCED TRAINING CONT'D:

1978 (July) Attended NHFC National Convention at Atlanta, Georgia and received the following training;
"OHFC CONTINUING EDUCATION" Coiffure Design Committee
"State Hair fashion Committee Seminar" CDC Committee
"Permanent Waving concepts" Teresa Pupilli & Charlene Rustenberg
"Creative Coloring" Leslie Bryner
"Skin Care Concepts" Denise Miller
"Fall & Winter Release 1978-79" CDC Members
"Motivation Class" Michael Sweeney
"Nutrition" Michael Nealeigh
"Competition Concepts" Alida Wiergang & CDC Members

Attended all Alaska State Shows & Conventions. Served as State Styles Director for 1976-77-78.

1979 (January) Attended NHCA CONVENTION in LAS VEGAS.
"Hair Happenings Release" (OHFC MEMBERS) CDC COMMITTEE
"Hair Color Concepts" Leslie Blanchard
"OHFC Self-Education" Doris Williams, Leslie Blanchard, Connie Rubin
"Competition Class" Louise Cotter, Sam Cappelli
"State Hair Fashion Committee Seminar"
"Skin Care Concepts" Luella Bailey
"Face Designs & Make-up Concepts" Grace Doran
"Chemical Control Permanent Wave Concepts" Bernard Des Jardins
"Nutrition for Beauty" Michael Nealeigh
"Art Principles" Carl Reese, Marquerite Buck
"Dollers & Sense for Hairdressers" Peg Gaudian
"Cosmetic Chemistry for Pros" Art Smith

1979 (July) Attended NHFC CONVENTION AT CHICAGO, ILL.
"OHFC HAIR HAPPENINGS" CEC Members
"Hair Color Concepts" Michael Tayler & Letha Ashcraft
"Perming" Max Matteson
"OHFC Seminar-SKIN" Luella Bailey
"OHFC Seminar-MAKE-UP", Grace Doran
"OHFC Seminar-COLOR", Michael Taylor & Letha Ashcraft
"State Hair Fashion Committee Seminar" Alida Wiergang
"State Hair Fashion Committee Participation Class:, Alida Wiergang.
"Art Principles" Marguerite Buck
"Dollars & Sense" Jonnie McCoy
"Public Relations-How to Promote Yourself & Your Business" Sharon Esche
"Gerontology" Jerri Redding
"Competition" Bernard Des Jardine
"Cosmo-Chemistry for Pros" Art Smith
"Motivation" Mchael Nealeigh
"Fashion Apparel for the Total Look"
"Merchadising-Marketing-Retailing" Frankl Ljquoir
"Model for National Coiffure Championship" Letha Ashcraft

LETHA BRAY ASYCRAFT
ADVANCED TRAINING (contd)

1980 January--attended the annual NHCA Educational Seminar held at Las Vegas, Nevada and received the following additional training and assisted with the presentation of the program:

"Chemical Styling" Paul Barnes
"Color Clasics" Vincent Farricielli & Letha Ashcraft
"Long Hair Braiding & Weaving" John Marsala
"Art & Principles of Hair Fashion Illusion" Mario Caruso
"Long Hair Balance & Design" Don Estes
"Hair Fashion Direction for Spring & Summer" 1981 CDC Committee
"Creating Fabulous Faces" Larry Parish
"SHFC/Participation Workshop" Same Cappelle & Letha Ashcraft
"How to be a Competitive Winner" Michael Diano
"Teaching Techniques for Instructors" Jean Redd
"Salon Up-Date Forum" Thomas Berger
"Self-Preservation (Exercise & Nutrition") Jan Murphy
"Male Services" Antonio Trapani
"Dollars & Sense for Cosmetologists" Betty Tallen
"Skin Care Motivation" Carlene Barefoot
"Motivation" Robert Willison
"Salon Chemistry" Taylor Burgess
"Creating Your Client's Best Image" Larry Walker

1981 January--attended the annual NHCA educational seminar held at Las Vegas, Nevada and received the following additional training and assisted with the presentation of the program:

"Color Classic" Letha Ashcraft
"Chemical Styling" Paul Barnes
"OHFC Directions -Spring & Summer 1981" Sam Cappelle, Charlene Rustenberg, Michael Schuh, Diane Sherrill
"OHFC Educational-Teaching Seminar" Sames as above
"Braiding & Weaving" Olive Benson, Richard Hertel
"Balance & Design" Linda Gazoway, Hayden Hitchock
"State Hair Fashion Seminar-Participation Workshop" Letha Ashcraft
"Teaching Techniques for Instructors" Jean Redd
""Train with Competition Winners" Leo Passage, Gloria DiSanga
"Hair Fashion Direction" Bill Hill
"Salon Up-Date Forum" Thomas Berger
"Self-Preservation-(exercise & nutrition)" Kurt Thomas, Peter Lupus
"Long Hair Design & Balance, Phase II" Linda Gazoway, Hayden Hitchock
"Creating Fabulous Faces" Larry Parrish
"Male Services" Antonio Trapani
"Dollars & Sense for Cosmetologists" Michael Swiger, Betty Tallen
"Art Principles of Hair Fashion Illusion" Mario Caruso
"Skin Care Motivation: Carlene Barefoot
"Motivation" Marilyn Van Derbero--former Miss America

1982 January--attended the annual NHCA Educational Seminar held at Anaheim, California:

"America Images" Doris Williams
"Men's Hair Cutting" Bill Hill
"Make-Up" Ron Renee, Ann Bray
"Salon Up-date Forum" Buddy Walton
"Competition Class" Michael Taylor, Gary Bray

LETHA BRAY ASHCRAFT
ADVANCED TRAINING (contd)

1982 Anaheim, California (contd):

"OHFC Examination Up-date" Art Waters
"Perming Images" Teresa Pupillo
"Skin Care" Luella Hubbard, Jean Tierney
"Participation Class for State Styles Directors" Letha Ashcraft, Mel Tozier
"OHFC Education" Vincent Farricielli, Gary Bray
"Long Hair Image" Micheal Schuh, Rapheal, Don Estes
"Motivation: Michael Sweeney
"Teen-Age Images" Jeri Hearne
"American Woman--Tips for Maturing" Larry Walker
"Jewelry & Hair Ornaments" Marium Haskell
"Evening Images" Candi Ekstrom

1983 January--attended the annual NHFC educational seminar held at New Orleans, Louisianna and received the following additional training plus assisted with the presentation of the program:

"Spring Images Release" Diane Narron, Dennis Mattos
"How to be Successful" Kevin McKowen
"Latest Techniques & Advice in Fetting & Attaching Wigs & Hairpieces", Larry Bucheit
"How to Prepare a Class, Platform Presentation, Voice Projection, & Self-Motivation" Micheal Diano
"Wholeistic Wellness, Health Awareness" Dr. George Milne
"Participation for Styles Directors & Chairmen Only" Letha Ashcraft
"Hairfashion Direction" Michael Diano
"Perming Technology" Pauline McCloud
"Hair Color Today" Carolyn Fruia
"Salon Technology" Peggy White
"Competition" Candi Ekstrom, Gary Bray
"Skin Care" Denise MIller
"Men's Trend Class" Herb Haller, Daniel Ruidant
"Premier Class" Sam Cappella, Letha Ashcraft

LETHA BRAY ASHCRAFT
Personal Data

REFERENCES: Professional and Character

Joe D. Montgomery
1048 Beech Lane
Anchorage, AK 99501

Ms. Connie Millhouse
407 East Northern Lights Blvd.
Anchorage, AK 99503

Mr. Charles Maletta
Paris Beauty Supply
P.O. Box 3774
Seattle, WA 98124

Mrs. Joy Donelson
908 R Street
Anchorage, AK 99501

M[illegible]. Maxine Reed
1361 W. 12th Street
Anchorage, AK 99501

Ms. Iyllamae Olsonoski
1317 Crescent Avenue
Anchorage, Ak 99504

LETHA BRAY ASHCRAFT
Personal Data
17 February 1982

EXPERIENCE:

February 1963 to December 1963	Operator, Maxine's Beauty Salon 809 4th Avenue Anchorage, AK 99501
January 1964 to May 1964	Operator-Manager Maxine's Beauty Salon 809 4th Avenue Anchorage, AK 99501
June 1964 to August 1964	Student-Instructor Beetch's Beauty College Enid, OK 73701
September 1964 to November 1964	Student-Instructor Maxine's Beauty College Anchorage, AK
December 1964 to December 1965	Manager-Operator Maxine's Beauty Salon Anchorage, AK
January 1966 to August 1970	Corporate Owner-Instructor-Operator Maxine's Beauty College Anchorage, AK
September 1970 to March 1972	Manager-Instructor D.J.'s School of Hair Design Anchorage, AK
April 1972 to March 1975	Manager-Instructor Alaska Accredited Beauty School Anchorage, AK
April 1975 to August 1982	Corporate Owner-Manager-Operator Instructor, H.G.B. Inc., dba Nordstrom Beauty Salon 603 D Street Anchorage, AK 99501
September 1982 to Present	Unemployed

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811

BOARDS AND COMMISSIONS RESUMÉ

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. The initial determination of whether you qualify for the position specified will be based on this application.

Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying:
Workmen's Compensation Board

Please list any other Board or Commission on which you serve:
None

Name	Previous Name applied under
DELIA I. PRUHS	n/a
Mailing Address	**Residence Address**
P.O. Box 1735	2915 Westgate Place
City, State and Zip Code	
FAIRBANKS, ALASKA 99707	
Home Telephone	**Business or Message Telephone**
(907) 456-4743	(907) 456-2945

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter before the last general election:

Are you a registered voter? ☒ YES ☐ NO

Voter Registration Number (Optional)

Social Security Number (Optional) 033-20-9972

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? ☐ YES ☒ NO

If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required authorized meetings? ☐ YES ☒ NO

If "YES", explain on a separate sheet of paper and attach to this application.

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating? Any that would be beyond my control.

CONFLICTS OF INTEREST: Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so? ☒ YES ☐ NO

Could you or any member of your family be affected financially by decisions to be made by the Board or Commission for which you have applied?
☐ YES ☒ NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion or Parenthood.

01-01212/811

TRAINING & EXPERIENCE: (If resume attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

R.N. in 1949

BSN in 1979

B. List both formal and informal education and training experiences: (Use additional paper if necessary)

Graduate from St. Vincent School of Nursing, Worcester, Mass R.N. degree

Attended 2yrs at Univ. of Alaska - Fairbanks

Bachelor of Science in Nutrition from Donsbach Univ. in Hunting ton Beach, Ca

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensated and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the positions.

Pres. Fairbanks Heart Association - 2yrs

American Cancer Society - Events Chrm. 2yrs - Board Member

Kila, Inc. Board of Directors + Exec. Bd. - 3yrs.

Commissioner WICHE - 4yrs

Board of Directors B.C.D.C. 5yrs - Treasurer

B.C.D.C. - B.E. on day [illegible] for 5 yrs

D. Employment work history: paid, unpaid or voluntary: (Use additional paper if necessary)

Administrator - Breast Cancer Detection Ctr 1982 - Fairbanks

School Nurse - Public Health - 2½ yrs - Fairbanks

Palpator - BC&C - 4½ yrs - volunteer - Fairbanks

Office Nurse - E.E.N.T - 2½ yrs - Fairbanks

Surgical Nurse - 3yrs - Hilo

General duty Nurse - Alaska Native Service - 2yrs - Pt. Barrow

Stewardess for 1 yr. - Anchorage

Mental Health - 2 1/4 yrs - State Institutions in Neb.

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX

☐ Male
☒ Female

ETHNIC BACKGROUND

☒ White ☐ Black ☐ Hispanic ☐ Alaska Native ☐ Asian or Pacific Islander ☐ American Indian

Date of Birth	Military Service (If applicable, give dates)
11/4/28	n/a

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature In Ink	Date
Julia A Pierce	July 29, 1983

01-012(1/81) Back

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811

RECEIVED
AUG 08 1983
GOVERNOR'S OFFICE

BOARDS AND COMMISSIONS RESUMÉ

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. The initial determination of whether you qualify for the position specified will be based on this application.

Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying:

Workers' Compensation Board, Southeastern Panel - Labor Representative

Please list any other Board or Commission on which you serve:

N/A

Name	Previous Name applied under
David William Richards	N/A
Mailing Address	**Residence Address**
3112 Wildmeadow Lane	Same
City, State and Zip Code	
Juneau, AK 99803	
Home Telephone	**Business or Message Telephone**
(907) 789-9825	789-9825

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter before the last general election.

Are you a registered voter? ☒ YES ☐ NO

Voter Registration Number (Optional)

Social Security Number (Optional)
563-48-6911

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? ☐ YES ☒ NO

If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required authorized meetings? ☐ YES ☒ NO

If "YES", explain on a separate sheet of paper and attach to this application. (Missed only one hearing during my tenure as a Board member over past 6 years.)

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating? No - I have attended hearings in Anchorage and Fairbanks on many occasions to fill in for absent Board members

CONFLICTS OF INTEREST: Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so? ☒ YES ☐ NO

Could you or any member of your family be affected financially be decisions to be made by the Board or Commission for which you have applied?
☐ YES ☒ NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion or Parenthood.

01-012(2/81)

TRAINING & EXPERIENCE: (If resumé attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

Vested member of Local 2247 Brotherhood of Carpenters and Joiners of America

B. List both formal and informal education and training experiences: (Use additional paper if necessary)

Graduated Pacific Grove High School, Pacific Grove California
2 Yrs. Jr. College M.P.C., Monterey, California
6 Yrs. Military Obligation fulfilled, Honorable Discharge

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensated and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the position.

N/A

D. Employment work history: paid, unpaid or voluntary: (Use additional paper if necessary)

20 Years Union Member Local 2247 Juneau

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX
☒ Male ☐ Female

ETHNIC BACKGROUND
☒ White ☐ Black ☐ Hispanic ☐ Alaska Native ☐ Asian or Pacific Islander ☐ American Indian

Date of Birth	Military Service (If applicable, give dates)
4-16-37	US Army, Ft. ORD, California E-4 Rating

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature in Ink	Date
[signature]	7-30-83

LABORERS INTERNATIONAL UNION OF NORTH AMERICA

LOCAL NUMBER 942

FAIRBANKS OFFICE: 315 BARNETTE ST., FAIRBANKS, ALASKA 99701-4566, PHONE (907) 456-4584
JUNEAU OFFICE: 369 SOUTH FRANKLIN, SUITE 201, JUNEAU, ALASKA 99801, PHONE (907) 586-2860

WILLIE LEWIS
President

JOE J. THOMAS
Business Manager
Secretary-Treasurer

RESUME

JOE J. THOMAS II

PERSONAL DATA:

Born: October 17, 1948, Fairbanks, Alaska

Marital Status: Married 11 years
Wife-Julie, Son-Damion, Age 7,
Daughter-Natalie, Age 4

Present Address: 879 Vide Way, Fairbanks, Alaska 99701

EDUCATION:

Lathrop High School, Fairbanks, Alaska
University of Alaska, Fairbanks, Alaska
West Virginia University, B.A. - Psychology

WORK HISTORY:

1967 - 1974	Construction Laborer Various Fairbanks Construction Companies
1974 - 1978	Business Agent and Executive Board Member Laborers Local Union 942 Fairbanks, Alaska
1978 - Present	Business Manager/Secretary-Treasurer Laborers Local Union 942 Fairbanks, Alaska

Jack L. Thompson
SRA 1451 P
550 High View
Anchorage, Alaska 99502

SUMMARY OF QUALIFICATIONS

Three (3) years Board of Directors of the Alaska Conference of Employers (ACE). This is a non-profit corporation structured solely to study Workman's Compensation problems and/or laws in Alaska.

Three (3) years Vice-President of the Workers Compensation Committee of Alaska (WCCA). This is a political action committee (PAC) to effect changes in the Workers Compensation laws and/or system:

An original and continuing member of the ad-hoc Labor/Management committee formed by member companies of the WCCA and a number of labor union leaders to work together to effect needed changes in the Workers Compensation system. HB 311 signed by Govenor Sheffield on 7-15-83 was the product of this committee.

Knowledgeable in labor/management relation and have been a member of many boards of arbitration and greivances at the request of several Alaskan employers.

My past three and one/half years of intense involvement in the Workers Compensation system and my past six years as General Manager of Air Van Lines, Inc., which had serious Workers Compensaion loss problems, has given me a broad overview of the system. My involvement with Teamster Local 959 as an employer has given me an area of expertise vis-a-vis worker safety, safety programs and labor/management objectives in a Workers Compensation system.

EDUCATION

1948-1950	Graduated	Gonzaga High School-Spokane, Washington
1954	Attended	University of California at Santa Barbara, California
1955	Attended	Gonzaga University-Spokane, Washington
1962	Attended	Sophia University-Tokyo, Japan

EMPLOYMENT HISTORY

1977 - Present	Air Van Lines, Inc. - Anchorage, Alaska
Position:	Vice-President and General Manager

Six years domiciled in Japan as Far East Manager with a major transportation company.

Six years domiciled in Germany as European Area Manager with a major transportation company.

PERSONAL DATA

Birthdate: February 18, 1933

Married - wife: Fuuko Nakajima Thompson

Health - Excellent

REFERENCES

Mr. Whitey Gregory - President
Alaska Trucking Association

Mr. Frank Chapados - President
H & S Forwarders
Fairbanks, Alaska

Mr. David Roderick
Chief Consul
Alaska Railroad

Mr. Dick Pittenger - Manager
Alaska Associated General Contractors
276-5354
Anchorage, Alaska

Mr. Ike Waldrop - President
National Electrical Contractors Association
Alaska Chapter

ALICE SOLOMON
BOX 235
BARROW, ALASKA 99723

ORGANIZATIONS AND COMMITTEES	DATES
UIC Board Member	1981-1983
UIC Arctic Slope Inupiat Foundation Board member	1982-1983
Barrow Health Board (Member)	1974-1983
Prudhoe Communication (Board Member)	1982-1983
American Society for Circumpolar Health (Member)	1981-1983
Alcoholism Program (Board Member)	1961-1970's
North Slope Borough Assembly Member	19? -1978
Utkeaqvik Presbyterian Church Elder	1978-1982
Utkeaqvik Presbyterian Church Deacon	1976-1978
Utkeaqvik Presbyterian Church Trustee	
Utkeaqvik Presbyterian Church Chair Member	
Utkeaqvik Presbyterian Church UPW Association officer	

Employment:

PHS Hospital Barrow Alaska, as nurse's aid	14 Years Retired

1) Member of Advisory Committee
2) E.E.O. Counselor while employed

North Slope Borough

Part-time Inupiat Language Commission Translator and Interpreter

Belong to the Mother's Club

Ikayuqtit Board Member for Family Presbyterian Church counseling and alcohol Program	1983-

Lynn E. Hartz
SRA Box 1563-B
Anchorage, AK 99507

AK. RN #6966
ANP #6966-0006
Calif. RN #C234743

Professional Resume

I. Education

1977 - Sonoma State University, Department of Nursing, B.S.N.
Public Health Nursing - Certificate
Family Nurse Practitioner - Certificate

1973 - Ventura Junior College, Department of Nursing, A.S.

II. Work Experience

1982 - Consultant, UAA - School of Nursing

Over a six-week period, I served as a co-investigator in research on a sexually transmitted infection.

1978 to Present - Family Nurse Practitioner, Municipality Family Planning Clinic.

My duties include physical exam, diagnosis and management of common gynecologic complaints, and prescribing birth control methods. For two years I have been acting as a preceptor for WAMI medical and UAA nursing students on rotation through the family planning clinic. Other activities include: starting a sickle-cell screening program for the clinic, writing and instituting an adult health screening program, writing and updating nursing protocols, and representing the clinic at the Board of Nursing meetings.

1980 - Executive Director, Alaska Nurses Association Continuing Education, Approval and Recognition Program

As staff support for the continuing education committee, I processed educational programs and classes for approval, supervised and updated office organization, and coordinated fundraising activities.

1974 to 1978 - Director of Inservice
Director of Employee Health
Staff Nurse - ICU
Warrack Medical Center, Santa Rosa, CA.

Following graduation, I assumed responsibility for continuing education for the nursing staff. I designed and implemented an in-patient, out-patient diabetic teaching program which was the first of its kind in the area. With the administration's backing, I began an employee health program which included counseling and yearly screening physical exams.

1977 - Family Nurse Practitioner, Common Health Club

On a contractural basis I provided screening physicals and health education for members.

1973 to 1974 - Staff Nurse
Intensive Care Unit
University of California Medical Centers
UCLA - UCSF

1971 to 1973 - Nurses' Aide, Ventura County Hospital, Vencura, CA.

1969 to 1970 - Nurses' Aide, Oxnard Convalescent Home, CA.

III. Other Professional Training and Experiences

1978 to 1982 - Certificate of Achievement - Alaska CEARP. This requires 60 or more hours of continuing education every two years.

1982 - Rural Nursing - I assisted a local nurse practitioner on her yearly visit to an Eskimo village, providing women's health care.

1980 - Authorization to practice as an Advanced Nurse Practitioner through the Alaska Division of Occupational Licensing.

1979 - Certification by examination as a Family Nurse Practitioner through the American Nurses Association.

1977 - Certification as a continuing education instructor by the California Board of Registered Nurses.

1974 - Coronary Care Certification

IV. Professional Involvement

1982 to Present - Advisory Committee for the nurse practitioner component of UAA School of Nursing Master's Program.

1978 to Present - California Coalition of Nurse Practitioners.

1978 to Present - "PEER" Group - statewide association of nurse practitioners in Alaska.

1976 to Present - American Nurses Association:
A. Council of Primary Health Care Nurse Practitioners

1978 to Present - Alaska Nurses Association:
A. State Convention Committee - 1982-3
B. District Nominations Committee - 1982-3
C. District Program Committee - 1981-82
D. State Continuing Education Committee - 1978-1980

V. Community Involvement

1978 to 1982 - Member KAKM, public TV.

1982 - Member KSKA, public radio.

1982 - Member, Unitarian Universalist Fellowship.

VI. Personal

Born March 5, 1952
Alaska resident since 1978
Married 8 years
One 3-year-old son

LHI:lp

Joy Holloman Donelson
908 R. Street
Anchorage, Alaska

Home 277-5018
Business 561-1964

BORN- Slaton, Lubbock County, Texas November 28, 1930
Widow- Ralph W. Donelson; Three daughters- Cynthia, Cecelia and Elizabeth

EDUCATION- B.S. Pharmacy; University of New Mexico, 1951

RESIDENT- State of Alaska Since November 1962

BUSINESS AFFILIATION- President and Principal Stockholder Alaska Medical Center Pharmacies Inc. Medical Arts Pharmacy and Professional Center Pharmacy

PROFESSIONAL ORGANIZATIONS-

American Parmaceutical Association- Delegate to National meetings 15 years; Chair of Professional Relations, Public Relations, and House Assessment Committee

National Association of Retail Druggists- Delegate to National Meeting 15 years; member several committees

American College Apothecaries- Alaska Director

Alaska Pharmaceurical Association- Member founding Board of Directors; Past President 1974

Professional Recognition- Recipient Bowl of Hygeia, Alaska Pharmcies highest honor

BUSINESS ORGANIZATIONS-

Anchorage Chamber of Commerce 20 years
Chamber of Commerce Retail Division

American Society of Women Business Owners

SERVICE ORGANIZATIONS-

Soroptimist International of Cook Inlet- Past President 1978 and Chair of each Committee during the past 15 years

Member Advisory Board Salvation Army

Member Advisory Board Booth Memorial Home

POLITICAL AFFILIATION- Republican

POLITICAL ORGANIZATIONS- Alaska Political Caucus
N.O.W.

RESUME

Christy C. Woolschlager (Nielsen)

Birth date: 10/23/55
Birth place: Waltham, Mass.

Address: SR BOX 20124-A
Fairbanks, Alaska 99701

EDUCATION:

Omak High School
Omak, Washington 98841
Graduated: June 1973

Washington State University
Pullman, Washington 99163
Graduated: June 1979
Degree: Bachelor of Pharmacy

QUALIFICATIONS:

Board certified to practice pharmacy by the state of Washington August 1979. Washington State License #PL 10804

Board certified to practice pharmacy by the state of Alaska February 1980. Alaska State License # AA 0648

EXPERIENCE AND TRAINING:

1. Fairbanks Memorial Hospital
   1650 Cowles Street
   Fairbanks, Alaska 99701

   Dates: 6/80 to present

   Title: Staff Pharmacist
   Educational Coordinator

2. Foodland Pharmacy
   Lacey and Gaffney
   Fairbanks, Alaska 99701

   Dates: 5/80-6/80

   Title: Retail Pharmacist

3. Teamster Pharmacy
   Old Rich Hwy.
   Fairbanks, Alaska 99701

   Dates: 3/80-5/80

   Title: Retail Pharmacist
   Relief Work only.

4. Fred Meyer Pharmacy
   College Road
   Fairbanks, Alaska 99701

   Dates: 2/80-4/80

   Title: Retail Pharmacist
   Part-time/relief work only.

5. Alaska Native Health Service
   Alaska Native Medical Center
   Anchorage, Alaska 99501

   Dates: 1/4/80-2/1/80

   Title: Pharmacist, Volunteer

6. Alaska Native Health Service
PHS Hospital
Kotzebue, Alaska 99752

Dates: 10/1/79-1/1/79

Title: Pharmacist
Relief duty

7. Alaska Native Health Service
PHS Hospital
Mt. Edgecumbe, Alaska 99835

Dates: 7/5/79-9/23/79

Title: Pharmacist
Volunteer, intern

8. Alaska Native Health Service
PHS Hospital
Kotzebue, Alaska 99752

Dates: 2/6/79-4/12/79

Title: Pharmacy Intern

ORGANIZATIONS:

1. AMERICAN SOCIETY OF HOSPITAL PHARMACY
2. AMERICAN PHARMACEUTICAL ASSOCIATION
3. ALASKA STATE PHARMACEUTICAL ASSOCIATION
4. FAIRBANKS PHARMACEUTICAL ASSOCIATION, SECRETARY-TREASURER
5. TOP OF THE WORLD JAYCEETTES
6. PHARMACY-NURSING COMMITTEE
7. STATE CONTINUING EDUCATION ADVISORY BOARD-1983

ADDITIONAL INFORMATION:

1. Inservice provider for nursing and pharmacy staff
2. Health Fair: 1982, 1983
3. Public speaking and media appearances on drug related areas of Poison Prevention, Drugs and the Elderly, and Drug and Alcohol Abuse
4. Alcohol Awareness Inc. 1981, 1983
5. Edit monthly pharmacy newsletter for hospital.

VITAE

William P. Larson, RPh
13400 Baywind Drive
SRA Box 562
Anchorage, Alaska 99516
(907)345-7606

Date of Birth - July 27, 1949, Riverdale, North Dakota
Marital Status - Married, two children

EDUCATION 1967 - Graduate of Osseo Sr. High School, Osseo, Minnesota
1972 - B.S. Pharmacy, University of Minnesota

WORK EXPERIENCE

May 1984 to Present	Director of Pharmacy, Carrs Quality Centers 1341 Fairbanks Street, Anchorage, Alaska (907)277-6639
July 1976 to May 1984	Head Pharmacist, Carrs Payless, Aurora Village 1740 West Northern Lights, Anchorage, Alaska (907)276-3921
January 1974 to July 1976	Staff Pharmacist, Carrs Payless Anchorage, Alaska
September 1973 to December 1973	Staff Pharmacist, Walgreens Drug St. Cloud, Minnesota
September 1972 to September 1973	Internship, Snyder Rexall Drug Minneapolis, Minnesota

Member of Alaska Pharmaceutical Association

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811

BOARDS AND COMMISSIONS RESUMÉ

INSTRUCTIONS

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Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying: Board of Dental Examiners

Please list any other Board or Commission on which you serve:

Name	Previous Name applied under
Paul Stuart Buxton	NA
Mailing Address	**Residence Address**
Bx 1376	Tischer Ave.
City, State and Zip Code	
Soldotna, Ak. 99669	
Home Telephone	**Business or Message Telephone**
907-262-4685	907-262-5454

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter before the last general election.

Are you a registered voter? ☑ YES ☐ NO

Voter Registration Number (Optional)

Social Security Number (Optional) 515 44 8136

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? ☐ YES ☑ NO

If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required authorized meetings? ☐ YES ☑ NO

If "YES", explain on a separate sheet of paper and attach to this application.

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating? No

CONFLICTS OF INTEREST: Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so? ☑ YES ☐ NO

Could you or any member of your family be affected financially by decisions to be made by the Board or Commission for which you have applied? ☐ YES ☑ NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion or Parenthood.

01-012(2/81)

TRAINING & EXPERIENCE: (If resumé attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

Licensed in the State of Washington

Licensed in the State of Alaska

B. List both formal and informal education and training experiences: (Use additional paper if necessary)

Dental Continuing Education in the Areas of:
- Periodontal Diagnosis & Treatment
- Dental Materials
- Restorative Dentistry
- TMJ & Equilibration treatment

Hypnosis training
CPR Training
Kenesiology Seminar

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensate and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the positions.

EST Standard Training Guest Seminar Leader
Road Service Area Supervisor
Past President of Kenai-Kodiak Dental Society
Past Member of the Alaska Dental Society Executive Council
Gave Free Dental Clinic at the Kenai Wellness Fair
A past member of the School Nutritional Advisory Committee
Donates time for Elementary Dental Education each year

D. Employment work history: paid, unpaid or voluntary: (Use additional paper if necessary)

Active Duty in the US Army; August 1972-August 1975
Rank: Captain - Major

Self-Employed General Dentist 1975-Present

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX
☑ Male
☐ Female

ETHNIC BACKGROUND
☑ White ☐ Black ☐ Hispanic ☐ Alaska Native ☐ Asian or Pacific Islander ☐ American Indian

Date of Birth: 12 JAN 1947

Military Service (If applicable, give dates): Aug 72 – Aug 75 U.S. Army active duty

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature In Ink: P S Buxton

Date: 16 Aug 83

01-012(1/81) Back

Resume:

Dr. Jerry F. Zemlicka
9191 Lee Smith Drive
Juneau, Alaska 99801

Personal History

Age 39

Birthdate 6/18/44, San Francisco, California

Married 19 years to Karen Zemlicka

2 children - Darcy age 17, will attend University of Colorado in fall 1983

Eric age 12, will attend 7th grade in fall 1983.

Resident of Juneau, Alaska for 13 years.

Educational History

High School - Grants Pass, Oregon - graduated 1962

College - University of Oregon - graduated 1966-67

Dental School - University of Oregon Dental School - graduated 1970

Professional History

State Board License - Alaska - 1970 - current, active

Oregon - 1970 - current, inactive

Practiced in Juneau 13 years.

Member American Dental Association since 1970

Member of Alaska Dental Society since 1970

Reorganized Juneau Dental Society and chaired group from 1970-1978

Organized Southeast Alaska Study Group with Dr. McKrill. This organization promotes post graduate education in Southeast Alaska.

Social & Religious History

Active in Glacier Valley Rotary in the 70's, past president

Organized and worked 5 years on the Eaglecrest Advisory Committee which was responsible for formation of Eaglecrest Board of Directors.

Served as Trustee and presently an Elder at Presbyterian Church - Chapel by the Lake, Auke Bay, Alaska.

Ida Hjellen McMahon C.P.A.

Certified Public Accountant: Alaska cert. # 299
California # 19000

Backgound: 14 years in accounting
3 years in industry
11 years in public accounting

Employment history:

Partner, Thomas, Head, & Greisen CPA's
Anchorage, Alaska
Thru 1980

Vice-president Finance, S & G Construction, Inc.
Anchorage, Alaska
1980 to 1982

Partner, Bushnell and McMahon CPA's
Wasilla, Alaska
1982 to present

Professional activities:

Member, Alaska Society of CPA's
American Institute of CPA's

Alaska Society of CPA's elected positions,
President, Secretary, Treasurer, & Director
American Institute of CPA's elected positions,
Elected representative to Council of the AICPA
1982 to 1985

Other activities:

member, UAA Business Advisory Council
1981 to 1984
member, Wasilla Chamber of Commerce

Personal history,

Born in Anchorage, Alaska 1946
College; Univ. of Alaska, Fairbanks
Univ. of Georgia, Athens

MICHAEL T. COOK, CPA

Mr. Cook was born in Fairbanks, Alaska in 1938 and attended Fairbanks elementary and secondary schools. He attended Lehigh University in Bethlemen, Pennsylvania and graduated with honors in accounting. While at Lehigh University, he was president of his social fraternity and was elected as a member and president of Beta Alpha Psi, the accounting honorary, and a member of Beta Gamma Sigma, the business honorary.

In conjunction with receiving his degree from Lehigh University, Mr. Cook was commissioned an officer in the U. S. Air Force. He served as a medical administrator at Paine AFB, Washington and in Pakistan until August, 1965, and attained the rank of captain.

He began his professional career in 1960 with Price Waterhouse & Co. prior to his service in the U. S. Air Force. In September, 1965, he returned to Fairbanks to resume his accounting career with the predecessor firm of Main Hurdman & Cranstoun, and was made a partner in that firm in 1968. He became partner in Main Hurdman & Cranstoun in 1969 and is in charge of the Fairbanks office's audit practice.

He served six years as a member of the Board of Directors of the Alaska Society of Certified Public Accountants, is a past president and has been chairman of the Society's Legislative Committee. He was General Chairman of the 1977 Pacific Northwest Conference of Certified Public Accountants held in Fairbanks. He has been a member of the Council of the American Institute of Certified Public Accountants.

Among other activities, he is a past president of the Greater Fairbanks Chamber of Commerce, the president-elect of the Executive Committee of the Midnight Sun Boy Scout Council, is in the Rotary Club of Faibanks, is a member of the Board of Directors of Alaska Crippled Children & Adults, a past president of the Fairbanks Estate Planning Council, is currently the president of the Midnight Sun Chapter of the Air Force Association and is in the Pioneers of Alaska. He has taught accounting courses for the University of Alaska. He and his wife, Sharon, and their children, Lance, Amy and Sarah, live in Fairbanks, where they are members of Fairbanks Lutheran Church.

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811

BOARDS AND COMMISSIONS RESUMÉ

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. The initial determination of whether you qualify for the position specified will be based on this application.

Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying:
Alaska State Board of Public Accountancy

Please list any other Board or Commission on which you serve:

Name	Previous Name applied under
Edward Bovee Mecham	
Mailing Address	**Residence Address**
P.O. Box 5975	Fire #221D Roosevelt Drive
City, State and Zip Code	
Ketchikan, Alaska 99901	
Home Telephone	**Business or Message Telephone**
(907) 225-9306	(907) 225-9688

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter before the last general election:

Are you a registered voter? [X] YES [ ] NO

Voter Registration Number (Optional): 02915122

Social Security Number (Optional): 527 74 1312

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? [ ] YES [X] NO

If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required authorized meetings? [ ] YES [X] NO

If "YES", explain on a separate sheet of paper and attach to this application.

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating?

No

CONFLICTS OF INTEREST: Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so? [X] YES [ ] NO

Could you or any member of your family be affected financially be decisions to be made by the Board or Commission for which you have applied?
[ ] YES [X] NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion or Parenthood.

01-012(2/81)

TRAINING & EXPERIENCE: (If résumé attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

Certified Public Accountant, State of Alaska May 12, 1977

B. List both formal and informal education and training experiences: (Use additional paper if necessary)

Glendale Union High School, Glendale, Arizona - graduated May, 1965
Phoenix College, Phoenix, Arizona - attended 3 semesters, general education with business emphasis
Brigham Young University, Provo, Utah - BS degree in accounting
Subsequent training has been on the job and subsequent education has been through AICPA prepared continuing education courses

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensated and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the positions.

Treasurer, Sitka Rotary Club - 2 years.
Treasurer, Sitka Chamber of Commerce - 2 years.
Board Member of South Tongass Volunteer Fire Department March 1981 to February 1983. The department went under a Borough Service District in October, 1982.
Board Member, Ketchikan Rotary Club - 2 years - Director of Student Foreign Exchange Program.

D. Employment work history: paid, unpaid or voluntary: (Use additional paper if necessary)

Double Tree Inns, Inc. - Home office accountant - Jan. 1972 to mid-1973
Mecham Pontiac, Inc. - Office Manager - mid-1973 to Dec. 1974
Peat Marwick Mitchell & Co. - Staff Accountant - Dec. 1974 to June 1976
Gregor Hogan McCracken Early & Co - Supervisor & then Office Manager - Sept. 1976 to June 1979
Hogan, Mecham, Palmer & Co. - Partner - June 1979 to June 1982
Hogan, Mecham, Richardson & Co. - Partner - June 1982 to present

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX
☒ Male
☐ Female

ETHNIC BACKGROUND
☒ White ☐ Black ☐ Hispanic ☐ Alaska Native ☐ Asian or Pacific Islander ☐ American Indian

Date of Birth	Military Service (If applicable, give dates)
Sept. 15, 1947	

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature In Ink	Date
Edward B. Mecham	8-3-83

MARIANNE K. BURKE
7241 Foxridge Circle
Anchorage, Alaska 99502

CERTIFIED PUBLIC ACCOUNTANT

State of Alaska since 1978

EDUCATION

Georgia Institute of Technology
Atlanta, Georgia
Major: Civil Engineering
Completed two years

Anchorage Community College
Anchorage, Alaska
Completed four semesters psychology

Portland State University
Eugene, Oregon
Completed one year philosophy
Completed two semesters psychology

University of Alaska, Anchorage
Major: Accounting
Degree: Bachelor of Business Administration
Accounting, awarded May 7, 1976

AFFILIATIONS

American Institute of Certified Public Accountants
Alaska Society of Certified Public Accountants
American Women's Society of Certified Public Accountants
Municipal Finance Officers Association
Hospital Financial Management Association

ACADEMIC AWARDS

Academic Excellence Scholarship	Fall 1974 Spring 1975
Tuition Waiver (Awarded by faculty, Division of Business Administration for outstanding scholastic achievement)	Fall 1975 Spring 1976

EMPLOYMENT

Price Waterhouse Anchorage, Alaska	Audit Manager	1982 to present
Laventhol & Horwath Anchorage, Alaska	Audit Supervisor	1976 - 1982
Arthur Young Anchorage, Alaska	Tax Staff	1976
Manpower Development and Training (thru Anchorage Community College) Anchorage, Alaska	Instructor	1966
State of Alaska, Dept. of Highways, Juneau and Anchorage, Alaska	Highway Engineering Assistant II	1960 - 1965

RESPONSIBILITIES IN PUBLIC ACCOUNTING

- All levels of field work including review of internal controls
- Planning and supervision of personnel
- Preparation of financial statements, management letters and special reports and review of same
- Final review and opinion of conduct of engagements for partners
- Compliance work and accounting, auditing research and tax research
- Consulting
- National Continuing Education (instructor)
- In-house training sessions (instructor)
- Practice Development, recruiting, personnel evaluation and career planning.
- Primary client contact.

TYPES OF CLIENTS

- Hospitals
- Welfare Benefit Plans
- Administrative Services
- Pharmacy
- Real Estate Management/ Development
- School District
- Cities
- Wholesale Novelties
- Profit-Sharing Trusts
- Personal Financial Planning
- State of Alaska
- Investment Corporations
- Construction
- Hotels
- Pension Plans
- Training Benefit Plans
- Dental Clinics
- Air Transportation Companies
- Regional Native Corp.
- Village Native Corps.
- Insurance
- Grant Administration Org.
- Consulting - IHS
- Law Firms & Legal Services
- Gold Mining
- Engineering Firms
- Fisheries

PERSONAL DATA

Resident of State of Alaska since 1960

CURRICULUM VITAE
June 1981

NAME: Stephen Arthur Mersch

DATE OF BIRTH: June 26, 1952

PLACE OF BIRTH: Sleepy Eye, Minnesota

MARITAL STATUS: Married

Wife: Pamela Ruth
Date of Birth: May 17, 1952
Children: None

SELECTIVE SERVICE CLASSIFICATION: 1-H

SOCIAL SECURITY NUMBER: 473-52-6203

UNIVERSITIES ATTENDED:

Iowa State University
Ames, Iowa
September 1970-May 1972

University of Minnesota
College of Veterinary Medicine
St. Paul, Minnesota
September 1972-June 1976

DEGREES:

Bachelor of Sciences with distinction - 1974
University of Minnesota
Major - Veterinary Sciences

Doctor of Veterinary Medicine - 1976
University of Minnesota

PROFESSIONAL TRAINING:

EXTERNSHIP

Type: Small Animal; Equine
Peterson Veterinary Center
Great Falls, Montana
January 1976

OTHER EXPERIENCES

Type: Mixed practice
Mersch Veterinary Clinic
Fairfax, Minnesota

OTHER EXPERIENCES

Type: Research Veterinary Medicine
Inhalation Toxicology Research Institute
Lovelace Foundation
Albuquerque, New Mexico June-September 1973

MILITARY SERVICE: None

HONORS AND AWARDS:

Bachelor of Science - with distinction
University of Minnesota - June 1974

Associated Western Universities
Position in Student Research
Inhalation Toxicology Research Institute
Albuquerque, New Mexico

Past President, South Central Veterinary Medical Association
Anchorage, Alaska 1977-1978

Alternate delegate to the AVMA for the State of Alaska
1979, 1980

Spokesman, Region 6 for the AAHA for Public Relations
(Alaska) for 1979-1980

Member Ethics Committee, Alaska Veterinary Medical
Association
1978 to present

SOCIETY AFFILIATIONS.

Member of the American Veterinary Medical Association

Member Minnesota Veterinary Medical Association

Member Alaska Veterinary Medical Association

Member South Central Veterinary Medical Association
Anchorage, Alaska

Member Veterinary Orthopedic Society

STATE LICENSES:

Alaska, Arizona, Oregon, Washington and Wisconsin

REFERENCES:

Dr. Terry Braden, D.V.M., M.S., M.R.C.V.S.
Staff Surgeon and Assistant Professor
of Orthopedic and Plastic Surgery
Michigan State University
College of Veterinary Medicine
East Lansing, Michigan

Dr. Carl Jessen, D.V.M., Ph.D.
Head of Veterinary Radiology
University of Minnesota
St. Paul, Minnesota

Dr. Arden L. Anderson, D.V.M.
8625 Why Worry Lane
Phoenix, Arizona

Dr. Albert Franzmann, D.V.M., Ph.D.
Director, Kenai National Moose Range
P. O. Box 666
Soldotna, Alaska 99669

Dr. Pamela A. Tuomi, D.V.M.
2036 East Northern Lights Blvd.
Anchorage, Alaska 99504

Mr. Jack Cline
P. O. Box 866
Soldotna, Alaska 99669

PAPERS AND PUBLICATIONS:

The Removal of Inhaled 239PU from Beagle Dogs by
Bronchopulmonary Lavage and Chelation Therapy.
Muggenberg et al, Healty Physics
Vol. 31, pp 315-321

ADDITIONAL INFORMATION:

Physical Statistics:
Height: 5'10"
Weight: 160 pounds
Health: Excellent
Vision: Corrected to 20:10

HOBBIES AND INTERESTS:

Fishing
Skiing
Tennis
Canoeing
Track and Field

Varsity letter winner at Iowa State University and University of Minnesota

Photography

PAST AND PRESENT PROFESSIONAL ACTIVITIES:

From July 1976 to July 1978, I was employed at College Village Animal Clinic, Anchorage, Alaska. From July 1978 to July 1980, I was partner and co-director of College Village Animal Clinic. College Village Animal Clinic is an AAHA certified, 3 veterian hospital, with practice limited strictly to small animals. I had full surgical, medical and management responsibilities.

In March 1981, I established Twin Cities Veterinary Clinic, a small animal hospital serving the Kenai-Soldotna, Alaska area. The hospital has full surgical, medical, and dental capabilities.

Continuing Education Seminar	Continuing Education Credits
Small Animal Orthopedics, A.S.I.F. Technique Dr. Wade Brinker & Dr. Terry Braden South Central Veterinary Medical Assoc., Cont. Ed. Seminar Anchorage, Alaska August 1976	10
Intermountain Veterinary Medical Assoc. Annual Meeting Las Vegas, Nevada February 1977	40
Small Animal Oncology Dr. Bruce Madewell South Central Veterinary Medical Assoc. Cont. Ed. Seminar Anchorage, Alaska March 1977	8
Small Animal Neurology Dr. Stan Creighton Alaska Veterinary Medical Assoc. Annual Meeting Anchorage, Alaska May 1977	12
Clinical Pathology Dr. Steve Gilbertson South Central Veterinary Medical Assoc. Meeting Anchorage, Alaska August 1977	3
Plastic and Reconstructive Surgery Dr. Terry Braden South Central Veterinary Medical Assoc. Cont. Ed. Seminar Anchorage, Alaska September 1977	8
Gastroenterology Dr. Don Strombeck and Dr. Gary Ewing AAHA Regional Meeting Seattle, Washington October 1977	12
Veterinary Orthopedic Society Aspen, Colorado February 1978	30

Urology 9
Dr. Delmar Pinco
South Central Veterinary Medical Assoc.,
Cont. Ed. Seminar
Anchorage, Alaska
April 1978

Clinical Pathology 10
Drs. Everett and Spona
Alaska Veterinary Medical Association
Annual Meeting
Anchorage, Alaska
May 1978

Radiographic Interpretation 2
Dr. William Zontine
South Central Veterinary Medical Association
Meeting
Anchorage, Alaska
July 1978

Minnesota Veterinary Medical Association 24
St. Paul, Minnesota
February 1979

Cardiology; Biopsy Technique 10
Dr. Stephen Ettinger
Alaska State Veterinary Medical Association
Anchorage, Alaska
May 1979

American Veterinary Medical Association 12
Annual Meeting
Seattle, Washington
July 1979

Practice Management 6
Dr. Ray Worley
South Central Veterinary Medical Association
Meeting
Anchorage, Alaska
September 1979

Neurology 12
Dr. Alan Parker
South Central Veterinary Medical Association
Meeting
Anchorage, Alaska
February 1980

The Netherlands Small Animal Veterinary Assoc. 30
Amsterdam, Netherlands
May 1980

American Veterinary Medical Association 6
Annual Meeting
Washington, D.C.
July 1980

Animal Behavior; Endincrinology 9
Drs. Beaver and August
Alaska Veterinary Medical Association
Annual Meeting
Anchorage, Alaska
May 1981

Dolores Hughes, MD
3168 Bresee Street
Juneau, AK 99801

Carol Derfner
Special Staff Assistant to the
Governor on Boards & Commissions
Office of the Governor
Pouch A
Juneau, AK 99811

Dear Ms. Derfner:

I am interested in applying for the vacancy that recently occurred in the Board of Medical Examiners. My qualifications are as follows:

1. I have practiced medicine in Southeast Alaska for 10 years.

2. I have mainly practiced in Juneau but I did serve as itinerant physician to Skagway for nearly two years.

3. I have worked in a broad variety of practice in the past 10 years. I have been in private practice and have done contract work for Federal, State, and City government as well as for private business.

4. My training is in Family Practice but I have, also, done work in pediatrics, gynecology, geriatrics and in the drug abuse and alcoholism field.

5. I have served on the Board of Directors of Hospice, Juneau and NCA, Juneau.

6. My schedule will permit me to interview physicians on short notice and to attend Board meetings as necessary, as well as testify in front of the legislature if needed.

Thank you for your consideration.

Sincerely,

D Hughes

Dolores B. Hughes, MD, ABFP, CCFP

SUNSET REVIEWS

ARCHITECTS, ENGINEER. & LAND SURVEYORS

#1

APRIL 3, 1984

TO: JOHN

FROM: KEN

RE: CSSB 438 "RELATING TO THE STATE BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS"

THE HOUSE LABOR AND COMMERCE COMMITTEE FIRST HEARD LEGISLATION PERTAINING TO THE BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS ON MARCH 16th. A NUMBER OF BOARD MEMBERS AND REPRESENTATIVES OF THE INDUSTRY AND THE DIVISION OF LICENSING TESTIFIED. FOLLOWING THE HEARING THE COMMITTEE DRAFTED SUBSTITUTE LEGISLATION WHICH ADDRESSES MANY OF THE CONCERNS BROUGHT OUT IN THE HEARING. AN ANALYSIS HAS BEEN PREPARED BY STAFF WHICH OUTLINES THE DIFFERENCES IN THE SENATE BILL AND THE HOUSE LABOR AND COMMERCE COMMITTEE SUBSTITUTE.

A PERFORMANCE REPORT ON THE BOARD OF REGISTRATION FOR ARCHITECTS. ENGINEERS, AND LAND SURVEYORS

July 1, 1980 - April 15, 1983

Audit Control Number
08-1114-54-83-R

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vincent O'Reilly Terry Elder

Members of the Board of Registration for Architects, Engineers, and Land Surveyors

President	Wallace I. Deboff
Member	Wayne K. Jenson
Member	Paul Stutzman
Member	Gordin Unwin
Member	Wallace Wellenstein
Member	Gordon S. Best
Member	Robert Boswell
Member	Odin Strandberg
Member	Vacant

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

April 15, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE
BOARD OF REGISTRATION FOR
ARCHITECTS, ENGINEERS,
AND LAND SURVEYORS

July 1, 1980 - April 15, 1983

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

TABLE OF CONTENTS

PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Registration for Architects, Engineers, and Land Surveyors for the past three fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Registration for Architects, Engineers, and Land Surveyors should be reestablished. The law now specifies that this Board will terminate on June 30, 1984, and have one year from that date to conclude its affairs.

SCOPE

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.

2. Interviews with Board members.

3. Tests of files and documents of licensees.

4. Interviews with license examiners.

5. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman's Office.

6. Minutes of Board meetings and Division correspondence files.

7. Attorney General's opinions applicable to professional boards.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The Board of Architects, Engineers, and Land Surveyors is a regulatory board with nine members consisting of two civil engineers, one land surveyor, one mining engineer, two engineers from other branches of the engineering profession, and three architects.

The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.

2. Establishing, amending, or eliminating regulations controlling architect, engineer, and land surveyor practices.

3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated architect, engineer, and land surveyor statutes or regulations.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Registration for Architects, Engineers, and Land Surveyors should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Legislation should be introduced requiring continuing education for architects, engineers, and land surveyors.

Architects, engineers, and land surveyors must demonstrate a high degree of educational and practical competence before they can become registered in Alaska. However, renewal of certificates is not dependent upon evidence of a professional's continued competence.

In our questionnaire to registered professionals, 93% of the architects, 78% of the engineers, and 64% of the land surveyors responding reported that they had attended courses and/or seminars in the last two years. Most were concerned, however, that continuing education requirements would be too narrowly defined or too difficult to satisfy. To address these concerns, there must be active involvement by individuals and professional societies in the development of continuing education standards.

Architects, engineers, and land surveyors are acutely aware of the public's trust that they maintain their professional competency. Required continuing education is one means of fulfilling that trust. In addition, a program of continuing education will assist in avoiding professional obsolescence and keep practitioners aware of changes taking place in the profession.

Recommendation No. 2

The Board should repeal its anticompetitive and restrictive regulations prohibiting competitive bidding (12 AAC 36.230(b)).

We reviewed the Board's regulations to determine if they are anticompetitive and restrictive. Regulation 12 AAC 36.230(b) provides that an architect, engineer, or land surveyor may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding. We find this regulation restrictive, anticompetitive, and absent of clear and statutory policy to restrain competition.

This point of view is supported by memorandum A66-191-79A from the Attorney General's Office dated October 29, 1980. That memo states in part:

> There must exist clear statutory policy to restrain competition before a state regulatory agency may promulgate regulations to restrain competition if federal antitrust immunity is to occur. No direct

authorization for such an anticompetitive provision [12 AAC 36.230(b)] appears in the statutes. In such a situation, federal courts have specifically held such regulations to be violative of antitrust law.

This regulation is now being challenged by the United States' Department of Justice in the Anchorage Federal District Court (U.S. v. AK Board of Registration for Architects, Engineers, and Land Surveyors).

Recommendation No. 3

The Board should approve for examination only those applicants eligible to take the examination.

The Board has approved applicants for the fundamentals of engineering examination when they do not meet the eligibility requirements for the examination. 12 AAC 36.062 requires successful completion of at least 85% of an accredited engineering curriculum, or, if curriculum is unaccredited, a number of years in experience. At a November, 1982, Board meeting and a February, 1983, Board meeting, applicants were approved for examination who were in an unaccredited curriculum and did not have the requisite experience.

While we do not question the quality of the applicants approved for examination, we do believe that if the Board no longer believes that these requirements are necessary, they should propose regulation changes that would ensure that all applicants would be treated in a consistent and fair manner.

Recommendation No. 4

In order to ensure that the Board adequately represents the general public, the qualifications and conditions of Board membership should be reviewed and amended.

AS 08.48.011-.031 creates the State Board of Registration for Architects, Engineers, and Land Surveyors, specifies the qualifications and professions of the nine Board members, and establishes the members' terms of office. In order that the Board better represent the general public, these statutory provisions should be reevaluated. Some specific areas that should be reevaluated are:

A. The Board is the only licensing board that has no lay representation. In general, lay members with no direct financial interest in the regulated professions can and should contribute to policy formulation and enforcement decisions. It should be recognized that the public is the ultimate interest group and we recommend, as we did in the 1979 audit, that at least two lay members be included on the Board.

B. The term of Board members is currently set at 6 years with no limitation on the number of terms that can be served by one individual. This Board is the only licensing board that has a six year term for its members and only two other State licensing boards have an unlimited number of terms that can be served by their members. Such conditions might hamper the flow of new ideas since individuals could serve for an extended period of time. We recommend that a statutory change be considered to limit the number of terms a Board member can serve as well as reducing the years in a Board member's term.

(Intentionally left blank)

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

I. The extent to which the board, commission or program has operated in the public interest.

A. The Board holds at least four regular meetings each year.

B. The Board holds written exams at least twice each year, except for certain national examinations that are held only once a year.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The Board approved engineer in training (EIT) applicants for the fundamentals of engineering examination when the applicants did not meet the eligibility requirements of 12 AAC 36.062 (see Recommendation No. 5).

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Board adopted regulations that clarified various vague statutory and regulatory requirements.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. The Board has advertised certain proposed regulations changes in only one city. The Board does not actively solicit comments on its effectiveness.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

A. Certain examinations and meetings have not been advertised in an adequate and timely manner.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

A. The Attorney General's Office has record of a case filed against the Board by the United States' Department of Justice concerning the Board's regulation banning competitive bidding. (12 AAC 36.230(b)). This case is pending in U.S. District Court (see Recommendation No. 4).

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. We found no instances where the Board had licensed unqualified practitioners.

B. Architects, engineers, and land surveyors are not required to demonstrate their continued competence through a continuing education program (see Recommendation No. 1).

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

A. Applications for licensure require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIX

(Intentionally left blank)

APPENDIX A

BOARD OF REGISTRATION FOR ARCHITECTS
ENGINEERS, AND LAND SURVEYORS
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ending June 30, 1982
(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	$108,052
Less: Expenditures (Note 3)	99,967
Excess Revenues Over Expenditures	$ 8,085

Schedule 1
Type of Revenues (See Note 2)

Revenues	Amount	Collection Time
Application for Examination Fee		
(A) NCARB Examination		
(i) Qualifying Exam	$50	With application
(ii) Section A	$50	With application
(iii) Section B	$75	With application
(B) NCEE Examination	$50/exam	With application
Reexamination Fee	$50/exam	Upon reexam
Comity Application Fee	$50	With application
Corporate Authorization Application Fee	$100	With Application
Individual Registration Fee	$15/year	Renewals paid biennially; new registrants pay $15/year for balance of biennial period.
Corporate Authorization Registration Fee	$50/year	Renewals paid biennially; new registrants pay $50/year for balance of biennial period.
Amendment to Corporate Authorization	$20	With amendment
Delinquent Renewal Fee	$30	With reinstatement
Postponement of Examination Fee	$20	With request for postponement
Late Fee Fine	$10	With late payment
Improper Payment Fine	$10	When payment is found to be improper

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenue in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Years 1981 and 1982 in order to obtain a more accurate representation of collected revenues.

Note 3

Expenditures include those made by Board members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments, such as the Department of Law, assisting the boards and the Division.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

August 11, 1983

Mr. Gerald Wilkerson
Legislative Auditor
Legislative Audit Division
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on the preliminary findings of your audit of the Board of Registration for Architects, Engineers and Land Surveyors. The following comments address each recommendation individually:

Recommendation No. 1: Legislation should be introduced requiring continuing education for architects, engineers and land surveyors.

The department is in substantial agreement with the intent of this recommendation. However, we feel that the emphasis of legislation should be put on continuing competency rather than on continuing education per se. It is appropriate for the State as a licensing agency to be concerned with continuing competency and with continuing education only to the extent that it is a vehicle for assuring competency and necessary public protection.

By focusing on continuing education exclusively, we are equating education and competency. The effectiveness in continuing education as a vehicle for assuring continuing competency is still open to debate. It would be premature to end that debate through legislation.

Additionally, both administrative costs and increased costs to the consumer must be considered.

Any additional costs that a professional incurs gets passed on to the consumer in the form of higher fees. The costs of services will increase to the extent that professionals are not presently taking continuing education courses. Yet, it is not known whether there will actually be an increase in public protection.

08-r. 'LH

Similarly, continuing education programs can be very expensive to administer and would probably require that an additional staff person be hired. There are presently 4,000 active licensees under the Board of Registration for Architects, Engineers and Land Surveyors. Assuming that the continuing education regulations are straightforward enough to be completely administered by the licensing examiner, this means that at a minimum, the Division of Occupational Licensing will have to manage an additional 4,000 pieces of paper every two years.

In this connection, it should also be borne in mind that approximately 95% of the active files are presently stored in Archives. Continuing competency requirements would most likely generate a need for the files to be kept in the office to be managed properly. There would also be a significant increase in both telephone calls and written correspondence, especially during the phasing in of the new regulations.

If the board review were required as part of the new continuing education requirements, the workload would increase that much more dramatically. Between FY '80 and FY '82, the State has experienced an increase of over 100% in the number of new applications for licensure received. At the present, this board is understaffed.

Since it is not known whether continuing education leads to a greater public benefit through continuing competency, serious consideration should also be given to funding research to determine whether present and proposed regulation in this area is actually effective.

Recommendation No. 2: The board should repeal its anticompetitive and restrictive regulations prohibiting competitive bidding (12 AAC 36.230(b).

The department concurs with this recommendation.

Recommendation No. 3: The board should approve for examination only those applicants eligible to take the examination.

The department concurs with this recommendation.

Recommendation No. 4: In order to ensure that the board adequately represents the general public, the qualifications and conditions of board membership should be reviewed and amended.

The department concurs with the recommendation and specifically with the suggestions contained therein for the addition of at least two public members and limitations on the terms of board members.

Sincerely,

Richard A. Lyon
Commissioner

RAL/kkk/C32
81183a

(1) at all times recognize his primary obligation to protect the safety, health, property, and welfare of the public in the performance of his professional duties; if his professional judgment is overruled under circumstances where the safety, health, and welfare of the public are endangered, he shall inform his employer or client of the possible consequence and notify such other proper authority of the situation as may be appropriate; and

(2) undertake to perform assignments only when he or his associates, consultants, or employees are qualified by education, training, experience, and licensing in the specific technical branches or fields involved;

(3) be completely objective and truthful in all professional reports, statements, or testimony and shall include all relevant and pertinent information in such reports, statements, or testimony when the result of an omission would, or reasonably could, lead to a fallacious conclusion; and

(4) not affix his signature or seal to any plan or document dealing with professional services in which he is not qualified by virtue of education, experience, and licensing; and

(5) issue no statements, criticisms, or arguments on architectural, engineering, or land surveying matters connected with public interests which are inspired or paid for by his interested party or parties unless he has prefaced his comment by explicitly identifying himself by disclosing the identities of the party or parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.111

12 AAC 36.220. CONFLICT OF INTEREST. (a) Each architect, engineer, or land surveyor shall avoid conflicts of interest with his employer or client but, when unavoidable, the architect, engineer, or land surveyor shall promptly inform his employer or client of any business association, interests, or circumstances and identify any circumstances which could influence his judgment or the quality of his service to his employer or client.

(b) An architect, engineer, or land surveyor may not accept compensation, financial or otherwise, from more than one party for services on the same project or for services pertaining to the same project unless the circumstances are fully disclosed to and agreed to by all interested parties or their authorized agents.

(c) An architect, engineer, or land surveyor may not solicit or accept financial or other valuable consideration from suppliers for specifying their products.

(d) An architect, engineer, or land surveyor may not solicit or accept gratuities from other parties dealing with his client or employer in connection with the work for which he is responsible. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

12 AAC 36.225. PUBLIC SERVICE. When in public service as a member, advisor, or employee of a government body, an architect, engineer, or land surveyor may not participate in considerations or actions with respect to services provided by him or his organization. An architect, engineer, or land surveyor, in his capacity as an elected, retained, or employed public official, may not review or approve work that he has performed, whether it was under his direction or on behalf of another employer or client. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

12 AAC 36.230. SOLICITATION OF EMPLOYMENT. (a) An architect, engineer or land surveyor may not pay, solicit nor offer, directly or indirectly, any bribe or commission for professional employment with the exception of his payment of the usual commission for securing salaried positions through licensed employment agencies.

(b) Deleted 11/18/83.

(c) An architect, engineer or land surveyor may not falsify or permit misrepresentation of his or her associates' academic or professional qualifications. He may not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments.

(d) Brochures or other presentations incident

ackley
jensen
architects inc.

March 22, 1984

RE: Board of Registration for Architects,
Engineers and Land Surveyors

Representative Cowdry, Chairman
Labor and Commerce Committee
Room 209 Behrends Building
Juneau, Alaska

Dear Representative Cowdry:

Thank you for the opportunity to comment on the Committee bill regarding the continuation of the Board of Registration for Architects, Engineers and Land Surveyors. I understand that your committee proposes to continue the board for another four years, to reduce the length of terms to four years, to leave the composition of the board unchanged, and to delete the requirements in CS SB 438 for registrants providing evidence of "continued competence" for renewal of registration.

As President of the board I concur with these positions and feel that the board will also concur. If I can be of further assistance please contact me or any other board member.

Sincerely,

Wayne Jensen

WJ:mec24(3)

p.o. box 310, juneau, alaska 99802 (907) 586-1070

MARCH 14, 1984

THE BOARD OF ARCHITECTS, ENGINEERS AND LAND SURVEYORS IS COMPRISED OF NINE MEMBERS: TWO CIVIL ENGINEERS, ONE LAND SURVEYOR, ONE MINING ENGINEER, TWO ENGINEERS FROM OTHER BRANCHES OF THE PROFESSION, AND THREE ARCHITECTS. THE BOARD IS RESPONSIBLE FOR SETTING MINIMUM STANDARDS FOR PRACTICE IN ALASKA.

QUESTIONS:

1. HOW DOES BOARD MAINTAIN A BALANCE OF AUTHORITY WITH FIVE ENGINEERS, THREE ARCHITECTS, AND ONE LAND SURVEYOR ?

2. DO YOU SUPPORT THE FINDINGS AND RECOMMENDATIONS MADE BY THE LEGISLATIVE AUDIT DIVISION FOR THE BOARD ?

3. HOW OFTEN DO YOU THINK THIS BOARD SHOULD BE REVIEWED BY THE LEGISLATURE ?

4. WHAT SUGGESTIONS DO YOU HAVE FOR IMPROVEMENT OF THE BOARD ?

5. HAS THE BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS FILED AN ANNUAL REPORT TO THE LEGISLATURE IN RECENT MONTHS

to an architect's, engineer's or land surveyor's solicitation of employment may not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101
AS 08.48.111

Editor's Note: As of Register 83, Jan. 1984, 12 AAC 36.230(b) was deleted by the regulations attorney under AS 44.62.125 (b)(6) and in accordance with a Stipulation and proposed Final Judgment filed on November 10, 1983 by the Board of Architects, Engineers and Land Surveyors and the United States Department of Justice in the United States District Court for the District of Alaska in **United States v. Alaska Board of Registration for Architects, Engineers and Land Surveyors**, Civil Action No. A82-423 CIV. This Stipulation and proposed Judgment were filed because 12 AAC 36.230(b) was in violation of section 1 of the Sherman Antitrust Act [15 U.S.C. § 1 (1977)]. The proposed Final Judgment which may become final on or soon after January 16, 1984 will, also prohibit further enforcement of any ban or board policy against competitive bidding.

12 AAC 36.235. ADVERTISING. An architect, engineer, or land surveyor may not advertise his or her services in a deceptive or untruthful manner. (Eff. 9/30/78, Reg. 67; am 5/30/82, Reg. 82)

Authority: AS 08.48.101(a)(5)

12 AAC 36.240. IMPROPER CONDUCT. (a) An architect, engineer, or land surveyor may not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows or has reason to believe is engaging in business or professional practices in a fraudulent or dishonest manner.

(b) If an architect, engineer, or land surveyor has knowledge or reason to believe that another person or firm may be in violation of the provisions of AS 08.48, or any of these rules of professional conduct, he or she shall present that information to the board in writing and shall cooperate with the board in furnishing such further information or assistance as may be required. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

ARTICLE 3.
GENERAL PROVISIONS

Section
250. Definitions

12 AAC 36.250. DEFINITIONS. For the purposes of this chapter and AS 08.48, unless the context requires otherwise

(1) at all times recognize his primary obligation to protect the safety, health, property, and welfare of the public in the performance of his professional duties; if his professional judgment is overruled under circumstances where the safety, health, and welfare of the public are endangered, he shall inform his employer or client of the possible consequence and notify such other proper authority of the situation as may be appropriate; and

(2) undertake to perform assignments only when he or his associates, consultants, or employees are qualified by education, training, experience, and licensing in the specific technical branches or fields involved;

(3) be completely objective and truthful in all professional reports, statements, or testimony and shall include all relevant and pertinent information in such reports, statements, or testimony when the result of an omission would, or reasonably could, lead to a fallacious conclusion; and

(4) not affix his signature or seal to any plan or document dealing with professional services in which he is not qualified by virtue of education, experience, and licensing; and

(5) issue no statements, criticisms, or arguments on architectural, engineering, or land surveying matters connected with public interests which are inspired or paid for by his interested party or parties unless he has prefaced his comment by explicitly identifying himself by disclosing the identities of the party or parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.111

12 AAC 36.220. CONFLICT OF INTEREST. (a) Each architect, engineer, or land surveyor shall avoid conflicts of interest with his employer or client but, when unavoidable, the architect, engineer, or land surveyor shall promptly inform his employer or client of any business association, interests, or circumstances and identify any circumstances which could influence his judgment or the quality of his service to his employer or client.

(b) An architect, engineer, or land surveyor may not accept compensation, financial or otherwise, from more than one party for services on the same project or for services pertaining to the same project unless the circumstances are fully disclosed to and agreed to by all interested parties or their authorized agents.

(c) An architect, engineer, or land surveyor may not solicit or accept financial or other valuable consideration from suppliers for specifying their products.

(d) An architect, engineer, or land surveyor may not solicit or accept gratuities from other parties dealing with his client or employer in connection with the work for which he is responsible. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

12 AAC 36.225. PUBLIC SERVICE. When in public service as a member, advisor, or employee of a government body, an architect, engineer, or land surveyor may not participate in considerations or actions with respect to services provided by him or his organization. An architect, engineer, or land surveyor, in his capacity as an elected, retained, or employed public official, may not review or approve work that he has performed, whether it was under his direction or on behalf of another employer or client. (Eff. 9/30/78, Reg. 67)

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(b) Deleted 11/18/83.

(c) An architect, engineer or land surveyor may not falsify or permit misrepresentation of his or her associates' academic or professional qualifications. He may not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments.

(d) Brochures or other presentations incident

SUNSET REVIEW

BOARD of BARBERS & HAIRDRESSERS

#2

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSHB 714
Title: "An Act relating to Barbers & Hairdressers"
Sponsor: L&C Committee
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Econ. Dev.
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: N/A

Funding for the continuation of the Board of Barbers and Hairdressers is provided for in the Department FY '85 operating budget.

ANALYSIS: Attach a separate page for analysis

Prepared By: Darrell Miller (Darrell Miller) Phone: 465-2535
Division: Occupational Licensing Date: 4/17/84

Approved by Commissioner: Richard A. Lyon Date: 4/17/84
Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

April 9, 1984

To: House Labor and Commerce Committee Members
From: Committee Staff
RE: HB 714 "Relating to Barbers and Hairdressers"

Sectional Analysis

Section 1: Extends the Board of Barbers and Hairdressers until June 30, 1986.

Section 2: Under this section, two additional members would be added to the Board of Barbers and Hairdressers. There are currently five members on the board. That number would be increased to seven. Requirements of practice for those serving on the board also are addressed in this section.

Section 3: In this section the board is given the responsibility of setting educational requirements for applicants seeking a license as a barber or hairdresser.

Under current statutes both the Department of Education and the Board of Barbers and Hairdressers authorize the issuance of licenses for schools of barbering, hairdressing, and cosmetology. Section 3 repeals the boards authority to issue this license.

Section 4: The board is given the power to inspect barbering and hairdressing shops or schools.

Section 5: A new section is added to statute which pertains to the boards powers of inspection.

Section 6: In section 3 the authority of the board to issue a licenses for schools of barbering and hairdressing was repealed. In this section paragraph two pertaining to licenses of schools is repealed.

Section 7: This section states that an applicant for license must meet the educational requirements established by the board.

Section 8: Under this section, the period of apprenticeship for a license to practice hairdressing is set at 1,850 hours.

Section 9: Under this section, the period of apprenticeship for a license to practice cosmetology is set at 2,000 hours.

Section 10: This section states the board may appoint a committee to examine applicants for licensing. It also requires a person examining applicants be licensed to practice in the field for which the examination is being given.

Section 11: This section further details the structure of the committee's that will conduct applicant examinations.

Section 12: The board is given the power to regulate the practice of manicuring and pedicuring.

Section 13: Under current statutes a person licensed in another state or country is entitled to a license to practice in Alaska. This section repeals that privilege from persons of other countries.

Section 14: This section repeals the boards power to adopt regulations to license shops. This function is already being performed by the Department of Commerce and Economic Development.

Section 15: This section establishes that a student permit to practice hairdressing and cosmetology is valid for a period of two years.

Section 16: This section repeals the boards power to set fees for the licensing of schools, school owners, instructors, and shop owners. These licenses and fees are established and collected by branches of the administration.

A PERFORMANCE REPORT
ON THE
BOARD OF BARBERS AND HAIRDRESSERS

July 1, 1980 to April 29, 1983

Audit Control Number
08-1114-53-83-R

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vincent O'Reilly Terry Elder

Members of the Board
of Barbers and Hairdressers

President	Maurice Smith
Member	Wilma Raduege
Member	Irene Roberts-Erickson
Member	Marse Kueber
Member	Vacant

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

April 29, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE
BOARD OF BARBERS AND HAIRDRESSERS

July 1, 1980 to April 29, 1983

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

TABLE OF CONTENTS

PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Barbers and Hairdressers for the past three fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Barbers and Hairdressers should be reestablished. The law now specifies that the Board will terminate June 30, 1984, and have one year from that date to conclude its affairs.

SCOPE

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.

2. Interviews with the licensing examiners.

3. Tests of files and documents of licensees.

4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Office of the Ombudsman.

5. Discussions with Board members.

6. Minutes of Board meetings and Division correspondence files.

7. Attorney General Opinions applicable to professional boards.

8. Discussions with the United States Food and Drug Administration.

ORGANIZATION AND FUNCTION

The Board of Barbers and Hairdressers was created in 1980. This Board is the result of the Legislature combining the Board of Barbers and the Board of Hairdressing and Beauty Culture Examiners. The membership of the Board consists of two licensed barbers, two licensed hairdressers, and one public member. Each member is appointed by the Governor for a three year term, but can serve no more than two consecutive full terms.

The Board regulates the vocations of barbering, hairdressing, and cosmetology. The Board has been given the authority to examine applicants, issue licenses and permits, suspend or revoke licenses and permits, and investigate complaints. The Board issues the following licenses: beauty or barber schools, school owners, shop owners, instructors, barbers, hairdressers, and cosmetologist practitioners. They also issue temporary and student permits.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (OL). OL provides the Board with licensing and investigative support. The licensing section processes applications, maintains license files, answers inquiries and provides other administrative help to the Board.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committee should take into consideration the Findings and Recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

The primary purpose of a regulatory board with a licensing function is to protect the public. The questions that have to be evaluated to determine if licensing is needed are:

1. Does the unlicensed practice pose a serious risk to the consumers' life, health, safety, or economic well-being?

2. Can the potential users be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services?

3. Do the benefits to the public clearly outweigh any potential harmful effects, such as a decrease in the availability of practitioners, higher costs of services, and restriction on optimum utilization of personnel?

During our review to determine if the Board's licensing function is required and meets the previously mentioned criteria, we examined existing complimentary statutes, complaints, and various Board functions. As a result of our examination we found:

1. The Department of Environmental Conservation (DEC) is required by Alaska Statute 44.46.020 to adopt regulations for a standard of cleanliness and sanitation in connection with the construction, operation, and maintenance of barber shops, hairdressing, or cosmetology establishments. DEC has codified regulations to fulfill their statutory responsibility in 18 AAC 30.700-760. These statutes and regulations provide adequate protection for public sanitation.

2. Postsecondary Education, under the Department of Education, issues Certificates of Registration to postsecondary institutions (of which barber and beauty schools are) that meet minimum standards concerning quality of education, ethical and business practices, health and safety, and fiscal responsibility as required by AS- 14.48.010. These statutes provide protection to those students who wish to attend beauty college or barber school.

3. The Department of Revenue, as required by AS 43.70.020, issues business licenses to individuals engaging in business in this State.

4. Included in OL investigation/complaint files were complaints against Board members for their conduct during the State examination. They included asking improper questions, such as where the student went to school, not adequately examining the work performed by the student, changing final grades, including the grade of a Board member's apprentice, and holding the examination only in Fairbanks and Anchorage (see Recommendation No. 1).

As a result of our examination, we conclude that there is not sufficient reason to support the licensing of schools, school owners, shop owners, and instructors. The licensing of practitioners can be done by the Division of Occupational Licensing by licensing those individuals who have met predetermined educational or experience qualifications.

An alternative to licensing of practitioners would be certification. Certification is a form of State regulation that recognizes individuals who have met predetermined qualifications established by a state agency. Only those who meet the qualifications may legally use the designated title. Non-certified individuals may offer similar services to the public as long as they do not describe themselves as being "certified."

Therefore, we recommend that the Board of Barbers and Hairdressers should be allowed to terminate on June 30, 1984.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Barbers and Hairdressers should be allowed to terminate on June 30, 1984.

The primary purpose of a regulatory board with a licensing function is to protect the public. The questions that have to be evaluated to determine if licensing is needed are:

1. Does the unlicensed practice pose a serious risk to the consumers' life, health, safety, or economic well-being?

2. Can the potential users be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services?

3. Do the benefits to the public clearly outweigh the potential harmful effects, such as a decrease in the availability of practitioners, higher costs of services, and restriction on optimum utilization of personnel?

During our review to determine if the Board's licensing function is required and meets the previously mentioned criteria, we examined existing complimentary statutes, complaints, and various Board functions. As a result of our examination we found:

A. In two instances after the practical examination was given and grades were calculated, Board members and examination proctors reviewed the grades and changed six individuals' failing grades to passing grades (see Recommendation No. 4).

B. For the past two and a half years, State examinations have been held exclusively in Anchorage and Fairbanks. Of the last 12 exams, 9 have been in Anchorage and 3 have been in Fairbanks. This presents an economic hardship to those students who wish to take the examination from other parts of the State, because they must pay travel and living expenses for themselves and their model for up to three days.

C. There have been numerous complaints made to the Division of Occupational Licensing concerning the Board's conduct during the State examination.

D. The Board issues duplicative and unnecessary licenses which only provide another layer of licensing without providing any additional public protection (see Recommendation No. 2).

The licensing of practitioners could be done by the Division of Occupational Licensing by licensing those individuals who have met predetermined education and experience qualifica-

tions. These qualifications could be obtained from either schooling or apprenticeship at the hourly requirement already established in the regulations.

An alternative to the licensing of practitioners would be certification. Certification grants recognition to individuals who have met predetermined qualifications. Only those who have met these qualifications may legally use the designated title, however, noncertified individuals may offer similar services to the public as long as they do not describe themselves as being certified. This would assist the public in identifying competent practitioners.

Because the public can be adequately protected through either licensing or certifying practitioners, we recommend that the Board of Barbers and Hairdressers be allowed to terminate on June 30, 1984.

However, in the event that the Board is reestablished we recommend the following changes be made in their operations.

Recommendation No. 2

The Board should seek legislation that would reduce and restrict its various licensing functions.

The Board, in addition to testing individual practitioners to determine their minimum qualifications for licensure, also issues four other categories of licenses. These other categories are schools, school owners, shop owners, and instructors. Each of these additional categories represent an extra unnecessary layer of licensing, specifically:

A. Schools - AS 08.13.185 establishes the fee and 12 AAC-09.125 establishes the requirements for school licenses and in summary they are:

   1. An initial fee of $700 and biennial renewal fee of $400.

   2. A Certificate of Registration issued by the Department of Education.

   3. The name of the school owner.

   4. The location of the school with an exact description of the floor plan that meets the Board's specifications.

In addition to the license issued by the Board, a school has to obtain a business license issued by the Department of Revenue which also requires the owner's name, school location, and a $25.00 fee. In order to obtain a Certificate of Registration from the Department of Education, the school has to meet the minimum standards set out in AS 14.48.060. Among these are, the school can operate so that "the quality and content of each course or program of instruction, train-

ing or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered," and, that "the institution has, or has access to adequate space, equipment, instructional materials, and personnel where applicable to achieve the stated objective of the course or program of study." There is an initial $100 fee with additional renewal fees for the Certificate of Registration.

B. School Owner - AS 08.135 establishes the fee and 12-AAC 09.120 establishes the requirements for a school owner's license and in summary they are:

1. An initial fee of $70 with a biennial renewal fee of $60.

2. The names of all parties having financial interest in the school.

3. A copy of the valid bond filed with the Department of Education.

Again, a business license requires the names of the owners, and the bond is already required to be filed with the Department of Education.

C. Shop Owner - AS 08.13.185 establishes the fee and 12 AAC 09.110 establishes the requirements for a shop owner's license and in summary they are:

1. An initial fee of $45 with a biennial renewal fee of $40.

2. The business name, physical location, and addresses of all shops owned.

3. A report of a sanitary health inspection by the Department of Environmental Conservation.

4. The license number of the practitioner employed as a manager of the shop if the owner is not a licensed practitioner.

The Department of Environmental Conservation has independent statutory authority in AS 44.46.020 to adopt regulations for "standard of cleanliness and sanitation in connection with the construction, operation, and maintenance of . . . barbershops, hairdressing or cosmetology establishments." Again, a business license requires the name and location information. The fourth requirement is unnecessary; there is no additional protection gained from having a licensed practitioner as owner or manager when all the employees have to be licensed practitioners.

D. Instructors - The statutory authority for licensing instructors is construed from AS 08.13.185, which

establishes an instructor's license fee of $70 and a $60 biennial renewal fee. Using that as authority, the Board adopted regulations for licensing of instructors. The licensing requirements established in the regulation are summarized as follows:

1. A current practitioner's license.

2. Three years of practice or one year of practice and six-hundred hours of student instructor training.

3. Passing the written and practical portions of the instructor's examination given by the Board.

The licensing of these instructors is not necessary since the third minimum standard required by the Department of Education for their Certificate of Registration in AS 14.48-.060 is that "the education or experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study."

As we have seen, each of the four categories represent an unnecessary and duplicative licensing function.

The Board tests each individual to determine if they have the minimum qualifications to practice all phases of their profession. Therefore, the additional categories of licensing provide no additional public protection.

Recommendation No. 3

The Board should review existing statutes and regulations and seek appropriate revision where necessary.

During our examination, we reviewed the Board's statutes and regulations to determine if any were obsolete, vague, or unduly restrictive. Examples of what we found are as follows:

A. The Board has promulgated considerable regulations for the licensing of instructors when the only statutory authority to issue instructors' licenses is implied by AS 08.13.185 which defines license fees.

B. AS 08.13.120 authorizes and 12 AAC 09.110(b) provides the criteria for the licensing of shops, however, the Board does not license shops.

C. AS 08.13.120 also requires that either the shop owner be a licensed practitioner, or employ a licensed practitioner as the manager. Since all practitioners in the shop must be licensed, that requirement is not necessary.

AS 08.13.030 provides that the Board shall exercise general control over the vocations of barbering, hairdressing, and cosmetology. This cannot be done effectively without clear and concise statutes and regulations. Therefore, the Board should review their statutes and regulations for obsolescence, vagueness, and restrictiveness, and propose appropriate changes where necessary.

Recommendation No. 4 -

The Board should improve their procedures for the administration of the State examination.

We reviewed the examination function of the Board and noted problems and complaints concerning the Board's administration of the examination, specifically:

A. The State examination is currently given only in Anchorage and Fairbanks. While we recognize that these locations represent the residence of a large majority of students taking the examination, there remains a high economic cost to students from other parts of the State who have to pay travel and living expenses for themselves and their model for the duration of the examination. We suggest that the Board administer the examination periodically statewide with the possible use of examination proctors.

B. After two separate examinations, the Board members and proctors met after the practical examination had been completed. They reviewed the score sheets and in six cases, changed failing grades to passing grades. The Division of Occupational Licensing has notified the Board that grades cannot be changed at a post-examination review session.

C. The Division of Occupational Licensing has received numerous complaints from students concerning Board members' behavior during the practical examination. The complaints included Board members asking students questions such as where they went to school, and not adequately checking the work done by the students. Again, Occupational Licensing sent a letter to the Board addressing these and other problems and offered suggestions for their possible resolution.

According to AS 08.13.030, it is the Board's duty to examine applicants and approve the issuance of licenses and permits to practice. We, therefore, recommend the Board improve their procedures for administering the State examination.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

I. The extent to which the board, commission or program has operated in the public interest.

A. The Board issues licenses to schools, school owners, shop owners, and instructors that are unnecessary (see Recommendation No. 2).

B. The Board has only held the State examinations in Fairbanks and Anchorage. Of the last 12 examinations, 9 have been in Anchorage and 3 in Fairbanks. This can cause an economic hardship to individuals from other parts of the State who have to travel to take the examination (see Recommendation No. 4).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The Board is not issuing shop licenses as required by Alaska Statute 08.13.120 (see Recommendation No. 3).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Board proposed various statutory changes to definitions of a cosmetician, an instructor, and other statutory areas. None of these changes have been submitted to the Legislature from the Executive Branch.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. Board meetings are announced to the public. Comments on regulation changes are solicited by announcement in public newspapers. The Board does not actively solicit comments on its effectiveness.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

A. The Board has published notices of its meetings in Anchorage, Fairbanks, and Juneau. However, such notices have not always been published in a consistent and timely manner as required by statute.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board, or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

A. During our review, we found the average case length for complaints and investigations filed with the Office of the Ombudsman to be approximately 1 month; with the Division of Occupational Licensing, approximately 7 months, and; with the Attorney General's Office, Consumer Protection Agency was approximately 1 month.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. In two instances after the practical examination was completed and the final grades were calculated, the Board members and examination proctors reviewed the grades and changed six individuals' grades in various sections of the examination from failing to passing (see Recommendation Nos. 1 and 4).

B. According to the Division of Occupational Licensing's records for the Fiscal Year 1982, there were a total of 464 new licenses issued. Of these new licenses, 181 were issued by credentials.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

A. Applications for licensure as a practitioner require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the recommendations section of this report.

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APPENDIX A

BOARD OF BARBERS AND HAIRDRESSERS
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ended June 30, 1982

(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	$75,697
Less: Expenditures (Note 3)	70,713
Excess of Expenditures Over Revenues	$ 4,984

Revenue Type	Amount	Collection Time
School	$ 700	With license issuance
School Renewal	400	Biennially
School Owner	70	With license issuance
School Owner Renewal	60	Biennially
Instructor	70	With license issuance
Instructor Renewal	60	Biennially
Shop Owner	45	With license issuance
Shop Owner Renewal	40	Biennially
Barber Practitioner	55	With license renewal
Barber Practitioner Renewal	40	Biennially
Hairdresser Practitioner	55	With license issuance
Hairdresser Practitioner Renewal	40	Biennially
Cosmetology Practitioner	45	With license issuance
Cosmetology Practitioner Renewal	30	Biennially
Temporary Permit	30	With permit issuance
Student Permit	20	With permit issuance
Examination	25	With application
Investigation	25	With application
Delinquent Fee for Late Renewal	20	With application

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and accordingly we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Years 1981 and 1982 in order to obtain a more accurate representation of revenues collected.

Note 3

Expenditures include those made by board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments (such as the Department of Law) assisting the boards and the Division.

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BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

August 12, 1983

Mr. Gerald Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Legislative Affairs Agency
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Re: Preliminary Audit Report
Board of Barbers and Hairdressers

Thank you for the opportunity to comment on the Preliminary Audit Report of the Board of Barbers and Hairdressers. We have reviewed your recommendations and, based on information you supplied and information in our files, at this time we concur that the Board of Barbers and Hairdressers should be allowed to terminate on June 30, 1984.

Opposition to this position will come from licensed professionals. The consuming public has indicated neither support for continuing nor dissolving the board. Complaints have been made that the board was not acting in the best interests of hairdresser students.

RECOMMENDATION #1

The Board of Barbers and Hairdressers should be allowed to terminate on June 30, 1984.

We would concur. However, we will respond to those individual items your report has listed as A, B, C, and D.

Item A. We concur. This problem did occur. The division has attempted to correct this type of action by requiring the Licensing Examiner to place the score sheets in a sealed envelope.

Item B. Your assessment is correct. However, Anchorage and Fairbanks are the only locations where there are schools with sufficient facilities that can accommodate the number of applicants who must be tested.

Item C. This statement is correct. Complaints have been discussed with the board.

Item D. Response follows (see Recommendation #2).

08-H2LH

RECOMMENDATION #2

The board should seek legislation that would reduce and restrict its various licensing functions.

We disagree with the general assumption that the additional categories of licensure represent an unnecessary layer of licensing. Each category evaluates and identifies separate functions. We would agree to eliminate the school owner license, but would strongly support continued licensing of the facility. Students are able to obtain State student loans to attend beauty and/or barbering schools. The school should be responsible for an accurate and legitimate course of training or instructions. We would not be opposed to having all fees paid to one State agency, be it Department of Education or the Department of Commerce and Economic Development.

We support some registration or recording of the shop owner, for public protection. It would be necessary to identify a responsible party for redress of damages in the event of public harm.

Because instructor fees are addressed in statutory language, it is assumed the legislative intent was another level of competency. It also substantiates a licensee just out of beauty school could not begin teaching others. We would support a position of graduation from a licensed school and a specified number of years in practical experience to qualify for an instructor's license.

The additional licensing does offer additional public protection by insuring competent practitioners.

RECOMMENDATION #3

The board should review existing statutes and regulations and seek appropriate revision where necessary.

We would concur with this recommendation in substance. The board has continually worked on regulations. Efforts were made for statutory change.

RECOMMENDATION #4

The board should improve their procedures for the administration of the State examination.

We agree. Responses to the items listed as A, B, and C were provided on previous pages of this response.

Division records will reflect that efforts were made to address these problems and assist the board. They recently began training licensed professionals to serve as proctors. With the division's assistance, extra examinations were conducted to reduce the expense to a number of applicants from the Kenai area.

The division is currently polling the licensed professionals as to the attitude toward the existing State examination process. The survey asks if there is a need for State examinations.

We would encourage schools to assume responsibility of graduating competent, qualified professionals and to set graduation standards to ensure only those meeting professional criteria would receive diplomas or certificates.

Should the survey indicate a desire to eliminate State exams, we would look toward higher requirements in courses and for graduation.

Persons entering the profession by apprenticeship could be required to pass a school examination before licensure.

Again, thank you for the opportunity to respond to your Preliminary Audit Report.

Sincerely,

Richard A. Lyon
Commissioner

RAL/mc5/3
812a

March 1, 1984
P. O. Box 47[illegible]
Juneau, Alaska 99802-473

The Honorable Senator Eliason
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

My letter is to address the Board of Barbers and Hairdressers that are up for Sunset Review by your committee on March 6, 1984 at 1:30 p.m.

I would like to address two issues. One, would be to have statute changes regarding AS .08.13.010, AS .08.13.030 and AS .08.13.040 all of which I have highlighted on page 7 of the attached Statute booklet.

Secondly, I would like to address things I feel would greatly improve the function of the Board. Things that are necessary if the public is to remain unharmed or damaged by anything that could go wrong in a shop or school.

These are my suggestions in regard to Statute changes I feel need to be made: When a person applies for application to serve on this Board that he/she must be licensed in the State of Alaska at least 3 years before even being considered for the appointment. That they may not have a conflict of interest such as being instructors in beauty culture schools or school owners. That they may not test anyone who has been or is currently under their instruction whether it be in a school or in an apprentice program. That a public member may not aid in any form of examinations, practical or written. Senator, I strongly feel that if these changes were made that the Board would not only have more experience but that there would be much less problem in getting an effective job done for the people of this State.

Currently, there is a conflict on our existing Board and that relates directly to this section I have just referred to. After studying the above Statute, I then turned to page 31 in the Statute booklet, which I have also highlighted for your information, and found a regulation made by the Board, that sets duties and functions for proctors at a level far exceeding the current Statute rules and regulations set forth by the Legislators for the Board. This is an area where I see that to be a Board member you need nothing but to be licensed as a Barber or a Hairdresser or be a member of the public. Other than that nothing is required and since our Board was combined in 1980, no Statute change has been introduced to even change the wording so that the two professions are combined to form a complete Board. By this I mean that merely combining the Boards into one unit, that does not complete the job. The entire structure of licenses needs to be broken down and changed. If this is not done then you have conflicts at exams when Barbers are grading Hairdressers and vise-versa. All you get is arguments and that is not the professional approach to anything. These need to be combined, above and beyond any other minor problem currently facing the Board. Another reason I believe problems have arisen stem back to lack of rules and regulations regarding selection of Board members. We have had a rather large turn-over in members of the last four years and I feel that this can be changed with higher standards set.

I would like to mention that when a public member is on the Board that they should be exempt from taking part in any examinations. This is totally unprofessional. I feel that they shcould observe the other Board members in this function, but in no way should they be allowed to actually grade a student in their performance. Afterall, they are not licensed in this profession and it stands to reason that this makes no sense at all.

A public member is very important to have on a Board but not for grading purposes. A public member can do so many other things relating to the Board afterall, licensing is important but it is not the main function of the Board. The Board is there to protect the public.

Senator, at this time I need to also suggest that the Board be given authority to perform shop and school inspections. I believe this would require statute change as well. Currently the Department of Enviromental Conservation and Health and Social Services do inspections. However, I have been a shop owner in Juneau since January 1981 and I was inspected before I could open. I was inspected again in January 1983 and again last month. This inspection was a joke. I felt more like the person inspecting was a building inspector instead of a sanitation inspector. They were so busy picking apart the fact that my shampoo sink did not have a back stop regulator and that I did not have the trim work in my shop complete yet that they totally ignored the fact that I have sun tan beds and how do I clean them or where my refuse goes or how I care for my equipment I use on my customers. My inspection was not on sanitation and I felt they had no right four years down the road to pick my sink apart. The Board knows what to look for in inspections and I feel more inspections will be done by them than is currently being done now. This is the most important area to protect the public. As I understand, the Board only has the authority to see that proper licenses are displayed. They can come in and look around for general cleanliness but not thoroughly inspect. They can make recommendations to the proper Departments but because those Departments are understaffed, the inspections of our businesses are low priority. They will even tell you they are too busy.

Areas I feel would improve Board functions are:

1. Combine licensing

2. Create seperate licenses compatable with other States so people moving to Alaska can work here too.

3. Provide Grandfather and Comody licensing for Barbers, who just want to be Barbers and do no chemical work. That is there livihood, why should they have to change.

4. Seperate personal feelings from professional ones. Don't get on the Board to show everyone who you are, but what you can do to help them.

5. Keep the public safe at all times. Keep the public in mind when considering all Board business.

Concerning the Legislative Audit, I see some very legitamite concerns about the Board, however, I know that these areas will be taken care of if some Statute changes are made.

I do want to address the Audits concluding remarks found on page 5 of that audit.

Question 1. Does the unlicensed practice pose a serious risk to the consumers' life, health, safety, or economic well being?

The answer is clearly, yes. Without licensing or regulation of any kind the public will be the ones to suffer. God only knows what kind of confusion and chaos will develcpe from it. I personally went thorough 2000 + hours to receive my license in the State of Alaska. I feel that by combining licenses and creating additional licenses for skin care, nails and electrical work (electrolosis) that the hours for Hairdressing or Barber Styling can be reduced to perhaps 1300-1600 hours. But without any form of licensing I feel that the State would be responsible for any legal action a customer harmed would cause and also by de-regulating licenses at all of how that would cause loss of livihood for those of us currently licensed. Our profession would suffer too. How could we work next to someone who didn't know what they were doing and let them do harm to someone. That would set us up for potential lawsuits as well. Sounds like a can of worms I do not want to be a part of.

Please go over the information I have given you and please vote to retain the Board of Barbers and Hairdressers considering the changes I have outlined for you.

Thank you again for your time and consideration.

Respectfully yours,

Julie Huber-Ward

Julie Huber Ward, President
Juneau Chapter of the National
Hairdressing and Cosmetology Assoc.

cc: Governor Bill Sheffield
Senator Rodey
Senator Mulcahy
Senator Pettyjohn
Senator Sackett
Department of Occupational Licensing
Labor and Commerce Committee House of Representatives

Rep.

March 1st, 1984

State of Alaska

This letter is regarding the proposed sunset of the Barbers and Hairdressers Board.

As a salon owner and professional hairdresser, licensed and with over 15 years experience, I believe the Barbers and Hairdressers Board should not be allowed to terminate.

Reviewing the legislative audit, I do agree with some important points made by the auditor; especially the recommendations for improvements to said board.

The audit states "Dept of Environmental Conservation provides adequate protection for public sanitation. Postsecondary Education issues Certificates of Registration to barber and beauty schools that meet minimum requirements and provides protection to students, and the Dept of Revenue issues business licenses." Therefore they say there is no need for a board. The legislature saw a need to form a board in 1980, and the audit does not prove that the need is no longer there. We do need professionals from our industry to represent us in the State system.

The board is not a paid position and the above three Depts would surely have to hire additional staff (professional) to perform their duties, in the best interest of the public. You would be abolishing an inexpensive public agency and increasing budget requirements in several others.

The audit mentions certification: who will be qualified to certify the students? We need professionals licensing or certifing students as indicated by the original intent of the board. This cannot be performed by a lay person working for the Division of Occupational Licensing.

Please keep in mind that most professional hairdressers want a state board (based in the tremendous response to the proposed sunset legislation) however said professionals do not necessarily support the members of the board in the past four years, due to their poor performance. There should be better guidelines for qualifing board members. There should also be 7 members not 5 on the board because two seperate and distinct boards were combined (Barbers and Hairdressers). The 7 members to include; 3 barbers, 3 hairdressers all with at least 3 years experince and one voting public member who does not give examinations. The combining of seperate boards four years ago was done with no regard as to combining requirements; how effective could this be? The requirements should be combined to lessen confusion.

As a shop owner I am concerned with the insurance aspect of deregulation. I have a letter from my insurance agent (attached) stating concerns his company would have if present laws were changed. Remember that increased insurance costs would be passed on to the consumer.

I personally would not hire hairdressers who were not properly licensed, certified and properly trained: would I face litigation for not hiring this person? Would this practice be discriminatory?

I do not believe professional hairdressers who have passed the State board exam would work beside someone who had not passed said exam. We would lose the overall professionalism in our salons. Remember the intent is to protect the public; let us keep the standards high as the public demands this.

Thank you for your careful consideration regarding this matter.

Sincerely

D. Cheryl Winton
Chers Juneau Hair Co.

CLIF BEADLE Agent
Auto - Life - Health - Home and Business

9110 Glacier Highway
Juneau, Alaska 99801
Phone: Bus: 907-789-3127

February 21, 1984

Cheryl D. Winton
DBA Cher's Juneau Hair Co.
3-6000 Suite 101
Juneau, Alaska 99801

Dear Cher:

This letter will act to confirm our numerous talks regarding the possibility of the elimination of the barber/beauty shop licensing requirements.

Our major concern is the liability aspect of the barber/beauty shop policy. As you know, our policies can provide professional liability. The possibility exists of untrained operators or owners creating problems (claimwise) due to lack of training or proper supervision and claims in turn being paid. This would in time have a direct effect on the overall rates.

Our underwriting procedures now require all operators and supervisors to be licensed and we highly recommend the shop owner or manager be a member of the National Hair Dressers Association. We feel that one of the major reasons that the rates are low for this specific profession is because of the training and current license requirements.

We are, once again, concerned mainly with the liability area--especially with the application of hair tints or dyes, hair straightening and permanent hair waving and bleaching. Our underwriting requirements would remain the same on the property insurance aspects.

We would hope the licensing requirements would remain the same for the overall protection of the public.

Sincerely,

Clif Beadle
Agent

SALONS, SCHOOLS AND OPERATORS, THEREBY ENSURING ALL HAVE THE NECESSARY UNDERSTANDING OF THE HUMAN BODY, SKIN AND HAIR STRUCTURES, DISEASES AND DISORDERS, AS WELL AS KNOWLEDGE OF MIXING AND APPLYING CHEMICALS, AND SANITATION, BEFORE PERMISSION TO PRACTICE IS GRANTED. TO REQUIRE LESS, THE STATE OF ALASKA WOULD BE REMISS IN ITS' DUTY TO THE GENERAL PUBLIC.

1 [illegible]

2 [illegible]

3 [illegible]

4 Beatrice Franklin 17550 Andreanof Dr Jnu. AK 99801

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35	Anne Lafaveau	2523 Juneau Dr.	" 99801
36	Cecelia Nemi	9451 Carol Dr	" 99803
37	Margo Nash	Box 588	Juneau 99802
38	Bedtrice Benya	5975 Lemon St	" 99801
39	Diana Howell	Box 210347 - Auke Bay, Ak.	99521
40	William B Hafeld	2665 Old Mendenhall Loop Rd	99801
41	Marilyn	P.O. Box 2197 Juneau AK	99803
42	Virginia Gettner	9091 Skyline Way	Juneau 99801
43	Jean C. Sandoz	4113 Dogwood Ln.	Juneau 99801
44	Sara L. Monk	2238 Meadow Ln	Juneau 9980
45	Hazel B. Jean	2238 Meadow Ln	Juneau 998
46	Marjorie Merritt	P.O. Box 3086	Juneau 99803
47	Marilyn Clark	9165 Parkwood	Juneau 9980
48	Bobby ~~Hunter~~	9335 Betz Ct	Juneau Ak 99801
49	Peggy Colleson	Box 2343	Juneau AK - 99803
50	Verna Michaelson	416 W. 10th St	Juneau AK 99801
51	Leslie Wink	1101 Mendenhall Loop Rd	Juneau Ak 99801
52	Margo Kendall	643 Main St	- Juneau 99
53	[illegible]	9634 Division St	Juneau 998
54	Carolyn A. Minkler	2205 Meadow Dr.	Juneau 998
55	Frances A. Ritter	9575 Meadow Lane	Juneau, 99802
56	Betty A. Minkler	P.O. Box 2890	Juneau 99803
57	Marcia M. Chrisko	7887 - Loop Rd	Juneau, 9980
58	[illegible]	[illegible]	9980

59	Charlotte Arndt	Box 221	Juneau	99802
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61	Ellen E. Freitag	P.O. Box 418	Douglas AK	99824
62	Donna Kotyk	P.O. Box 3012	Juneau AK	99803
63	Mike Coudeau	9151 Parkwood	Juneau	99801
64	Sharon Rupich	PO Box 449	Douglas AK	99824
65	Dale E. Staley	5875 Glacier Hwy #33	Juneau AK	99801
66	Leon Tree	Box 261	Douglas AK	99824
67	Ruth Call	Box 33	Douglas AK	99824
68	Nancy Woolford	Box 736	Juneau, AK	99802
69	Linda Mayberry	Box 3062	Juneau, AK	99803
70	Lorraine Hurley	Box 246	Auke Bay	99821
71	Marylou Ratz	8468 Valley Blvd	Juneau	99801
72	Kalit Adkins	3911 Alitak Bay Dr.	Anchorage	99502
73	Nancy Weaver	Box 256	Juneau, AK	99802
74	Donald Rhuten	P.O. Box 6	Auke Bay, AK	99821
75	Jinny Martens	PO Box 1245	Petersburg AK	99833
76	Jamie Carver	Box 1771	Juneau AK	99802
77	Allen Capps	9366 Northland St.	Juneau, AK	99801
78	Barbara P. Magnusson	9416 Orchard Dr.	" "	99801
79	Shirley A. Jones	6310 Glacier Hwy #18	Juneau	99
80	Margaret M. MacKinnon	PO Box 2760 9341 Turn St.	Juneau	99803
81	Karen Carlson	1510 Mendenhall Spur Rd PO Box 226	Juneau	99802
82	Sonya Head	9147 Parkwood	Juneau	998
83	Stan Head	9147 Parkwood	Juneau	99801
84	Sharon Peck	3852 Melrose	Juneau	99801
85	Jeff Bryson	2175 Cascade	Juneau	
86	[illegible]	8691 [illegible]	[illegible]	9980[illegible]

87	Jan K. Rutledge	3-6000, Suite 122, Juneau, AK 99801
88	Sally D. Dowd	1800 Northwood E38 Jnu 99801
89	Robin Trane	7760 Glacier Hwy Juneau 998
90	Jennifer Noah	PO Box 3183, Juneau, AK 99803
91	Kim Ratz	8465 Valley Blvd. Juneau 99501
92	Jan Somerville	3780 McGinnis Dr, Juneau 99801
93	Judy Robinson	3178 Indian Cove Juno 99
94	Martha Penrose	P.O BOX 2940 JUNEAU 9980
95	Catherine Johnson	P.O. Box 996 Auke Bay AK 9978
96	Peter A. Kiesp	P.O BOX 1823 Juneau, AK. 9980
97	Jamsy R Mielke	1350 Fritz Cove Rd Juneau, AK 9980
98	Lynn Russ	1850 Fritz Cove Rd Juneau AK 9980
99	Carol Pollock	3-6000, Suite 186, Juneau, AK 99801
100	Marie A. Fisher	P.O. 6 Auke Bay AK 9982
101	Pam Callahan	4463 Columbia Blvd. Juneau AK. 99801
102	Judy Franklet	6217 El Camino St. Juneau 9980
103	Polly Dewey	16275 Sand Loop Juneau AK
104	Sharon Summers	4394 Julep Juneau, AK
105	Cathleen P. Seage	9575 Moraine Way Juneau, AK 998
106	Lori Lewkowski	4531 Riverside Juneau, AK 9980
107	Debbie Ydore	3246-39 Mendenhall Lp Rd. Juneau, AK 9
108	John Stewart	4224 Taku Ct Juneau AK 99801
109	Dana Stewart	4224 Taku Ct. Juneau AK 99801
110	Linda Jacobsen	4430 Clarendale, Juneau, AK 99801
111	Karen Jennison	8221 Dogwood Box 1687 Juneau AK 998
112	Mike W Northrup	8255 Aspen (Box 2808) Juneau Ak 9980
113	Jane Adams	2355 O'Day dr Juneau AK 99801
114	Dan Thomas	917 Glacier Hi...

115	Gaylene M Flanagan	4457 Coleen Ave	99801
116	Susan L Klabunde	8521 Rainbow Rd	99801
117	Martin T. Richard	3722 El Conejo	99801
118	Barbara Muse	4537 Sawa Cir.	99801
119	Carolyn Rasmussen	1020 Spruce Ln	99801
120		3199 Glacier Way	99801
121	Lisa L Downey	9013 Foxglove Ln	9980
122		9167 Parkwood	99801
123	C. Hameedi	8313 Aspen	99801
124	Colleen D Baugh	Box 941 Juneau	99802
125	Marlene Hinebaugh	P.O. Box 3163 Juneau	99803
126	Rebecca A. Hahn	5915 Sherry, Juneau	998
127	Willi Page	18665 Thane Road Dr.	99801
128	Hilary Lemer	8463 Kimberly St. Juneau AK	9980
129	Jeff Eyle	3479 MEALDER WAY JUNEAU	998
130	Laurel Spezani	8452 Kimberly St., Juneau, AK	99
131	Bert Kalmerer	PO Box 5515 Juneau AK	998
132	Jon Meyer	Box 210266 Auke Bay	99
133	Shannon Davis	2587 Glacier Wood Dr.	998
134	Anne Garrett	10 Bear Ln. Juneau	99541
135	Don Thorp	PO Box 2074 Juneau AK	99803
136	Phyllis Manchester	617 Calhoun Ave Douglas AK	998
137	Brad Lovejoy	3021 Jackson Road Apt. Juneau	9980
138	Gene Hickey	9171 Glacierwood Dr., Juneau, AK	9980
139	Judy Hickey	9171 Glacierwood Juneau AK	998
140	Kelley Fox	5336 Montgomery Juneau AK	9980
141	Elizabeth Smith	3-6000 Suite 128 Juneau	998
142	Lavon Fox	9982 Nancy St Juneau	998

143	Carol Campbell	2742 Roger St.	Juneau	99801
144	Catalina S. Gapasin	Box 2700	Juneau	99803
145	Jean Taylor	Box 210467	Auke Bay	99821
146	Judy Damasiege	Box 1174	Juneau	99802
147	Dale S. Bickar	Box 1308	Juneau	99802
148	Tom Mulgrew	3952 Retire	Juneau	9980
149	Mike Jordan	3-6000 Suite 102	"	99801
150	Barbara Duncan	3319 Meander Way	Juneau	99801
151	Rena Mooney	3601 Anaka Ave.	Juneau	99801
152	Patricia Costa	9312 Twin St.	Juneau	99801
153	Diane Brown	4545 Back Rd	Juneau	99821
154	Jan Duncan	Box 690	Juneau	99802
155	Peggy Hall	Box 923	Juneau	99802
156	Vivian Holland Watt	P.O. Box 548	Juneau	99802
157	Sue K. Fuller	P.O. Box 376	Douglas	99824
158	Ellen Catlett	929 Long Run Dr.	Juneau	99801
159	Josephine McAvoy	4039 Poland Dr	Juneau	99801
160	Nancy Tingstad	2951 Glacier Ave.	Juneau	99
161	Nancy [illegible]	[illegible] Marlyn Ave.	Juneau	998
162	Kathleen M Cote	9472 Eagle St.	Juneau AK	998
163	Bob Donohoe	Box 2 and SA	Douglas AK	9982
164	Eugene Grundeen	P.O. Box 3155	Juneau	99803
165	Dale Bacon	1800 Northwood Dr #46	Juneau, AK	998
166	Linda Seaman	7260 Glacier Hwy	Juneau AK	9
167	Steve Hanie	" " "	" "	"
168	Dawn Middleton	PO 2668	Juneau AK	99801
169	Beth Cyrus	3070 Hurricane Dr	Juneau	99801
170	[illegible]	[illegible]	[illegible]	[illegible]

171	[illegible]	9350 [illegible] Juneau
172	[illegible]	9654-B La Perla - Juneau
173	[illegible]	5445 Kimberly - Juneau 998
174	[illegible]	[illegible]
175	[illegible]	[illegible]
176	[illegible]	[illegible]
177	Elizabeth Cynthia Brabec	PO Box 419 Juneau, AK 99803
178	Marlene Chilton	9253 Auklet Dr Juneau 998
179	[illegible]	[illegible]
180	Cindy Williams	9473 Morris R Juneau, AK 998
181	[illegible]	[illegible]
182	Steph K. Cottingham	Box 767, Juneau AK 99802
183	[illegible]	9270 Shadrock Cir 998
184	Maureen Wilcox	Box 1731 Juneau 9980
185	Rachel Wilcox	" "
186	Marissa Wilcox	P.O. Box 2539 Juneau 998
187	Eileen Smith	9220 Mendenhall Loop Rd Juneau 998
188	[illegible]	[illegible]
189	[illegible]	[illegible]
190	[illegible]	[illegible]
191	DAVID YOUNGER	4467 N. Tongass Juneau AK 998
192	[illegible]	9229 Lee St. Juneau AK
193	[illegible]	3325 Tongass Blvd Juneau AK
194	[illegible]	3325 Tongass Blvd AK
195	[illegible]	[illegible]
196	[illegible]	[illegible]
197	[illegible]	[illegible]
198	[illegible]	[illegible] 9980

199	Richard Jacobs	612 W. Willoughby Ct. Juneau, AK
200	Irene Jones	9174 Jewel Lake Rd. Juneau AK
201	Betty Lee	9041 Dallas Dr. Juneau, Ak.
202	Glenn Thomas	5849 Salmon Ridge Juneau, AK
203	Jim Smith	17555 Lena Loop, Juneau AK 99801
204	Linda Shaber	9585 Mendenhall Juneau AK
205	Sharon Kennedy	3555 Engineer Cutoff Juneau 99801
206	Carol Williams	9687 Dudley St. Juneau
207	J. Watts	2194 Lawnick Rd. Douglas
208	Debbie Petersen	9436 LaBrasse #1 Juneau, AK 99
209	Lonnie Paquette	9951 Spruce Rd #3 Juneau, AK 99
210	Betty E. Mylott	Box 545 Douglas, Alaska 99824
211	S. Kay Hennig	11633 Auke St. Juneau, AK 99801
212	Joseph Kubley	5906 Cole St. Juneau, AK 99
213	Ray B Bank	Box Richmond AK 96 Juneau, AK 99801
214	Ida Jones	PO Box 2723 Juneau AK 99803
215	Diana Bolton	9436 Alaska Blvd Juneau 99801
216	Leslie Campion	PO Box 2730 Juneau 99803
217	Carol Bartholomew	11914 Eden Dr. Juneau AK 1
218	Margaret Lake	P.O. Box 2571 Juneau, Alaska 998
219	Betsy Guldman	Box 3177 Juneau 99803
220	[illegible]	1801 Mark Ann Juneau 998
221	Gerald Shyman	874 Riverside Dr Juneau AK
222	Ronald A. Wilson	Box 458 Douglas
223	Alma Jones	9360 Mendel Juneau, AK 99801
224	Janice Lange	9497 Kinsey St Juneau, AK
225	Bill Church	2861 Mendenhall Apt. C23 Juneau, Alaska
226	Ron Ad	" " " " " "

227	Ruth M. Dwight	9007 Gil St. Juneau 998
228	Rebecca Epps	Box 1771 Juneau 9980
229	Karla J. Cayan	Box 1253 Juneau 9980
230	Marian Sanderson	Box 152 Juneau 99802
231	[illegible]	4103 Blackerby Juneau 998
232	[illegible]	8104 Applegate Ave. Ju
233	Virginia McLaren	4450 Columbia Blvd. Juneau 9980
234	Ethel H. Smith	17855 Lena Loop Rd. Juneau 9
235	Evelyn M. Schmitz	P.O. Box 210747 Auke Bay 99821
236	Ella Westcott	4312 Riverside Dr. 99801
237	Linda Klein	9750 Glacierwood Dr. Juneau 998
238	Jean Edmondson	2581 Linda Ave. Juneau 998
239	Lynn Hutchcroft	525 Back Loop Rd. 99801
240	Jenny Cloyes	P.O. Box 2432 Juneau 998
241	[illegible] Dahl	2525 David St. Juneau 99801
242	Karen Olson	Box 32961 JA 99803
243	Kathryn Drummett	(Kathryn) 301 Seward St Jnu 99801
244	[illegible]	2072 Jun 9980[illegible]
245	[illegible]	706 Seward St. Juneau AK 9980
246	[illegible]	1347 N Franklin Juneau AK 99801
247	[illegible]	1450 Anka Court Dr. Juneau Ak
248	[illegible]	[illegible] Juneau 99802
249	[illegible]	2332 Marion Lane
250	Mildred Boyd	9386 Lawson Way Juneau
251	[illegible]	716 Glacier Avenue, Juneau
252	[illegible]	4021 Deborah Dr. Juneau
253	[illegible]	P.O. Box 3135 Juneau, AK 9980
254	[illegible]	PO Box 527 Juneau AK 9980

255	Dana Eagan	P.O. Box 3113, Juneau, AK
256	Kathy Miller	10050 Keep Rd. - Juneau
257	Jessie Dietz	PO Box 3001 Juneau 99802
258	Karen Lipscy	[illegible]
259	Susan Hurley	4553 Dehaven Dr Juneau
260	Virginia Saunders	9311 Northland - Juneau
261	Sue Deane	Box 114 Auke Bay, Alaska
262	Karen Peterson	9751 Stellar Dr Juneau AK
263	Marsha S. Gregnet	4401 McGinnis Juneau
264	Pamela J. Finney	PO Box 527 Juneau, 3834 N. Douglas
265	Cynthia Mc Ahee	9333 Glacier Hwy Juneau
266	Dani Gilmore	368 Seward Juneau 99801
267	Jennifer Barkdull	4366 Tall Pine Dr Juneau 99801
268	Lori Bump	4651 [illegible]
269	Patricia Grasmick	5905 Churchill Dr Juneau 99801
270	Myra M Reeves	9241-B Glacier Dr. Juneau, AK.
271	Rebecca A Durtschy	16775 Lena Loop Juneau, AK 99801
272	Colleen C. Brown	Box 356, Juneau 99802
273	Kathleen Runyan	Box 2664 Juneau 99803
274	Diane Atkinson	4366 Manor Ave. Jun 99801
275	Darla Walton	PO Box 2913 Juneau AK 99803
276	Linda Carlson	6025 Lund St Kitty 99505
277	Beth Ann Reed	Box 210636, Auke Bay 99821
278	Nancy Hatcher	9347 Stephen Richards 99801
279	Steven D. Tompkins	P.O. Box 351 Ketchikan 99901
280	[illegible]	8182 [illegible] 99801
281	Janice Van Dusen	2301 Meadow Ln. 99701
282	[illegible]	[illegible]

	name	address
283	Paula Bullock	P.O. Box 22 Juneau 99802
284	Dave Krieg	PO Box 9455 Juneau AK 99802
285	Alan Otten	PO Box 22 Juneau AK 99802
286	Debbie McCracken	3409 Quarry St. Juneau AK
287	Dawna Parris	4359 Third St. Juneau, AK
288	Tri Cegavske	8158 Heliff Way Juneau AK 9980
289	Roxanne Beck	8758 Haight Way, Juneau, AK 9980
290	Carla Hilgenfeldt	3215 Kaylee, Juneau 99801
291	Theresa Best	2737 Davis Rd. Juneau 99801
292	Tom O'Connor	1112 Glacier Highway, 99801
293	Stephanie Poor	Box 114 Douglas, AK. 99824
294	Dennis Mark-Tanner	8217 Dogwood Ln 99801
295	Karen Keller	9464 Ha-Sa-Ga Dr. 99801
296	[illegible]	3216 Kaylee Juneau 99801
297	Michelle Reeds	P.O. Box 912 Juneau AK 99802
298	Chris Donohoe	PO Box 32 Douglas AK 99824
299	[illegible]	9338 Mendenhall Loop Juneau 99801
300	[illegible]	204 Behrends Ave Juneau 99801
301	James Clark	1122 Fritz Cove Rd Juneau 99825
302	Lonnie Gibson	9285 James Blvd #102 Juneau 99801
303	Maria Talley	9350 Shaune St., Juneau 99801
304	[illegible]	7304 Johnson Loop, Juneau 99801
305	Rick Chase	7029 Deborah Dr. Juneau 99801
306	Jean Stacy	7611 Fritz Cove Rd Juneau 99801
307	Janelle & King	1725 Douglas Hwy Douglas 99824
308	[illegible]	[illegible]
309	Judy Gunn	7015 Thane Rd Juneau 99801
310	Anne Cameron	2111A Kriest Ct. Juneau AK 99801

311	[illegible]	P.O. Box 1252 Juneau, AK 99802
312	[illegible]	[illegible]
313	[illegible]	[illegible]
314	[illegible]	[illegible]
315	[illegible]	[illegible]
316	[illegible]	[illegible]
317	[illegible]	[illegible]
318	[illegible]	PO Box 3016 Juneau 99803
319	[illegible]	PO Box 2178 Juneau, AK 99803
320	[illegible]	[illegible]
321	Jeff Dillz	1178 Glacier Hwy. Juneau AK 99801
322	[illegible]	[illegible]
323	[illegible]	[illegible]
324	[illegible]	PO Box 731 Douglas 99824
325	[illegible]	[illegible]
326	[illegible]	9253 [illegible] Juneau 99801
327	[illegible]	8178 Thunder St. Juneau 99801
328	[illegible]	8178 Thunder St Juneau 99801
329	[illegible]	[illegible]
330	[illegible]	[illegible]
331	[illegible]	[illegible]
332	[illegible]	P.O. Box 807 Juneau 99802
333	[illegible]	4450 TRAFALGAR AVE JUNEAU 99801
334	[illegible]	[illegible]
335	[illegible]	[illegible]
336	[illegible]	Box 2573 Juneau 99803
337	[illegible]	[illegible]
338	[illegible]	[illegible]

	Name	Address
339	[illegible]	6340 Glacier Hwy.
340	[illegible]	[illegible]
341	[illegible]	712-5th, Douglas, AK 99824
342	[illegible]	7013 Nagoon [illegible]
343	[illegible]	[illegible]
344	[illegible]	[illegible]
345	[illegible]	9360 Tamsc [illegible]
346	[illegible]	9360 Tam St. [illegible]
347	NORMAN SNYDER	5403 DEDY BLVD [illegible]
348	[illegible]	9167 Glacierwood, Juneau, AK [illegible]
349	[illegible]	4137 Birch [illegible], Juneau [illegible]
350	[illegible]	4396 Clearwater St. Juneau 99801
351	[illegible]	[illegible]
352	[illegible]	203 Steelhead [illegible]
353	[illegible]	9344 Tam St- Juneau
354	[illegible]	Box 2385 Juneau
355	[illegible]	PO Box 3198 Juneau
356	[illegible]	3305 Aspen Ave Jun AK 99801
357	[illegible]	1501 Mark Han Jno AK [illegible]
358	[illegible]	P.O. Box 2362 Juneau, Ak 99803
359	[illegible]	4047 Delta Dr Juneau AK 9980[illegible]
360	[illegible]	Box # 210346 Auke Bay 99821
361	[illegible]	3-6000, Ste 124 [illegible]
362	[illegible]	PO Box 242 Douglas AK 99824
363	[illegible]	[illegible]
364	[illegible]	9230 Dee St. Juneau, Ak 99801
365	[illegible]	[illegible]
366	[illegible]	[illegible]

MUST MONITOR THE LICENSING AND REGULATORY REQUIREMENTS OF BEAUTY AND BARBER SALONS, SCHOOLS AND OPERATORS, THEREBY ENSURING ALL HAVE THE NECESSARY UNDERSTANDING OF THE HUMAN BODY, SKIN AND HAIR STRUCTURES, DISEASES AND DISORDERS, AS WELL AS KNOWLEDGE OF MIXING AND APPLYING CHEMICALS, AND SANITATION, BEFORE PERMISSION TO PRACTICE IS GRANTED. TO REQUIRE LESS, THE STATE OF ALASKA WOULD BE REMISS IN ITS DUTY TO THE GENERAL PUBLIC.

1 Ina S Russell 622 Calhoun Ave E Juneau AK 99801
2 Lisa Hansen 603 W Willoughby Juneau AK 99801
3 Pamela A Mitchell PO Box 2211 Juneau 99803
4 [illegible] Brundidge 5671 Glacier Hwy #4 Juneau 99801
5 Mary K Sweeney 210 Cordova St Juneau AK 99801
6 Sylvia Johnson 333 W 9th Juneau, AK
7 Penny Johnson 333 west 9th St Juneau AK 99802
8 [illegible] 622 Calhoun #1 Juneau Alaska 99801
9 Kim Rios 144 Novell Apt 7 Juneau AK 99801
10 Ronald P. Grimes 603 W. Willoughby Juneau, Alaska 99801
11 [illegible] 622 Calhoun Juneau, Alaska 99801
12 Dorothy L. Wilson 105 Spruce St. Juneau AK 99801
13 Lynda McCurry Box 47, Juneau, AK 99802
14 Amberly Griffin 1502 Evergreen Ave Juneau AK 99801
15 [illegible] 1570 Evergreen Ave Juneau AK 99801
16 Helen Hiscock Box 222 Douglas 99824
17 [illegible]
18 Heather L Cook 3200 Foster Ave Juneau AK 99801
19 [illegible] 3720 El Camino St Juneau Ak 99801
20 Janet R Jaquish 1030 11th & B St Juneau Ak 99801
21 [illegible] 674 Glacier Hwy Juneau AK 99801
22 [illegible] 325-3rd St Juneau AK 99801
23 [illegible] Skagway 99840
24 Ella Nelson 6590 Glacier Hwy 260 Juneau AK 99801
25 Willie K Wilson 6590 Glacier Hwy #260 Juneau AK 99801
26 Kellie Mungle 3090 Douglas Hwy 99801 Juneau AK
27 Mary Stuart 803 F St A-1 Juneau, AK
28 Victoria Cruz 112 W 9th St Juneau, AK 99801
29 Samantha Soule 112 W 9th St Juneau, Alaska
30 April Kapilla - 712 Basin Road Juneau AK 99801

[illegible] AND REGULATIONS [illegible] OF BARBER AND BARBER SALONS, SCHOOLS AND OPERATORS, THEREBY MAKING ALL HAVE THE NECESSARY UNDERSTANDING OF THE HUMAN BODY, SKIN AND HAIR STRUCTURES, DISEASES AND DISORDERS, AS WELL AS KNOWLEDGE OF MIXING AND APPLYING CHEMICALS, AND SANITATION, BEFORE [illegible] TO PRACTICE IS GRANTED. TO REQUIRE LESS, THE STATE OF ALASKA WOULD BE REMISS IN ITS' DUTY TO THE GENERAL PUBLIC.

Christina M. Kennedy 1211 5th St. Douglas AK 99824
[illegible] 500 Fst Juneau, AK 99801
Helen P. Adams 1890 Glacier Hwy. Juneau Box 6th 99802
Carolyn Jackson 8678 Dudley 789-3787
Virginia Tomlinson 9029 Long Run Dr. Juneau Ak 99801
Michael Wilde P.O. Box 3182 Juneau, AK 99803
Margaret A Potter P.O. Box 1574 Juneau AK 99802
~~Barbara J Juneau~~ P.O. Box 246 Juneau AK 99803
Connie R Davis 3305 Glacier Hwy Juneau Ak 99801
Terry Dallee 400 F Street #6 Juneau Ak 99801
Myra McKinley 816 Dixon Juneau, Ak 99801
Lucian Wathen 242 Natzuhi Cir Juneau, Ak 99801
Jeanne Ingram 325 - 3rd St Juneau Ak. 99801
Fredda Barclay PO Box 143 Craig, AK 99921
Mark Hellyer Box 154 Petersburg Ak 99833
Gene L. Neely 800 Fst #P3, Juneau, A 99801
Clyde T. Jackson P.O. Box 1022 Juneau AK. 99802
Mike Sweeney 210 Cordova St. Juneau, AK 99801
Katherine Nordale 350 Marine " "
Marlene C. Schmidt 7600 N. Douglas Hwy Juneau, AK 99801
Barry C Ahn 8310 Crow's Nest Dr Juneau Ak 99801
Jacqueline E Furman 4443 Mendenhall Blvd Juneau AK 99301
Brian Arnold 122 Chilkoot Juneau AK 99801
Constance L Munro 120 W 9 Juneau Ak 99801
Shelby Russell 6713 Margarite St. Juneau Ak 99801
[illegible] 9351 Stephen Richards Dr. Juneau, AK 99801
Vicky Villanueva
Mae J Hosken 500 F St. N-1 Juneau
Beverly C. Jones 312 C St Douglas, Ak 99824.
Kari Lee Lumba P.O. Box 883 Juneau, Ak 99802

... THE LICENSING AND REGULATORY REQUIREMENTS OF BEAUTY AND BARBER SALONS, SCHOOLS AND OPERATORS, THEREBY ENSURING ALL HAVE THE NECESSARY UNDERSTANDING OF THE HUMAN BODY, SKIN AND HAIR STRUCTURES, DISEASES AND DISORDERS, AS WELL AS KNOWLEDGE OF MIXING AND APPLYING CHEMICALS, AND SANITATION, BEFORE PERMISSION TO PRACTICE IS GRANTED. TO REQUIRE LESS, THE STATE OF ALABAMA WOULD BE REMISS IN ITS' DUTY TO THE GENERAL PUBLIC.

Romaine Jackson
[illegible] Dabbs
Julia [illegible]
Thelma Henry
Sherry [illegible] Sutton
[illegible]
Janeen Byrne
Cathy Crawford
Luberta E. [illegible]
Jeanne [illegible]
Elizabeth [illegible]
Peggy Hendolen
Frances H. Cose
Janis Clemitson
Carole McMullen
De Lores Brown
[illegible]
Delia V. Mason
Lisa Rafferty
J. Goddard
[illegible] Shoemaker
Maggie Jimmie
Vera [illegible]
Kim [illegible]
[illegible]

Dear Sirs:

The reason I am contacting you is to present expert testimony in order to prove to you beyond a doubt that the Board of Hairstylists and Barbers should be kept in Alaska as it is in almost all of the other States of the Union I am currently a licensed hairstylist in Alaska as well as a licensed instructor, a former owner of three beauty salons, and currently an owner of a beauty salon of fifteen hairstylists. I have had the opportunity to manage and teach in a Beauty School, I'm working on my seventh year in this profession. And feel as many other hairstylists and barbers in this field with the years of training and practical work I have dedicated to this profession I can speak as a professional and an expert on my work.

I am not writing this to try and convince you that Boards of Review are necessary this goes without saying. Doctors, Lawyers, Dentists, and C.P.A.'s, all go before Boards of Review by thier peers. Because being judged by an impartial group of your peers to evaluate your competency is the most effective and legally binding way to verify your ability. A student can go through Medical School with an "A" average and yet the President of the school will freely admit that the most effective way of judging this student is to evaluate him by his peers who are actually out in the medical field working in both public and private practice. Because these doctors are saving lives and losing lives by their own hand and are taking direct responsiblility for their professional decisions. This experience gives them keen insight into the practical demands that must be met and maintained in order to give the best possible service to the public. These are the only qualified professionals that can be expected to shoulder this important responsibility of quality control.

The reason I am writing you is to deal with the major question here before us, that is whether Hairstyling and Barbering is worth the effort necessary to maintain a Board of Examiners who are a group of impartial peers? After all, from the average "male" point of view Hairstyling and Barbering consists of coming in every six weeks, getting your hair clipped and leaving, should a Barber or Hairstylist do enough bad cuts free enterprise will eliminate him/her from the market place. It is my intention to elaborate on what this profession is all about.

Hairstyling has and always will be first cousin to the medical profession and until 80 years ago when we stopped pulling teeth, we used to be in the dental profession as well. We are the only occupation other than medicine and dentistry where we are allowed by law to apply caustic chemicals to the human body, chemicals capable of permanently dissabling human life through no other reason than incompetency. Chemicals such as Sodium Hydroxide, 130 Volume Peroxide, Ammonia, and Thioglycolate Acid are available only to Hairstylists and Barbers who have been evaluated and approved by a State Board of impartial peers in the field. These chemicals are not available to the public in the same way harmful drugs are not available to the public unless prescribed by a Physician. Chemicals such as Sodium Hydroxide are capable of eating through the skin in a matter of minutes and causing permanent paralysis. But unless you are a customer who is black or have incredibly curly hair there is no need of you ever needing or using this chemical. Chemicals such as Thioglycolate Acid used in permanent waving can also penetrate the skin causing second and third degree burns, as well as permanent hair loss and be the direct cause to mass infection. However, unless you are a person who wishes to have wavey or curly hair there is no

need to ever hear of this chemical. These statements I am making will be backed up by medical documentation attached to this letter. It is my point to impress upon you the

complexity of the Hairstyling and Barbering Profession. Even as you read this dozens of these chemicals are being used by qualified Barbers and Hairstylists safely and efficiently and will continue doing so as long as these stylists are given adequate

screening and training in the field of chemistry by qualified instructors. Instructors in turn being overviewed by qualified members of a Board of Examiners.

It has been suggested that Beauty Schools not be licensed by the State Board of Examiners, because the Dept. of Post Secondary Education already overlooks Beauty Schools and can maintain quality control. It is not the function of the Dept. of Post Secondary Education for instance to tell a "Dr. John Doe" how to teach his students to do a heart operation. The Post Secondary Eduction knows nothing of heart operations much less the first thing about medicine, they admit they are not qualified to scrutinize professional technique of an instructor or a student. Their job is to protect the students from fraud of incompetent managing of a school. The only people who can legitimately evaluate the instructors competency is a qualified group of peers who are currently working in the field.

At this point let me establish some other facts. Hairstyling and Barbering have State Boards in almost every State in America. Every State recognizes the necessity of keeping this potentially harmful occupation in close review by State Board members. These State Boards are welcomed by Hairstylists and Barbers, this self-imposed evaluation is recognized by the Hairstylists and Barbers as well as the government as a necessity. Furthermore the underwriters of insurance companies for malpractice view hairstyling and barbering as if it were in exactly the same field as dentistry or medicine in view of its potential hazard to health. Attached is a document verifying this point. That it is inconceivable to imagine trying to underwrite a malpractice insurance for Hairstylists and Barbers that are not evaluated by an impartial board of peers. It is their view that a State Board is the very least that can be done to insure quality control in this field. In conclusion to this it is obvious that hairstylists and barbers would have no way of getting malpractice insurance to protect the stylists or the public in case of an accident.

The medical profession have always backed Barbers and Hairstylists Boards of Review for reasons of public safety. Attached is testimony of three Doctors and a Registered Nurse. I urge you to contact them if there is any doubt to their sincerity or reasoning.

I will be looking forward to giving a more detailed presentation at your meeting March 6, 1984.

Respectfully Yours,

John Beaton
Hairstylist

JB;raw

Enclosures

As a member of the medical profession in Alaska it's in my professional opinion that it's an obvious necessity to maintain a board of review for hairstylists and barbers in Alaska. This I feel is the only practical way of maintaining quality control in a field where caustic chemicals such as sodium hydroxide, Thioglycolate Acid, ammonia, 130 volume peroxide, to name but a few, are directly applied to the human body. In the hands of the unskilled, permanent injury to the body could occur. Also in any profession where cutting instruments are being used that are as sharp as any surgeons scalpel or dentists instrument the possible damage to the individual receiving the treatment is obvious. I strongly recommend that licensing of this type of profession which directly threatens the health, well-being and safety of the public should not be taken lightly.

SIGNATURE & PROFESSION _____

Registered Nurse
3500 LaTouche
Anchorage, Alaska

563-3755

HOMESTATE INSURANCE BROKERS OF ALASKA, INC.

March 2, 1984

John Beaton
Gable & Garbo's Hairstyling
3928 Mt. View Drive
Anchorage, AK, 99504

Re: Professional Licensing;
Hairdressers

Dear John:

Confirming our conversation this morning regarding the possibility of our State Legislature rescinding the hairdressers' licensing requirements; I have discussed this situation with the underwriters at Firemans Fund Insurance Co. in Seattle.

They indicate that to their knowledge, all the states in which they write Hairdressers' Professional Liability have a professional licensing requirement. They state that removal of this requirement would cause them considerable concern and could substantially restrict the availabity of this type of insurance.

As you know, Firemans Fund is one of the leading writers of this coverage in Alaska and we feel certain that other insurance carriers would have the same problem with this situation.

Sincerely,

R. W. Osgood
Vice President

RWO:amh

As a member of the medical profession in Alaska it's in my professional opinion that it's an obvious necessity to maintain a board of review for hairstylists and barbers in Alaska. This I feel is the only practical way of maintaining quality control in a field where caustic chemicals such as sodium hydroxide, Thioglycolate Acid, ammonia, 130 volume peroxide, to name but a few, are directly applied to the human body. In the hands of the unskilled, permanent injury to the body could occur. Also in any profession where cutting instruments are being used that are as sharp as any surgeons scalpel or dentists instrument the possible damage to the individual receiving the treatment is obvious. I strongly recommend that licensing of this type of profession which directly threatens the health, well-being and safety of the public should not be taken lightly.

SIGNATURE & PROFESSION S. Nathanson M.D.

Ears, nose and throat, Reconstructive Plastic Surgery

4002 Laurel
Anchorage, Alaska 561-1426

As a member of the medical profession in Alaska it's in my professional opinion that it's an obvious necessity to maintain a board of review for hairstylists and barbers in Alaska. This I feel is the only practical way of maintaining quality control in a field where caustic chemicals such as sodium hydroxide, Thioglycolate Acid, ammonia, 130 volume peroxide, to name but a few, are directly applied to the human body. In the hands of the unskilled, permanent injury to the body could occur. Also in any profession where cutting instruments are being used that are as sharp as any surgeons scalpel or dentists instrument the possible damage to the individual receiving the treatment is obvious. I strongly recommend that licensing of this type of profession which directly threatens the health, well-being and safety of the public should not be taken lightly.

SIGNATURE & PROFESSION C. F. St. John

Dr. C.F. St. John Family Practice
3500 LaTouche
Anchorage, Alaska
563-3755

SUNSET REVIEW

BOARD of CHIROPRACTIC EXAMINERS

#3

TO: JOHN

FROM: KEN

RE: BOARD OF CHIROPRACTIC EXAMINERS

THE ALASKA BOARD OF CHIROPRACTIC EXAMINERS WAS FIRST ESTABLISHED IN 1939. IT IS COMPRISED OF FIVE MEMBERS; FOUR ARE PRACTICING CHIROPRACTORS AND ONE IS A PUBLIC INDIVIDUAL. THE BOARD IS RESPONSIBLE FOR REVIEWING APPLICATIONS, ADMINISTERING EXAMINATIONS, ADOPTING REGULATIONS PERTAINING TO PRACTICE, AND INVESTIGATE AND ACT ON COMPLAINTS FILED AGAINST PRACTICING CHIROPRACTORS.

A PERFORMANCE REPORT
ON THE
BOARD OF CHIROPRACTIC EXAMINERS

July 1, 1980 to February 28, 1983

Audit Control Number

08-1114-50-83-R

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vincent O'Reilly Terry Elder

Members of the Board
of Chiropractic Examiners

President	Keith Godfrey, D.C.
Vice President	Curtiss Anderson, D.C.
Secretary	Linnea Burmeister
Member	Tom Davis, D.C.
Member	Kenneth Ketz, D.C.

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

February 28, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE
BOARD OF CHIROPRACTIC EXAMINERS

July 1, 1980 to February 28, 1983

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

TABLE OF CONTENTS

PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have examined the activities of the Board of Chiropractic Examiners for the past three fiscal years. Our examination was conducted to determine if the Board has been operating in an effective and efficient manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Chiropractic Examiners should be reestablished. The law now specifies that the Board will terminate June 30, 1984 and have one year from that date to conclude its affairs.

SCOPE

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

1. Applicable statutes and Board regulations.

2. Interviews with Board members.

3. Discussions with the Division of Occupational Licensing personnel.

4. Tests of the records and documents of the Board and the Division of Occupational Licensing.

5. Complaints filed with the Division of Occupational Licensing, Ombudsman's Office, Consumer Protection Agency, Equal Employment Opportunity Office, and the Human Rights Commission.

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ORGANIZATION AND FUNCTION

Created in 1939, the Alaska Board of Chiropractic Examiners is a regulatory board comprised of five members appointed by the Governor. Four are licensed chiropractors and one is a public individual.

The underlying reasons for this Board are fourfold. First, the Board is responsible for reviewing the applications of individuals desiring to enter the chiropractic profession in Alaska. Secondly, the Board has the responsibility of administering an examination to test the applicant's ability. Third, the Board is responsible for the adoption of regulations regarding the standards of professional practice in Alaska and fourth, to investigate and act upon complaints filed against members of the regulated profession.

To assist the Board, it has the staff support of the Division of Occupational Licensing (OL), Department of Commerce and Economic Development which is comprised of two sections. The licensing section processes applications, maintains license files, collects statistics, answers inquiries, and provides administrative help to the Board. The investigation section provides investigative services to the Board in the event of consumer or other professional complaints.

The Board of Chiropractic Examiners issues licenses to applicants that have met all licensing requirement and have taken and passed the State examination. The Board may also issue a license without examination if the applicant holds a current license in another state whose licensing requirements are essentially equivalent to those of Alaska. In addition, the Board may issue a temporary permit to individuals apparently qualified until the next regular meeting of the Board.

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REPORT CONCLUSION

POLICY ISSUES

This report contains policy issues raised as a result of our evaluation of Board practices. The final policy decisions affecting these practices are not within the scope of this report, but require legislative consideration. In debating these issues, the legislative oversight committee should take into consideration the Findings and Recommendations presented in this report so that the potential impact of policy changes can be evaluated.

REPORT CONCLUSION

In our opinion, the Board of Chiropractic Examiners should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the effectiveness and efficiency of the Board.

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FINDINGS AND RECOMMENDATIONS

Prior Audit Recommendation No. 1

The Board of Chiropractic Examiners should eliminate Part I (written) of the State examination.

The Alaska State Board of Chiropractic Examiners has recognized the National Board examination by adopting through proposed regulation "persons applying for a chiropractic license by examination in the State of Alaska, graduating after January 1, 1978, are required to submit a Diplomate Certificate from the National Board of Chiropractic Examiners." The Diplomate Certificate is certification that the applicant has taken Parts I and II of the National Board and indicates the areas tested and examination results. The following areas of chiropractic are tested at the National level: General and Spinal Anatomy, Physiology, Chemistry, Pathology, Micro-Public Health, General and Neuro-Muscular Diagnosis, X-ray, Principles of Chiropractic, Chiropractic Practice, Associate Clinical Science, and Physiotherapy. The examination questions are objective in nature.

In addition to the requirement that the applicant provide the Board with the Diplomate Certificate, the State Board administers a State examination which basically consists of three parts. Part I is a written examination consisting mostly of subjective type questions. Part II involves X-ray identification and interpretation, and Part III consists of practical application of chiropractic technique. While Parts II and III of the State examination involve physical application of the applicant's knowledge through oral testing and actual adjustive techniques in case situations, the merits of the written examination (Part I) are questionable.

Part I of the State examination tests the applicant on topics, previously examined at the National Board level, such as anatomy, physiology, physiotherapy, chiropractic, diagnosis and X-ray. Also, in a 1971 opinion, the Attorney General stated that "the Board of Chiropractic Examiners has the authority to require an applicant to demonstrate competence only in those subjects not covered by the National Board."

Therefore, considering the redundancy of the State written examination over the National Board, the Attorney General's opinion on the topic and the State requirement of the applicant to take the National Board, we recommend the discontinuance of the State written examination.

Legislative Audit's Current Position

During 1980, the State Board sent a copy of the written State examination to the National Board of Chiropractic Examiners so they could review the State examination for redundancy.

The National Board's response was that any State examination is going to be redundant to the National Board examination since it covers such a large scope of material and that Alaska's written examination was 100% redundant. Therefore, we reiterate our prior audit recommendations that the Board eliminate Part I (written) of the State examination.

Prior Audit Recommendation No. 2

Legislation should be introduced requiring continuing education for chiropractors as a provision for license renewal.

The underlying purpose of continuing education is to permit professional education on a post-graduate level and allow for the maintenance and upgrading of professional competency.

According to the most recent figures provided by the Federation of Chiropractic Licensing Board's, thirty-nine states require some form of continuing education for license renewal. In December of 1977, the Alaska Chiropractic Society notified the Board of Chiropractic Examiners of its unanimous endorsement of a requirement of continuing education for license renewal. Of more significance, 94% of the respondents to the questionnaire were in favor of such a requirement and 78% knew of workshops or seminars that may qualify as continuing education that were in the respondents' locality.

From information available, it appears the Board expressed interest in a continuing education requirement in early 1977. We recommend that this worthwhile interest be regenerated towards implementing a sound post-graduate education requirement tied to the biennial license renewal. Accordingly, regulations should be promulgated for the administration of such a program by the Board.

Legislative Audit's Current Position

Alaska Statute 08.20.170(d) requires the Board to adopt "regulations which insure that renewal of license is contingent on proof of continued competency by a practitioner." Continuing education is one way of promoting continued competency. In October of 1981, the Board drafted continuing education regulations, but has not yet adopted them. Therefore, to fulfill the Alaska Statute requirement we recommend that the Board should adopt continuing education regulations for chiropractors as a provision for license renewal.

Recommendation No. 3

The Board of Chiropractic Examiners should improve examination guidelines.

During our review, we noted two examples of an employer/employee relationship existing between a Board member and the individual taking the examination. Examination guidelines should be established to prevent situations where a Board member/employer is administering and grading the State examination for an employee. These guidelines would prevent any appearance of a conflict of interest for the Board member and the examinee.

Recommendation No. 4

The Board of Chiropractic Examiners should revise regulation 12 AAC 16.200 regarding the issuance of temporary permits.

Currently, AS 08.20.160 allows for the issuance of temporary permits "to persons apparently qualified until the next regular meeting of the Board." The Board also adopted 12 AAC 16.200 as additional regulations for issuing temporary permits. The regulations stipulate that a temporary permit holder must "practice in association with a licensed chiropractor in the State." Currently there is no definition of "association." The term "association with" does not limit the scope of services that can be performed nor requires direct or indirect supervision by the licensed chiropractor. Therefore, a temporary permit holder is allowed to practice unsupervised, for up to 6 months prior to taking the State examination.

If the Board feels that the State examination, both written and practical is necessary for public protection then the issuance of temporary permits to individuals who can practice chiropractic unsupervised is not in the best interests of public health.

Therefore, the Board should revise the regulations on the issuance of temporary permits to include either a supervisory requirement or a limitation on the services that can be performed.

Recommendation No. 5

The Board of Chiropractic Examiners should issue, and the Division of Occupational Licensing should maintain the yearly reports as required by statute.

Alaska Statute 37.07 requires the Board to prepare and issue a performance report which should include the Board's goals, objectives, licensing, and financial information. For Fiscal Years 1981 and 1982, we could not locate the required report for the Board of Chiropractic Examiners. Without the report, neither the Legislature nor the Governor have an adequate basis for evaluating and analyzing the Board's performance for the year.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive but to address those areas we were able to cover during our review.

I. The extent to which the board, commission or program has operated in the public interest.

A. The written examination requirement is redundant of the required National Board examination, except for certain areas covering Alaska law, resulting in duplicate testing of Alaskan applicants (see Recommendation No. 1).

B. The Board has not established a formal passing grade for the State examination.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource and personnel matters.

A. The Division of Occupational Licensing (OL) has not provided licensing and examination statistics for the Board to use in their annual report.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Board has initiated the repeal of the regulation on advertising that was in violation of antitrust laws.

B. The Board has drafted, but not yet adopted, a regulation requiring continuing education for license renewal.

C. The statutes providing for licensure of Associate Chiropractors has been repealed.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. The Board publishes public notices of all examinations, meetings, and regulation changes.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

A. The Board announces proposed regulation changes or additions in the newspaper, according to the Administrative Procedures Act.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

A. According to the Division of Occupational Licensing's files, there have been approximately fifteen investigation cases in the past four years with an average case length of eleven months. No complaints have been filed with the Office of the Ombudsman or the Attorney General's office.

VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

A. The Board issues temporary licenses to individuals so they may practice unsupervised, until the next scheduled examination (see Recommendation No. 4).

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

A. Application for licensure as a chiropractor require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the recommendations section of this report.

APPENDIX

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APPENDIX A

BOARD OF CHIROPRACTIC EXAMINERS
REVENUES COMPARED WITH EXPENDITURES

For the Fiscal Year Ended June 30,1982

(UNAUDITED)
(Note 1)

Average Revenue (Note 2)	$ 8,680
Less: Expenditures (Note 3)	42,240
Excess of Expenditures Over Revenues	$33,560

Revenue Type	Amount	Collection Time
Examination Fee	$ 50	With application
Re-examination Fee	20	With application
Temporary Permit	50	With application
Initial License	200	With license issuance
Renewal License	200	Every four years

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and accordingly we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Years 1981 and 1982 in order to obtain a more accurate representation of revenues collected.

Note 3

Expenditures include those made by board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments (such as the Department of Law) assisting the boards and the Division.

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BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

July 5, 1983

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on your February 28, 1983 audit findings entitled A Performance Report on the Board of Chiropractic Examiners, July 1, 1980 to February 28, 1983. The Department of Commerce and Economic Development feels that the licensing of chiropractors and the continuation of the Board of Chiropractic Examiners is in the public interest. The following are our comments with regard to the specific recommendations outlined in your findings.

Prior Audit Recommendation No. 1: The Board of Chiropractic Examiners should eliminate Part I (written) of the State Examination.

The department does not object to this recommendation. The audit findings present substantial evidence that part one of the State examination duplicates the national examination by testing the same knowledge base. It is the policy of the department to oppose unnecessary obstacles to licensure since they may delay or discourage competent practitioners from offering their services to the public. However, the board contends that there are several key differences in the two examinations which merit retention of both.

First, the national examination is normally taken by students immediately out of school and is, therefore, a weaker indicator of the individual's ability to retain basic knowledge over time.

Second, the national examination has straight multiple choice questions while the State written examination tests the knowledge base through questions which emphasize practical applications.

For these two reasons, primarily, the board feels that the State's written portion provides a reasonable and more desirable level of public protection. In view of the board's concerns, consideration might be given to requiring a State written examination only for those candidates who have not passed the national examination within a reasonable period of time (e.g., two years) prior to application for licensure.

Prior Audit Recommendation No. 2: Legislation should be introduced requiring continuing education for chiropractors as a provision of license renewal. The department concurs with the audit finding that "to fulfill the Alaska Statutes...the board should adopt continuing education regulations for chiropractors as a provision for license renewal." However, the department questions the assumption that continuing education assures continuing competence and that it is the State's responsibility to require such education. Continuing education regulations entail additional costs of doing business which are passed on to the consumer.

Recommendation No. 3: The Board of Chiropractic Examiners should improve examination guidelines. The department concurs with this recommendation. Written examination guidelines should be established and followed to prevent situations where board member/employer is administering and grading the State examination for his/her employee.

Recommendation No. 4: The board should revise regulation 12 AAC 16.200 regarding the issuance of temporary permits. The department concurs with this recommendation. More appropriate controls over practice under temporary permits should be established to assure public protection.

Recommendation No. 5: The board should fulfill its statutory reporting requirements. The department concurs with this recommendation.

Thank you again for this opportunity to comment on your findings.

Sincerely,

Richard A. Lyon
Commissioner

RAL/saH/37
705b

Board of Chiropractic Examiners

Current Number of Licensees - 95

FY '83 - Allocated 10.5 (Board Travel and Per Diem)

Revenues (7/1/82 - 7/1/83)	5.5		
Contractual	23.0		
Board Travel and Per Diem			12.9
**Personal Services			8.6
*Contractual			1.5
		Total	23.0

FY '84 - Allocated 5.5 (Board Travel and Per Diem)

Revenues (7/1/83 - 2/1/84)	1.4		
Contractual	9.5		
Board Travel and Per Diem			5.0
**Personal Services			4.1
*Contractual			.4
		Total	9.5

FY '85 Board Component - Division Budget Total - 95.0
Board of Chiropractic Examiners Allocation - 2.3

* The above items are funded in the division's budget under the Administration component.

** Personal services or 1/3 of one licensing examiner's position.

(1) meets the requirements of 12 AAC 16.030;

(2) furnishes the board with the name of the licensed chiropractor in the state with whom he or she will associate while practicing under authority of the temporary permit;

(3) has not previously taken and failed the examination; and

(4) has not previously held a temporary permit.

(b) A temporary permit holder must

(1) provide the board with a statement sworn by a licensed chiropractor in the state with whom the temporary permit holder will practice, that the licensed chiropractor assumes all legal liability for the practice of the temporary permit holder.

(2) display his or her temporary permit in a conspicuous place in the office where the holder practices chiropractic; and

(3) inform the board of a change in his or her mailing and practicing address.

(c) A temporary permit is valid until the results of the next scheduled examination are received by the applicant. If an applicant is unable to appear for the first scheduled examination, the board will, in its discretion, extend the temporary permit until the results of the next scheduled examination are received. The board will not extend a temporary permit more than once.

(d) Temporary permits are subject to termination by the board at any time if, in the board's determination, the holder of the permit is violating ethical behavior or law after being warned by the board that this action in regard to him or her was being contemplated. (Eff. 3/8/71, Reg. 37; am 3/31/82, Reg. 81; am 10/21/82, Reg. 84)

Authority: AS 08.20.055
AS 08.20.160

12 AAC 16.210. ASSOCIATES. Repealed 9/30/81.

12 AAC 16.211. CHIROPRACTIC ASSOCIATES. (a) No associate may treat or diagnose a patient professionally unless

(1) he establishes and provides the board with documented evidence of a supervisory relationship which includes

(A) name, license number, address and signature of the licensed supervising chiropracter;

12 AAC 16.120. DISTURBANCE. An applicant may not communicate with another applicant during the examination. Communication with another applicant will result in immediate dismissal from the entire examination. (Eff. 3/8/71, Reg. 37; am 9/30/81, Reg. 79)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.130. SECTIONS OF EXAMINATION. (a) The examination consists of the following sections:

(1) a written examination covering subjects described in 12 AAC 16.070 and the provisions of AS 08.20;

(2) a practical and oral examination of the following subjects:

(A) Clinical proficiency, including manipulation technique, physiotherapy and clinical examination procedures;

(B) physical diagnosis;

(C) X-ray technique and interpretation; and

(D) Any other subjects which, in the opinion of the board, are necessary to demonstrate knowledge of chiropractic as defined in AS 08.20.220.

(b) An applicant shall rely solely on his own judgment for the meaning of each question and on his own knowledge of the subject in answering each question.

(c) A grade of at least 75 percent on the written examination and a grade of at least 75 percent on each subject of the practical and oral section is a passing grade. (Eff. 3/8/71, Reg. 37; am 9/30/81, Reg. 79; am 10/21/82, Reg. 84; am 4/22/83, Reg. 86)

Authority: AS 08.20.055
AS 08.20.120
AS 08.20.130

12 AAC 16.140. GRADES. (a) An applicant failing to make required grade average will be credited for the subjects passed.

(b) An applicant failing to attain a general average rating of 75 percent after two examinations is required to produce evidence of refresher courses in the subjects failed before he is allowed a reexamination. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130

12 AAC 16.150. REEXAMINTION. An applicant may apply for reexamination by

(1) informing the board of his intention at least 30 days before the next regularly scheduled examination; and

(2) paying the reexamination fee. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.160. TIME. Repealed 9/30/81.

12 AAC 16.170. SPECIAL EXAMINATION. A special examination of an applicant may be allowed if all members of the board agree and notice of 30 days in writing is given to the board and the applicant has complied with the provisions of this chapter and AS 08.20. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.180. RECONSIDERATION OF PAPERS. The examining board will not reconsider an applicant's examination papers unless the applicant presents his reason in writing to the board. The applicant is bound by the decision of the board. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.190. LICENSES AND CERTIFICATES. (a) The board will issue a renewable consecutively numbered license to a person passing the examination.

(b) The board will issue a certificate to a person passing the examination. The certificate, issued on a one-time basis, will contain the signatures of all board members. (Eff. 3/8/71, Reg. 37; am 9/30/81, Reg. 79)

Authority: AS 08.20.055

12 AAC 16.200. TEMPORARY PERMITS. (a) The board will, in its discretion, issue a temporary permit to an applicant who

SUNSET REVIEW BOARD of EXAMINERS in OPTOMETRY

#4

A PERFORMANCE REPORT OF THE BOARD OF EXAMINERS IN OPTOMETRY

July 1, 1980 - March 31, 1983

Audit Control Number
08-1114-82-83-R

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vincent O'Reilly Terry Elder

Members of the
Board of Examiners in Optometry

Chairman	Maynard Falconer, O.D.
Secretary	John Demske, O.D.
Member	Robert O'Connell, O.D.
Member	Vacant
Member	Vacant

STATE OF ALASKA

AUDIT DIVISION
FOUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

March 31, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE BOARD OF
EXAMINERS IN OPTOMETRY

July 1, 1980 - March 31, 1983

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

TABLE OF CONTENTS

PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have examined the activities of the Board of Examiners in Optometry for the past three fiscal years to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Examiners in Optometry should be reestablished. The law now specifies that the Board will terminate June 30, 1984, and have one year from that date to conclude its affairs.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.

2. Tests of files and documents of licensees.

3. Interviews with the license examiners.

4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman's Office.

5. Discussions with Board members.

6. Minutes of Board meetings and Division correspondence files.

7. Attorney General's Opinions applicable to professional boards.

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ORGANIZATION AND FUNCTION

The Board of Examiners in Optometry is a regulatory board consisting of five persons; four optometrists and one public member, appointed by the Governor. Board members serve staggered terms of four years.

The Board regulates the practice of optometry. The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.

2. Establishing, amending, or eliminating regulations controlling optometry practices.

3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated optometry statutes or regulations.

(Intentionally left blank)

REPORT CONCLUSION

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting the practices are not within the scope of this report, but requires legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Examiners in Optometry should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

(Intentionally left blank)

FINDINGS AND RECOMMENDATION

Recommendation No. 1

The Board of Examiners in Optometry should repeal its anti-competitive and restrictive regulations [12 AAC 48.070(a)-(e)].

We reviewed the Board's regulations to determine if they are anticompetitive and restrictive. Legislative Audit's 1978 report on the Board recommended repeal of 12 AAC 48.070 subsections (b) and (c) because of their restrictive and anti-competitive nature.

Regulation 12 AAC 48.063 requires certain information to be contained in advertising in the same type size as the main body of the advertisement. Regulation 12 AAC 48.070(a)(1), (2), (3), (6), and (8) limit advertising. Advertising is not allowable except as delineated by 12 AAC 48. This includes limitations on type size in ads, display of merchandise, shape and size of signs, and house-to-house solicitation.

Regulation 12 AAC 48.070(b), working for a corporation, states in part:

> An optometrist may not practice the profession for a commercial establishment or business primarily engaged in trade or commerce for profit.

Similarly, regulation 12 AAC 48.070(c), prohibiting the practice of optometry and the advertising of same as an employee, lessee, sublessee of, or in connection with, a commercial or mercantile establishment, states in part:

> It is unlawful for an optometrist to practice optometry as an employee, lessee, or sublessee of a commercial or mercantile establishment or to practice optometry in connection with one, or to advertise either in person or through a commercial or mercantile establishment.

Regulation 12 AAC 48.070(d), which prohibits the practice of optometry on premises where any other materials are dispensed, states in part:

> No optometrist may practice in or on premises where any materials other than those necessary to render his professional services are dispensed to the public.

Finally, regulation 12 AAC 48.070(e), which limits the nature of signs, states in part:

No optometrist may display a sign containing other then his name, profession, recognized specialty, and office hours. It may be used only on office windows or at an entrance to his office.

The point of view that these regulations are restrictive, anticompetitive, and absent of clear statutory policy to restrain competition is supported by memorandum A66-191-79A from the Attorney General's Office dated October 29, 1980. That memo states in part that:

> There must exist clear statutory policy to restrain competition before a state regulatory agency may promulgate regulations to restrain competition if federal antitrust immunity is to occur, 12 AAC 48.063 may be construed to limit advertising to print media, and is anticompetitive and violative of antitrust law since no such restriction is found in the statute prohibiting false or misleading advertising. 12 AAC 48.070 subsections (a)(1), (2), (3), and (6) impede competition and go beyond what is necessary to limit false and misleading advertising, the only specific statutory prohibition, they are violative of antitrust law. Subsection (a)(8) is likewise anticompetitive. Subsection (b) restrains competitive opportunity among optometrists and there is an absence of specific statutory policy to support the regulation. Therefore, it is unlawful. Subsection (c) is violative of antitrust law on the same basis as subsection (b). Subsection (d) clearly limits competitive opportunity and has no basis in specific statutory authority. It is, therefore, violative of antitrust law. Subsection (e) is anticompetitive, without statutory authorization, and, consequently, violative of antitrust law.

In a memorandum dated October 6, 1978 addressing 12 AAC 48.070 (b) and (c), the attorney for the Legislative Affairs Agency states that those subsections may be unauthorized and restrictive.

In addition, if no action is taken by the Board, we recommend that the State Legislature consider the repeal of the regulations.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

I. The extent to which the board, commission or program has operated in the public interest.

A. The Board has expanded regulations governing continuing education requirements for license renewal.

B. The Board has adopted regulations concerning working for a corporation and leasing of commercial property which unduly restricts the practice of optometry by licensed, qualified optometrists which may be in violation of antitrust laws (see Recommendation No. 1).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The Governor has not appointed the public member to the Board. It has been operating for almost a year with only four members.

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Board recommended CSSB 551 to help clarify the optometry law by requiring the written portion of the exam to be the National Board of Examiners in Optometry examination.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. The Board placed advertisements requesting input on proposed regulation changes.

V. The extent to which the board, commission, or agency has encouraged public participation in the making or its regulations and decisions.

A. The Board's meetings and examinations are advertised in newspapers by OL to encourage public participation.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office or the Ombudsman have been processed and resolved.

A. The Office of the Ombudsman and the Attorney General's Office has no consumer complaints regarding the Optometry Board.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. A low number of complaints were filed with OL against optometrists in the last three years.

B. We found no instances where the Board had licensed unqualified practitioners.

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

A. Applications for licensure require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendation.

APPENDIX

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APPENDIX A

BOARD OF EXAMINERS IN OPTOMETRY
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ended 1982
(UNAUDITED)
(Note 1)

Average Revenue (Note 2)	$ 6,515
Expenditures (Note 3)	34,514
Excess of Expenditures Over Revenues	$(27,999)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Examination Fee	$ 50	With application
Reexamination Fee For Written Portion	$ 50	With application for reexamination
Waiver of Examination Fee	$ 50	With application
Certificate Fee	$100	With issuance of license
Renewal Fee	$200	Every four years
Branch Office Registration Fee	$100	Every four years
Late Fee Fine	$ 10	With late payment

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average for the revenues collected in Fiscal Years 1981 and 1982 in order to obtain a more accurate representation of collected revenues.

Note 3

Expenditures include those made by board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments such as the Department of Law, assisting the boards and the Division.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

August 12, 1983

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on the preliminary findings of your audit of the State Board of Examiners in Optometry.

The department has reviewed your findings regarding the anticompetitive nature of certain regulations and we concur with your recommendations. Thank you again for this opportunity to comment.

Sincerely,

Richard A. Lyon
Commissioner

RAL/mc5/3b
812a

08-H2LH

Board of Examiners in Optometry

Current Number of Licensees - 81

FY '83 - Allocated 6.2 (Board Travel and Per Diem)

Revenues (7/1/82 - 7/1/83)	1.4		
Contractual	9.4		
Board Travel and Per Diem			3.1
**Personal Services			5.0
*Contractual			1.3
		Total	9.4

FY '84 - Allocated 3.4 (Board Travel and Per Diem)

Revenues (7/1/83 - 2/1/84)	1.2		
Contractual	5.2		
Board Travel and Per Diem			1.4
**Personal Services (7/1/83 - 2/1/84)			3.1
*Contractual			.7
		Total	5.2

FY '85 - Board Component - Division Budget Total - 95.0
Board of Optometry Allocation - 1.9

* The above items are funded in the division's budget under the Administrative component.

** Personal services are 1/5 of one licensing examiner's position.

SOLDOTNA OPTOMETRY CLINIC
JOHN A. DEMSKE, O.D.
DOCTOR OF OPTOMETRY
WOODRUFF BLDG. - SUITE 202, 155 SMITH WAY
SOLDOTNA, AK 99669

TELELPHONE (907) 262-3168

March 6,198[illegible]

The Honorable Richard Eliason
Alaska State Senate
Pouch V
Juneau, Ak. 99811

Dear Senator Eliason,

Per our conversation during the hearing of last week concerning SB 437, Continuation of the Board of Examiners in Optometry, I have discussed the issue of the application photograph with the other members of the board.

Both board members expressed a desire to retain the applicants photograph for proof of identification. The photograph is our only method to ensure that the individual sitting for the exam is indeed the applicant who filed the required documents by mail. The only other alternative that we can think of is to have fingerprints.

If you have an alternative that is more agreeable with the EEO, we would appreciate your recommendations. Thank you for your time in this matter.

Sincerely,

John Demske, OD

cc: Maynard Falconer, O.D.
Chairman, Optometry Board

Wanda Fleming, Licensing Examiner

(E) ocular motility and neurological integrity;

(F) a far point subjective examination, a static retinoscopy, and a subjective refraction;

(G) a near point subjective examination, a dynamic retinoscopy and a subjective refraction;

(H) tests of accommodation and convergence and binocular coordination at far and near, preferably made with a phoropter; and

(I) confrontation fields and tonometry tests;

(2) if contact lenses are prescribed, a routine vision examination includes, in addition to the requirements of subsection (1)

(A) a slit lamp evaluation;

(B) a fluorescein examination;

(C) a diagnostic evaluation when soft lenses are prescribed; and

(D) evaluation within three months in the case of firm lenses and within six months in the case of soft lenses. (Eff. 2/14/78, Reg. 65; am 4/22/83, Reg. 86)

Authority: AS 08.72.050
AS 08.72.060

12 AAC 48.070. UNPROFESSIONAL CONDUCT. (a) An optometrist may not engage in unprofessional conduct within the meaning of AS 08.72.240(3). Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) except as provided by sec. 63 of this chapter, soliciting patients by advertising of any nature or description regardless of means or media employed; however, upon the opening, reopening or removal of any office for the practice of optometry, an optometrist may publish, in local newspapers, an announcement, which announcement is limited to a statement of his name, title, profession, degrees, specialty, address, telephone number and office hours; the announcement may not be published for more than 90 days after the opening, reopening, or removal of the office; the announcement may not exceed eight square inches in area;

(2) displaying any spectacle, eyeglasses or eyeglass or spectacle frames or mountings, goggles, lenses, prisms, spectacle or eyeglass cases, ophthalmic material of any kind, optometric instruments or optical tools or machinery, or any merchandise, material or displays of a commercial nature in office windows or reception rooms or display cases outside the office, where the display of the merchandise, material or display would make it visible from outside the office;

(3) using display or boldface type or type that is in any way dissimilar in size, shape or color to that used for others of the healing arts in the same directory;

(4) using any false, deceptive, or misleading representation in connection with any advertising concerning ophthalmic prosthetic products or optometric services;

(5) using "bait" advertising;

(6) using signs whether painted, neon, decalcomania, colored or otherwise, and whether constructed in the form of eyes or structures resembling them, or frames or mountings for any type of lenses or other ophthalmic prosthetic products displayed in any manner or place connected with the practice of optometry;

(7) using publicly, a sign, card, stationery, or other publicity medium which fails to clearly identify the individual optometrist or optometrists engaged in practice in an office or practice location, or using a name other than the name under which the optometrist is licensed including such designations as "optical company," "optical laboratory," or words or phrases of like import which are out of keeping with the use of the title "Doctor of Optometry" and the practice of optometry as a profession;

(8) soliciting, personally or through agents, from house to house for the rendering of optometric services or sale of ophthalmic prosthetic products;

(9) advertising self-styled superiority or the performance of services in a manner presumed to be superior, or the making of untruthful, improbable or impossible claims regarding treatments, cures, or values;

(10) lending, leasing, renting, or in any other manner placing a certificate of registration at the disposal of or in the service of any person not licensed to practice optometry in this state.

(b) An optometrist may not practice the profession on a salary or commission basis for a commercial establishment or business primarily engaged in trade or commerce for profit, or associate with such an establishment or business for the practice of optometry. However, this subsection does not prohibit professional incorporation under the Professional Corporation Act, AS 10.45. The fact that an officer, trustee, director, agent, or employee of a commercial establishment or business is an optometrist does not permit the establishment or business to do the acts prohibited in this subsection, nor is that fact a defense to board action against any of the persons mentioned in this subsection for a violation of this subsection. However, this subsection does not apply to a partnership of two or more registered and licensed optometrists who practice under their own names.

(c) It is unlawful for an optometrist to practice optometry as an employee, lessee, or sublessee of a commercial or mercantile establishment or to practice optometry in connection with one, or to advertise either in person or through a commercial or mercantile establishment that he is a registered practitioner and is practicing or will practice optometry as an employee, lessee, or sublessee of a commercial or mercantile establishment or in connection with one. Nothing in this subsection prohibits the rendering of professional services to the officers and employees of a person, firm, or corporation by an optometrist, whether or not the compensation for the services is paid by the officers and employees or by the employer or jointly by all or any of them.

(d) No optometrist may practice in or on premises where any materials other than those necessary to render his professional services are dispensed to the public.

(e) No optometrist may display a sign containing other than his name, profession, recognized specialty, and office hours, which sign may be used only on office windows or at an entrance to his office. Letters may not be luminous or illuminated.

(f) No optometrist may represent himself or herself as a specialist in an optometric field unless he or she is certified, as a diplomate of the American Academy of Optometry or as a fellow of the College of Vision Development, in a recognized specialty. The board recognizes American Academy certification in contact lenses, binocular vision, geriatric care, and low vision, and College of Vision Development fellowships in vision training and developmental vision. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37; am 2/14/78, Reg. 65; am 7/6/78, Reg. 67; am 6/14/80, Reg. 74)

Authority: AS 08.72.050(4)
AS 08.72.060(e)
AS 08.72.240(3)

12 AAC 48.080. DEFINITIONS. Unless the content in this chapter otherwise states:

(1) "Act," "law," or "statute" refers to AS 08.72.;

(2) "regulations" referred to are those made by the board in keeping with AS 08.72.;

(3) "registration" means registration under AS 08.72.;

(4) "chain exploitation" means establish-

SUNSET REVIEW

BOARD OF PUBLIC ACCOUNTANCY

#5

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

February 10, 1984

FEB 1 [illegible]

The Honorable Joe Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Enclosed are six of the seven sunset audit reports of regulatory boards that will terminate June 30, 1984. I am forwarding these reports to you so that they may be distributed to the appropriate standing committees you will designate to perform the legislative oversight function.

The boards are:

1. Board of Chiropractic Examiners (AS 08.20.010)
2. Board of Examiners in Optometry (AS 08.72.010)
3. Board of Pharmacy (AS 08.80.010)
4. Board of Barbers and Hairdressers (AS 08.13.010)
5. State Board of Registration for Architects, Engineers, and Land Surveyors (08.48.011)
6. Board of Public Accountancy (AS 08.04.010)

The audit on the Alcoholic Beverage Control Board (AS 04.06-.010) is in process and will be available once released by the Legislative Budget and Audit Committee.

Please note that AS 08.03.020(a) provides that upon termination, each board continues in existence until June 30th of the next succeeding year for the purpose of concluding its affairs.

Sincerely,

Robert Bettisworth

Rep. Robert Bettisworth,
Chairman
Legislative Budget and Audit
Committee

A PERFORMANCE REVIEW

OF THE

BOARD OF PUBLIC ACCOUNTANCY

November 7, 1983

Commissioner of the Department of Commerce and Economic Development	-	RICHARD A. LYON
Deputy Commissioner of the Department of Commerce and Economic Development	-	J. VINCENT O'REILLY
Director of the Division of Occupational Licensing	-	HARRY D. TRAEGER

Members of the
Board of Public Accountancy

President	-	J. Shelby Stastny
Member	-	L. Pete Hogan*
Member	-	Deloris Dash*
Member	-	Michael T. Cook*
Member	-	Vernon R. Johnson
Member	-	Sandra L. Langland
Member	-	Kaye May

* term expired April 25, 1983

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

November 7, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the Division of Legislative Audit was mandated to perform a "Sunset" review of the Alaska State Board of Public Accountancy.

As many staff members of the Division hold Certified Public Accountant certificates, and are subjected to regulation by that Board, the Division lacked the apparent independence necessary to perform the review.

The Division contracted with R.W. Pavitt and Associates, Inc. to perform this review. This firm is a reputable management consultant business that has been in operation for several years. In addition, it conducted the review for us in 1979.

We feel this report discharges our responsibility, mandated under Title 24 and 44. The report is submitted for your review.

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

R. W. PAVITT AND ASSOCIATES, INC.
PLANNING CONSULTANTS

November 7, 1983

LEGISLATIVE AUDIT DIVISION
State of Alaska
Pouch W
Juneau, Alaska 99811

Attention Merle R. Jenson, Deputy Legislative Auditor

Dear Mr. Jenson:

In accordance with the Contract for Services between the Legislative Audit Division and our firm, we have completed a performance review of the Board of Public Accountancy using guidelines and standards established in Alaska Statutes for such "sunset" audits.

The report, entitled A PERFORMANCE REVIEW OF THE BOARD OF PUBLIC ACCOUNTANCY, is hereby submitted.

Respectfully,

R. W. Pavitt, AICP
President

RWP/bp

130 SEWARD STREET • ROOM 205
JUNEAU, ALASKA 99801 • (907) 586-2066

A PERFORMANCE REVIEW OF THE BOARD OF PUBLIC ACCOUNTANCY

Table of Contents

PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (Sunset legislation), a review of the Board of Public Accountancy was conducted to examine Board activities, operations, policies and accomplishments. The purpose of the review is to determine if the Board has operated in a fair, effective, efficient and economical manner in the performance of its statutory functions, duties and responsibilities.

As required by AS 44.66.050, this report shall be considered during the legislative oversight procedure in determining whether the Board of Public Accountancy should be continued or reestablished. The law currently specifies that this Board will terminate on June 30, 1984, but will continue until June 30, 1985 for the purpose of concluding its affairs.

Scope

The major areas studied were the Board's operations, policies, procedures and its examination, licensing, administration, complaint and affirmative action responsibilities. Our review consisted of research, analysis and evaluation of the following:

(1) Applicable Alaska Statutes and Alaska Administrative Code regulations;

(2) Records, minutes and documents of the Board and the Division of Occupational Licensing;

(3) Licensing and certification requirements of other jurisdictions;

(4) Interviews with Board members

(5) Interviews conducted with personnel of:
Division of Occupational Licensing
Office of the Ombudsman
Human Rights Commission

(6) Compaints filed with:
Human Rights Commission
Office of the Ombudsman

ORGANIZATION AND FUNCTION

Although regulation of the profession of public accountancy in Alaska dates back to 1949, the Alaska State Board of Public Accountancy was established by the First Alaska Legislature when it adopted the Accountancy Act of 1960 (AS 08.04). An amendment to the Act in 1976 added two public members to the Board, bringing its total membership to seven. (Chapter 258 SLA 1976).

The Act was further amended in 1980 (Chapter 82 SLA 1980) to provide that of the seven board members, five shall be certified public accountants and two members shall be public members. Other changes, both technical and substantive, were made in the 1980 amendments, but the Accountancy Act as amended continues to assign to the board the following major responsibilities:

1. the promulgation and amendment of rules to "establish and maintain a high standard of integrity and dignity in the profession of public accountancy" (AS 08.04.080)
2. granting of certificates of "Certified Public Accountant" to persons meeting the specified requirements (AS 08.04.100)
3. administering the Uniform CPA Examination prepared and graded by the Board of Examiners of the American Institute of Certified Public Accountants (AS 08.04.130)
4. registration of partnerships and corporations engaged in the practice of public accountancy (AS 08.04.240)
5. prescribing requirements for continuing education as a prerequisite to renewal of permits to practice (AS 08.04.425)
6. consideration of revocation or suspension of a certificate or license for a cause specified in the Act (AS 08.04.450)
7. consideration of reinstatement of a revoked or suspended certificate or license (AS 08.04.490)
8. consideration of application to the appropriate court for an order enjoining certain unlawful acts (AS 08.04.630)

Except for the exemptions specified in AS 08.04.570, the Accountancy Act of 1960 prohibits the practice of public accountancy by any individual, firm, partnership or corporation not holding a currently valid certificate, license and/or permit to practice in Alaska (AS 08.04.500 et seq.).

REPORT CONCLUSION

In our opinion, the Board of Public Accountancy should be continued. Protection of the public interest is a basic tenet of Alaska's Constitution, and a continuing responsibility of state government. We believe that state regulation and licensing of the profession of public accountancy is necessary and desirable for the continued protection of the citizens of Alaska.

That conclusion is supported by the following rationale:

- Financial statements, audited and attested by certified public accountants, are relied on by many persons required to make judgements on important financial and business transactions. Users of such financial statements cannot reasonably be expected to investigate the individual qualifications and competency of every accountant who performs the attest function.
- State licensing and regulation protects the public from incompetent and fraudulent practitioners.
- State licensing and regulation assures the public that only individuals who have proven themselves skilled and knowledgeable of technical accounting principles and procedures may perform the attest function.
- The public interest is advanced when individuals, financial institutions, businesses and government agencies are able to identify and rely on public accountants who have demonstrated professional skill and competence.

All fifty states of these United States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands require that a person must pass the Uniform CPA Examination in order to qualify for a CPA license. Every jurisdiction has found it in the public interest to pass laws regulating public accountancy, and each has established a board of accountancy to administer and enforce the laws. Although the requirements of those laws with respect to experience, education, age, citizenship and residency vary somewhat from one jurisdiction to another, the requirements of the Alaska Accountancy Act of 1960, as amended, appear reasonable and prudent when reviewed along with the accountancy laws of other jurisdictions.

The Alaska Statute governing public accountancy is clearly designed to set apart those who have met certain qualifications for a license, and

to restrict the use of the titles "Certified Public Accountant" and "Public Accountant" to those who have so qualified. The policies and practices of the Board of Public Accountancy observed in the conduct of this review appear to be consistent with that objective.

FINDINGS AND RECOMMENDATIONS

FINDINGS

An exhaustive performance audit of the Board of Public Accountancy was conducted in the fall of 1979. Eight specific recommendations were made in that review. The recommendations made, and actions taken pursuant to the legislative oversight hearings of 1980 follow:

Recommendation No. 1

The qualifications and conditions of Board membership (AS 08.04.020) should be amended to specify five certified public accountants or public accountants, and two public members.

Action

Recommendation accomplished in Chapter 82, SLA 1980)

Recommendation No. 2

The Board of Public Accountancy should be brought to its full complement of seven members, and maintained at that strength by means of timely appointments of qualified professional and public members.

Action

None. Over 6 months have passed since the terms of 3 members of the board have expired. The board has submitted a list of names to the Governor's Office, but as of November 7, 1983, no appointments have been made. (see Recommendation No. 1; this review)

Recommendation No. 3

Without affecting the rights and privileges of presently-licensed Public Accountants, the Accountancy Law should be amended to discontinue the licensing of new applicants as Public Accountants.

Action

Recommendation accomplished in Chapter 82, SLA 1980

Recommendation No. 4

Electronic recordings should be made of all Board meetings, and the tapes retained by DOL for two years.

Action

Recommendation accomplished in Chapter 82, SLA 1980

Recommendation No. 5

The Board should adopt a formal statement of goals, objectives and policies; and should prepare an annual report of its activities.

Action

Recommendation accomplished in Chapter 82, SLA 1980

Recommendation No. 6

AS 08.01.025 should be amended to state more clearly legislative intent with respect to the qualifications of public members of boards.

Action

Recommendation accomplished in Chapter 82, SLA 1980

Recommendation No. 7

DOL should develop improved statistical record-keeping methods and procedures.

Action

DOL's record-keeping methods and procedures have shown substantial improvement. Much of the essential data is now maintained on DOL's computer system, and appears to be easily accessible and retrievable.

Recommendation No. 8

DOL should handle investigations in a more comprehensive, efficient and timely manner.

Action

Board minutes, and interviews with board members and DOL personnel indicate that great improvement has been made regarding the investigatory function of DOL as related to public accountancy. Reports on cases in progress are now made at nearly every board meeting, and much of the backlog of public accountancy cases has been cleared up and the cases closed. (see Recommendation No. 2; this review)

In summary, it is the finding of this review that nearly all of the recommendations made in the 1979 sunset review of the Board of Public Accountancy have been implemented. The Board currently appears to be operating smoothly and efficiently in accomplishing its statutory responsibilities.

RECOMMENDATIONS

Following are the recommendations of this review:

Recommendation No. 1

The Board of Public Accountancy should be brought to its full complement of seven members, and maintained at that strength by means of timely appointments of qualified professional and public members.

Slow appointment procedures make it difficult for the Board to operate at peak efficiency. While it is true that "a member continues to serve until a successor is appointed . . . ." (AS 08.04.040), it is unreasonable to expect those members who terms have expired to invest the many hours of time required of board members over an extended period of time.

Board meetings typically extend over a full two day period, and require many hours of diligent preparation, and substantial travel of the members. The charge to "establish and maintain a high standard of integrity and dignity in the profession of public accountancy" is taken seriously by the Board. The State as well as the people of Alaska benefit from the many hours of unpaid and dedicated service contributed by members of the Board.

It is recommended that the Office of the Governor expeditiously appoint qualified new members to the three expired Board seats, and continue to make appointments or reappointments to this Board in a timely manner.

Recommendation No. 2

The records of the investigations unit of DOL should be systematized and automated.

Although much of the work done by the investigatory personnel of DOL is confidential in nature, the same is true of the Ombudsman's Office, the Human Rights Commission and numerous other State agencies. They have

invariably found, however, that statistical information regarding investigations is made immeasurably faster and simpler to store and retrieve using modern computer technology.

Considering the many boards, commissions and functions served by the investigations unit, automation of these records and statistics would be of substantial assistance to the overall effectiveness and efficiency of the Division of Occupational Licensing.

*

ANALYSIS OF PUBLIC NEED

The following analysis of Board activities relates to the public need factors defined in AS 44.66.050(c). This analysis addresses those areas able to be covered within the scope of this review.

I. The extent to which the board, commission or agency has operated in the public interest.

1. The Board of Public Accountancy has established criteria and authored regulations setting forth the standards which an individual must satisfy in order to practice public accountancy in Alaska.
2. The Board has established regulations requiring evidence of continuing professional education (CPE) as a condition of license renewal.
3. The Board has held an average of three meetings per year and conducts examinations twice a year in Anchorage, Fairbanks and Juneau.

II. The extent to which the operation of the board, commission or agency program has been impeded or enhanced by existing statutes, procedures and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. Operation of the Board has been enhanced by improvements in DOL's administration, record-keeping and statistical capabilities.
2. Operation of the Board has been enhanced by improvements in DOL's investigations of public accountancy matters, and by the development of better rapport between the Board and its investigatory arm.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. The Board has recommended several amendments to the Accountancy Act of 1960 which appear to be consistent with other jurisdictions and generally in the public interest.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. Individuals who contact Board members or the Licensing Examiner who wish to present information, ask questions or register complaints are invited and encouraged to attend Board meetings.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. Board meetings are held at least three times annually, are open to the public, and are advertised in a timely manner by DOL in Anchorage, Fairbanks and Juneau newspapers.
2. In accordance with the Administrative Procedures Act, the Board has invited interested persons and groups to offer testimony in regard to proposed changes in regulations, and has held advertised public hearings to receive testimony.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which the board or commission is adminstratively assigned, or with the office of the ombudsman have been processed and resolved.

1. In the past four years, two complaints concerning the Board's activities were filed with the Ombudsman's Office. A complaint in 1980 charging the board with unfair handling of an application

was found by the mbudsman to be unsupported, and a 1982 complaint dealing with an anticipated reapplication problem proved to be a misunderstanding that was rapidly resolved to the complainant's satisfaction.

2. No complaints regarding the Board's practices or activities have been recorded in the past four years by the Human Rights Commission or the Equal Opportunity Office.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. The Board has proposed and adopted regulations and standards with respect to acceptable experience necessary for certification.
2. The Board has proposed and adopted regulations for continuing professional education (CPE) as a requisite for license renewal.
3. The Board exercises diligence to assure that only those individuals who fully comply with the requirements of the statute and regulations are certificated to practice public accountancy.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency in its own activities and the area of activity or interest.

1. The application forms for examination and certification do not inquire as to race or sex, nor do they require photos.
2. No evidence has been presented that the Board has discrimminated against applicants on the basis of age, race or sex.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please see RECOMMENDATIONS subsection of this review.

*

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

January 26, 1984

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on the November 7, 1983 audit findings entitled A Performance Report of the Board of Public Accountancy. The Department of Commerce and Economic Development feels that the licensing of certified public accountants and the continuation of the Board of Public Accountancy is in the public interest. The following are our comments with regard to the specific recommendations outlined in your findings.

Recommendation No. 1: The Board of Public Accountancy should be brought to its full complement of seven members and maintained at that strength by means of timely appointments of qualified professional and public members.

The department does not object to this recommendation.

Recommendation No. 2: The records of the investigations unit of DOL should be systematized and automated.

The department concurs with this recommendation. The investigations section is in the planning stages for computerizing files for tracking and statistical use. Actual entry into the computer system will occur following completion of the entries of all licensing data and design of security measures. Investigation entries could occur within a year.

Thank you again for this opportunity to comment on the findings.

Sincerely,

Richard A. Lyon
Commissioner

RAL/cw#23W1
12684b

08-H2LH

E.O. # 58

VETERANS AFFAIRS

(PREPARED BY OMB)

BACKGROUND

- 13 statutory references to veterans

- Major veterans programs in the State anticipate FY 85 funding of $58.68 million (State) and $656,100 (Federal). These programs include:

  - Department of Commerce. Handles on a "pass through" basis funding for veterans services provided by VFW and American Legion ($219,000) and Burial Allowances ($222,700). These two programs are being transferred to Department of Military Affairs.

  - Alaska Housing Finance Corporation. Handles Veterans Mortgage Program. Loan subsidy and operating budget projected to be about $50 million.

  - Department of Health and Social Services. Funds mental health diagnosis and treatment services for Vietnam veterans in Juneau. Funding is projected to be $109,000.

  - Department of Community and Regional Affairs. Provides funding for Nonconforming and Rural Housing Loan programs. The veterans portion of loan subsidy and operating costs for these programs is expected to be about $8.1 million.

  - Department of Labor. Handles four programs designed to assist veterans in obtaining employment. The programs are federally funded at $547,000.

  - Alaska Commission on Post-Secondary Education. Acts as the State Approval Agency for veterans educational programs. The program is federally funded at $109,100.

  - Department of Military Affairs. Has responsibility for veterans memorial. $30,000 currently projected for FY 85.

  - The Alaska Region of Federal Veterans' Administration has a projected budget of about $38 million. This provides medical, compensation, pension and home loan assistance to qualified veterans.

PROBLEMS

- The Alaska veterans are concerned about lack of representation within state government.

- No central point of contact within the state to:

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 23, 1984

SUBJECT: Sectional analysis of executive order no. 58 (Work Order No. 13 - 1819)

TO: Representative John Cowdery
Chairman House Labor and Commerce Committee

FROM: Edward H. Hein EHH
Legislative Counsel

Section 1 states the governor's intention to transfer the veterans' service and the veterans' burial allowance programs from the Department of Commerce and Economic Development to the Department of Military Affairs, and to rename the latter the Department of Military and Veterans' Affairs.

Sections 2 - 7, 14 - 20 and 22 - 24 are simply clean-up sections that change references to the Department of Military Affairs to read Department of Military and Veterans' Affairs.

Sections 8 - 11 change references to the Department of Commerce to read the Department of Military and Veterans' Affairs. This effectively transfers from one department to the other the responsibilities under four sections relating to regulations and reports; acceptance of gifts, donations, and grants; training in rehabilitation and service work; and approval of payment. Section 8 also deletes the superfluous reference to "rules" at page 3, line 4. Section 10 corrects the word "those" to "that" at page 3, line 23.

Section 12 transfers the veteran's burial allowance program from the Department of Commerce, division of veterans' affairs, to the Department of Military and Veterans' Affairs.

Section 13 amends the powers and duties of the Department of Commerce relating to cooperation with the federal government in matters concerning Alaska veterans. The Department of Commerce retains its responsibility for veterans' loans.

Section 21 transfers to the Department of Military and Veterans' Affairs the responsibility for cooperating with the federal government in (1) matters concerning Alaska veterans, other than veterans' loans; and (2) establishing, extending or strengthening services for Alaska veterans.

Section 24 repeals the Department of Commerce's responsibility for cooperating with the federal government in establishing, extending or strengthening services for veterans in Alaska.

Section 26 provides that the transfer of functions from the Department of Commerce to the Department of Military and Veterans' Affairs does not affect pending legal proceedings related to the functions being transferred, regulations adopted under authority of a section being amended or repealed, or contracts, rights, liabilities and obligations created under a law being amended or repealed by the executive order. This section also provides for the transfer of state property from one department to the other.

Section 27 directs the revisor of statutes in the Legislative Affairs Agency and the regulations attorney in the Department of Law to correct statutory and regulatory references required by the changes made by the executive order.

Section 28 states the effective date of the executive order as March 9, 1984.

EHH:ojb
J2/067

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: Ex order #58
Title: Transfer of Veteran's Services Program & Vet Burial Allowance
Sponsor:
Requestor: Governor Sheffield
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Economic Development
Program Category Affected: Economic Development
BRU, Program or Subprogram(s) Affected: Accounting & Collections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Net zero fiscal impact (fiscal impact too small to be measured). This division currently spends four hours or less per month of Accounting Clerk III effort requesting vouchers for veterans' burial claims. This effort would be transferred to the new department if this bill becomes law.

ANALYSIS: Attach a separate page for analysis

Prepared By: Margaret I. Hamley, Director Phone: 465-2555
Division: Accounting and Collections Date: 1/6/84

Approved by Commissioner: Richard A. Lyon Date: 1/6/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: Executive Order #58 #1
Title: Consolidation of Veteran Pgms. in new Dept. of Military & Vet. Affairs
Sponsor: Governor Sheffield
Requestor: Governor Sheffield
Date of Request: 1/5/84

FISCAL DETAIL
Agency Affected: Commerce & Economic Development
Program Category Affected: Economic Development
BRU, Program or Subprogram(s) Affected: Veterans Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		[15.8]				
300 CONTRACTUAL		[203.6]				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		[222.7]				
800 MISCELLANEOUS						
TOTAL OPERATING		[442.1]				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		[442.1]				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The fiscal impact of this executive order will be transferred to the new Department of Military and Veterans' Affairs.

ANALYSIS: Attach a separate page for analysis

Paul B. Arnoldt

Prepared By: Paul B. Arnoldt, Director Phone: 465-2510
Division: Division of Investments & Veterans' Affairs Date: 1/6/84

Approved by Commissioner: Richard A. Lyon Date: 1/6/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/8

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST #2
Bill/Resolution No.:
Title: Executive Order & #58
Sponsor:
Requestor: Office of the Governor
Date of Request:

FISCAL DETAIL
Agency Affected: Department of Military Affairs
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Life & Property Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		86.5				
200 TRAVEL		6.0				
300 CONTRACTUAL		28.4				
400 SUPPLIES		4.0				
500 EQUIPMENT		20.4				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		145.3				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		145.3				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		2				
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

State Operating Budget

The attached fiscal note from Commerce & Economic Development in the amount of $442.1 represents the costs of transferring to DMA.

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard L. Rountree, Director Phone: 465-4600
Division: Admin. & Support Services Division Date: 1/5/84

Approved by Commissioner: M. G. Edward G. Pagano Jr. Date: 1/5/84
Agency: Department of Military Affairs

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

1.	POSITION TITLE: Special Assistant to the Commissioner II				RANGE/STEP: 23 A	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PX	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION	1						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	50.0	
6.	Benefits	4.1	
7.	Supplemental Benefits	3.1	
8.	Fixed Benefits	2.6	
9.	TOTAL PERSONAL SERVICES	01	59.8
10.	Travel	02	6.0
11.	Contractual	03	28.4
12.	Commodities	04	4.0
13.	Equipment	05	10.6
14.	Other		
15.	TOTAL COST		108.8

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	108.8
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

This position will be responsible for the administration of the State Division of Veterans Affairs within the Department of Military and Veterans' Affairs. The position will be tasked with the coordination of all Veterans' programs within the State of Alaska. It will also be tasked with the coordination between the State and Federal Veterans' Administration as well as Veterans' Organizations. The position will cooperate with the federal government in matters of mutual concern pertaining to the welfare of Alaskan veterans, including establishing, extending, or strengthening services for veterans, in Alaska.

13 REQUEST FOR NEW POSITION

AGENCY: Department of Military and Veterans' Affairs
PROGRAM: Life and Property Protection
BRU: Veterans' Affairs
COMPONENT: Administration

Page of
Revised Date

FY 85

1.	POSITION TITLE Secretary I			RANGE/STEP 10A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION GGU	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION ERA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	21.0	
6.	Benefits	1.7	
7.	Supplemental Benefits	1.3	
8.	Fixed Benefits	2.7	
9.	TOTAL PERSONAL SERVICES 01		26.7
10.	Travel 02		0
11.	Contractual 03		0
12.	Commodities 04		0
13.	Equipment 05		9.8
14.	Other		
15.	TOTAL COST		36.5

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	36.5
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

This position will provide the clerical and technical support for the Division of Veterans' Affairs. As clerical support to the Administrator of the Division, the position will maintain all files, type, respond to routine correspondence, and act as receptionist for the Division.

13 REQUEST FOR NEW POSITION

AGENCY Department of Military and Vererans' Affairs

PROGRAM Life and Property Protection

BRU Veterans' Affairs

COMPONENT Administration

Page of

Revised Date

FY 85

ANALYSIS

This fiscal note is tempered with the assumption that funding to operate the Veterans' programs at their present level of service will be transferred to the Department of Military & Veterans' Affairs along with the responsibilities.

Therefore this fiscal note only addresses funding needed to provide an increased level of service.

5. What are the main advantages for veterans to having this transfer approved ?

6. What is the initial cost of the transfer to the state ?

7. Will the State re-coup this cost over a period years due to more efficiency in the veterans programs ?

8. WIll some people lose their jobs as a result of the transfer ?

BILL SHEFFIELD
GOVERNOR

E 0 58

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1984

The Honorable Joe Hayes
Speaker of the House
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an executive order that transfers two veterans' programs from the Department of Commerce and Economic Development to the Department of Military Affairs and renames that department as the Department of Military and Veterans' Affairs.

The veterans' services program (AS 26.10.010 -- 26.10.050) and the veterans' burial allowance program (AS 26.10.080) are both currently assigned to the division of investments within the Department of Commerce and Economic Development. This executive order would transfer these two programs to the renamed Department of Military and Veterans' Affairs.

The transfer places these programs where they logically belong and the departmental name change corresponds more nearly with the name of Title 26 of the Alaska Statutes, "Military Affairs and Veterans." Most of that title already relates to the Department of Military Affairs. After transfer of these two programs, AS 26.15, concerning the veterans' loan program in the Department of Commerce and Economic Development, will be the only part of AS 26 that relates to another agency. The amendment of AS 26.15.030(c)(1) in sec. 13 recognizes that change by slightly modifying one of the duties of the Department of Commerce and Economic Development. The language being added to AS 44.35.020 in sec. 21 of the order, listing duties of the Department of Military and Veterans' Affairs, is a consolidation of current AS 26.15.030(c)(1) and (3) (the latter of which is being repealed in sec. 25 of the order).

I believe that this transfer will improve the efficiency and effectiveness of these two programs and will improve the quality of services delivered to veterans and their survivors. It is anticipated that a division of veteran's affairs will eventually be established to provide the services.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

BILL SHEFFIELD
GOVERNOR

E 0 59

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1984

The Honorable Joe Hayes
Speaker of the House
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an executive order that transfers two veterans' programs from the Department of Commerce and Economic Development to the Department of Military Affairs and renames that department as the Department of Military and Veterans' Affairs.

The veterans' services program (AS 26.10.010 -- 26.10.050) and the veterans' burial allowance program (AS 26.10.080) are both currently assigned to the division of investments within the Department of Commerce and Economic Development. This executive order would transfer these two programs to the renamed Department of Military and Veterans' Affairs.

The transfer places these programs where they logically belong and the departmental name change corresponds more nearly with the name of Title 26 of the Alaska Statutes, "Military Affairs and Veterans." Most of that title already relates to the Department of Military Affairs. After transfer of these two programs, AS 26.15, concerning the veterans' loan program in the Department of Commerce and Economic Development, will be the only part of AS 26 that relates to another agency. The amendment of AS 26.15.030(c)(1) in sec. 13 recognizes that change by slightly modifying one of the duties of the Department of Commerce and Economic Development. The language being added to AS 44.35.020 in sec. 21 of the order, listing duties of the Department of Military and Veterans' Affairs, is a consolidation of current AS 26.15.030(c)(1) and (3) (the latter of which is being repealed in sec. 25 of the order).

I believe that this transfer will improve the efficiency and effectiveness of these two programs and will improve the quality of services delivered to veterans and their survivors. It is anticipated that a division of veteran's affairs will eventually be established to provide the services.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

EO 57, (cont'd)

In his message transmitting EO 57 to the Legislature, Governor Sheffield stated:

> Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance with AS 24.30.130(b), I am transmitting an executive order that transfers the Alaska State Office from the Governor's Office to the Department of Commerce and Economic Development and renames it the Alaska Foreign Office.
>
> Under current statutes (AS 44.19.074 -- 44.19.082), the Alaska State Office is in the Office of the Governor. Because the functions of the Alaska State Office are in the area of economic development, resource, and trade information, and contact between government and private industry, the appropriate administrative location for the office is the Department of Commerce and Economic Development. With a very slight re-wording, this Order just relocates the current statutes to that department's chapter from the Governor's Office chapter. No substantive changes are being made. State employees in the Tokyo office remain in the exempt service by virtue of AS 39.25.110(17).
>
> Renaming the office as the Alaska Foreign Office gives it an obviously more appropriate name.
>
> I believe that this transfer will improve the efficiency of state government.

Dept. of Military & Vets' Affairs

EXECUTIVE ORDER NO. 58, by the Governor. Would transfer two veterans' programs--the vets' services program and the vets' burial allowance program--from the Dept. of Commerce & Economic Development to the Dept. of Military Affairs. Renames the latter the "Department of Military and Veterans' Affairs." Effective March 9, 1984.

Introduced January 9 and referred to Judiciary and Finance in the Senate and Labor & Commerce, State Affairs and Finance in the House.

In his message transmitting EO 58 to the Legislature, Governor Sheffield stated:

> Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an executive order that transfers two veterans' programs from the Department of Commerce and Economic Development to the Department of Military Affairs and renames that department as the Department of Military and Veterans' Affairs.
>
> The veterans' services program (AS 26.10.010 -- 26.10.050) and the veterans' burial allowance program (AS 26.10.080) are both currently assigned to the division of investments within the Department of Commerce and Economic Development. This executive order would transfer these two programs to the renamed Department of Military and Veterans' Affairs.
>
> The transfer places these programs where they logically belong and the departmental name change corresponds more nearly with the name of Title 26 of the Alaska Statutes, "Military Affairs and Veterans." Most of that title already relates to the Department of Military Affairs. After transfer of these two programs, AS 26.15, concerning the veterans' loan program in the Department of Commerce and Economic Development, will be the only part of AS 26 that relates to another agency. The amendment of AS 26.15.030(c)(1) in sec. 13 recognizes that change by slightly modifying one of the duties of the Department of Commerce and Economic Development. The language being added to AS 44.35.020 in sec. 21 of the order, listing duties of the Department of Military and Veterans' Affairs, is a consolidation of current AS 26.15.030(c)(1) and (3) (the latter of which is being repealed in sec. 25 of the order).

EO 58, (cont'd)

I believe that this transfer will improve the efficiency and effectiveness of these two programs and will improve the quality of services delivered to veterans and their survivors. It is anticipated that a division of veteran's affairs will eventually be established to provide the services.

Sincerely,

/s/
Bill Sheffield
Governor

****
This report is a simple compilation of information and it is not, nor is it intended to present, a legal interpretation.
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This report includes all bills and resolutions introduced and all action taken in the Alaska House and Senate from January 9 through January 15, 1984.
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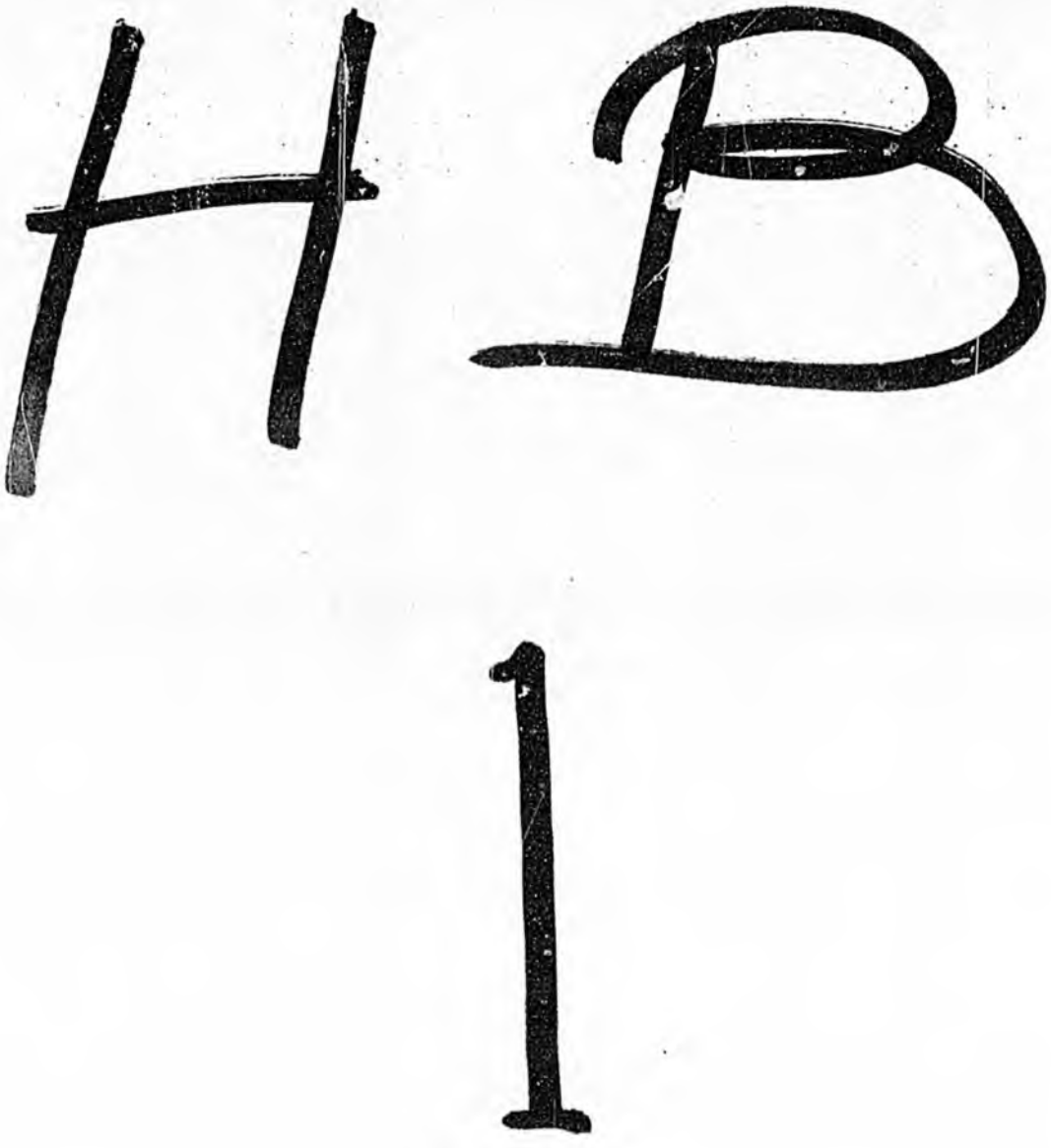
HB
1

Letter of Intent

~~In declaring~~

The Legislature recognizes that an increase in rent by the landlord, ~~in effect~~, may constitute a form of termination, ~~in that~~ in that it terminates the rental agreement then in existance and offers a new rental agreement at different terms. The tenant, however, should be given ample time to locate a new dwelling and to move. Upon receipt of a notice of rent increase a tenant ~~could~~ should have the full 45 days to vacate provided under this bill if ~~they choose~~ he chooses not to accept the higher rent. The tenant would be under the obligation to inform the landlord of his intention to ~~terminate~~ vacate within the 45 day-period if the tenant does not intend to pay the higher rent.

An Overview of
Sponsor Substitute for HOUSE BILL NO. 1
"An Act relating to landlords and tenants"

The Alaska Statutes governing Landlords/Tenants, (Title 34- Property), has not been clear in defining certain areas of concern to both the landlord and the tenant. Whether oral or written, both the landlord and tenant hold certain unalienable rights in the property they own as a landlord or rent as a tenant. With the 0% to 4% vacancy rate in most of Alaska, and because over 35% of the poulation in Alaska rent their dwellings, it is necessary to update the laws to answer the needs of the landlord and tenant. The following is a summary of HB 1, and how it answers some of these needs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 09.45.090 is amended by adding a new paragraph to read:

(4) when, after a notice to terminate the tenancy as provided in AS 34.03.290 with reference to termination of a periodic tenancy, a person continues in possession of a dwelling unit after expiration of the time for determining the tenancy.

This new paragraph is being added to stipulate a "periodic tenancy" termination. AS 09.45.090 (3) cites termination of an "estate at will" tenancy, which can be defined as a tenancy that transpires on a dav to day basis on an indefinite term at the will of the lessor. In this case, the tenant has no say in the matter of how long the tenancy will last, and the landlord may, at any time, terminate the tenancy and the tenant has no right to a notice. (This type of tenancy was developed in a few hundred years ago in England, and rarely applies "modern day" tenancy.) For this reason, it is necessary to add Paragraph 4, as periodic tenancy, (month to month, or a predetermined period of time), is not referenced in the present context.

Section 2. AS 34.03.290 (b) is amended to read:

(b) The landlord or the tenant may terminate a month to month tenancy by a written notice given to the other at least 45 [30] days before the termination [RENTAL DUE] date specified in the notice.

This amendment provides a more equitable time frame to tenants. The vacancy rate for apartments at the present time in the Anchorage, Fairbanks, Ketchikan and Juneau markets ranges from 0% to 4%. Because of this tight rental market, it is sometimes quite difficult for low income families, minorities, pet owners, families with children, and the elderly, (to name a few), to find adequate and habitable housing. General termination, (30 days), on the part of the landlord, in a time of a severe housing crunch does not always give the tenant sufficient notice to find other adequate housing.

"Rental due" date refers to Sec. 34.03.020 (c) which is the date on the same day each month that rent is to be paid. The landlord may wish to give notice of termination to the tenant before the "rental due" date, and replacing "rental due" with "termination" date provides for either time frame.

Section 3. AS 34.03.290 (c) is amended to read:

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after its termination, the landlord may bring an action for possession and recovery of actual damages. If [IF] the tenant's holdover is wilful and not in good faith the landlord, in addition, may recover an amount not to exceed one and one-half times the actual damages. If the landlord consents to the tenant's continued occupancy, AS 34.20.020 applies.

An improper hold-over by a tenant has caused landlords financial hardships. If a tenant continues to occupy the dwelling after his tenancy expires, he has caused the owner loss of income needed to make mortgage payments, as well as loss of time to make necessary repairs, alterations, etc., before renting the unit to the next party. Alaska law allows landlords to sue for damages, but the time, effort and money involved is not always feasible to pursue.

The new clause noted above provides for recovery of actual damages, (i.e. lost rent income, lost time needed to make necessary repairs, etc.), as well as one and one-half times the actual damages as compensation to the landlord. This deters the tenant from staying on past termination or the expiration of the rental agreement and in effect is incentive to the individual(s) to vacate the premises.

Section 4. AS 34.03.310 is amended by adding a new subsection to read:

(f) A landlord is presumed to have violated (a) of this section if the landlord increases rent, decreases service, or brings or threatens to bring an action for possession within 60 days after a tenant has engaged in an action listed under (a)(1) - (4).

This new subsection protects the tenant from landlords who abuse the right to access or evict the tenant for retaliatory reasons. The tenant has a right to his/her privacy, and the landlord must give "reasonable" notice to the tenant before entering the premises, (See AS 34.03.010). This new subsection also provides that the tenant may not be evicted because they have made a complaint using the proper procedures, (See AS 34.03.140), i.e. complained to a government agency regarding unfair rent hikes, or requesting that certain necessary repairs be made to the premises or common area. Sixty days is a sufficient amount of time to correct a problem or answer a complaint. After the 60 day period has expired, the tenant should refer to AS 34.03.160 and the landlord should refer to AS 34.03.220 for remedies to their problem(s).

Introduced: 1/28/83
Referred: Labor & Commerce
and Judiciary

FORCEABLE ENTRY
DETAINER

Default
Judgement

IN THE HOUSE BY ABOOD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

F.E.D.

A BILL

For an Act entitled: "An Act relating to landlords and tenants."

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OR TENANT FAILS TO PROVIDE THE NOTICE REQUIRED

SUB-SECTION (a+b)

failure to give notice; termination

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55-HB-1 Sec. 1

fined by AS 09.45.090, and that only is constructive force which that section declares to be such. Miners' & Merchants' Bank v. Brice, 5 Alaska 418 (1915).

Actual possession must be shown.— Since forcible entry and detainer is an action purely for possession, and not to try title (AS 22.15.050), such an action cannot be maintained without showing actual possession. Wills v. Peterson, 5 Alas. L.J. No. 12, p. 266 (Dec., 1967).

Possession of tenant does not make such tenant an agent or employee of his landlord. Wills v. Peterson, 5 Alas. L.J. No. 12, p. 266 (Dec., 1967).

entry and detainer, 45 ALR 323.

Forcible entry and detainer as remedy for interference with right of way, 47 ALR 556.

Criminal offense of forcible detainer where entry was peaceable, 49 ALR 957.

Forcible entry and detainer as a remedy of tenant against stranger wrongfully interfering with his possession, 12 ALR2d 1100.

Right of landowner who has conveyed property to third person to maintain forcible detainer or similar summary possessory action, 47 ALR2d 1170.

Sec. 09.45.080. Undertaking on appeal. If judgment is rendered against the defendant for the restitution of the real property described in the complaint or any part of it, no appeal may be taken by the defendant from the judgment until he gives, in addition to an undertaking required upon appeal, an undertaking to the adverse party with two sureties. The sureties shall justify, in the manner as bail upon arrest, for the payment to the plaintiff of twice the rental value of the real property of which restitution shall be adjudged from the rendition of the judgment until final judgment in the action, if the judgment is affirmed upon appeal. (§ 17.03 ch 101 SLA 1962)

Sec. 09.45.090. Unlawful holding by force. The following are cases of unlawful holding by force within the meaning of §§ 60—160 of this chapter:

(1) when the tenant or person in possession of a premises fails or refuses to pay the rent due on the lease or agreement under which he holds, or deliver up the possession of the premises for 10 days after demand made in writing for the possession;

(2) when, after a notice to quit as provided in §§ 60—160 of this chapter, a person continues in the possession of the premises at the expiration of the time limited in the lease or agreement under which that person holds, or contrary to a condition or covenant in the lease or agreement, or without a written lease or agreement;

(3) when, after a notice to terminate the tenancy as provided in this title with reference to termination of estate at will or by sufferance, a person continues in possession of the premises after expiration of the time for determining the tenancy. (§ 17.0 ch 101 SLA 1962)

Section defines detainer article is designed to prevent.—This section of the forcible entry and detainer act suggests the character of the detainer which the statute was intended to prevent. Stell v. Dessmore, 3 Alaska 302 (1907).

ute; but constructive force is defined by this section, and that only is constructive force which this section declares to be such. Miners' & Merchants' Bank v. Brice, 5 Alaska 418 (1915).

Where entry was without force and under claim of title, article is inapplicable. — Where defendant entryman, and entered under adverse claim of title, and without the title or possessio plaintiff, under such facts h be summarily removed by t ble entry and detainer act, b titled to have his title ...led Stell v. Dessmore, 3 Ala (1907).

Sec. 09.45.100. Requisites of notice to quit. A notice to qu be in writing and shall be served upon the tenant or person session by being delivered to him or left at the premises of his absence from the premises, or the notice may be s registered or certified mail, in which case an additional thre shall be added to the 10 days. (§ 17.05 ch 101 SLA 1962)

C.J.S. reference. — 36 C.J.S. Forcible Entry and Detainer §§ 23 to 25.

Sec. 09.45.110. Period between service of notice and brought. An action for the recovery of the possession of the ises may be maintained in the cases specified in § 90 (2) chapter when the notice to quit has been served upon the or person in possession for the period of 10 days before th mencement of the action unless the leasing or occupation is purpose of farming or agriculture, in which case the notice s served 90 days before commencement of the action. (§ 17.06 SLA 1962)

Sec. 09.45.120. Summons and continuance. Summons in for forcible entry and detainer shall be served not less tha nor more than four days before the date of trial. No conti shall be granted for a longer period than two days unless t fendant applying for the continuance gives an undertaking adverse party, with sureties approved by the court cond to the payment of the rent that may accrue if judgment ered against the defendant. (§ 17.07 ch 101 SLA 1962)

Sec. 09.45.130. Action against persons paying rent in ad The service of a notice to quit upon a tenant or person in sion does not authorize an action to be maintained against h the possession of the premises until the expiration of the for which that tenant or person may have paid rent for the ises in advance. To authorize an action against a tenant or in possession who has paid rent in advance, a notice must be at least 10 days before the date the rent is due again in ca month-to-month tenancy or at least three days before in t of a week-to-week tenancy. (§ 17.08 ch 101 SLA 1962)

Sec. 09.45.140. Agricultural tenant. When the leasing or

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

THE FOLLOWING ARE OFFERED AS AMENDMENTS TO SSHB 7:

AMENDMENT 1. This is to correct a technical ommission from the bill.

page 5 line 19

insert the words "property damage or" after because of. The line would then read..."of uninsured motor vehicles because of property damage or bodily injury or death...."

This is to make this section identical to the definition of motor vehicle policy proposed is 28.22.010.

AMENDMENT 2. This amendment will change the insurance code to mandate that companies authorized to do business in the state offer uninsured and underinsured insurance for property damage and personal injury liability in at least the amounts purchased voluntarily under the policy. However, this coverage may be waived as is the current procedure. Currently only uninsured coverage is mandated and then...only for personal injury..not property damage.

AS 21.89.020 is amended to read:

(a) An automobile liability policy which insures an owner or operator of a motor vehicle against loss resulting from his liability for bodily injury or death, or for property damage or destruction, or both, which is sold in the state [AFTER JANUARY 1, 1969, BY AN INSURANCE CARRIER AUTHORIZED TO TRANSACT BUSINESS IN THE STATE], shall contain limits in at least the amount prescribed for a motor vehicle policy in AS 28.20.440 (b)(2) and AS 28.22.010 (b)(2) [AND MEET THE REQUIREMENTS OF AS. 28.20.440(b)(3) UNLESS WAIVED AS PROVIDED IN THAT PARAGRAPH.]

(b) In addition to the coverages and limits required in (a) of this section, an insurance company offering automobile liability insurance in this state shall offer coverage, with limits equal to at least the limit purchased voluntarily to cover the insured persons liability, for the protection of the persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles. The coverage shall be offered in four parts, one or more of which may be waived pursuant to AS 28.20.440 (b)(3) or AS 28.22.010 (b)(3). The parts are:

(1) uninsured motorists,bodily injury;

(2) uninsured motorists, property damage;

(3) under insured motorists, bodily injury; and,

(4) under insured motorists, property damage.

(c) [(b)] This section may not be construed to apply only to automobile liability policies obtained to satisfy a requirment in AS 28.20 or AS 28.22.

AS 28.20.440 (b)(3) is amended to read:

(3) contain coverage in the amounts set out in (2) of this subsection for the protection of the persons insured under the policy who are legally entitled to recover damages from owners and operators of uninsured or under insured motor vehicles because of bodily injury or death, or damage to or destruction of property arising out of the ownership, maintenance or use of the uninsured or under insured motor vehicle, except that this coverage or part of it may be waived in writing by the insured on or before the effective date of the policy.

AMENDMENT #3...

I also proposed that this language in AS. 28.20.440 (b)(3) be used in lieu of the langauge proposed in AS 28.22.010(b)(3) of SSHB 7.

This amendment conflicts with the language change proposed in amendment #1 but is preferable. The adoption of amendment two would eliminate the need for amendment #1.

SECTION ANALYSIS -- MANDATORY AUTO LIABILITY INSURANCE
SSHB 7

Section 1 Declaration of Purpose. Expresses goal of legislation that motorists be financially responsible for their actions due to rising toll of accidents. The legislature declares that the public interest can best be served by the requirement to show proof of liability insurance pririot to registration.

Section 2 adds mobile homes as defined by statute to vehicles exempt from registration.

Section 3 Amends 28.10.011 by adding a new section under REGISTRATION which specifies an owner may not register or renew registration of a vehicle without providing proof of liability insurance as required in statute.

Section 4 Amends APPLICATION FOR REGISTRATION statute by specifying that certificate of registration may not be issued until the criteria set out in Section 3 above is met.

Section 5 Amends 28.10.111 (RENEWAL OF REGISTRATION) by adding a new section specifying that current registration may not be renewed until adequate proof of financial responsibility is shown as required in statute.

Section 6 Allows DMV to issue title to certain vehicles exempt from registration.

a) vehicles exempt under Soldier and Sailor's Civil Relief Act (current exemption)
b) special mobile equipment (new)
c) vehicles driven or parked on private property (new)
d) vehicles driven or moved on highway or vehicular way which is not connected to state highway system (new)
e) mobile homes as defined by statute (new)

Section 7 Requires proof of sufficient liability insurance on vehicles OWNED by driver before driver's license can be issued or renewed for both residents and non-residents. If driver did not OWN vehicles at time of license renewal, no proof would have to be shown. A person who owns a vehicle that is registered out of state must show proof of insurance prior to obtaining an Alaska license.

Section 8 Mandates suspension of license when advised that insurance has been cancelled and there is no response by license holder within 30 days of notice to suspend sent by department.

Section 9 Amends law to require knowledge of the effects of alcohol and drugs on driving and knowledge of laws relating to financial responsibility when taking test for driver's license.

Sections 10-13 Amends current financial responsibility law to increase liability limits to current rates as established for insurance polices under AS. 28.22.010 These are increasing limits from 25/50/10 to 100/300/50 thousand.

Section 14 adds requirement of offering underinsured motorist coverage for insurance policies written in state.

Section 15 adds new sections (l) and (m) to current definition of insurance policy. These are the same items as contained in the proposed definition under AS 28.22.010 (sec.17)

Section 16 Amends current law to increase amount of money or securities required as proof of insurance to a rate in line with policy requirements ... $100,000

Section 17 ADDS NEW CHAPTER 22 TO TITLE 28..Motor Vehicle Liability Insurance

This is virtually identical language to that now in statute 28.20.440.

CHANGES TO CURRENT LAW OR ADDITIONS:

28.22.010

(b) 2 A/B- increases minimum limits for insurance to be contained in policy. (These are the same limits that were amended in the previous 5 sections)

Bodily injury to or death of one person in any one accident
CURRENTLY $25,000 PROPOSED $100,000

Bodily injury to or death of two or more persons in any 1 accident
CURRENTLY $50,000 PROPOSED $300,000

Injury to or destruction of property of others in any one accident
CURRENTLY $10,000 PROPOSED $50,000

These are limits contained in most standard policies currently issued. These are also limits generally imposed by banks for insurance requirements to buy a car.

(3) Requires offering of underinsured motorist coverage in addition to uninsured coverage. Coverage will also relate to property damage. Current law on requires offering of uninsured coverage for bodily injury or death. But this may be waived in writing.

(l) Requires insurance carrier to notify DMV when a policy is cancelled within the first 180 days that a policy is in effect and within 10 days of knowledge of termination or intent to terminate. If a person whose coverage terminates fails to provide DMV with satisfactory evidence of insurance, DMV will suspend the driver's license and all registration certificates and plates issued to owner of vehivle until proof of insurance is given.

(m) Requires insurance carriers to provide the insured with a card indicating existance of satisfactory policy. This card must be carried in vehicle at all times.

28.22.020

To be considered effective, policies must be issued by insurance companies authorized to do business in state and meet financial limits imposed by statute. Allows for exception if power of attorney is executed.

28.22.500 PENALTIES

Penalties are imposed for driving or knowingly permitting to be driven a vehicle required to be insured unless the vehicle and driver are are covered by an adequate insurance policy. This section describes penalties for violation of that law. See attached sheet.
SEC. 28.20.510 sets out provisions relating to impoundment.

Allows for impoundment or release to person with right to possess a vehicle if a peace officer has cause to believe vehicle was driven without proper insurance. If released, the owner or person with right to possess must pay costs of impounding and storing.

Impoundment is until proof of insurance is shown if driver has not been previously convicted of similar offense or for 30-90 days if person has been previously convicted of similar violation within 10 years.

Upon impoundment, a hearing will be provided at the time of impoundment to the person with the right to possess the vehicle, the driver, other persons with an ownership interest. Following a hearing, the vehicle will be released to owner or person with right to possess if it is determined impoundment was improper or that at the time of impoundment the vehicle was being driven

by a person other than the owner or person with right to possess the vehicle AND

without the consent of the owner or person with right to possess the vehicle.

Vehicle will also be released if

the driver is not charged within 10 days of impoundment of an offense related to the impoundment OR any related charges are dropped or dismissed OR the driver is acquitted of any related offenses.

If the vehicle is not released after impoundment hearing, a lienholder may reposses the vehicle for sale and impoundment costs are to be paid by sale proceeds.

28.22.520/28.22.530 FORFEITURES

These provisions apply when forfeiture is called which happens following 3rd conviction within 10 years of driving without proper insurance.

Court will require surrender of registration and title. If not released, the department may dispose of the vehicle as governed by statutes.

Upon order to forfeit, the court will provide notification of intent to require forfeiture to all who have an ownership interest in vehicle. This will allow for any interested party to ask for remission of interest in the vehicle. Court will hold hearing if request for remission of interest is made and such interest will be remitted if

the petitioner has an interest in the vehicle acquired in good faith AND

a person other than the petitioner was convicted of the offense which resulted in forfeiture AND

before parting with the motor vehicle, the petitioner didn't know or have reasonable cause to believe it would be used in the commission of an offense.

This protects the vehicle dealer or, for example, the owner of a a car taken without permission or stolen.

If remission of interest is granted it may be either in the form of reimbursement for interest or repossession of the vehicle and title.

28.22.540 UNUSED MOTOR VEHICLES

This provision allows a person to terminate or suspend insurance policy without penalty by removing plates from vehicle and delivering them to DMV. When vehicle is to be used, driver must present proof of insurance to DMV and plates will be returned.

28.22.550 ANNUAL REPORT

Requires annual report beginning in February 1986 which is to assess impact of law with regard to effect on number of uninsured motorists, insurance rates and cost to administer law.

SECTION 16 Requires that insurance policies issued after June 30, 1983 meet requirements of liability policy described in this chapter. Since the bill would not become law until July 1, 1984, this would allow insurance companies to prepare to meet this requirement.

SECTION 17 Delays one provision of not issuing or renewing drivers license unless insurance is proven until 1/1/85. This allows DMV time to upgrade computer to provide for cross referencing licenses and owned cars.

SECTION 18 Effective date of act is 7/1/84.

PENALTIES UNDER AS 28.22.5000

A person may not drive or move nor may an owner knowingly permit to be driven or moved on a highway or vehicular way or area a vehicle required to be insured under a motor vehicle liability policy that complies with AS 28.22.010 unless a motor vehicle liability policy is in effect for the motor vehicle.

If stopped and a peace officer has reason to believe a person is driving without insurance, a citation for $250 will be given. The driver will then have 5 days to show the court that insurance was in effect at the time of the citation. If proof is shown, charges and fine will be dropped. OTHERWISE....

Violation of the law is a Class B misdemeanor.

Court will impose a minimum fine of $250 and maximum of $1000. Minimum fine may not be suspended. Court may also impose jail term of up to 90 days which may be suspended if fine is paid.

ADDITIONALLY THE COURT WILL IMPOSE THE FOLLOWING SANCTIONS:

1st Offense	SUSPENSION OF LICENSE FOR UP TO 30 DAYS
	SUSPENSION OF REGISTRATION UNTIL PROOF OF INSURANCE SHOWN
2nd Offense within 10 years	SUSPENSION OF LICENSE WITHOUT LIMITED DRIVING PRIVILEGES FOR MINIMUM OF 30 DAYS/MAXIMUM OF 90 DAYS
	SUSPENSION OF REGISTRATION AND IMPOUNDMENT OF VEHICLE FOR 90 DAYS OR LONGER UNTIL PROOF OF INSURANCE IS SHOWN. ALLOWS FOR JUDICIAL HEARING BEFORE ANY IMPOUNDMENT TAKES PLACE. SUCH A HEARING INCLUDES ANY PERSON NAMED ON TITLE OR WHO MAY HAVE A LIEN INTEREST.
3rd Offense 10 years	SUSPENSION OF LICENSE WITHOUT LIMITED DRIVING PRIVILEGES FOR within MINIMUM OF 90 DAYS TO MAXIMUM OF ONE YEAR.
	FORFEITURE OF VEHICLE UNDER AS 28.22.520

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

POSITION PAPER

SSHB 7: An act relating to motor vehicles; and providing for an effective date.

The Administration is not in favor of a mandatory automobile liability insurance system such as proposed in SSHB 7. The principal reasons for this position are:

1. Administration of the program is expensive and would necessitate a substantial bureaucracy to administer and enforce.

2. The cost of insurance is higher in a mandatory system. This is due to elimination of exclusions in the policy, elimination of defenses available to an insurer, and increased insurer administrative expense.

3. Mandatory systems do slightly increase the insured population but do not produce a commensurate reduction in loss caused by the uninsured operator.

4. The economically disadvantaged have less real personal need for liability insurance from a protection of assets viewpoint and this acts as a disincentive for compliance with a mandatory system.

The North Carolina/Virginia experience suggests that comparable, if not superior, inroads can be made on the uninsured population through a strong financial responsibility law and a mandatory offering of uninsured motorists coverage. Last year, a number of impediments to the smooth working of our law were corrected, but it is too soon to say how effective those changes will be in this State.

What is more to the point is not how many drivers are insured, but how many people are experiencing uncompensated loss caused by an uninsured motorist. Accordingly, we recommend as an alternative to the proposed legislation, a substitute that would mandate an offer by every insurer writing automobile liability insurance in this State, uninsured and underinsured motorists coverage, bodily injury and property damage in an amount at least as great as that purchased voluntarily for bodily injury and property damage liability. The offer currently exists only for basic limits; uninsured motorists coverage and bodily injury coverage. This would allow the insured motorist to protect himself from losses caused by uninsured or underinsured drivers.

4/14/83

Richard A. Lyon, Commissioner

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April 15, 1983

The Honorable Walter Furnace
Chairman, Committee on Labor and Commerce
Alaska State House
Pouch V
Juneau, Alaska 99811

Re: SSHB 7

Dear Representative Furnace:

This letter is written on behalf of the American Insurance Association. That Association is a trade group of approximately 150 casualty - property insurance companies, several of which write a substantial amount of automobile insurance in this state. While they understand and share the concerns which led to the introducton of SSHB 7, they know from experience in other states that attempting to solve the problems caused by uninsured motorists by means of a compulsory insurance law will be expensive, largely ineffective and, in some ways, counterproductive. Thus, while insurance companies are normally happy to sell their product, the Association strongly opposes compulsory automobile insurance as a way to protect the more conscientious driver and his passengers.

The following sections set out some of the reasons we think that this bill would cause more problems than it solves.

Enforceability

Although reliable data as to the number of uninsured motorists in this State is hard to come by, it is believed that the great majority of responsible drivers, persons who tend to have assets to protect, are presently covered. Those who do not have insurance tend to be either less responsible, much less affluent, or both. Those who have little property or income have nothing to lose in a lawsuit, and have no incentive to buy insurance. As Dr. John W. Hall, Chairman of the Insurance

Department at Georgia State University reported to the South Carolina Joint Legislative Auto Liablity Insurance Study Committee in 1979, "They see the liability insurance policy as taking care of other people. The compulsory liability insurance system forces these people to pay high premiums relative to their own income for benefits for others when they cannot afford adequate benefits to cover their own losses."

Accordingly, there is typically very strong resistance to compulsory insurance by those who have not obtained insurance voluntarily. The history in three states that have had compulsory laws the longest, and have made the strongest efforts to enforce them, demonstrate the point:

- Massachusetts passed a compulsory law in 1927, more than 30 years earlier than any other state. In 1968, Governor John Volpe told the Massachusetts Legislature that "the people of the common wealth have lost confidence in our compulsory automobile insurance system." Uninsured motorists in that state are still a serious problem.

- New York passed a law in 1956; a study by the University of Michigan in 1963 found twice as many uninsured motorists as before the law. A study by the New York Daily News reported that the law had "failed miserably to achieve its aims."

- In North Carolina, 23 years of well financed and sophisticated enforcement has still left many vehicles uninsured.

Perhaps the most telling fact is that all compulsory states require insurers to offer uninsured motorist coverage, and most drivers buy it. They therefore carry a double burden in addition to their own coverage - the cost of the uninsured motorist coverage and the cost of trying to enforce the law.

The law has proven to be easy to avoid. A motorist typically buys the insurance and then cancels after the license and registration are issued. The notice of cancellation to the state by the insurer sits in a large pile of similar notices; police, who must give higher priority to more serious crimes, cannot afford to send officers out to confiscate tags, but usually enforce only in the event of arrests or other offenses. The net change in the number of insured motorists is usually low.

The Cost of Enforcement

As noted, enforcement has proven to be ineffective in other states. Nevertheless, it is expensive. We invite the Commiteee to question Public Safety officials closely on what will be done, and not assume that a million dollars will mean

effective enforcement. Full and active enforcement, with citations for insurance lapses in the absence of other offenses, and with actions to find and take uninsured vehicles off the road, will cost, we are sure, a multiple of the fiscal note now accompanying the bill.

The Cost of Insurance

The Committee will be given figures by the Division of Insurance indicating estimates of 20-30% increases in premiums for minimum coverage changes in this bill, and perhaps 10% for the compulsory aspect and its effects. Attached to this letter is a chart showing rate increases historically noted in compulsory states as compared with otherwise similar states for similar coverages. These figures tend to corroborate the Dvision of Insurance estimates, athough there is variation from state to state.

There are several factors which will tend to increase premiums. They include

- The fact that presently uninsured motorists include a high percentage of high-risk motorists, which will be put in the assigned risk pool and will drive claim frequency up.

- The facts that plaintiffs' counsel will be working with higher limits, and juries will presume that any award will be against an insurer rather than personal assets (a presumption, as we have seen, that may not be warranted).

In the first 11 years, Massachusetts saw compulsory insurance claim frequency increase 33 percent, at a time when nationwide frequency was declining 21 percent. In 1968, Governor Volpe said:

> The personal injury claims frequency in the commonwealth is 1.8 times that of the next highest state (which also happens to be a compulsory state), and twice the national average. This claims frequency may be directly related to our high insurance costs and also supports the conclusion that under our compulsory system, Massachusetts motorists have become more claims conscious than those in other states.

Alternatives

Experience shows in compulsory states that responsible drivers continue to purchase uninsured motorist coverage. Coverage can also be purchased for so-called "underinsured" motorists. A law requiring insurers to offer both uninsured and

underinsured motorist coverage is not unreasonable, and allows an informed choice by each insured as to what he or she will protect against.

In addition, it is suspected that enforcement of the Financial Responsibilty law could be improved, but no study of its enforcement or possible improvements is to be our knowledge available. Study of this possibility should be authorized.

Conclusion

It is certainly appropriate for the legislature to identify uninsured motorists as a matter of concern, and to attempt to lessen the impact of irresponsible drivers. We encourage careful consideration of available alternatives to choose an effective measure. A promise to responsible drivers that everyone will be insured, probably cannot be kept, and the attempt will be expensive to the state and the motorist alike.

We are continuing to gather information pertinent to this problem, and will provide any specific information we can in response to your request.

I have not attempted a section-by-section comment on the bill in this letter, pending some indication of the Committee's early intentions with regard to the bill. There are some problems with individual sections not alluded to here.

Thank you for the chance to comment.

Sincerely,

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

M. T. Thomas

MTT:sd
Attachment

RATE LEVELS IN COMPARABLE STATES WITHOUT COMPULSORY SYSTEMS

Compulsory States (a)	Comparable States (b)	Overall Pure Premium Percent Change (c)	Average Annual Pure Premium Percent Change (c)
LOUISIANA (7/1/78)		14.2%	11.2%
	Alabama	0.1	0.9
	Mississippi	-1.2	1.4
	Tennessee	1.6	-1.3
MARYLAND (7/1/73)		43.3%	7.9%
	Indiana	21.3	5.0
	Virginia	32.0	6.2
	D.C.	23.9	4.4
OKLAHOMA (12/11/76)		11.6%	3.7%
	Arkansas	10.9	3.5
	Iowa	7.0	2.8
	Missouri	3.7	1.0
OREGON (1/1/76)		35.0%	8.4%
	Maine	19.6	3.9
	West Virginia	18.8	6.8
	Wisconsin	12.8	3.7
SOUTH CAROLINA (10/1/74)		27.0%	5.6%
	Alabama	22.5	5.5
	Arkansas	21.1	4.1
	Tennessee	14.9	2.9

(a) - The figures in the parentheses by the compulsory states are the effective dates of their compulsory laws.

(b) - The comparison states were chosen for their similarity to a compulsory state in demographic characteristics, geographic characteristics and the number of insured vehicles.

(c) - The liability pure premium ratio was used as a basis for comparison because it represents the average amount of loss per insured vehicle. An increase in pure premium suggests that the average claim per insured vehicle has risen as a sresult of the inclusion of those motorists who did not carry auto liability insurance prior to the adoption of the compulsory law.

SOURCE OF DATA: Fast Track Monitoring System, comprising loss experience of companies reporting to the National Association of Independent Insurers and the Insurance Services Office. The Fast Track Monitoring System loss experience begins with data for the year ending fourth quarter 1976.

TIME PERIOD: The time period selected for comparison purposes is that period after which each compulsory law has become effective (and limited to when the Fast Track Monitoring System loss experience begins) through the year ending second quarter 1981.

MAR 1 4 1983

March 9, 1983

Representative Joe L. Hayes
Pouch V
Juneau, Alaska 99811

Dear Representative Hayes:

I am writing this letter in pain, outrage and total disgust. I have painfully become aware of the completely inadequate and antiguated driving laws of this state as a result of my son Sean's death at the hands of an irresponsible, uninsured driver who was drinking, speeding, ran a red light and God only knows what else. This driver can afford alcohol and drugs (they were found in his car) but he cannot afford insurance!

The law concerning the requirement to have auto insurance, better known as "the State gives you a free one" is at best a farce. Having lived here 44 years and watching the traffic increase to the point beyond the capacity of our road system, coupled with the irresponsible attitude of the outsiders coming in and the young people growing up, dictates that the law be tightened.

It is imperative that mandatory auto insurance be required of those wishing to drive in the State of Alaska. When auto licenses are renewed or bought, or with registration and/or titles, proof of insurance at that time should be shown. Upon cancellation of insurance, then licenses revoked. In short No Insurance - No License!

Sean was not allowed to own a car or drive without insurance which he bought and paid for himself and he took that responsibility with him into his young adulthood and was subsequently killed by a person who apparently did not care or have any regard about others.

The time is long past due for all Alaskans new or old to accept the responsibilties attached to owning and driving an automobile and the necessary steps to accomplish this rests squarely on your shoulders.

Sincerely,

Robert J. Sinnett
ROBERT J. SINNETT

Thelma Sinnett
THELMA SINNETT
2001 Salem Court
Anchorage, Alaska 99504

In Memoriam

* SEAN SINNETT *

The members of the Legislature are deeply saddened at the tragic and untimely death of a young third generation Alaskan, Sean Sinnett of Anchorage.

Sean was a bright and enthusiastic young man, filled with vitality. Born in Anchorage, he was a 1980 graduate of East Anchorage High School. He was goalie for the hockey team in 1980 when it won the State Championship. In more recent years he was an employed member of the Teamsters and an avid hot-air balloonist.

It distresses us greatly to learn of this fine young man's death and the tragic circumstances surrounding it. Accidents involving pedestrians seem so needless and preventable. It should sadden every Alaskan to know of the loss of this promising young citizen and renew in each of us a dedication to do whatever we can to make certain that our highways and streets are made safe not only for drivers, but for pedestrians as well.

We wish to extend to Mr. and Mrs. Robert Sinnett, and to Christopher and Teresa our deepest and most heartfelt condolences. We share your loss. Our thoughts are with you at this most difficult time.

SPEAKER OF THE HOUSE

PRESIDENT OF THE SENATE

Date:

Requested by: Senator Ke[illegible]y, Hefford, Stu[illegible]

MOTOR VEHICLE SAFETY RESPONSIBILITY ACT

HEADINGS TITLE 28.
Motor Vehicles.
CHAPTER 20.
Motor Vehicle Safety Responsibility Act.

DECLARATION OF PURPOSE.

The legislature is concerned over the rising toll of motor vehicles accidents and the suffering and loss inflicted by them. The legislature determines that it is a matter of grave concern that motorists be financially responsible for their negligent acts so that innocent victims of motor vehicle accidents may be recompensed for the injury and financial loss inflicted upon them. The legislature finds and declares that the public interest can best be served by the requirements that the operator of a motor vehicle involved in an accident respond for damages and show proof of financial ability to respond for damages in future accidents as a prerequisite to his exercise of the privilege of operating a motor vehicle in the state.

HISTORY (Sec. 2 ch 163 SLA 1959)

Sec. 28.20.020.
ADMINISTRATION.

(a) The department shall administer and enforce this chapter and may adopt rules and regulations necessary for its administration.

(b) The department shall receive and consider any pertinent information upon request of persons aggrieved by its orders or acts under this chapter.

(c) The department shall prescribe and provide suitable forms requisite or considered necessary to carry out this chapter.

HISTORY (Sec. 4 ch 163 SLA 1959)

Sec. 28.20.030.
COURT REVIEW.
Repealed by sec. 4 ch 140 SLA 1977.

Sec. 28.20.040.
DEPARTMENT TO FURNISH OPERATING RECORD.
Repealed by sec. 20 ch 241 SLA 1976.

Sec. 28.20.050.
APPLICATION OF CHAPTER.

(a) The provisions of this chapter requiring deposit of security and suspension for failure to deposit security apply to the driver and owner of a vehicle subject to registration under the laws of this state which is involved in any manner in an accident in this state resulting in bodily injury to or death of a person or damage to the property of any one person exceeding $500.

(b) Not less that 20 days after receipt of a report of such accident, the department shall determine the amount of security which it considers sufficient to satisfy any judgments for damages resulting from the accident which may be recovered against each driver or owner. The determination shall not be made with respect to a driver or owner who is exempt from the requirements as to security and suspension.

(c) The department shall determine the amount of security deposit required upon the basis of the reports or other information submitted. If a person involved in an accident as described in this chapter fails to make a report or submit information indicating the extent of his injuries or the damage to his property within 30 days after the accident, and the department does not have sufficient information on which to base an evaluation of injuries or damage, then the department after reasonable notice to the person, if it is possible to give notice, otherwise without notice, shall not require a deposit of security for the benefit or protection of the person.

(d) Within 30 days after receipt of report of an accident and upon determining the amount of security to be required of any person involved in the accident or to be required of the owner of any vehicle involved in the accident, the department shall give to every person written notice of the amount of security required to be deposited by him and stating that an order of suspension will be made upon the expiration of 10 days after the notice is sent unless within that time security is deposited as required. No license may be suspended unless the licensee is afforded a hearing by the department at which it is determined that there is a reasonable possibility of a judgment being rendered holding him liable.

(e) A peace officer investigating an accident that results in bodily injury to or the death of a person or damage to the property of a person exceeding $500 shall inform persons involved in the accident in writing of the requirements of this chapter as they apply to suspension of an operator's license or driving privileges.

HISTORY (Sec. 7 ch 163 SLA 1959; am sec. 1 ch 127 SLA 1972; am sec. 11 ch 144 SLA 1977; am sec. 3 ch 78 SLA 1982)

Sec. 28.20.060.
EXCEPTIONS TO REQUIREMENT OF SECURITY.
The requirements as to security and suspension in this chapter do not apply to

(1) the driver or owner if the owner had in effect at the time of the accident an automobile liability policy or bond with respect to the vehicle involved in the accident, except that a driver is not exempt if at the time of the accident the vehicle was operated without the owner's express or implied permission;

(2) the driver who is not the owner if there was in effect at the time of the accident an automobile liability policy or bond with respect to his driving of vehicles not owned by him;

(3) a driver or owner whose liability for damages resulting from the accident is, in the judgment of the department, covered by another form of liability insurance policy or bond;

(4) a person qualifying as a self-insurer under sec. 400 of this chapter or to a person operating a vehicle for a self-insurer;

(5) the driver or owner of a vehicle involved in an accident in which no injury or damage was caused to the person or property of anyone other than the driver or owner;

(6) the driver or owner of a vehicle which at the time of the accident was parked, unless the vehicle was parked at a place where parking was at the time of the accident prohibited by a law or ordinance;

(7) the owner of a vehicle if at the time of the accident the vehicle was operated without his express or implied permission or was parked by a person operating the vehicle without the permission;

(8) the owner of a vehicle or the driver of a vehicle operating it with permission if at the time of the accident the vehicle was owned or leased to the United States, this state or a political subdivision of this state or a municipality of the state; or

(9) the driver or the owner of a vehicle if at the time of the accident the vehicle was operated by or under the direction of a police officer who, in the performance of his duties, assumed custody of the vehicle.

Sec. 28.20.070.
REQUIREMENTS AS TO POLICY OR BOND.

(a) No policy or bond is effective under sec. 60 of this chapter unless it is issued by an insurance company or surety company authorized to do business in this state, except as provided in (b) of this section, and if the accident resulted in bodily injury or death, unless the policy or bond is subject to a limit, exclusive of interest and costs, of not less than $25,000 because of bodily injury to or death of one person in any one accident and, subject to the same limit for one person, to a limit of not less than $50,000 because of bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of, property to a limit of not less than $10,000 because of injury to or destruction of property of others in any one accident.

(b) No policy or bond is effective under sec. 60 of this chapter with respect to a vehicle not registered in this state or a vehicle which was registered in another jurisdiction at the effective date of the policy or bond or the most recent renewal of it, unless the insurance or surety company issuing the policy or bond is authorized to do business in this state, or if the company is not authorized to do business in this state, unless it executes a power of attorney authorizing the director of the division of insurance to accept service on its behalf of notice or process in an action upon the policy or bond arising out of the accident.

(c) The department may rely upon the information in an accident report as to the existence of insurance or a bond unless the department has reason to believe that the information is erroneous.

HISTORY (Sec. 9 ch 163 SLA 1959; am sec. 1 ch 146 SLA 1966; am sec. 1 ch 202 SLA 1975; am sec. 12 ch 144 SLA 1977)

Sec. 28.20.080.
FORM AND AMOUNT OF SECURITY.

(a) The security required by this chapter shall be in the form and amount the department requires, but in no case in excess of the limits specified in sec. 70 of this chapter for the acceptable limits of a policy or bond.

(b) Every depositor of security shall designate in writing the person in whose name the deposit is made and may at any time change the designation, but a single deposit of security applies only on behalf of a person required to furnish security because of the same accident.

HISTORY (Sec. 10 ch 163 SLA 1959)

Sec. 28.20.090.
SUSPENSION FOR FAILURE TO DEPOSIT SECURITY.
(a) If a person required to deposit security under this chapter fails to deposit security within 10 days after the department sends notice, the department shall suspend
(1) the license of each driver involved in the accident;
(2) the privilege of operating a vehicle subject to registration if the driver is a nonresident;
(3) the privilege of the owner to operate or permit the operation within this state of a vehicle subject to registration if the owner is a nonresident.
(b) Suspensions shall be made in respect to persons required by the department to deposit security who fail to deposit such security, except as otherwise provided under succeeding sections of this chapter.
HISTORY (Sec. 11 ch 163 SLA 1959) CITATION

Sec. 28.20.100.
RELEASE FROM LIABILITY.
(a) A person is relieved from the requirement for deposit of security for the benefit or protection of another person injured or damaged in the accident if he is released from liability by the other person.
(b) A covenant not to sue relieves the parties to it as to each other from the security requirements of this chapter.
(c) If the department evaluates the injuries or damage to a minor in an amount not more than $500, the department may accept, for the purposes of this chapter only, evidence of a release from liability executed by a natural or legal guardian on behalf of the minor without court approval.
HISTORY (Sec. 12 ch 163 SLA 1959; am sec. 13 ch 144 SLA 1977)

Sec. 28.20.110.
ADJUDICATION OF NONLIABILITY.
A person is relieved from the requirement for deposit of security for a claim for injury or damage arising out of the accident if the person is finally adjudicated not to be liable for the claim. HISTORY (Sec. 13 ch 163 SLA 1959)

HISTORY (Sec. 14 ch 163 SLA 1959; am sec. 4 ch 78 SLA 1982)

Sec. 28.20.120.
AGREEMENTS FOR PAYMENT OF DAMAGES
(a) Two or more persons involved in or affected by an accident as described in AS 28.20.050 may at any time enter into a written agreement for the payment of an agreed amount with respect to their claims because of bodily injury, death, or property damage arising from the accident. The agreement may provide for payment in installments. The parties may file a signed copy of the agreement with the department.
(b) If proof of financial responsibility is provided and to the extent provided by the written agreement filed with it, the department shall not require the deposit of security and shall terminate a previous order of suspension, or if security was deposited, the department shall immediately return the security to the depositor or his personal representative.

(c) If there is a default in a payment under the agreement upon notice of default the department shall take action suspending the license of the person in default as is appropriate in case of failure of the person to deposit security when required under this chapter. (d) The suspension remains in effect and the license may not be restored until

(1) security is deposited as required under this chapter in the amount the department determines; or

(2) when, following default and suspension, the person in default pays the balance of the agreed amount; or

(3) one year elapses following the effective date of the suspension and evidence satisfactory to the department is filed with it that during the period no action at law upon the agreement is pending.

Sec. 28.20.130.
PAYMENT UPON JUDGMENT.
The payment of a judgment arising out of an accident, or the payment upon judgment of an amount equal to the maximum amount which could be required for deposit under this chapter, for the purposes of this chapter, releases the judgment debtor from the liability evidenced by the judgment. HISTORY (Sec. 15 ch 163 SLA 1959; am sec. 12 ch 2 SLA 1964)

Sec. 28.20.140.
TERMINATION OF SECURITY AGREEMENT
If satisfied as to the existence of a fact which under secs. 100 - 130 of this chapter entitles a person to be relieved from the security requirements, the department shall not require the deposit of security and shall terminate a previous order of suspension in respect to the person, and shall immediately return the deposit to the person or his personal representative. HISTORY (Sec. 16 ch 163 SLA 1959)

Sec. 28.20.150.
DURATION OF SUSPENSION.
(a) Unless a suspension is terminated under other provisions of this chapter, an order of suspension by the department remains in effect until terminated and no license may be renewed or issued to a person whose license is suspended until proof of financial responsibility for the future is provided and

(1) the person deposits or there is deposited on his behalf the security required under this chapter; or

(2) three years elapse following the date of suspension.

(b) Repealed by sec. 9 ch 78 SLA 1982.
HISTORY (Sec. 17 ch 163 SLA 1959; am secs. 5, 9 ch 78 SLA 1982)

Sec. 28.20.160.
APPLICATION TO NONRESIDENTS, UNLICENSED DRIVERS, UNREGISTERED VEHICLES AND ACCIDENTS IN OTHER STATES.
(a) If a driver or owner of a vehicle subject to registration under the laws of this state involved in an accident in this state does not have a license or registration in this state, then the driver may not be licensed, nor may the owner register a vehicle in this state until he complies with the requirements of this chapter to the extent necessary if, at the time of the accident, he had held a license or been the owner of a vehicle registered in this state.

(b) When a nonresident's operating privilege is suspended under sec. 90 of this chapter the department shall send a certified copy of the record of the action to the official in charge of the issuance of licenses and registration certificates in the state in which the nonresident resides, if the law of the other state provides for action similar to that provided for in (c) of this section.

(c) Upon receiving certification that the operating privilege of a resident of this state has been suspended or revoked in another state under a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of an accident under circumstances which would require the department to suspend a nonresident's operating privilege if the accident had occurred in this state, the department shall suspend the license of the resident. The suspension continues until the resident furnishes evidence of his compliance with the law of the other state relating to the deposit of security.

HISTORY (Sec. 18 ch 163 SLA 1959)

Sec. 28.20.170.
AUTHORITY OF DEPARTMENT TO DECREASE AMOUNT OF SECURITY. The department may reduce the amount of security ordered within six months after the date of the accident if in its judgment the amount is excessive. If the security originally ordered is on deposit, the excess deposit over the reduced amount ordered shall be returned immediately to the depositor or his personal representative. HISTORY (Sec. 19 ch 163 SLA 1959)

Sec. 28.20.180.
CORRECTION OF ACTION OF DEPARTMENT. If the department takes action or fails to take action under this chapter due to erroneous information or no information, upon receiving correct information within one year after the date of an accident the department shall take appropriate action to carry out the purposes and effect of this chapter. However, this section does not require the department to re-evaluate the amount of a deposit required. HISTORY (Sec. 20 ch 163 SLA 1959)

Sec. 28.20.190.
CUSTODY OF SECURITY. The department shall place security deposited with it in the custody of the Department of Revenue. HISTORY (Sec. 21 ch 163 SLA 1959)

Sec. 28.20.200.
DISPOSITION OF SECURITY.

(a) The security deposited is available only for

(1) the payment of a settlement agreement covering a claim arising out of the accident upon instruction of the person who made the deposit, or

(2) the payment of a judgment given against the person required to make the deposit for damages arising out of the accident in an action at law begun not later than one year after the deposit of security, or within one year after the date of deposit of security following failure to make payments under an agreement to pay.

(b) Every distribution of funds from a security deposit is subject to the limits of the department's evaluation on behalf of a claimant. HISTORY (Sec. 22 ch 163 SLA 1959)

Sec. 28.20.210.
RETURN OF DEPOSIT.

(a) Upon the expiration of two years from the date of deposit of security, the security remaining on deposit shall be returned to the person who made the deposit or his personal representative if an affidavit or other evidence satisfactory to the department is filed with it showing that

(1) no action for damages arising out of the accident for which deposit was made is pending against the person on whose behalf the deposit was made, and

(2) there does not exist any unpaid judgment against the person in an action.

(b) This section does not limit the return of a deposit of security under any other provision of this chapter authorizing return. HISTORY (Sec. 23 ch 163 SLA 1959; am sec. 6 ch 78 SLA 1982)

Sec. 28.20.220.
MATTERS NOT TO BE EVIDENCE IN CIVIL SUITS. The report required after an accident, the action taken by the department under this chapter, the findings, if any, of the department upon which its action is based, and the security filed shall not be referred to, and shall not be evidence of the negligence or due care of either party, at the trial of an action to recover damages. HISTORY (Sec. 24 ch 163 SLA 1959)

Sec. 28.20.230
PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

(a) The provisions of this chapter requiring the deposit of proof of financial responsibility for the future apply to persons who are convicted of or forfeit bail for certain offenses under motor vehicle laws or who, by ownership or operation of a vehicle of a type subject to registration under ch. 10 of this title, are involved in an accident in this state which results in bodily injury or death of a person or damage to the property of any one person exceeding $500.

(b) The term "proof of financial responsibility for the future" as used in this chapter means proof of ability to respond in damages for liability, on account of an accident occurring after the effective date of proof, which arises out of the ownership, maintenance or use of a vehicle subject to registration under the laws of this state, in the amount of $25,000 because of bodily injury to or death of one person in any one accident, and, subject to the same limit for one person, in the amount of $50,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of $10,000 because of injury to or destruction of property of others in any one accident. As used in this chapter the terms "proof of financial responsibility" or "proof" mean proof of financial responsibility for the future.

HISTORY (Sec. 25 ch 163 SLA 1959; am sec. 59 ch 69 SLA 1970; am sec. 2 ch 202 SLA 1975; am sec. 14 ch 144 SLA 1977)

Sec. 28.20.240.
PROOF REQUIRED WHEN USE OF LICENSE IS RESTRICTED.

Whenever under a law of this state the license of a person is suspended, revoked, limited under AS 28.15.201, or canceled for any reason, the department may not issue to that person a new or renewal of license in his name until permitted to do so under the motor vehicle laws of this state. A period of suspension, revocation, limitation, or cancellation under this section continues until proof of financial responsibility for the future is provided.

HISTORY (Sec. 26 ch 163 SLA 1959; am sec. 7 ch 78 SLA 1982)

Sec. 28.20.250.
ACTION IN RESPECT TO UNLICENSED PERSON.

(a) If a person does not have a license, but by final order or judgment is convicted of, or forfeits bail or collateral deposited to secure an appearance for trial for an offense requiring the suspension or revocation of license, or for driving a motor vehicle upon the highways without being licensed to do so, or for driving an unregistered vehicle upon the highways, no license shall be issued to the person unless he gives and thereafter maintains proof of financial responsibility for the future.

(b) Whenever the department suspends or revokes a nonresident's operating privilege for conviction or forfeiture of bail, the privilege remains suspended or revoked unless the person has previously given or immediately gives proof of financial responsibility for the future.

HISTORY (Sec. 27 ch 163 SLA 1959)

Sec. 28.20.260.
WHEN PROOF REQUIRED AFTER ACCIDENTS.

(a) Upon receipt by the department of the report of an accident resulting in bodily injury or death, or property damage to any one person exceeding $500, the department shall suspend the license of the driver of a motor vehicle involved in the accident unless the driver or owner

(1) has previously furnished or immediately furnishes security required by this chapter, or is excepted from furnishing security under sec. 60 of this chapter, and

(2) maintains proof of financial responsibility for three years following the accident.

(b) This section does not apply to an owner or operator with respect to an accident in which a judgment in his favor is given on a cause of action arising out of the accident which establishes his freedom from fault.

HISTORY (Sec. 28 ch 163 SLA 1959; am sec. 15 ch 144 SLA 1977)

Sec. 28.20.270.
SUSPENSION FOR NONPAYMENT OF JUDGMENTS. Upon receipt of a certified copy of a judgment and a certificate of facts relative to the judgment, the department shall immediately suspend the license or nonresident's operating privilege of a person against whom the judgment is given except as otherwise provided in this chapter. HISTORY (Sec. 29 ch 163 SLA 1959)

Sec. 28.20.280.
WHEN COURTS TO REPORT NONPAYMENT OF JUDGMENTS. If a person fails within 30 days to satisfy a judgment arising out of a motor vehicle accident, the clerk of the court, or the judge if there is no clerk, in which the judgment is given, shall forward to the department a certified copy of the judgment and a certificate of facts relative to the judgment. HISTORY (Sec. 30 ch 163 SLA 1959)

Sec. 28.20.290.
FURTHER ACTION WITH RESPECT TO NONRESIDENTS. If the defendant named in a certified copy of a judgment reported to the department is a nonresident, the department shall send a certified copy of the judgment to the official in charge of the issuance of licenses and registrations of the state of which the defendant is a resident. HISTORY (Sec. 31 ch 163 SLA 1959)

Sec. 28.20.300.
EXCEPTION FOR GOVERNMENT VEHICLES. Sections 260 and 270 of this chapter do not apply to an accident caused by the ownership or operation, with permission, of a vehicle owned or leased to the United States, this state, or a political subdivision or municipality of this state. HISTORY (Sec. 32 ch 163 SLA 1959)

Sec. 28.20.310.
EXCEPTION WHEN CONSENT GRANTED BY JUDGMENT CREDITOR. If the judgment creditor consents in writing in a form prescribed by the department to the issuance of a license or nonresident's operating privilege to the judgment debtor, the department may allow it for six months from the date of such consent and thereafter until the consent is revoked in writing, if the judgment debtor furnishes proof of financial responsibility notwithstanding default in the payment of judgment, or of an installment of the judgment prescribed in sec. 270 of this chapter. HISTORY (Sec. 33 ch 163 SLA 1959) -

Sec. 28.20.320.
EXCEPTIONS WHEN INSURER LIABLE. No license or nonresident's operating privilege shall be suspended under this chapter if the department finds that an insurer is obligated to pay the judgment upon which suspension is based at least to the extent and for the amounts required in this chapter, but has not paid the judgment for any reason. A finding by the department that an insurer is obligated to pay a judgment is not binding upon the insurer and has no legal effect except for the purpose of administering this section. If in a judicial proceeding it is determined by a final judgment, decree or order that an insurer is not obligated to pay a judgment, the department, notwithstanding any contrary finding made by it, shall immediately suspend the license or nonresident's operating privilege of a person against whom the judgment is given, as provided in sec. 270 of this chapter. HISTORY (Sec. 34 ch 163 SLA 1959)

Sec. 28.20.325.
EXCEPTION FOR BUSINESS RELATIONSHIP. If the driver at the time of an accident was driving, in the course and scope of his employment, a vehicle owned, operated or leased by his employer, the security deposit, proof of future responsibility and suspension provisions of this chapter apply to the employer and to the vehicles owned by him or registered under his name and do not apply to the driver. HISTORY (Sec. 1 ch 25 SLA 1966)

Sec. 28.20.330.
SUSPENSION TO CONTINUE UNTIL JUDGMENTS PAID AND PROOF GIVEN.
(a) If a person has an unsatisfied judgment against him requiring suspension under sec. 270 of this chapter, his license or nonresident's operating privilege shall remain suspended and shall not be renewed, nor shall a license or registration be issued in the name of the person, including a person not previously licensed, until the judgment is stayed or satisfied and until the person gives proof of financial responsibility subject to the exceptions in secs. 310 - 320, and 370 of this chapter.
(b) The proof required by (a) of this section shall be maintained during the period the person has a license or nonresident's operating privilege.

HISTORY (Sec. 35 ch 163 SLA 1959)

Sec.28.20.340
LICENSE CANCELLED, SUSPENDED OR REVOKED.
Upon receiving a record of the conviction of a person for driving a vehicle while his license was suspended, the department shall immediately suspend the registration of every vehicle registered in his name until he gives proof of financial responsibility for the future for each vehicle registered in his name. HISTORY (Sec. 36 ch 163 SLA 1959)

Sec. 28.20.360.
PAYMENTS SUFFICIENT TO SATISFY REQUIREMENTS.
(a) For the purpose of this chapter, a judgment is satisfied when
(1) $25,000 is credited upon a judgment given in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or
(2) subject to the limit of $25,000 because of bodily injury to or death of one person, the sum of $50,000 is credited upon a judgment given in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or
(3) $10,000 is credited upon a judgment given in excess of that amount because of injury to or destruction of property of others as a result of any one accident.
(b) However, payments made in settlement of a claim because of bodily injury, death or property damage arising from the accident shall be credited in reduction of the amounts provided for in this section. HISTORY (Sec. 38 ch 163 SLA 1959; am secs. 60, 61 ch 69 SLA 1970; am sec. 3 ch 202 SLA 1975)

Sec. 28.20.370.
INSTALLMENT PAYMENT OF JUDGMENTS; DEFAULT.

(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying the judgment in installments and the court, without prejudice at any other legal remedy, may order and fix the amount and time of payment of the installments.

(b) The department shall not suspend a license or nonresident's operating privilege, and shall restore a license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains an order permitting the payment of the judgment in installments. (c) If the judgment debtor fails to pay an installment specified by the court order, upon notice of default, the department shall immediately suspend the license or nonresident's operating privilege of the judgment debtor until the judgment is satisfied as provided in this chapter.
HISTORY (Sec. 39 ch 163 SLA 1959) -

Sec. 28.20.380.
REGISTRATION AND OPERATOR'S RIGHTS LIMITED BY EXTENT OF PROOF.

(a) When a certificate is filed showing that a policy is issued covering a motor vehicle owned by the insured, but not insuring the person when operating a motor vehicle not owned by him, the restriction may be removed upon the filing of a certificate showing an operator's policy issued to the person.
(b) If the department receives evidence of the violation of the restriction on the license, it may suspend the license until a certificate is filed showing an operator's policy issued to the holder of the license. HISTORY (Sec. 40 ch 163 SLA 1959)

Sec. 28.20.390.
ALTERNATE METHODS OF GIVING PROOF.
Proof of financial responsibility for a person who is not the owner of a vehicle may be given by filing

(1) a certificate of insurance as provided in secs. 410 or 420 of this chapter;

(2) a bond as provided in sec. 470 of this chapter;

(3) a certificate of deposit of money or securities as provided in sec. 490 of this chapter; or

(4) a certificate of self-insurance as provided in sec. 400 of this chapter, supplemented by an agreement by the self-insurer that, for accidents occurring while the certificate is in force, he will pay the same amount that an insurer would be obligated to pay under an owner's motor vehicle liability policy if it had issued a policy to the self-insurer.
HISTORY (Sec. 41 ch 163 SLA 1959)

Sec. 28.20.400.
SELF-INSURERS.

(a) A person in whose name more than 25 vehicles are registered in this state may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in (b) of this section.

(b) The department may issue a certificate of self-insurance when it is satisfied that the person has and will continue to have ability to pay judgments obtained against him. The certificate may be issued authorizing a person to act as a self-insurer for either property damage or bodily injury, or both, or within the limits the department prescribes.

(c) Upon not less than 10 days' notice and a hearing pursuant to the notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay a judgment within 30 days after judgment becomes final is a reasonable ground for the cancellation of a certificate of self-insurance. HISTORY (Sec. 42 ch 163 SLA 1959)

Sec. 28.20.410.
CERTIFICATE OF INSURANCE AS PROOF.

Proof of financial responsibility for the future may be furnished by filing with the department the written certificate of an insurance carrier authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate shall give the effective date of the motor vehicle liability policy, which shall be the same as the effective date of the certificate, and shall designate by description or appropriate reference all vehicles covered by it, unless the policy is issued to a person who is not the owner of a motor vehicle.
HISTORY (Sec. 43 ch 163 SLA 1959)

Sec. 28.20.420.
CERTIFICATE FURNISHED BY NONRESIDENT AS PROOF.

(a) A nonresident may give proof of financial responsibility by filing with the department a written certificate of an insurance carrier authorized to transact business in the state in which the vehicle described in the certificate is registered, or if the nonresident does not own a vehicle, then in the state in which the nonresident resides, if the certificate otherwise conforms with this chapter; the department shall accept it upon condition that the insurance carrier complies with (b) and (c) of this section.

(b) The insurance carrier shall execute a power of attorney authorizing the department of accept service on its behalf of notice or process in an action arising out of a motor vehicle accident in this state.

(c) The insurance carrier shall agree in writing that the policy shall conform with the laws of this state relating to the terms of motor vehicle liability policies issued in this state.
HISTORY (Sec. 44 ch 163 SLA 1959; am sec. 44 ch 32 SLA 1971) -

Sec. 28.20.430.
DEFAULT BY NONRESIDENT INSURER.
If an insurance carrier not authorized to transact business in this state, but qualified to furnish proof of financial responsibility in this state, defaults in an undertaking or agreement, the department shall not accept as proof a certificate of the carrier whether previously filed or thereafter tendered as proof, so long as the default continues.
HISTORY (Sec. 45 ch 163 SLA 1959)

Sec. 28.20.440.
MOTOR VEHICLE LIABILITY POLICY.
(a) In this AS 28.20.010 - 28.20.640, "motor vehicle liability policy" means an "owner policy" or an "operator's policy" containing an agreement or endorsement as provided in this section, or certified as provided in AS 28.20.410 or 28.20.420 as proof of financial responsibility for the future, and issued, except as otherwise provided in AS 28.20.420, by an insurance carrier authorized to transact business in this state, to or for the benefit of the person named as insured.
(b) The owner's policy of liability insurance shall
(1) designate by description or appropriate reference all vehicles which it covers;
(2) insure the person named and every other person using the vehicle with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of the vehicle within the United States of America or the Dominion of Canada, subject to limits exclusive of interests and costs, with respect to each vehicle, as follows: $25,000 because of bodily injury to or death of one person in any one accident, and, subject to the same limit for one person, $50,000 because of bodily injury to or death of two or more persons in any one accident, and $10,000 because of injury to or destruction of property of others in any one accident;
(3) contain coverage in the amounts set out in (2) of this subsection for the protection of the persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury or death arising out of the ownership, maintenance or use of the uninsured motor vehicle, except that this coverage may be waived in writing by the insured on or before the effective date of the policy.
(c) The operator's policy of liability insurance shall insure the person named as insured against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are required for an owner's policy of liability insurance.
(d) The motor vehicle liability policy shall state the name and address of the named insured, the coverage, the premium charges, the policy period and the limits of liability, and shall contain an agreement or an endorsement that insurance is provided in accordance with the coverage defined in AS 28.20.010 - 28.20.640 for bodily injury and death or property damage, or both, and is subject to all the provisions of AS 28.20.010 - 28.20.640.

(e) The motor vehicle liability policy need not insure liability under a workers' compensation law nor liability for damage to property owned by, rented to, in charge of or transported by the insured. (f) Every motor vehicle liability policy is subject to the following provisions but these provisions need not be contained in the policy.

(1) The liability of the insurance carrier becomes absolute whenever injury or damage covered by the policy occurs; the policy may not be cancelled or annulled as to this liability after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of the policy defeats or voids the policy.

(2) The satisfaction by the insured of a judgment for injury or damages is not a condition precedent to the right or duty of the insurance carrier to make payment on account of injury or damage.

(3) The insurance carrier may settle a claim covered by the policy, and if settlement is made in good faith, the amount of settlement is deductible from the limits of liability specified in (b) of this section.

(4) The policy, the written application for the policy, if any, and every rider or endorsement which does not conflict with the provisions of AS 28.20.010 - 28.20.640 constitute the entire contract between the parties.

(g) A policy which grants the coverage required for a motor vehicle liability policy may also grant lawful coverage in excess of or in addition to the coverage specified for a policy and the excess or additional coverage is not subject to the provisions of AS 28.20.010 - 28.20.640. With respect to a policy which grants excess or additional coverage the term "motor vehicle liability policy" applies only to that part of the coverage which is required by this section.

(h) A motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of AS 28.20.010 - 28.20.640.

(i) A motor vehicle liability policy may provide for proration of the insurance with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which together meet the requirements.

(k) A binder issued pending the issuance of a motor vehicle liability policy fulfills the requirements for a policy.

HISTORY (Sec. 46 ch 163 SLA 1959; am sec. 2 ch 146 SLA 1966; am sec. 4 ch 202 SLA 1975; am sec. 60 ch 94 SLA 1980)

Sec. 28.20.450.

NOTICE OF CANCELLATION OR TERMINATION OF CERTIFIED POLICY. When an insurance carrier certifies a motor vehicle liability policy under sec. 410 or sec. 420 of this chapter the insurance certified may not be cancelled or terminated until at least 10 days after a notice of cancellation or termination of the insurance is filed with the department, except that a policy subsequently procured and certified shall, on the effective date of its certification, terminate for the purpose of this chapter the insurance previously certified for a vehicle designated in both certificates. HISTORY (Sec. 47 ch 163 SLA 1959)

Sec. 28.20.460.
CHAPTER NOT TO AFFECT OTHER POLICIES.
(a) This chapter does not apply to or affect a policy of automobile insurance against liability which may now or hereafter be required by any other law of this state, except that the policy, if it contains an agreement or is endorsed to conform with the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.
(b) This chapter does not apply to or affect a policy insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of vehicles not owned by the insured.
HISTORY (Sec. 48 ch 63 SLA 1959)

Sec. 28.20.470.
BOND AS PROOF.
Proof of financial responsibility may be evidenced by the bond of a surety company authorized to transact business in this state. The bond shall be conditioned for payment of the amounts specified in sec. 230 of this chapter. The bond shall be filed with the department and shall not be cancellable except after 10 days' written notice to the department.
HISTORY (Sec. 49 ch 163 SLA 1959)

Sec. 28.20.480.
ACTION ON BOND. If a judgment given against the principal on a bond is not satisfied within 30 days after it becomes final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action in the name of the state against the company executing the bond. HISTORY (Sec. 50 ch 163 SLA 1959)

Sec. 28.20.490.
MONEY OR SECURITIES AS PROOF.
Proof of financial responsibility may be evidenced by the deposit of $25,000 in cash, or securities which are legal investments for saving banks or trust funds having a market value of $25,000. The department shall not accept a deposit unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the recording district where the depositor resides. HISTORY (Sec. 51 ch 163 SLA 1959; am sec. 15 ch 214 SLA 1975)

Sec. 28.20.500.
OWNER MAY GIVE PROOF FOR OTHERS.
(a) The owner of a motor vehicle may give proof of financial responsibility on behalf of his employee or a member of his immediate family or household. The furnishing of proof in this manner permits the person for whom it is given to operate a motor vehicle covered by the proof. The department shall endorse appropriate restrictions on the face of the license held by a person for whom proof is given by another, or may issue a new license containing these restrictions.
(b) The department, upon receiving satisfactory evidence of the violation of a restriction, may suspend the license until a certificate is filed showing a policy issued to the driver which covers the driver as operator or owner of the vehicle operated in violation of the restriction. -

Sec. 28.20.510.
SUBSTITUTION OF PROOF.
The department shall consent to the cancellation of a bond or certificate of insurance, or the department shall return money or securities to the person entitled to it, upon the substitution and acceptance of other adequate proof of financial responsibility under this chapter.
HISTORY (Sec. 54 ch 163 SLA 1959; am sec. 16 ch 214 SLA 1975)

Sec. 28.20.520.
OTHER PROOF MAY BE REQUIRED.
Whenever proof of financial responsibility filed under this chapter no longer fulfills the purpose for which it is required, the department shall required other proof as required by this chapter and shall suspend the license pending the filing of other proof.
HISTORY (Sec. 55 ch 163 SLA 1959)

Sec. 28.20.530.
APPLICATION OF DEPOSIT. The department shall hold the deposit to satisfy, in accordance with this chapter, any execution on a judgment issued against the person making the deposit for damages, including damages for care and loss of services because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use of it, resulting from the ownership, maintenance, use or operation of a vehicle subject to registration under the laws of this state after the deposit is made. Money or securities deposited are not subject to attachment or execution unless the attachment or execution arises out of a suit for damages specified in this section. HISTORY (Sec. 52 ch 163 SLA 1959; am sec. 17 ch 214 SLA 1975)

Sec. 28.20.540.
DURATION, CANCELLATION AND RETURN OF PROOF.
(a) The department shall, upon request, consent to the immediate cancellation of a bond or certificate of insurance, or shall return to the person entitled to it money or securities deposited as proof of financial responsibility, or shall waive the requirement of filing proof, in any of the following events:

(1) at any time after three years from the date proof is required when, during the three year period preceding the request, the department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license or registration of the person by or for whom the proof was furnished; or

(2) upon the death of the person on whose behalf the proof was filed or the permanent incapacity of the person to operate a motor vehicle; or

(3) if the person who has given proof surrenders his license to the department.

(b) The department shall not consent to the cancellation of a bond or the return of money or securities if an action for damages upon a liability covered by the proof is pending or a judgment upon the liability is unsatisfied, or if the person who filed the bond or deposited money or securities has within one year immediately preceding the request been involved as a driver or owner in a motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of these facts, or that he is released from all of this liability, or has been finally adjudicated not to be liable for the injury or damage is sufficient evidence in the absence of evidence to the contrary in the records of the department.

(c) Whenever a person, whose proof has been cancelled or returned under (a)(3) of this section applies for a license within a period of three years from the date proof was originally required, the application shall be refused unless the applicant reestablishes the proof for the remainder of the three-year period.

HISTORY (Sec. 56 ch 163 SLA 1959; am sec. 18 ch 214 SLA 1975)

Sec. 28.20.550.

TRANSFER OF REGISTRATION TO DEFEAT PURPOSE OF CHAPTER PROHIBITED.

(a) If an owner's registration is suspended under this chapter, the registration shall not be transferred nor the vehicle registered in any other name until the department is satisfied that the transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this chapter.

(b) This section does not affect the rights of a conditional vendor, chattel mortgagee or lessor of the vehicle registered in the name of another as owner who becomes subject to this chapter.

(c) The department shall suspend the registration of a vehicle transferred in violation of this section. HISTORY (Sec. 57 ch 163 SLA 1959)

Sec. 28.20.560.

SURRENDER OF LICENSE AND REGISTRATION, AND FALSE AFFIDAVITS.

(a) A person whose license or registration is suspended under any provision of this chapter, or whose policy of insurance or bond, when required under this chapter, is cancelled or terminated, shall immediately return his license or registration to the department. If a person fails to return the license or registration to the department, the department shall immediately direct a peace officer to obtain possession of it and to return it to the department.

(b) A person who wilfully fails to return a license or registration as required in (a) of this section or who knowingly gives an affidavit required by this chapter which is false is punishable by a fine of not more than $500, or by imprisonment for not more than 30 days, or by both. HISTORY (Sec. 58 ch 163 SLA 1959)

Sec. 28.20.570.
FORGED PROOF.
A person who forges or, without authority, signs any evidence of proof of financial responsibility for the future, or who files or offers for filing evidence of proof of financial responsibility for the future, knowing or having reason to believe that it is forged or signed without authority, is punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both.
HISTORY (Sec. 59 ch 163 SLA 1959)

Sec. 28.20.580.
ASSIGNED RISK PLANS. After consultation with the insurance companies authorized to issue motor vehicle liability policies in this state, the director of the division of insurance shall approve a reasonable plan, fair to the insurers and equitable to their policyholders, for the apportionment among these companies of applicants for motor vehicles policies and other vehicle coverages who are in good faith entitled to but are unable to procure policies through ordinary methods. When a plan is approved, all the insurance companies shall subscribe to it and participate in it. An applicant for an assigned risk policy, a person insured under an assigned risk plan, and an insurance company affected may appeal to the commissioner of commerce and economic development from a ruling or decision of the authority designated to operate the plan. Failure to adopt an assigned risk plan does not relieve any person from responsibility under this chapter. HISTORY (Sec. 60 ch 163 SLA 1959; am sec. 16 ch 144 SLA 1977)

Sec. 28.20.585.
REINSTATEMENT FEE. If an operator's license is suspended under the provisions of this chapter, the department shall charge a person who applies for reinstatement of the operator's license a reinstatement fee of $50. HISTORY (Sec. 8 ch 78 SLA 1982)

Sec. 28.20.590.
PAST APPLICATION OF CHAPTER. This chapter does not apply to any accident or judgment arising from an accident or violation of the motor vehicle laws of this state, occurring before September 1, 1959. HISTORY (Sec. 61 ch 163 SLA 1959)

Sec. 28.20.600.
CHAPTER DOES NOT PREVENT OTHER PROCESS. This chapter does not prevent the plaintiff in an action from relying for relief upon other processes provided by law. HISTORY (Sec. 62 ch 163 SLA 1959)

Sec.28.20.610
PROVISIONS OF CHAPTER APPLY THROUGHOUT STATE.
The provisions of this chapter apply upon highways and elsewhere throughout the state. HISTORY (Sec. 63 ch 163 SLA 1959)

Sec. 28.20.620.
APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.
Repealed by sec. 4 ch 140 SLA 1977.

Sec. 28.20.630.
DEFINITIONS
In this chapter unless the context otherwise requires:

(1) Repealed by sec. 20 ch 214 SLA 1976.

(2) Repealed by sec. 2 ch 135 SLA 1977.

(3) "judgment" means a judgment which is final by expiration without appeal of the time within which an appeal may be taken, or final by affirmation on appeal, given by a court of any state or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of a vehicle of a type subject to registration under the laws of this state, for damages, including damages for care and loss of services, because of bodily injury to or death of a person, or for damages because of injury to or destruction of property, including the loss of use of property, or upon a cause of action on an agreement of settlement for such damages;

(4) Repealed by sec. 2 ch 135 SLA 1977.

(5) Repealed by sec. 20 ch 241 SLA 1976; sec. 2 ch 135 SLA 1977.

(6) Repealed by sec. 2 ch 135 SLA 1977.

(7) Repealed by sec. 2 ch 135 SLA 1977.

(8) Repealed by sec. 2 ch 135 SLA 1977.

(9) Repealed by sec. 2 ch 135 SLA 1977.

(10) Repealed by sec. 2 ch 135 SLA 1977.

(11) Repealed by sec. 2 ch 135 SLA 1977.

(12) Repealed by sec. 2 ch 135 SLA 1977.

(13) Repealed by sec. 2 ch 135 SLA 1977.

(14) Repealed by sec. 2 ch 135 SLA 1977.

(15) Repealed by sec. 20 ch 241 SLA 1976.

HISTORY (Sec. 3 ch 163 SLA 1959; am sec. 20 ch 241 SLA 1976; am sec. 2 ch 135 SLA 1977)

Sec. 28.20.640.
SHORT TITLE.

This chapter may be cited as the Motor Vehicle Safety Responsibility Act.

HISTORY (Sec. 1 ch 163 SLA 1959)

END OF DOCUMENT

AGENCY: DEPARTMENT OF PUBLIC SAFETY

CATEGORY: PUBLIC PROTECTION

PROGRAM: LIFE AND PROPERTY PROTECTION

BRU(S): DRIVER/VEHICLE SERVICES

The Driver/Vehicle Services BRU is organized into four components: Vehicle Services, Driver Services, Field Services, and Administration. The basic purpose of the Vehicle Services unit is protection of ownership of vehicles by the maintenance of an official single source record of vehicle titles. License plate records also facilitate vehicle recovery when stolen. The purpose of the Driver Services unit is to restrict vehicle operation to those persons who are capable of safe operation by utilizing a system of driver testing, records maintenance, and a "driver improvement" function to identify and help improve or suspend drivers who violate safe driving laws. This unit also provides protection for innocent victims of accidents by suspending those drivers who do not meet their financial responsibilities resulting from an accident. The Field Services Unit operates the system of field offices where the public may obtain their vehicle titles, registrations, and driver licenses.

Driver and vehicle identification information collected is computerized for rapid retrieval by law enforcement agencies during investigation of criminal activities. This information is highly useful in identifying offenders. For instance, FBI statistics show that nationwide, a motor vehicle is involved in 50% of all crimes committed.

The Administration component includes the director's office, central support staff, and the municipal tax unit. The municipal tax unit is funded by charges assessed to municipalities which elect to levy a municipal motor vehicle tax; this tax is collected by the State.

202

PHONE CONTACT FOR MORE INFORMATION: Robert Rowan, Director 269-5551

SERVICE MEASURES	FY 82		FY 83	FY 84	
	PLAN	ACTUAL	PLAN	CONTINUATION	TOTAL
Number of registrations processed.	355,000	381,599	350,000	380,000	380,000
Number of titles issues.	190,000	161,080	160,000	170,000	170,000
Number of driver's licenses issued.	140,000	141,712	140,000	155,000	155,000
Accident reports processed.	20,000	20,444	17,000	22,000	22,000
Driver records produced.	96,000	77,942	90,000	85,000	85,000
Documents filmed.	2,100,000	1,996,306	2,100,000	2,200,000	2,200,000
Financial responsibility suspensions.	4,000	2,603	3,000	3,000	3,000
Point suspensions.	2,300	2,507	3,000	2,900	2,900

Car insurance is a necess

By KENT LEE WOODMAN

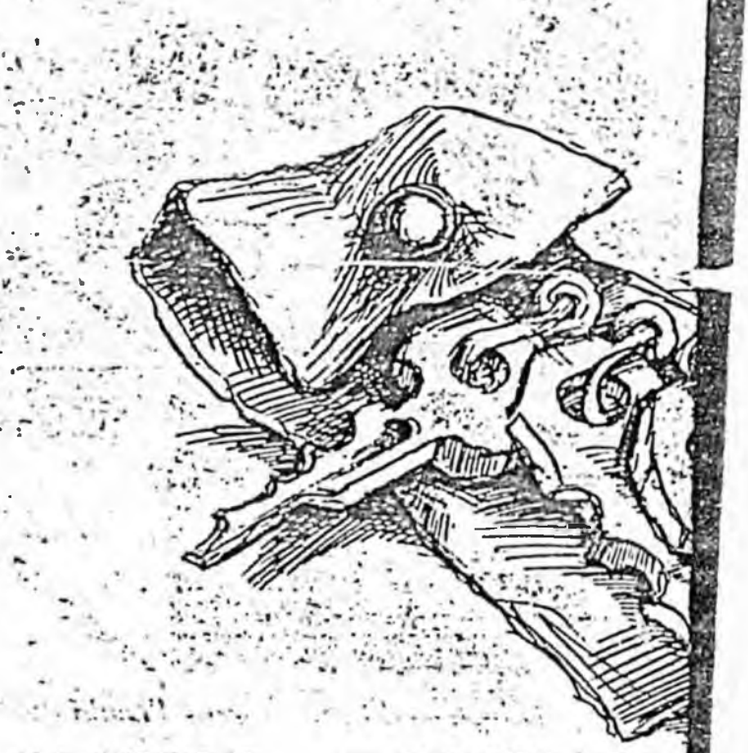
Last year in Juneau I stopped to pay my respects at Rep. Anderson's office. Previously I had correspondance with him on the subject of mandatory auto liability insurance. Rep. Anderson had draft copies of bills to require a minimum level of public liability for all auto operators and for state vehicle inspections and stickers. Neither bill was going anywhere.

Now I recognize that many folks come up here to escape the bureaucracy they had to live with in the South 48, but coming up here and abandoning all responsibility is not finding freedom, it is running from it. I once had freedom defined to me, as the freedom to take on the responsibilities you choose. We should be responsible enough to be certain that our affairs are in order to the point where we can pay for injury and damage to others for our actions. This is normally done by insurance on home and auto. We should be responsible enough to only take motor vehicles on the road which comply with the law and give everyone else a "fighting chance" to live . . . we should do these things, but many of us do not.

As an individual and as a business owner, both with adequate insurance, I am sick to my stomach time after time one of my vehicles is hit and the other driver has no insurance, no regular job, no cash reserves and often no license or registration.

We had one of our brand new Datsun diesel pickups smashed out from under my partner by a driver who had no insurance, no license, was drunk as a skunk, and who now lives in the Matanuska Valley where he gold mines and refuses to come to the phone or accept a certified letter. Our insurance paid the major portions, and we paid the $500 deductable. Our insurance carrier is "attempting to recover" both the funds they advanced and the deductable, but who knows when and if that will ever happen?

Recently our new Mazda service diesel was ripped open from end to end by a guy in a Chevy pickup with no insurance, no license, no registration. Same deal again, and another $2,800-plus.



Daily we all see the death-on-wheels that some folks push on to the public highways; no bumpers, broken windshields, missing lights, lights aimed up in your face, no defrosters, ice covered windows and drivers peering out through a postage-stamp sized hole, no brake lights, no turn indicators, bald tires in winter and summer and the whole works.

Estimates have been made that over 60 percent of the driving public in Alaska is not insured. That means that all the premiums required to cover all the accidents and injuries are paid by fewer than half of us who do have the responsiblity to have coverage. What's fair about that? Maybe we should cancel as well and let the rest of the world try to pry money out of us if we cause an accident.

I know that there will be some who will cry, "but what about the folks who cannot *afford* the insurance, cannot *afford* to keep

forum

sary responsibility for all

points of view from our community

compass

"If folks cannot, or will not, develop that sort of old-fashioned responsibility, then I am afraid we must legislate it."

their vehicles up to a safe standard?"

My answer may appear a tad cold on the surface, but think about it: perhaps they should not drive! There is the People Mover Bus system now, the third such system since I've been here and this one is working! There are special concessions made to car-poolers. Remember, the courts have long held that driving an automobile on the public highways is a *privilege, not a right.* When you take your ton of steel out there and aim it at folks, you are supposed to have your act together. If you do not, keep off the track.

You're not supposed to fly airplanes without licenses and medical. You're not supposed to conduct brain surgery or practice law without certain certificates. Why, then, should folks be allowed to go out there and cause more property damage and death each year than all the wars we've ever been in, on the public highway with no such responsiblity? If folks cannot, or will not, develop that sort of old-fashioned responsibility, then I am afraid we must legislate it.

It's a manageable program. It's a bill that already has been written once, and there are comment sheets to get it on track. We have seen recently an ordinance that lets the police pick up vehicles driven by drunks; why not the same for those who drive when their licenses have been revoked, those who drive with no public liability and those who drive vehicles with 20 or 30 write-ups?

I recognize that the mandatory vehicle inspection system offers opportunity either for heavier bureaucracy or graft, but it can be made to work . . . Hawaii and Texas do it with ease. Sure we have difficulties in the Bush, and making the same rules apply there and here in town, but they can be worked out certainly.

☐ Kent Lee Woodman is a 25-year resident of Anchorage, a licensed insurance agent, a small business owner, pilot and regional representative for the Aircraft Owners and Pilots Association.

Revised Dem Ends
Form 209

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No.: SSHB 7
Title: Motor Vehicle Insurance
Sponsor: Hayes
Requestor:

II. FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Public Prot/Just
BRU, Program of Subprogram(s) Affected:
Driver/Vehicle Services/Alaska State Troop

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		498.5	528.4	560.1	593.7	629.3
200 TRAVEL		31.0	32.9	34.9	37.0	39.2
300 CONTRACTUAL		460.2	487.8	517.1	548.1	581.0
400 COMMODITIES		35.5	37.6	39.9	42.3	44.8
500 EQUIPMENT		147.9				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		1173.1	1086.7	1152.0	1221.1	1294.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		1173.1	1086.7	1152.0	1122.1	1294.3
FEDERAL FUNDS						
OTHER (Specify Source)-						

POSITIONS:

FULL-TIME		12.0	12.0	12.0	12.0	12.0
PART-TIME						
TEMPORARY						

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

Not identified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Marcia Lynn McKenzie
Phone: 465-4349
Division: Administrative Services
Date: 04/06/83

Approved by Commissioner: [signature]
Date: 4/6/83
Department: Public Safety

Distribution:
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Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

FISCAL NOTE ANALYSIS
SSEB-7 (SB-223)

The basic assumption of this fiscal note is that for this bill to be effective there must be an adequate system of enforcement and compliance. Other states with mandatory insurance laws estimate that 5%-15% of their vehicles are operating without insurance as owners find ways to circumvent the law. We find that our present Financial Responsibility Law, AS 28.20, is practically as effective and far less costly both to the state bureaucracy and to the citizens directly.

This fiscal note assumes an effective date of July 1, 1983. A 6% inflation factor has been applied to FY 85 and beyond.

Fiscal Note Detail - Alaska State Troopers

SS House Bill No. 7

Motor Vehicle Liability Insurance

Passage of this bill will require a statewide enforcement effort to ensure compliance. If a vehicle is stopped and proves not to have current insurance it will need to be impounded. This will require numerous Troopers all over the State to spend patrol time enforcing provisions of this particular law. The bulk of the activity will take place in the Anchorage area, Fairbanks and Juneau. One additional Trooper is requested for each of these locations to absorb the increased work load.

FY '84

	Three Troopers	Academy (2)	Totals
Per. Ser.	190,268		190,268
Travel	6,000		6,000
Contractual	52,704	9,000	61,704
Commodities	9,900	600	10,500
Equip. (1)	60,900		60,900
	319,772	9,600	329,372

(1) Equipment costs are incurred during the first year only.

(2) The Public Safety Academy is budgeted only for costs of training replacement Troopers based on normal turnover of personnel. Any new Troopers required due to new legislation need additional funding.

Note: Inflation after FY '84 is estimated at 6% per year. A Form 13 for each position is attached.

1.	POSITION TITLE: State Trooper			RANGE/STEP: 76A	BARG. UNIT: PSEA	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 13.9	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Palmer	ELECTION DISTRICT: 7-15	LEG.		

3.	CONTINUATION LEVEL		ADDITION	
4.	TYPE OF EXPENDITURE			AMOUN
	1		2	3
	PERSONAL SERVICES			
5.	Salary $2,698 + 25 hrs. OT		44,118	
6.	Benefits .2721		11,266	
7.	Supplemental Benefits		2,880	
8.	Fixed Benefits		2,240	
9.	TOTAL PERSONAL SERVICES	01		60,504
10.	Travel	02		2,000
11.	Contractual	03		17,568
12.	Commodities	04		3,300
13.	Equipment	05		20,300*
14.	Other			
15.	TOTAL COST			103,672

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	103,672
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR BDN USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

This position will be utilized on increased patrol activity due to the need to check motor vehicle records to assure compliance with this new law.

* Equipment costs will be incurred in the first year only.

13 REQUEST FOR NEW POSITION

AGENCY: Department of Public Safety
PROGRAM: Crime ID & Apprehension
BRU: Alaska State [illegible]
COMPONENT: Detachments & C.

Page 1 of 3
Revised Date

FY 84

1.	POSITION TITLE: State Trooper			RANGE/STEP: 76A	BARG. UNIT: PSEA	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 13.9	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Juneau	ELECTION DISTRICT: 7-15	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $2,998 + 25 hrs. OT	44,118	
6.	Benefits .2721	11,266	
7.	Supplemental Benefits	2,880	
8.	Fixed Benefits	2,240	
9.	TOTAL PERSONAL SERVICES	01	60,504
10.	Travel	02	2,000
11.	Contractual	03	17,568
12.	Commodities	04	3,300
13.	Equipment	05	20,300*
14.	Other		
15.	TOTAL COST		103,672

	RECEIPT COLS	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	103,672
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

This position will be utilized on increased patrol activity due to the need to check motor vehicle records to assure compliance with this new law.

* Equipment costs will be incurred in the first year only.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers

COMPONENT Detachments & C.I.B.

Revised Date

FY 84

1.	POSITION TITLE: State Trooper			RANGE/STEP: 76A	BARG. UNIT: PSEA	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 13.9	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Fairbanks	ELECTION DISTRICT: 18-21	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $3,472 + 25 hrs OT	51,093	
6.	Benefits	13,047	
7.	Supplemental Benefits	2,880	
8.	Fixed Benefits	2,240	
9.	TOTAL PERSONAL SERVICES	01	69,260
10.	Travel	02	2,000
11.	Contractual	03	17,568
12.	Commodities	04	3,300
13.	Equipment	05	20,300*
14.	Other		
15.	TOTAL COST		112,428

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	112,428
19.		I/A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR OMB USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

This position will be utilized on increased patrol activity due to the need to check motor vehicle records to assure compliance with this new law.

* Equipment costs will be incurred in the first year only.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID & Apprehension

BRU Alaska State Troopers

COMPONENT Detachments & C.I.B.

Revised Date

FY 84

FISCAL NOTE DETAIL Driver/Vehicle Services Page 1
SS HB7

EXPENDITURES

	FY 84	FY 85	FY 86
100 Personal Services	308.2	326.7	346.3
200 Travel	25.0	26.5	28.1
300 Contractual	398.5	422.4	447.7
400 Commodities	25.0	26.5	28.1
500 Equipment	87.0	-0-	-0-
TOTAL	843.7	802.1	850.2

For this bill to be effective the Division of Motor Vehicles must create a compliance unit of 9 employees. The compliance unit must be located with Division headquarters since there must be ready reference to the existing ownership and registration record. The present headquarters location will not accomodate any expansion, therefore, the fiscal note provides for relocation and lease of new space for the Division of Motor Vehicles headquarters in FY-84.

A further breakdown by object code is attached. The reason for such a large figure in the 310 catagory is because of statutory requirement that all suspension notices must be sent by registered or certified mail, return receipt requested. If action is taken on 30,000 uninsured vehicles, at $1.55 postage per notice, that cost alone is $46,500.

ANALYSIS (continued):

The FY-84 costs for the compliance unit are as follows:

100 Personal Services

1 - Insurance Compliance Unit Supervisor (Range 18, new classification)	49.5
2 - Hearing Officers (Range 16, new classification)	85.0
1 - Clerk V	31.3
4 - Clerk IV	112.8
1 - Microfilm Equipment Operator	29.6
TOTAL	308.2

200 Travel

Hearing Officers to travel to various cities to conduct suspension hearings	25.0

300 Contractual

310 - phones, tolls, postage	51.5
320 - forms, advertising, public notice	15.0
330 - headquarter's space lease (6,000 sq. ft.)	162.0
360 - equipment rental (4 AJIS terminals)	30.0
382a - DP Chargeback programming and maintenance	80.0
TOTAL	398.5

ANALYSIS (continued):

400 Commodities

Normal office supplies		25.0

500 Equipment

Office Equipment (9 employees)		27.0
Word Processing Station (Wang)		20.0
Microfilm Camera and Printer		40.0
	TOTAL	87.0

Inflation for subsequent years if figured at the 6% level.

1.	POSITION TITLE Clerk IV			RANGE/STEP 9	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1700	20.4	
6.	Benefits	3.6	
7.	Supplemental Benefits	1.3	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES 01		28.2
10.	Travel 02		
11.	Contractual 03		5.0
12.	Commodities 04		1.0
13.	Equipment 05		3.0
14.	Other		
15.	TOTAL COST		37.2

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	37.2
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&N USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

The state is required to suspend vehicle registrations and operator's licenses of those found to be operating a motor vehicle without liability insurance. The clerical functions associated with this are highly specialized in that the Clerk IV must be able to do detailed research in both motor vehicle and drivers records, must be familiar with different types of insurance policies, and must have a working knowledge of all motor vehicle laws.

Accuracy is essential in this work since the consequences of the unit's actions on individual citizens is great. The loss of vehicle and driving privileges is a harsh step and the possibility of error must be eliminated to avoid working hardships on innocent parties. To assist in record tracking and handling similar form correspondence, a Wang word processing unit will be used by the section.

Based on other states' experience, approximately 10% or 30,000 vehicle owners will try to circumvent or violate this law. The volume of records and correspondence with 30,000 cases annually will require a unit of 4 Clerk IVs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Page 1 of 1

Revised Date

FY 84

1.	POSITION TITLE Clerk IV				RANGE/STEP 9	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1700	20.4	
6.	Benefits	3.6	
7.	Supplemental Benefits	1.3	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES	01	28.2
10.	Travel	02	
11.	Contractual	03	5.0
12.	Commodities	04	1.0
13.	Equipment	05	3.0
14.	Other		
15.	TOTAL COST		37.2

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	37.2
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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

JUSTIFICATION

The state is required to suspend vehicle registrations and operator's licenses of those found to be operating a motor vehicle without liability insurance. The clerical functions associated with this are highly specialized in that the Clerk IV must be able to do detailed research in both motor vehicle and drivers records, must be familiar with different types of insurance policies, and must have a working knowledge of all motor vehicle laws.

Accuracy is essential in this work since the consequences of the unit's actions on individual citizens is great. The loss of vehicle and driving privileges is a harsh step and the possibility of error must be eliminated to avoid working hardships on innocent parties. To assist in record tracking and handling similar form correspondence, a Wang word processing unit will be used by the section.

Based on other states' experience, approximately 10% or 30,000 vehicle owners will try to circumvent or violate this law. The volume of records and correspondence with 30,000 cases annually will require a unit of 4 Clerk IVs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Revised Date

FY 84

01-1156 (7/82) - 13

1.	POSITION TITLE Clerk IV			RANGE/STEP 9	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL		ADDITION	
4.	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
	PERSONAL SERVICES			
5.	Salary 1700		20.4	
6.	Benefits		3.6	
7.	Supplemental Benefits		1.3	
8.	Fixed Benefits		2.9	
9.	TOTAL PERSONAL SERVICES	01		28.2
10.	Travel	02		
11.	Contractual	03		5.0
12.	Commodities	04		1.0
13.	Equipment	05		3.0
14.	Other			
15.	TOTAL COST			37.2

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	37.2
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

The state is required to suspend vehicle registrations and operator's licenses of those found to be operating a motor vehicle without liability insurance. The clerical functions associated with this are highly specialized in that the Clerk IV must be able to do detailed research in both motor vehicle and drivers records, must be familiar with different types of insurance policies, and must have a working knowledge of all motor vehicle laws.

Accuracy is essential in this work since the consequences of the unit's actions on individual citizens is great. The loss of vehicle and driving privileges is a harsh step and the possibility of error must be eliminated to avoid working hardships on innocent parties. To assist in record tracking and handling similar form correspondence, a Wang word processing unit will be used by the section.

Based on other states' experience, approximately 10% or 30,000 vehicle owners will try to circumvent or violate this law. The volume of records and correspondence with 30,000 cases annually will require a unit of 4 Clerk IVs.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services .

Revised Date

FY 84

01-1136 (7/82) - 13

1.	POSITION TITLE Hearing Officer			RANGE/STEP 16	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3.
	PERSONAL SERVICES		
5.	Salary 2670	32.0	
6.	Benefits	5.6	
7.	Supplemental Benefits	2.0	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES	01	42.5
10.	Travel	02	10.0
11.	Contractual	03	5.0
12.	Commodities	04	2.0
13.	Equipment	05	3.0
14.	Other		
15.	TOTAL COST		62.5

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	62.5
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR OSM USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The mandatory insurance bill requires the state to suspend vehicle registrations, plates, and operator's licenses for those people who operate a vehicle without the required liability insurance. Prior to taking any action of this type, the department must provide the person an opportunity for an administrative hearing (AS 28.05.131).

Using estimates based on other states' experience with mandatory insurance, there will only be a 90% compliance level. This means action will be taken on the remaining 10% or 30,000 uninsured vehicles. The hearing officer must travel to all areas of the state to administer the hearings. With this volume there will be two hearing officers required.

Due to the limited scope of the hearing items, it is not necessary to have an attorney in this position.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Page | of |

Revised Date

FY 84

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Microfilm Equipment Operator I				10	GGU				
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT	LEG.		

3. CONTINUATION LEVEL | | ADDITION |

4. TYPE OF EXPENDITURE	1	2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary 180	21.6	
6.	Benefits	3.8	
7.	Supplemental Benefits	1.3	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES	01	29.6
10.	Travel	02	
11.	Contractual	03	5.0
12.	Commodities	04	4.0
13.	Equipment	05	43.0
14.	Other		
15.	TOTAL COST		118.8

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	118.8
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR OMB USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

As a result of this bill, each vehicle operator must present some form of proof of insurance at the time of registration. This form is kept with the vehicle records which are microfilmed. Also the records of registration, suspensions, and all associated documents are microfilmed and kept with vehicle records. These forms and documents will represent a 20% increase in the documents presently maintained by the Vehicle Services Unit.

To accomodate this increased workload, a Microfilm Equipment Operator I is necessary to augment the present staff. Equipment associated with this position includes a microfilm camera and a reader-printer work station.

The microfilm retrieval system currently being used has proved cost effective in terms of labor savings and rapid response to filing needs. The high initial cost of equipment is soon offset by savings in labor and file storage costs.

13 REQUEST FOR NEW POSITION

AGENCY: Department of Public Safety

PROGRAM: Life and Property Protection

BRU: Driver/Vehicle Services

COMPONENT: Vehicle Services

Revised Date

FY 84

01-1136(7/82)-13

1.	POSITION TITLE: Insurance Compliance Unit Supervisor				RANGE/STEP: 18	BARG. UNIT: Sup.	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 3143	37.7	
6.	Benefits	6.6	
7.	Supplemental Benefits	2.3	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES 01		49.5
10.	Travel 02		5.0
11.	Contractual 03		5.0
12.	Commodities 04		2.0
13.	Equipment 05		3.0
14.	Other		
15.	TOTAL COST		64.5

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	64.5
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR OMB USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The mandatory insurance laws require that the state take action against those who do not have liability insurance or those who cancel policies after registration. Administration of this program is the responsibility of the Insurance Compliance Unit. The Supervisor of this unit will act under the general direction of the Chief of Vehicle Services and will be responsible for the supervision of seven employees.

This position carries considerable authority in that this unit has the responsibility of suspending both vehicle registration and operator's licenses of violators. This will require close coordination with the insurance industry, the court system, and law enforcement agencies to ensure that appropriate and timely action is taken and that complete due process is given to the citizen.

The intent of the law is to have 100% compliance, however based on other states' experience, usually only 90% compliance is achieved. This will require some action be taken on 30,000 uninsured vehicles and their owners.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Revised Date

FY 84

81-113G (7/82) - 13

1.	POSITION TITLE Clerk V			RANGE/STEP 11	BARG. UNIT CCU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1914	23.0	
6.	Benefits	4.0	
7.	Supplemental Benefits	1.4	
8.	Fixed Benefits	2.9	
9.	TOTAL PERSONAL SERVICES 01		31.3
10.	Travel 02		
11.	Contractual 03		5.0
12.	Commodities 04		1.0
13.	Equipment 05		3.0
14.	Other		
15.	TOTAL COST		40.3

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	40.3
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

Under the general supervision of the Insurance Compliance Unit Supervisor, this position will supervise the clerical section of this unit. The unit will perform checks on those suspected of being in violation of the insurance laws. The consequences of the actions of this section in suspending vehicle registrations and operator's licenses and complexity of the due process system require a high level of supervision and expertise.

The section supervisor must have a thorough knowledge of motor vehicle laws and forms and vehicle insurance practices and policies. This section will also schedule administrative hearings and the supervisor must coordinate these with the hearing officer's travel plans.

This position will be responsible for the final actions of the unit, and accuracy and good judgement are essential to ensure correct compliance with the insuracne laws and to avoid hardships for innocent vehicle operators.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Vehicle Services

Revised Date

FY 84

01-1136(7/82)-13

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

April 11, 1983

To: House Labor and Commerce Committee

From: Jeff Day
Assistant to the Speaker

Re: Fiscal Note for Department of Public Safety on SSHB 7

There are several misconceptions made in the fiscal note provided for SSHB 7 that this office wishes to respond to. Additionally it is felt, the fiscal note is not an accurate reflection the result of the legislation but, rather, is intended to discourage passage of the bill.

1. This is virtually the same fiscal note that was produced for the original HB 7 despite the fact that numerous changes and revisions were made in the sponsor substitute with a desire of lowering the proposed fiscal impact. It is felt that the changes in SSHB 7 were not taken into consideration in preparation of this fiscal note.

2. The fiscal note assumes an effective date of July 1, 1983. In fact the bill proposes an effective date of July 1, 1984 in order to give the Department sufficient time to prepare to implement this legislation. The fiscal impact in FY 84 should be minimal. This note does not reflect that fact.

3. The fiscal note states that every car stopped in which the driver could not provide proof of insurance would have to be impounded. That is not the case. The legislation gives discretion to a peace officer to impound a car on the spot. It does not mandate impoundment at that time. In fact a provision has been provided to issue a citation which is believed will be the usual course of action in such cases. Impoundment on the spot would only be likely if a peace officer knows he is dealing with a repeat offender or some similar case.
The fiscal note reflects the desire for three state troopers to enforce the impoundment procedures which it feels are mandated. Since the bill does not mandate impoundment, it is felt these troopers are not needed for this activity. This cost should be eliminated from the fiscal note.

It must also be noted that the request for the three troopers includes 25 hours overtime in their proposed salaries without justification from the Department.

The fiscal note assumes a compliance unit of 9 persons will be required all based in Anchorage. If all are based in Anchorage, it is stipulated there must be more space made available. Why must all nine employees be based in Anchorage?

In the justification sections for the Clerk positions there are some misleading statements. The simple check for license and registration with regard to liability insurance should not be a "highly specialized" function as the fiscal note assumes. Micro film and computer technology should make this a relatively simple task along with the resulting form paper work. It is agreed that accuracy will be essential, but the qualifications and justification for this level of clerk service are overstated.

The fiscal note assumes that 10% will try to circumvent the law. While the ten per cent figure may be legitimate, it must be pointed out that some states have stated that only 5% try to circumvent the law. In any case, the legislation does not direct DMV to search all their records and find those who are trying to slip through the cracks. It only directs DMV to take action on those that come to its attention through notification by insurance companies. The assumption must also be made that this law will provide an incentive for many uninsured drivers to get insurance, provide proof to DMV at the time of registration or license renewal or the registration simply will not be renewed. There is no intent for DMV to initiate investiagtions into non insured motorists unless there is a clear action in which a motorist cancels a policy.

The justification for a clerk V position is questionable. These duties could be carried out by the unit supervisor or by one of the other four clerk positions.

In summary, the fiscal note reflects a cost that is similar to programs enacted in other states but which deal with many more vehicles than the number registered in Alaska. There are several wrong or misleading assumptions that have created what is felt to be an inflated fiscal note. These areas should be re-examined and the department should be urged to read the sponsor substitute and understand it to a better degree for preparation of a revised fiscal note.

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

April 18, 1983

The Honorable Walt Furnace
Chairman
House Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: SSHB 7/ Reply to letter by Michael Thomas

Dear Representative Furnace:

You have received a letter from Michael Thomas who represents the American Insurance Association. He list a number of reasons why this legislation should not be enacted. I wish to offer the following arguments for enactment of the legislation.

First, the insurance industry in general has opposed compulsory insurance, yet it has been enacted in about 2 dozen states. While it has been repealed in a couple and amended in some states, the fact remains...THE MAJORITY OF THOSE STATES WHICH HAVE TRIED THIS APPROACH HAVE KEPT IT. If such laws are so inneffective as the industry would want you to believe, why have most of the states retained these laws?

The arguments say that no law has proved completely effective in accomplishing a 100% insured motoring population. We do not expect 100% compliance. We do expect two accomplishments. It is believed that more people will buy insurance. If we can achieve even 90% compliance, that is a significant improvement over current estimates. Some states have achieved an even higher insured percentage. Two, the bill provides strong disincentives to drive while not insured. It is believed that the possibility of severe penalties will keep a significant portion of uninsured drivers off the road rather than risking loss of driving priveleges or a motor vehicle. The bill is not aimed solely at mandating compliance. It also seeks to provide an incentive for to find alternate transportation for the uninsured.

The letter says that North Carolina has had problems achieving successful results with its law and " has still left many vehicles uninsured." However, in statistics obtained in 1981 it was learned that the prediction was that only 5% evaded the system and were uninsured. And of the accidents occuring in state involving in state drivers, less than one half of one per cent were found to be uninsured. In Alaska, a survey of accidents showed in 1980 and 1981 that about 20% of those people involved in accidents were uninsured. This points out that the North Carolina law has worked and I believe, if we could achieve their success rate, the legislation would have to be considered a success.

Two points need to be made. The letter from the insurance industry is misleading and vague. If there are inaccuracies in this one section, I submit that same vagueness likely persists throughout the letter. Insurance industry publications on this subject argue very effectively but in a very vague manner.

The letter also infers that compulsory insurance doesn't work because states still mandate the offering of uninsured insurance. First, you must realized uninsured or underinsured insurance is not required by any driver. It can be waived by the insured. But it's offering allows a person to take ALL precautions to protect himself.

The letter infers that this law would be easy to avoid and that a motorist will cancel insurance the day after he buys it to comply with the law. While it is recognized a small hard core percentage might do this, once again there are disincentives in the bill that will make people really think about taking the chance of getting caught without insurance. I don't believe there is another states which has proposed as severe penalties as this legislation seeks to do for non compliance. There has not been serious objection to the notification requirments placed on insurance companies by this legislation at this point. North Carolina has reported reduced cost and administrative burden by requiring notification by insurance companies of cancellation only within the first six months of policy issuance. This is what our bill proposes to require.

Nobod is assuming the law will cost nothing to enforce. It will take efficient enforcement and a substantial amount of money. It is not believed it will require what Dept. of Public safety is asking for in a fiscal note.

The bill also infers that premiums will rise dramatically if this program is adopted. First it is obvious premiums will rise if higher minimum liability limits are adopted. The desire to raise the limits may be a bargaining item even though it is not believed rates will increase as substantially as proposed. Whether there may be an increase in premiums simply as a result of mandatory insurance is subject to debate. The removal of the higher minimum limits negates much of the letter's argument, however.

The letter says that study of alternatives has not been undertaken on how to improve current law. A substantial directive has been received from the public for mandatory insurance. The public wants action now..not a study.

Conclusion

No one has ever assumed enactment of this legislation will result in a 100% insured motoring public. But results from other states have shown similar laws do increase the number of insured drivers. A combination of mandatory liability insurance and the offering of uninsured and underinsured insurance coupled with retention of the current financial responsibility law is the most effective way to close loopholes and protect the public.

Other states have encountered probems with the law, but most states that have enacted the law HAVE KEPT IT. Obviously, something beneficial is happening. It is realized there will likely be amendments to this law in the future if adopted. But it is a good starting point. Efforts have been taken to choose the better parts of legislation from many states so that it is effective and cost efficient.

The insurance industry has a very well financed lobbying effort to ward off these laws when the crop up around the nation. I caution the committee not tp be misled by vague facts or misrepresentations in statement. I believe the public has expressed an interest in this legislation and it is the responsibility of the legislature to represent the public..not the insurance industry.

This office remains open to work with others seriously concerned with addressing this public concern.

Sincerely,

Jeff Day
Assistant to the Speaker

ccidents urged

YORK — The standardiza- state accident reports is being ed to state regulators by nt Insurance Agents of Inc.

recommends that an accident e developed by the National ation of Insurance Commis- In cooperation with IIR/- Corporation in order to cut consumers, agents and while streamlining the ction process. In a letter to Vice President and Executive Chairman Bill Gunter, the IIAA requested that an advisory committee be set develop such a form.

request will be brought the NAIC's systems for dere- and improved regulation sub- at the NAIC meeting in this March.

• • •

Kilpatrick to assume onal executive roles

YORK — Ralph S. Saul, of CIGNA Corporation, an- January 17 that the co-chief structure, established at the 1982 merger of Con- General and INA, will be re- with a more traditional struc- tive as of the April 18 annual of shareholders. Following meeting it is planned that will serve as chairman of the of directors and Robert D. will serve as president and executive officer of CIGNA. Kilpatrick have been co-chief since the merger.

ting on this action, Saul major decisions to integrate Connecticut General and INA have made and the policies and required to manage CIGNA been established. Moreover, is expected to meet the goals Kilpatrick and I set for the of the merger. In view of the made regarding the merger, concluded in consultation with that it is now appropriate a more traditional form current structure to address and operational needs of

the new structure Saul, in to serving as chairman of the will chair the executive and committees of the board.

served as chairman and executive officer of INA from the merger. Kilpatrick, 58, as president and chief officer of Connecticut from 1976 until the merger, joined the company in 1954.

auto identification card

WHITE PLAINS, NY — Robert E. Merriman, executive vice president of the recently merged IIR/ACORD Corporation, has announced the availability of a uniform automobile insurance identification card effective February 15. Six of the 18 states that require proof of insurance as part of their mandatory automobile insurance laws have approved the ACORD form. Three other states appear to be nearing approving it, and several others have indicated that they are looking favorably upon it.

Those states where the card has been approved include Colorado, Connecticut, Delaware, Montana and Texas. Kansas also has given its approval, but has limited its use to private passenger automobiles.

Companies also are required to print and distribute ID cards of some type in Florida, Georgia, Hawaii, Idaho, Kentucky, Michigan, Nevada, New Jersey, New York, Oklahoma, Pennsylvania, and West Virginia. Some companies also issue ID's on a voluntary basis in states where they are not required. Although the majority of these forms are similar in appearance, each jurisdiction has some unique content or size requirement, necessitating separate forms which will comply with the state's regulation.

• • •

Reinsurance arbitration program offered by IAF

NEW YORK — A new arbitration program to help insurers and reinsurers speedily resolve their disputes has been developed by Insurance Arbitration Forums, Inc.

The "Excess/Primary Reinsurance Arbitration" program provides an effective vehicle for the settlement of inter-insurer disputes, according to Bernard L. Hines Jr., executive director of IAF, a non-profit industry organization.

"This program will enable insurers and reinsurers to resolve their disputes more quickly and efficiently," he said.

Prior to the establishment of the IAF program, there were no formal rules to guarantee an objective and prompt settlement of a reinsurance dispute, said Hines.

Now, through IAF's national network, cases involving all types of reinsurance disputes are being handled according to specific arbitration rules, he said. In addition, the entire arbitration process takes only 60 to 90 days.

Under the reinsurance program, disputing parties choose the hearing site and participate in the selection of arbitrators from IAF's group of experienced reinsurance executives.

Filing cost for the program is $250 for each disputing party. The program is voluntary and handled on a per case basis.

Additional information is available

The new cos

Theories of liability have develop legal scholars and underwriters of a

The latest and perhaps the harde of liability for wrongful life . . . not theory was accepted by the Wash (January 14 INSURANCEWEEK) a

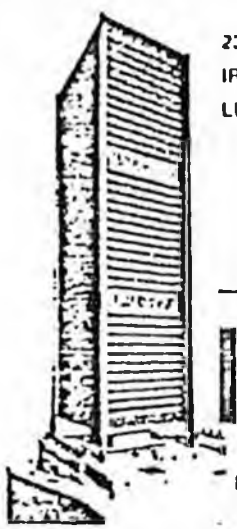
Under the recent ruling of the W their parents may recover damages properly inform expectant parents prevented the choice of abortion.

It is difficult to argue against the sure from a physician concerning unborn child. It is logical in some i the right to decide on abortion coul doctor who failed to properly infor defects. However, the ruling that th damages against the doctor in favor is stretching the judicial function be

Most of us will agree that we can stances under which we would pre the court to award damages to a wrongfully permitting the child to mation that could have resulted in a jury to place a negative measuremen

Permitting recoveries for wrong liability to the unborn and to the a holding physicians liable for the s permitting them to die.

Wrongful life liability and the in expansion of liability for medical se pressures on medical practitioners increase costs for patients.



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HOUSE RESEARCH AGENCY
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Juneau, Alaska 99811
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MEMORANDUM March 6, 1980

TO: Representative Sally Smith

FROM: Peter B. Froehlich

RE: Uninsured Motorists and the Motor Vehicle Safety Responsibility Act (AS 28.20) (Research Request No. 69)

You recently asked this agency to explore possible methods to "tighten up" the Motor Vehicle Safety Responsibility Act (AS 28.20). In the course of our research on the Act, we learned that the Senate Commerce Committee has been studying the same issue. That committee has received a report from Richard Block, former director of the Division of Insurance, addressing amendments to the Act, as well as other approaches to the problem of uninsured motorists in Alaska. Senator Bradley has recently introduced one bill as a result of Mr. Block's report (SB 460 authorizing municipalities to impose mandatory insurance). Another, which will amend and tighten up the Motor Vehicle Safety Responsibility Act is currently being drafted by the Legal Services Division of the Legislative Affairs Agency for the committee.

In light of the existence of Mr. Block's report and the legislation which Senate Commerce Committee intends to introduce amending the Act, you have instructed us that completion of our research pursuant to your request was not necessary. Nonetheless, we offer this memorandum as a brief summary of our work thus far.

* * * * * * * * * * * *

The problem at hand is that over 50% of the registered private vehicles in Alaska are completely uninsured. In 1978, according to Division of Insurance statistics, the figure was 49.1%. Although that year is the most recent for which complete data is available, the trend has been an increase in the figure each year.

The answer to the problem is not at all simple, and many possibilities have been suggested. Mandatory insurance appears to be the least popular for several reasons. In the states which have tried it, enforcement and administration has been an expensive burden and insurance rates have often climbed faster than in states without mandatory insurance.

"No fault" insurance is perhaps a more workable solution, but has not been popular with insurance carriers, attorneys and others in Alaska when it has been considered by the legislature in the past.

Amendment of the existing Motor Vehicle Safety Responsibility Act may be the most feasible answer. This approach would take advantage of the main body of an existing chapter of the Alaska Statutes. It would therefore result in less disruption, adjustment and staff increase in the existing bureaucracy which implements the Act. It would be simpler both to legislate and to administer. Because fewer people would be forced by law to buy insurance, individual freedom of choice would be preserved to a greater degree. While all possible problems with uninsured drivers would not be solved, significant improvement could result from amending the Act.

The Motor Vehicle Safety Responsibility Act was enacted in 1959 during the first legislative session after Statehood. The Act deals with two separate subjects: 1) the requirement of deposit of security by uninsured motorists involved in an accident (AS 28.20.050-220); and 2) the requirement of proof of financial responsibility for the future by motorists convicted of certain offenses or involved in an accident (AS 28.20.230-600). The Act has been amended 13 times from 1964 through 1977. However, none of these amendments were really substantive. They merely made minor changes such as raising dollar amounts (e.g., ch 202 SLA 1976 and ch 144 SLA 1977), repealing some sections and subsections (e.g., 53 SLA 1973 and ch 135 SLA 1977), and substituting the Department of Public Safety for the Department of Revenue in the administration of the Act (e.g., ch 214 SLA 1976). Although the Alaska Supreme Court made several specific suggestions for substantive amendments to the Act in Paulson vs. National Indemnity Co. 498 P2 d731 (AK 1972), no remedial action was taken by the legislature. The Act has been significantly interpreted in one other Alaska Supreme Court case, Hart vs. National Indemnity Co. 422 P2 d1015 (AK 1967). It has been cited or applied in at least 9 other cases, including three Alaska Supreme Court cases, two Federal District Court cases, and four Alaska Superior Court cases.

Several amendments to the Act have been suggested either by others contacted during our research or by the research itself. First, of course, are the suggestions of the Alaska Supreme Court in the Paulson decision 498 P2 d731 at 737. These suggestions are directed at tightening the requirements of the second part of the Act for proof of financial responsibility for the future by motorists involved in accidents. The court suggested the repeal of language in AS 28.20.410 and 440 which allows a motorist to satisfy the act by insuring only one of several vehicles he owns.

Two amendments were suggested by Ken Moore, director of the Division of Insurance in a January 24, 1980 letter to Senator Hackney. These amendments would 1) prevent registration of a vehicle or renewal thereof by anyone required under the Act to file proof of responsibility for the future who did not do so; and 2) make any falsification of such proof punishable by a fine or jail sentence. The latter suggested amendment appears to be covered by existing AS 28.20.570. The first suggestion, essentially tightening the relationship between the Act and AS 28.10 (Vehicle Registration) appears to be necessary and desirable; however, it would be susceptible to devious compliance by an individual who obtains an insurance policy, registers his car, and then cancels his policy.

Another possible amendment to tighten the Act would be repealing AS 28.20.260(b) which exempts anyone involved in an accident who establishes his freedom from fault in court from the proof of financial responsibility in the future requirement. The Department of Public Safety in 13 AAC 08.110 has implemented this section by providing that only those who "in the department's opinion" stand a "reasonable possibility" of being held liable in court need provide the required proof. Eliminating the exemption of AS 28.20.250(b) would force more people to prove financial responsibility and save the department from making its finding as to reasonable possibility of liability. However, it would also force innocent parties to accidents to buy what would probably be high risk, high cost "SR 22" insurance.

One last amendment which has been suggested may be the most effective measure. It is a suggestion which apparently arose from Mr. Block's report to the Senate Commerce Committee and will be included in that committee's bill. This approach would follow the example of New Mexico and enact a fairly stiff penalty (fine and/or jail) for any uninsured motorist who is involved in an accident in which he has any fault.

In conclusion, we should note that the whole area of automobile insurance and solutions to the problem of uninsured motorists is very complex, and no perfect solutions seem to be available. If you have any futher questions or desire any additional background information on this matter, please contact us.

PBF/dp

A STUDY OF UNINSURED MOTORISTS INVOLVED IN REPORTED AUTOMOBILE ACCIDENTS

AUGUST 1980

ANN DURAND

INSURANCE INDUSTRY STUDIES
BY THE
ALL-INDUSTRY RESEARCH ADVISORY COUNCIL

RESEARCH REPORT A80-5

ACKNOWLEDGMENTS

This research report was carried out under the auspices of the Personal Lines Committee of the All-Industry Research Advisory Council. Additional copies of the study may be made or it may be quoted with proper attribution to the author and Personal Lines Committee of the Council. Correspondence regarding the study should be directed to the All-Industry Research Advisory Council, 7315 Wisconsin Avenue, Suite 231-W, Bethesda, Maryland 20014.

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HERMAN BRANDAU, COUNSEL
State Farm Mutual Automobile Insurance Company

A Study of Uninsured Motorists Involved in Reported Automobile Accidents

Overview

A study of the characteristics of uninsured motorists and of the vehicles they drive has been done by the Personal Lines Committee of the All-Industry Research Advisory Council (AIRAC). This study was based on data obtained from official accident report forms filed with motor vehicle departments in seven states--California, Florida, Louisiana, North Carolina, Oregon, Virginia, and West Virginia. It was assumed that a vehicle was uninsured if the accident report did not show the vehicle was insured, or if the driver at the time of the accident was other than the owner and no insurance was shown.

Major findings from this study of uninsured drivers involved in reported accidents were as follows:

1. About 70% of the uninsured motorists in the study were males. In all accidents (including both insured and uninsured), almost 70% of the drivers were males, also. Thus, there does not appear to be any significant difference by sex in the insured population and the uninsured population. It is interesting to note that males, who make up 53% of all licensed drivers, were involved in a disproportionate share of accidents.

2. Uninsured motorists tended to be younger drivers. Some 46% of the uninsured motorists in the study were under age 25 compared with 38% of all drivers involved in accidents and 22% of all licensed drivers in the seven survey states.

3. About 30% of the uninsured motorists were not owners of the vehicles driven in the reported accidents. Younger drivers were less likely than older drivers to be owners (possibly a reflection of young people driving parents' cars).

4. A large proportion of the uninsured vehicles were older models. Some 46% of the uninsured vehicles in the study were 1971 models or older compared with 36% of all cars in operation.

5. A special analysis of the areas of residence of the uninsured motorists examined levels of income and of mobility. This analysis suggested that failure to have auto insurance was not restricted to a limited segment of the population (i.e., the uninsured motorists were not concentrated in any particular types of areas.)

Introduction

Although the magnitude of the problem presented by the uninsured driver to the insured public and to the auto insurance industry is difficult to measure, it has been alleged that the number of uninsured drivers is increasing and that a major reason for car owners driving without insurance is the high cost of such auto insurance. In 1978, the Personal Lines Committee of the All-Industry Research Advisory Council (AIRAC) charged a subcommittee with exploring changes in consumer behavior resulting from increases in auto insurance premium. One project initiated by this subcommittee was a study of the characteristics of uninsured motorists and of the vehicles they drive. This report summarizes the results of that study.

Methodology

Recognizing the limitations of examining aggregate statistics comparing car registrations with insured cars and of surveying consumer attitudes and behavior (possible self-reporting bias), the approach taken in this study was to examine information provided on official accident report forms that described accidents involving private passenger vehicles. Information about uninsured drivers and vehicles was provided by motor vehicle departments in seven states from the reports of accidents that occurred during a one-month period or from reports processed during a one-month period. For the purpose of this study, it was assumed a vehicle was uninsured if the accident report did not show that the vehicle was insured. Also, if the driver was other than the owner and no insurance was shown, it was assumed that there was no insurance applicable. It should be noted that data in this study describing uninsured drivers were based solely on accident reports filed in the seven survey states, and no effort was made in the course of this study to verify the accuracy or completeness of these reports.

Information was obtained from the states of California, Florida, Louisiana, North Carolina, Oregon, Virginia, and West Virginia using survey forms similar to that shown in Appendix A. The following items were collected for each uninsured driver: accident date, accident location (county), residence ZIP code, birthdate, sex, vehicle ownership, vehicle model year, vehicle make, and types of damage. States were selected to take part in this study on the basis of their ability to provide the desired information and their willingness to participate. A list of survey periods is shown in Appendix B for each participating state.

It should be noted that this method did not provide information about uninsured motorists in general, but about uninsured motorists who were involved in accidents reported to their respective state motor vehicle departments. Consequently, comparisons in this report of uninsured motorists with distributions of all drivers involved in accidents are more meaningful than comparisons with all licensed drivers (which are also provided). Because distributions of all drivers involved in accidents were not available for the seven survey states individually, data for 24 states combined were used for comparison purposes. Unfortunately, appropriate distributions of all vehicles involved in accidents by make and by model year were not available.

Summary of Results

Descriptive information was collected for a total of 6,159 uninsured motorists involved in reported accidents in the seven survey states. The number of uninsured motorists and the number of accident reports reviewed during the survey period are shown for each state in Table 1. The largest absolute numbers of uninsured motorists were found in the states of Florida (2,169) and California (1,035). The particularly small number of uninsured motorists in North Carolina (51) was probably a result of the selection criterion used by that state: information was provided only for those cases where action was being taken by the state. It is not recommended that state-to-state comparisons be made of the number of

Table 1

Number of Uninsured Motorists and Number of Accident Reports Reviewed by State

State	Number of Uninsured Motorists Involved In Reported Accidents	Number of Accident Reports Reviewed
California	1,035	47,494
Florida	2,169	6,539
Louisiana	778	24,762
North Carolina	51	Not Available
Oregon	446	10,535
Virginia	773	38,297
West Virginia	907	4,950

uninsured drivers as a percentage of accident reports reviewed because of suspected differences in data collection methods among the participating states. This report focuses on descriptions of uninsured motorists and vehicles rather than on such comparisons of incidence for this reason.

It should be noted that the number of uninsured motorists per state may differ in subsequent tables due to varying amounts of missing data for individual survey items. Tables presented in the remainder of this report are based on valid data only.

Sex and age of uninsured motorists are examined individually in Tables 2 and 3, and Table 4 contains distributions of uninsured motorists by age and sex combined. Similar proportions of uninsureds involved in accidents and of all drivers involved in accidents were males. A disproportionately large number of the uninsured drivers and of all drivers in accidents were found to be males when comparisons were made with the distribution of all licensed drivers in the seven survey states. Almost 70% of all uninsured drivers in the study and of all drivers involved in accidents were males compared with 53% of all licensed drivers in the seven survey states (see Table 2 and Figure 1).

Uninsured motorists tended to be younger drivers as shown in Table 3 and Figure 2. Drivers under age 20 accounted for 20% of the uninsured motorists in the study compared with 18% of all drivers involved in accidents and 8% of all licensed drivers. About 46% of the uninsured motorists were 24 years old or younger compared with 38% of all drivers involved in accidents and 22% of all licensed drivers.

The distributions of uninsured motorists and of all licensed drivers categorized by age and sex are shown in Table 4. A similar distribution for all drivers involved in accidents was not available. Consequently, comparisons with all drivers involved in accidents by age and by sex that are shown in Tables 2 and 3 should be a consideration when interpreting information shown in this table. Young males under age 25 accounted for about one-third of the uninsured motorists for the seven states combined, but only 12% of all licensed drivers were males in this age group. Some 18% of the uninsured motorists and 37% of all licensed drivers in the

seven survey states were females aged 25 or older. Similar observations regarding the age and sex of uninsured motorists could be made for each of the seven participating states individually.

A substantial number of uninsured motorists were not owners of the vehicles involved in the reported accidents. As shown in Table 5, about 30% of all uninsured motorists in the study did not own the vehicles driven, and the percentages of nonownership ranged from a low of 20% in California to a high of 44% in Louisiana. The strong relationship between vehicle ownership and driver age (possibly a reflection of young people driving parents' cars) is apparent in Table 6. Half of the uninsured motorists under age 20 did not own the vehicles which they drove at the time of their accidents compared to 30% of those between the ages of 20 and 24. The percentage of uninsured motorists who were nonowners continued to decrease with increasing age for the other age groups shown in this table.

Distributions of uninsured vehicles by model year and by make are shown in Tables 7 and 8. Uninsured vehicles tended to be somewhat older when comparisons were made with all vehicles in operation (see Table 7 and Figure 3). About 46% of the uninsured vehicles in the study and 36% of all cars in operation were 1971 models or older. This general observation regarding uninsured vehicle age applied to all states in the study except Louisiana where 28% of the uninsured vehicles were reported to be 1971 models or older. Strikingly higher percentages of uninsured vehicles were in this age group in North Carolina (68%--but the sample size was very small) and in Oregon (64%).

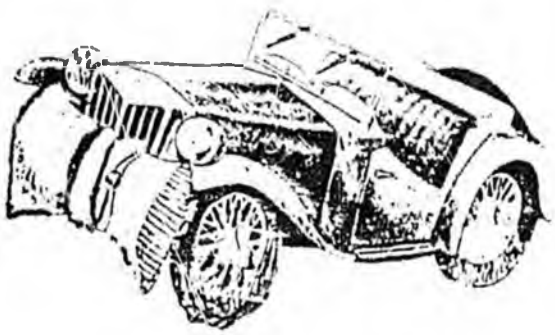
There was no apparent relationship between vehicle make and involvement in a reported accident while uninsured. As shown in Table 8, the distribution of uninsured vehicles in the study by make was similar to the distribution of all cars in operation.

Residence areas of the uninsured motorists and of all people in four of the survey states were compared in an effort to determine the extent to which the failure to have auto insurance (and involvement in a reported accident) was restricted to a limited segment of the population.

Tables 9 and 10 contain distributions of income levels and of mobility (i.e., percentages of households with length of residence two years or less) for residence ZIP code areas of the uninsured motorists and comparison distributions for the state populations. This analysis was restricted to the states which supplied ZIP codes for at least 85% of the uninsured motorists and for which there were adequate numbers of uninsureds. There was no consistent pattern appearing in either the income distributions or in the mobility distributions that was present for each of the four states. This suggested that uninsured motorists were not concentrated in any particular types of areas.

Further analyses of accident locations and areas of residence were done in order to discover whether there was a relationship between driving in urban areas and having auto insurance. As shown in Table 11, 32% of the accidents in Florida involving uninsured motorists occurred in Dade County (Miami) while 15% of all vehicles in Florida were registered in that county. Similarly, 39% of the accidents reported in California occurred in Los Angeles County compared to 31% of all registered vehicles (see Table 12). A substantially higher percentage of the uninsured motorists than of the total population in California resided in the city of Los Angeles--13% compared to 8%--as shown in Table 13. These comparisons seem to support a hypothesis that uninsured motorists were more likely to drive or to reside in urban areas. However, accident frequencies are higher in urban areas than in nonurban areas. Thus, since this study was based on uninsured motorists who were involved in reported accidents, these comparisons may reflect, in part, a higher accident frequency in urban areas rather than a characterization of uninsured motorists.

ALASKA
1982
PRIVATE PASSENGER AUTO INSURANCE



AND

HOMEOWNERS INSURANCE

A STATISTICAL ANALYSIS

1982

ALASKA

PERSONAL LINES

STATISTICAL

ANALYSIS

PRIVATE PASSENGER AUTOMOBILE INSURANCE

HOMEOWNERS INSURANCE

DIVISION OF INSURANCE

DEPARTMENT OF
COMMERCE AND ECONOMIC DEVELOPMENT
STATE OF ALASKA

November 8, 1982

JAY S. HAMMOND — GOVERNOR
CHARLES R. WEBBER — COMMISSIONER
KENNETH C. MOORE — DIRECTOR

PREPARED BY: NORM CHENEY
INSURANCE MARKET ANALYST III

PART ONE

AUTOMOBILE

1982 - STATISTICAL ANALYSIS
PRIVATE PASSENGER AUTOMOBILE INSURANCE

- SUMMARY -

In 1981, the majority of companies writing private passenger automobile liability and physical damage insurance in Alaska garnered a profit. The overall loss ratio for all admitted companies writing private passenger automobile insurance was 56.8%, 4.6% higher than the 52.2% ratio enjoyed in 1980.

According to the July 19, 1982 edition of "Best's Insurance Management Report" Alaska had, for the fourth consecutive year, the lowest loss ratio of any state for all automobile insurance, 56.1%. This includes commercial automobile and private passenger automobile insurance. The loss ratio nationally was 70.7%, 14.6 percentage points higher. A consistently profitable automobile insurance market is something few states have been able to maintain in recent years. We are quite happy with the state of the market in Alaska. Over the past three years, we have seen an increase in the number of companies pursuing a share of the market. We now have a very active non-standard market helping to make insurance available at competitive prices to those drivers with numerous or serious violations on their driving records. Good drivers have many different companies and a wide variation of prices from which to choose. On the negative side, we still find ourselves striving to overcome misconceptions and trepidatious underwriting by many companies. Being the largest of the United States, yet having a population of only just over 400,000 people does cause problems from a statistical credibility standpoint. Too often the negative results from other states have an influence on our market conditions. When profit conditions indicate a need for a company to tighten their underwriting, Alaska has in the past felt first the tightening rope of reduced availability. We sincerely hope that the consistent profitability of the Alaska automobile insurance market will cause the industry to consider us a desirable market in which to do business.

We have again divided this portion of the "Personal Lines Statistical Analysis" into two sections. First, is a review of the private passenger automobile insurance market in Alaska. The second section is a display of the rates charged for five different risks by numerous companies writing private passenger automobile insurance in Alaska.

Exhibit I ranks the 1981 market shares of the 30 leading writers in Alaska by line of automobile insurance and compares those shares to the 1980, 1979 and 1978 figures for those 30 companies.

The first chart of Exhibit I shows us that State Farm Mutual Automobile Insurance Company is the leading writer of private passenger auto liability insurance in this State. During 1981, State Farm Mutual Auto increased its written premium for this line by 7.8% despite dropping its market share by .15% to 22.15%, nearly a full percentage below its 23.1% share in 1979. Ranked number two, Allstate gained an additional .3% of the market and now holds a 20.5% market share, an increase of 2.6% over 1979's 17.9% share. Allstate's premium volume went up 10.1% in 1981. Third place Criterions market share remained about the same, 7.04%, up from 7% in 1980, premium volume was up 9.2%. United Services Automobile Association lost .3% of its share down to 4.19% from 4.5% in 1980, but they increased their premium volume 1.2%. Number five, State Farm Fire and Casualty gained a full percentage point of the market from 2.9% in 1980 to 3.92% in 1981 and had 49.4% more premium than 1980. Elsewhere in the top ten, four companies increased their market share and premium volume. Number seven, Leader National, lost 1.43% of its share down to 3.47% from 4.9%, while writing 22.5% less premium than 1980. The cumulative market share for the top ten is 74.8%, this compares to 74.7% in 1980. The top 30 companies accounted for 98.62% of the market, while the 30 top companies in 1980 had 98.9% of the market. Of the 30 companies, 13 increased their market share, 17 lost share. Written premiums were up for 17 companies and down for 13 companies. For all companies writing private passenger automobile liability in Alaska, written premiums were up 8.4% to $32,408,000 from $29,900,000 in 1980.

Exhibit I, Chart 2 shows that State Farm Mutual Auto has 22.5% of the private passenger auto physical damage market, an increase of .4% from 1980 and 3% from 1979. Written premiums for State Farm Mutual were up 23.1%. Allstate lost about .1% of its share down to 17.73% from 17.8% in 1980, but still up 1% over the 1979 share. Premiums for Allstate increased 10.1% from 1980. Criterion retains third place with a 1% increase in market share, 7.1% compared to 6.1% in 1980, premiums were up 29.6% since 1980. United Services Automobile Association moved into fourth place with a 5.42% share; 1.42% over 1980, premiums were up 50.9%. Foremost dropped to fifth, losing over 1.1% of its share and 15.2% in written premiums. The remainder of the top ten are led by State Farm Fire and Casualty in sixth place which now hold 3.22% of the market; up from 2.0% or 14th place in 1980, premium jumped 9.1% during the year. Nationwide Mutual joined the top ten in 1981 with a .5% increase in share, to 3.0%. The ten top writers account for 3.5% more of the market of 1981, 71.44% opposed to 67.9% in 1980. 95.95% of the private passenger auto physical damage business was written by the 30 companies, up 1.35% over 1980. Fourteen companies gained market share while 16 lost, but 19 increased premium volume and only 11 wrote less premium. Written premium volume for all companies was up 11.6% to $26,896,000.

Chart 3 of the first exhibit displays the market shares of the top 30 companies based on their combined written premiums for liability and physical damage. Again, State Farm Mutual Auto leads with 22.31%, Allstate remains second with a 19.24% share of the market a slight drop from 1980. Of more significance is the fact that Allstate has fallen 3% behind State Farm. In 1978 and 1979, Allstate trailed State Farm by about 4%, closing the gap to 2.2% in 1980 and now falling back to 3%. Criterion has 7.1% of the market up .4% from 1980. United Services Automobile Association is up .45% over 1980 to 4.75%. In 1981, State Farm Fire and Casualty increased it share 1.1% to 3.6%. All of the top ten this year increased their premium volume and only one company from last year dropped out of the top ten, Leader National falling from 5th in 1980, a 3.3% share, to 11th in 1981 with a 2.41% share. Of these 30 writers, 13 companies increased their market share, 15 declined and two remained about the same. Nineteen companies wrote more premium in 1981 and 11 wrote less. Cumulatively, the 30 companies accounted for 96.39% of all private passenger auto premiums, whereas the 30 top writers in 1980 represented 96.6% of the market. Premium volume for all admitted companies writing private passenger automobile insurance in 1981 was $59,304,000 up 10.5% over the 1980 figure of $53,666,000

Exhibit 2, Chart 1 shows us that liability business was not as profitable in 1981 as in years past. The loss ratio for the top 30 writers and the overall market was the same in 1981, 62.8%. This is a substantial increase from the 51.5% loss ratio experienced by the total private passenger auto liability market in 1980. Of the top 30 companies, 10 had better experience, 18 worse and two were new markets in 1981. Eleven of the 18 companies with loss ratios worse than last year had loss ratios in excess of 60%, eight had in excess of 70%, three companies experienced a loss ratio greater than 80%. Eleven of the 30 companies had loss ratios below 50%, seven of these were below 40%.

The second chart of Exhibit 2 shows that the private passenger automobile physical damage market had a good year in 1981. The loss ratio for all companies was 49.5% compared to 53% in 1980. Fifteen of the top 30 companies improved their loss ratios in 1981. Only five of the 30 companies had loss ratios in excess of 60%, eight of the 30 had loss ratios less than 40%.

Chart 3 has the loss ratios for the top 30 writers of both liability and physical damage coverages and again we see generally profitable results. Of the 30 companies, four had loss ratios in excess of 70%, 14 had loss ratios less than 50% and the overall loss ratios for all companies was 56.8%, 4.6% higher than 1980 but still low enough for profit.

The two charts of Exhibit III further illustrate the profitability of the private passenger auto market in Alaska. Here we have the top 30 writers of liability and physical damage auto coverages and their expense exhibits. We have calculated the loss ratios, which should indicate a company's break-even point--permissibe loss ratio (PLR)--(the ratios do not provide for investment income, reserves or the traditional 5% profit percentages). In the liability arena 14 companies had actual

loss ratios that exceeded their PLR, up from seven in 1980. Four of these companies had expense ratios in excess of that normally allowed by this division. An expense factor (including profit) greater than 45% is in most cases considered excessive. Thirteen companies had actual loss ratios 15% below their PLR in 1981 compared to 17 in 1980. The average PLR for the 30 companies was 61.2%. The expense exhibits for physical damage evidenced five companies whose loss ratios exceeded their PLR. Four of these companies had expense ratios in excess of the normally allowed 45%. Twelve companies had actual loss ratios 20% or more below their permissible loss ratios. The average PLR for the 30 companies was 61.9%, compared to actual loss ratios for the 30 companies of 49.5%, leaving 12.4% for incurred but not reported claims and profit requirements.

Writers of private passenger automobile insurance in Alaska have experienced five consecutive years of profitability a condition that's rare in today's automobile market. In many markets in the "Lower 48" states, combined ratios of 100% or more are common. Over the next 12 months we will be urging some companies to lower their rates and/or bring their expenses into line with accepted standards.

Exhibit IV is an illustration of the total private passenger automobiles registered in the State versus the insured car years, a comparison which provides a means of approximating the percent of uninsured motorists in this State. We have reevaluated the data base used in previous reports and find that statistics for the total number of autos were misstated. We have corrected the deficiencies and now have what we believe to be the most accurate possible estimation of the number of uninsured motorists. It is impossible to determine precisely the percentage uninsured. Even with the inherent inadequacies of this system, we can see that the number of insured drivers increased somewhat in 1980, we estimate 59.5% were insured up 1.8% over 1979 and 6.3% over 1978. While this increase is welcome, the thought that approximately 40% of Alaskans on the highways are uninsured is unsettling at best. Reasons for the large numbers of uninsured drivers are illusive. There does not appear to be a lack of available markets, and rates, in general, are not excessive.

Exhibit V concerns the Automobile Insurance Plan (assigned risk plan). Part A shows that in 1980, 2.6% of all insureds in the State were written through the Plan. This is 1% less than in 1979, 3.1% less than in 1978 and 5.2% less than 1977. 6.5% of the insureds countrywide were written through a plan of some sort in 1980, this is compared to 3.9% in 1979, an increase of 67%. In part B we see that the population of the plan continues to decline. At the end of 1980 there were 3,564 insureds in the plan, 24.1% less than in December 1979. 2,627 were in the plan at the end of 1981, a 26.3% drop from 1980 and 70.2% less than the 9,447 at the end of 1977. The depopulation of the plan is continuing in 1982 as shown in part C. Through September of 1982 only 1,009 policies had been assigned, 37.8% less than September 1981. The number of policies assigned each month has declined for 57 straight months. Part D charts the percentage of private passenger automobile liability premiums attributable to the Automobile Insurance Plan. The percentage in 1980 was 4.3%, down 2% from the 6.3% in 1979.

This division remains concerned about the population of the plan. While the population continues to decrease, the division feels that many insureds being placed in the plan could be written by companies on a voluntary basis. In conversations with agents around the State who utilize the plan extensively, we have heard that one of the main reasons for their use of the plan is price. We agree that for some types of risks the plan rates are low in comparison to voluntary market, but these rates are low because the experience of the plan has been favorable. The preponderance of clean risks or certainly risks that would be acceptable to companies on a voluntary basis are, to some degree, responsible for this good experience. The Alaska Automobile Insurance Plan Advisory Committee has been exploring various methods of depopulating the plan. One method receiving consideration is the requirement that agents give insureds a brochure explaining the plan and advising that by shopping, they may find companies willing to write voluntarily at lower rates or with improved coverage and better service.

For several years we have closed this narrative summary with a statement to the effect that the private passenger automobile insurance market in Alaska is profitable; this year is no exception. We are of the opinion that this profitability will continue. While this division continues to push for reduced insurance rates, we are not going to hinder the right of a company to make a reasonable profit. We will continue our efforts to assure that auto insurance rates in Alaska are neither excessive, inadequate nor unfairly discriminatory.

Norm Cheney
Insurance Market Analyst

EXHIBIT I

CHART I

PRIVATE PASSENGER AUTO LIABILITY MARKET SHARE

	Company Name	Written Premiums (000's Omitted)	% Market Share 1981	% Market Share 1980	% Market Share 1979	Cumulative Market Share 1981
1.	State Farm Mutual Auto Ins. Co.	7,178	22.15	22.3	23.1	22.15
2.	Allstate Ins. Co.	6,643	20.50	20.2	17.9	42.65
3.	Criterion Ins. Co.	2,282	7.04	7.0	7.4	49.69
4.	United Services Automobile Assn.	1,359	4.19	4.5	4.5	53.88
5.	State Farm Fire & Casualty Co.	1,271	3.92	2.9	1.9	57.80
6.	Continental Insurance Co.	1,195	3.62	3.5	2.8	61.42
7.	Leader National	1,123	3.47	4.9	5.9	64.89
8.	Nationwide Mutual Fire Ins. Co.	1,090	3.36	3.2	3.0	68.25
9.	Nationwide Mutual Ins. Co.	1,068	3.30	2.9	2.5	71.55
10.	Horace Mann Ins. Co.	1,052	3.25	3.2	3.0	74.80
11.	Government Employees Ins. Co.	870	2.68	3.0	3.2	77.48
12.	Industrial Indemnity Co. of Ak.	724	2.23	1.7	1.9	79.71
13.	Industrial Indemnity Co.	679	2.10	1.0	1.0	81.81
14.	Firemans Fund Ins. Co.	638	1.97	2.7	3.2	83.78
15.	Globe American Casualty Co.	604	1.86	.7	--	85.64
16.	Associated Indemnity Corp.	594	1.83	1.9	2.9	87.47
17.	Alaska Ins. Co.	579	1.79	2.0	1.8	89.26
18.	AIU Ins. Co.	449	1.39	1.8	2.5	90.65
19.	National Indemnity Co.	375	1.16	1.8	2.5	91.81
20.	Colonial Penn Ins. Co.	307	.95	1.2	1.2	92.76
21.	Insurance Co. of North America	302	.93	1.2	.8	93.69
22.	Lumbermans Mutual Casualty Co.	235	.73	1.0	1.5	94.42
23.	USAA Casualty Insurance Co.	217	.67	.8	.9	95.09
24.	Dairyland Ins. Co.	198	.61	--	--	95.70
25.	National Surety Corp.	195	.60	.5	.7	96.30
26.	Industrial Indemnity Co. of the NW	192	.59	.9	1.	96.89
27.	International Service Ins. Co.	169	.52	.6	.7	97.41
28.	Fidelity & Casualty Co. of N.Y.	150	.46	.5	.4	97.87
29.	Progressive Casualty Ins. Co.	143	.44	--	--	98.31
30.	Foremost Ins. Co.	102	.31	.5	--	98.62
	Total Top 30 Companies	31,676		98.9*		98.62
	Total All Companies	32,408				100.0

* Based on Top 30 Companies 1980

Source: Insurance Reports 1979-81

CHART II

PRIVATE PASSENGER AUTO PHYSICAL DAMAGE MARKET SHARE

Company Name	Written Premiums (000's Omitted)	% Market Share 1981	% Market Share 1980	% Market Share 1979	Cumulative Market Share 1981
1. State Farm Mutual Auto. Ins. Co.	6,051	22.50	20.1	19.5	22.50
2. Allstate Insurance Co.	4,770	17.73	17.8	16.7	40.23
3. Criterion Ins. Co.	1,928	7.17	6.1	5.8	47.40
4. United Services Automobile Assn.	1,457	5.42	4.0	3.9	52.82
5. Foremost Ins. Co.	1,010	3.76	4.9	--	56.58
6. State Farm Fire & Casualty Co.	865	3.22	2.0	1.2	59.80
7. Nationwide Mutual Fire Ins. Co.	849	3.16	2.9	2.8	62.96
8. Nationwide Mutual Ins. Co.	806	3.00	2.5	2.2	65.96
9. Continental Ins. Co.	742	2.76	2.8	2.2	68.72
10. Horace Mann Ins. Co.	731	2.72	2.5	2.3	71.44
11. Government Employees Ins. Co.	728	2.71	2.8	2.9	74.15
12. American Family Home Ins. Co.	622	2.31	2.8	--	76.46
13. AIU Ins. Co.	504	1.87	2.2	2.6	78.33
14. Alaska Ins. Co.	453	1.68	1.7	1.7	80.01
15. Industrial Indemnity Co. of Alaska	435	1.62	1.1	1.2	81.63
16. Industrial Indemnity Co.	416	1.55	.7	.7	83.18
17. Motors Ins. Corp.	399	1.48	1.7	1.6	84.66
18. Associated Indemnity Co.	379	1.41	1.3	1.4	86.07
19. Firemans Fund Ins. Co.	339	1.26	1.6	2.0	87.33
20. Bankers & Shippers Ins. Co. of N.Y.	314	1.17	1.3	1.5	88.50
21. Leader National Ins. Co.	305	1.13	1.4	2.0	89.63
22. Globe American Casualty Co.	296	1.10	--	--	90.73
23. Imperial Casualty & Indemnity Co.	243	.90	3.7	4.5	91.63
24. Colonial Penn Ins. Co.	203	.75	.9	.9	92.38
25. Insurance Co. of North America	195	.73	--	--	93.11
26. National Indemnity Co.	187	.70	1.1	1.7	93.81
27. USAA Casualty Ins. Co.	177	.66	.5	.6	94.47
28. Dependable Ins. Co.	146	.54	--	--	95.01
29. Lumbermans Mutual Casualty Co.	131	.49	.8	1.1	95.50
30. Puritan Ins. Co.	122	.45	1.0	.8	95.95
Total Top 30 Companies	25,803		94.6*		95.95
Total All Companies	26,896				100.0

*Based on top 30 companies 1980
Source: Insurance Reports 1979-80

CHART III

PRIVATE PASSENGER AUTO PHYSICAL DAMAGE & LIABILITY MARKET SHARE

	Company Name	Written Premiums (000's Omitted)	% Market Share 1981	% Market Share 1980	% Market Share 1979	% Market Share 1978	Cumulative Market Share 1981
1.	State Farm Mutual Auto Ins. Co.	13,229	22.31	21.5	21.4	21.1	22.31
2.	Allstate Ins. Co.	11,413	19.24	19.3	17.3	17.2	41.55
3.	Criterion	4,210	7.10	6.7	6.6	8.8	48.65
4.	United Services Auto Assoc.	2,816	4.75	4.3	4.3	5.2	53.40
5.	State Farm Fire & Casualty	2,136	3.60	2.5	1.6	1.3	57.00
6.	Nationwide Mutual Fire Ins. Co	1,939	3.27	3.2	2.9	2.7	60.27
7.	Continental Ins. Co.	1,937	3.27	3.2	2.5	1.7	63.54
8.	Nationwide Mutual Ins. Co.	1,874	3.16	2.8	2.3	2.0	66.70
9.	Horace Mann Insurance Co.	1,783	3.01	2.9	2.7	2.7	69.71
10.	Government Employees Ins. Co.	1,598	2.69	2.9	3.1	2.6	72.40
11.	Leader National Ins. Co.	1,428	2.41	3.3	4.1	3.8	74.81
12.	Industrial Indemnity Co. of Ak.	1,159	1.95	1.5	1.6	--	76.76
13.	Foremost Insurance Co.	1,112	1.88	2.5	--	--	78.64
14.	Industrial Indemnity Co.	1,095	1.85	.9	.9	--	80.49
15.	Alaska Ins. Co.	1,032	1.74	1.9	1.8	1.6	82.23
16.	Firemans Fund Ins. Co.	977	1.65	2.3	2.7	3.0	83.88
17.	Associated Indemnity Co.	973	1.64	1.6	1.8	1.9	85.52
18.	AIU Ins. Co.	953	1.61	2.0	2.5	2.6	87.13
19.	Globe American Casualty Co.	900	1.52	--	--	--	88.65
20.	American Family Home Ins. Co.	622	1.05	1.3	--	--	89.70
21.	National Indemnity Co.	562	.95	1.5	2.1	3.2	90.65
22.	Colonial Penn Ins. Co.	510	.86	1.1	1.1	1.1	91.51
23.	Insurance Co. of North America	497	.84	.7	.4	.5	92.35
24.	Motors Ins. Corp.	399	.67	.8	.7	.6	93.02
25.	USAA Casualty Ins. Co.	394	.66	.7	.8	1.1	93.68
26.	Lumbermans Mutual Casualty Co.	366	.62	.9	1.3	1.7	94.30
27.	Bankers & Shippers Ins. Co. of N.Y.	345	.58	.6	.7	.9	94.88
28.	Industrial Indemnity Co. of the N.W.	306	.52	.8	.5	--	95.40
29.	National Surety Corp.	297	.50	--	--	--	95.90
30.	International Service Ins. Co.	289	.49	.6	.6	.7	96.39
	Total Top 30 Companies	57,151		96.6*			96.39
	Total All Companies	59,304					100.0

*Based on top 30 companies 1980

Source: Insurance Reports 1978-81

EXHIBIT II

CHART I

PRIVATE PASSENGER AUTO LIABILITY LOSS RATIO

	Earned Premium (000's Omitted)	Incurred Losses (000's Omitted)	Loss Ratio 1981	Loss Ratio 1980	Loss Ratio 1979	Loss Ratio 1978
1. State Farm Mutual Auto Ins. Co	7,081	4,589	64.9	49.4	31.4	43.2
2. Allstate Ins. Co.	6,557	4,664	71.1	58.5	56.3	55.1
3. Criterion Ins. Co.	2,198	1,128	51.3	40.0	55.7	73.4
4. United Services Automobile Assoc.	1,409	834	59.2	27.5	52.0	24.9
5. State Farm Fire & Casualty Co.	1,159	1,040	89.7	20.8	3.4	5.0
6. Continental Ins. Co.	1,090	847	77.7	62.4	30.5	49.9
7. Leader National Ins. Co.	1,207	535	44.3	47.4	46.1	40.4
8. Nationwide Mutual Fire Ins. Co.	1,056	962	91.1	80.2	55.0	45.1
9. Nationwide Mutual Ins. Co.	1,011	928	91.8	61.9	70.8	84.6
10. Horace Mann Ins. Co.	1,023	392	38.3	43.7	43.5	54.8
11. Government Employees Ins. Co.	877	453	51.7	78.6	31.5	80.5
12. Industrial Indemnity Co. of Ak.	718	298	41.5	90.0	44.4	33.0
13. Industrial Indemnity Co.	479	294	61.4	37.7	27.1	--
14. Firemans Fund Ins. Co.	683	151	22.1	34.3	31.9	28.5
15. Globe American Casualty	492	280	56.9	12.9	--	--
16. Associated Indemnity Corp.	584	222	38.0	41.6	44.4	33.0
17. Alaska Ins. Co.	585	437	74.7	71.3	61.0	76.6
18. AIU Ins. Co.	445	329	73.9	51.9	61.0	76.6
19. National Indemnity Co.	403	254	63.0	12.6	6.2	45.1
20. Colonial Penn Ins. Co.	323	132	40.9	22.8	20.4	35.8
21. Insurance Co. of North America	297	117	39.4	51.8	47.4	44.9
22. Lumbermans Mutual Casualty	252	141	56.0	115.1	38.4	83.5
23. USAA Casualty Ins. Co.	229	66	28.8	29.0	37.5	27.3
24. Dairyland Ins. Co.	147	82	55.8	--	--	--
25. National Surety Corp.	192	88	45.8	35.0	60.2	32.0
26. Industrial Indemnity Co. of the NW	239	180	75.3	57.1	54.6	--
27. International Service Ins. Co.	183	104	56.8	45.2	34.3	45.4
28. Fidelity & Casualty Co. of N.Y.	140	23	16.4	9.2	9.9	18.2
29. Progressive Casualty Ins. Co.	94	51	54.3	--	--	--
30. Foremost Ins. Co.	118	20	16.9	28.9	10.1	43.5
Total Top 30 Companies	31,271	19,642	62.8	50.5*	42.9*	
Total All Companies	31,734	19,940	62.8	51.5	44.7	50.0

* Based on Top 30 companies 1979, 1980

Source: Insurance Reports 1978-81

CHART II

PRIVATE PASSENGER AUTO PHYSICAL DAMAGE - LOSS RATIO

Company Name	Written Premiums (000's Omitted)	Incurred Losses (000's Omitted)	Loss Ratio 1981	Loss Ratio 1980	Loss Ratio 1979	Loss Ratio 1978
1. State Farm Mutual Auto Ins. Co.	5,704	3,082	54.0	55.5	47.0	38.4
2. Allstate Ins. Co.	4,661	2,466	52.9	44.3	45.4	35.5
3. Criterion	1,705	1,043	61.2	53.0	49.6	49.2
4. United Services Automobile Assoc.	1,347	655	48.6	62.4	39.0	38.7
5. Foremost Ins. Co.	1,201	291	24.2	87.5	45.7	32.5
6. State Farm Fire & Casualty Co.	751	476	63.4	56.5	30.3	33.1
7. Nationwide Mutual Fire Ins. Co.	806	480	59.6	47.4	45.9	47.2
8. Nationwide Mutual Ins. Co.	754	500	66.3	59.5	63.9	41.2
9. Continental Insurance Co.	697	290	41.6	49.6	22.0	43.0
10. Horace Mann Ins. Co.	698	328	47.0	53.6	62.5	43.9
11. Government Employees Ins. Co.	708	365	51.6	48.9	41.2	38.6
12. American Family Home	662	144	21.8	84.4	51.4	7.0
13. AIU Ins. Co.	486	263	54.1	61.2	46.3	60.7
14. Alaska Ins. Co.	435	209	48.0	67.3	41.9	83.7
15. Industrial Indemnity Co. of Ak.	406	236	58.1	43.8	82.3	--
16. Industrial Indemnity Co.	279	208	74.6	62.3	39.2	--
17. Motors Ins. Corp.	414	181	43.7	33.3	36.4	31.8
18. Associated Indemnity Corp.	354	121	34.2	43.5	35.5	21.7
19. Firemans Fund Ins. Co.	344	148	43.0	53.7	28.4	39.9
20. Bankers & Shippers Ins. Co. of N.Y.	318	53	16.7	52.0	33.2	30.2
21. Leader National Ins. Co.	305	174	57.0	32.4	43.1	28.5
22. Globe American Casualty Co.	222	137	61.7	--	--	--
23. Imperial Casualty & Indemnity	378	51	13.5	24.6	24.4	--
24. Colonial Penn Ins. Co.	213	80	37.6	47.0	40.0	49.9
25. Insurance Co. of North America	192	78	40.6	--	--	--
26. National Indemnity Co.	205	105	51.2	30.7	30.1	36.3
27. USAA Casualty Ins. Co.	166	52	31.3	70.3	42.5	40.6
28. Dependable Ins. Co.	129	66	51.2	--	--	--
29. Lumbermans Mutual Casualty	145	32	22.1	45.6	36.0	21.3
30. Puritan Ins. Co.	164	79	48.2	47.2	17.8	0.0
Total Top 30 Companies	24,849	12,393	49.9	53.5*	42.5*	--
Total All Companies	25,993	12,866	49.5	53.0	43.1	39.5

*Based on Top 30 Companies 1979-80

Course: Insurance Reports 1978-81

CHART III

PRIVATE PASSENGER AUTO LIABILITY AND PHYSICAL DAMAGE - LOSS RATIOS

Company Name	1981 Earned Premiums (000's Omitted)	1981 Incurred Losses (000's Omitted)	Loss Ratio 1981	Loss Ratio 1980	Loss Ratio 1979	Loss Ratio 1978	Loss Ratio 1977
1. State Farm Mutual Auto Ins. Co.	12,785	7,671	60.0	52.0	37.8	40.0	44.2
2. Allstate Ins. Co.	11,218	7,130	63.6	52.5	51.5	47.7	56.3
3. Criterion	3,903	2,171	55.6	45.7	53.1	62.3	60.8
4. United Services Automobile Assoc.	2,756	1,489	54.0	42.1	46.7	30.8	53.4
5. State Farm Fire & Casualty	1,910	1,516	79.4	44.4	45.4	37.7	3.5
6. Nationwide Mutual Fire Ins. Co.	1,862	1,442	77.4	66.2	51.1	43.3	56.3
7. Continental Insurance Co.	1,787	1,137	63.6	57.3	27.2	47.4	--
8. Nationwide Mutual Ins. Co.	1,765	1,428	80.9	60.9	67.9	65.5	52.4
9. Horace Mann Ins. Co.	1,721	720	41.8	47.5	51.0	50.4	34.8
10. Government Employees Ins. Co.	1,585	818	51.6	65.7	35.6	62.9	71.2
11. Leader National Insurance Co.	1,512	709	46.9	44.4	45.4	37.7	--
12. Industrial Indemnity Co. of Ak.	1,124	534	47.5	74.1	57.0	10.0	--
13. Foremost Ins. Co.	1,319	311	23.6	81.6	42.0	33.6	--
14. Industrial Indemnity Co.	758	502	66.2	46.5	31.5	--	--
15. Alaska Ins. Co.	1,020	646	63.3	69.7	53.0	79.3	23.4
16. Firemans Fund Ins. Co.	1,027	299	29.1	40.6	30.7	33.0	79.9
17. Associated Indemnity Co.	938	343	36.6	42.2	40.1	28.7	51.1
18. AIU Ins. Co.	931	592	63.6	56.5	51.6	53.6	51.5
19. Globe American Casualty	714	417	58.4	--	--	--	--
20. American Family Home	665	144	21.8	84.4	51.4	7.0	--
21. National Indemnity Co.	608	359	59.0	18.7	14.9	41.9	45.6
22. Colonial Penn Ins. Co.	536	212	39.6	32.3	28.0	41.4	82.5
23. Insurance Co. of North America	489	195	39.9	51.7	47.4	43.5	--
24. Motors Ins. Corp.	414	181	43.7	33.3	36.4	31.8	60.1
25. USAA Casualty Ins. Co.	395	118	29.9	43.7	39.3	32.3	39.1
26. Lumbermans Mutual Casualty	397	173	43.6	88.0	37.5	62.9	57.2
27. Bankers & Shippers Ins. Co. of N.Y.	318	53	16.7	52.0	33.2	29.0	34.8
28. Industrial Indemnity Co. of the N.W.	372	268	72.0	57.4	55.2	--	--
29. National Surety Corp.	291	137	47.1	--	--	35.0	46.0
30. International Service Ins. Co.	314	163	51.9	50.7	40.2	41.2	63.5
Total Top 30 Companies	55,431	31,878	57.5	51.9*	43.0*	44.8*	51.4*
Total All Companies	57,727	32,806	56.8	52.2	44.0	45.6	52.9

*Based on Top 30 Companies 1977, 78, 79, 80

Source: Insurance Reports 1979-81

EXHIBIT III

CHART I

PRIVATE PASSENGER AUTO LIABILITY EXPENSE EXHIBITS 1981

	Company Name	Earned Premium 1981	Loss Adjustment Expense	Comssn. and Brkrg.	Other Acquis. & Field Supv. Collect.	Gen Expns.	Taxes, Licenses and Fees Incurred	Total Expns.	Permis. Loss Ratio	Actual Loss Ratio	Comb. Loss Ratios Col. 7 and 9
1.	State Farm Mutual Auto. Ins. Co.	7,081	13.9	2.2	10.2	2.6	2.2	31.1	68.9	64.9	96.[illegible]
2.	Allstate Ins. Co.	6,557	14.0	9.1	5.9	3.0	4.1	36.1	65.9	71.1	107.2
3.	Criterion Ins. Co.	2,198	12.5	2.9	10.7	2.6	2.8	31.6	68.4	51.3	82.6
4.	United Services Automobile Assn.	1,409	16.2	.5	7.3	1.0	2.3	27.3	72.7	59.2	86.5
5.	State Farm Fire & Casualty Co.	1,159	2.6	(283.7)	17.3	0	287.0	23.3	76.7	89.7	113.0
6.	Continental Ins. Co.	1,090	12.1	16.6	3.7	10.6	2.6	45.6	54.4	77.7	123.3
7.	Leader National Ins. Co.	1,207	8.3	23.9	10.3	1.1	2.6	46.2	53.8	44.3	90.5
8.	Nationwide Mutual Fire Ins. Co.	1,056	9.3	8.9	7.5	4.6	3.1	33.4	66.6	91.1	124.5
9.	Nationwide Mutual Ins. Co.	1,011	9.3	8.9	7.5	4.6	3.1	33.4	66.6	91.8	125.2
10.	Horace Mann Ins. Co.	1,023	8.8	14.7	1.5	5.6	3.1	33.7	66.3	36.3	72.0
11.	Government Employees Ins. Co.	877	14.2	.8	5.4	5.1	2.6	28.1	71.9	51.7	79.8
12.	Industrial Indemnity Co. of Ak.	718	11.1	15.8	2.9	9.9	2.9	42.6	57.4	41.5	84.1
13.	Industrial Indemnity Co.	479	11.1	15.8	2.9	9.9	2.9	42.6	57.4	61.4	104.0
14.	Firemans Fund Ins. Co.	683	5.8	16.6	2.7	6.0	2.7	33.7	66.3	22.1	55.8
15.	Globe American Casualty Co.	492	9.7	16.8	15.4	4.8	2.7	49.5	50.5	56.9	106.4
16.	Associated Indemnity Corp.	5[illegible]	5.8	16.6	2.7	6.0	2.7	33.7	66.3	38.0	71.7
17.	Alaska Ins. Co.	5[illegible]	8.3	17.0	4.6	2.9	2.3	35.1	64.9	74.7	109.8
18.	AIU Ins. Co.	445	11.3	1.8	24.0	21.5		58.6	41.4	73.9	132.5
19.	National Indemnity Co.	403	12.3	27.3	2.5	9.3	2.2	53.6	46.4	63.0	116.6
20.	Colonial Penn Ins. Co.	323	9.4	1.3	11.5	8.0	2.8	33.0	67.0	40.9	73.9
21.	Insurance Co. of North America	297	10.7	14.8	3.9	10.4	3.2	43.0	57.0	39.4	82.4
22.	Lumbermans Mutual Casualty	252	12.2	15.2	7.8	7.1	3.6	45.9	54.1	56.0	101.9
23.	USAA Casualty Ins. Co.	229	20.5	3.5	9.6	1.8	2.8	38.6	61.4	28.8	67.4
24.	Dairyland Ins. Co.	147	9.5	1.5	9.3	2.1	2.8	25.2	74.8	55.8	81.0
25.	National Surety Corp.	192	5.8	16.6	2.7	6.0	2.7	33.7	66.3	45.8	79.5
26.	Industrial Indemnity Co. of N.W.	239	11.1	15.8	2.9	9.9	2.9	42.6	57.4	75.3	112.9
27.	International Service Ins. Co.	183	13.3	17.7	7.0	2.9	3.1	43.8	56.2	56.8	100.6
28.	Fidelity & Casualty Co. of N.Y.	140	12.1	16.6	3.7	10.6	2.6	45.6	54.4	16.4	62.0
29.	Progressive Casualty Ins. Co.	94	16.9	18.8	11.4	4.1	2.5	49.0	51.0	54.3	103.3
30.	Foremost Ins. Co.	118	7.3	20.4	13.1	3.5	2.3	46.6	53.4	16.9	63.5

CHART II

PRIVATE PASSENGER AUTO PHYSICAL DAMAGE EXPENSE EXHIBITS 1981

	Company Name	Earned Premium 1981	Loss Adjustment Expense	Comssn. and Brkrg.	Other Acquis. & Field Supv. Collect.	Gen Expns.	Taxes, Licenses and Fees Incurred	Total Expns.	Permis. Loss Ratio	Actual Loss Ratio	Comb. Loss Ratios Col. 7 and 9
1.	State Farm Mutual Auto. Ins. Co.	5,704	9.8	1.8	10.6	2.7	2.2	27.1	72.9	54.0	81.1
2.	Allstate Ins. Co.	4,661	7.6	7.6	6.3	3.2	4.3	29.0	71.0	52.9	81.9
3.	Criterion Ins	1,705	11.8	3.1	10.7	2.6	2.9	31.1	68.9	61.2	92.3
4.	United Service ile Assn.	1,347	9.7	.5	7.4	1.0	8.3	20.9	79.1	48.6	69.5
5.	Foremost Ins.	1,201	5.0	29.5	17.1	4.5	3.0	59.1	40.9	24.2	83.3
6.	State Farm Fi ty Co.	751		(999.9)	62.6		999.9	20.8	79.2	63.4	84.2
7.	Nationwide Mut ins. Co.	806	6.2	11.9	6.2	2.8	3.0	30.1	69.9	59.6	89.7
8.	Nationwide Mutu Co.	754	6.2	11.9	6.2	2.9	2.9	30.1	69.9	66.3	96.4
9.	Continental Ins. Co.	697	9.4	17.4	3.0	10.1	2.5	42.4	57.6	41.6	84.0
10.	Horace Mann Ins. Co.	698	6.2	14.1	1.5	5.6	3.1	30.5	69.5	47.0	77.5
11.	Government Employees Ins. Co.	708	8.6	.6	5.4	5.0	2.7	22.3	77.7	51.6	73.9
12.	American Family Home Ins. Co.	662	7.0	32.2		4.5	1.6	45.3	54.7	21.8	67.1
13.	AIU Ins. Co.	486	11.0	(2.6)	5.8	4.5	.6	19.3	80.7	54.1	73.4
14.	Alaska Ins. Co.	435	3.7	18.2	4.4	2.8	2.4	31.5	68.5	48.0	79.5
15.	Industrial Indemnity Co. of Ak.	406	8.8	17.2	2.9	10.2	2.3	41.3	58.7	58.1	99.4
16.	Industrial Indemnity Co.	275	8.8	17.2	2.9	10.2	2.3	41.3	58.7	74.6	105.9
17.	Motors Ins. Corp.	414	6.0	11.6	14.8	7.4	3.4	43.2	56.8	43.7	86.9
18.	Associated Indemnity Co.	354	12.5	17.9	6.5	13.5	2.9	53.2	46.8	34.2	87.4
19.	Firemans Fund Ins. Co.	344	12.5	17.9	6.5	13.5	2.9	53.2	46.8	43.0	96.2
20.	Bankers & Shippers Ins. Co. of N.Y.	318		23.5	4.3	4.1	5.3	37.2	62.8	16.7	53.9
21.	Leader National Ins. Co.	305	11.7	24.3	10.5	1.1	2.7	50.2	49.8	57.0	107.2
22.	Globe American Casualty Co.	222	5.5	16.3	16.0	5.0	2.6	45.4	54.6	61.7	107.1
23.	Imperial Casualty & Indemnity	378	3.6	21.3	1.3	1.9	10.4	38.5	61.5	13.5	52.0
24.	Colonial Penn Ins. Co.	213	15.0	1.0	11.6	7.5	2.8	37.9	62.1	37.6	75.5
25.	Insurance Co. of North America	192	8.4	14.0	3.0	8.8	3.1	37.3	62.7	40.6	77.9
26.	National Indemnity Co.	205	15.2	29.4	1.6	6.6	2.2	55.0	45.0	51.2	106.2
27.	USAA Casualty Ins. Co.	166	13.3	2.5	9.1	1.6	2.8	29.3	70.7	31.3	60.6
28.	Dependable Ins. Co.	129	2.5	35.3	.9	1.0	1.7	41.4	58.6	51.2	92.6
29.	Lumbermans Mutual Casualty Co.	145	8.7	16.2	7.7	7.0	3.4	43.0	57.0	22.1	65.1
30.	Puritan Ins. Co.	164	6.4	26.2	7.4	13.7	2.6	56.2	43.8	48.2	104.4

EXHIBIT IV

TOTAL PRIVATE PASSENGER AUTOS
VERSUS INSURED CAR YEARS

YEAR	TOTAL NUMBER OF AUTOS*	INSURED CAR YEARS+	PERCENTAGE INSURED
1975	199,536	117,355	58.8
1976	221,386	120,964	54.6
1977	226,329	121,635	53.7
1978	232,425	123,581	53.2
1979	229,403	132,391	57.7
1980	230,040	136,895	59.5

* Based on data supplied by Alaska Department of Transportation and Public Facilities

+ Automobile Insurance Plans Service Office

EXHIBIT V

AUTOMOBILE INSURANCE PLAN VOLUME

A. Insured Car Years

Year	Total Car Years Insured	Automobile Ins. Plan Car Years Insured	Percentage In Plan
1974	95,430	409	.4%
1975	117,355	622	.5
1976	120,964	4,760	3.9
1977	121,635	9,454	7.8
1978	123,619	7,021	5.7
1979	132,391	4,698	3.6
1980	136,895	3,564	2.6
1979 Countrywide	102,018,115	4,007,139	3.9
1980 Countrywide	106,164,766	6,563,269	6.5

B. Number of Autos Insured In Plan

Year Ending Dec. 1977	Year Ending Dec. 1978	Percent Change	Year Ending Dec. 1979	Percent Change	Year Ending Dec. 1980	Percent Change	Year Ending Dec. 1981	Percent Change	% Change 1977-1981
9,447	7,021	-25.7%	4,698	-33.1%	3,564	-24.1%	2,627	-26.3%	-72.2%

C. Policies Assigned

	1979	% Change From 1978	1980	% Change From 1979	1981	% Change From 1980	1982	% Change From 1981
Jan.	297	-33.9	180	-39.4	121	-32.8	94	-22.3
Feb.	510	-37.8	326	-36.1	267	-18.1	190	-28.8
Mar.	771	-39.1	535	-30.6	471	-12.0	307	-34.8
Apr.	1,061	-38.9	771	-27.3	673	-12.7	433	-35.7
May	1,400	-39.3	991	-29.2	876	-11.6	544	-37.9
June	1,707	-40.0	1,239	-27.4	1,101	-11.1	664	-39.7
July	1,992	-40.0	1,445	-27.5	1,272	-12.0	773	-39.2
Aug.	2,286	-40.3	1,665	-27.2	1,455	-12.2	892	-38.7
Sept.	2,582	-39.9	1,909	-26.1	1,623	-15.0	1,009	-37.8
Oct.	2,894	-39.7	2,132	-26.3	1,793	-15.9		
Nov.	3,167	-39.0	2,319	-26.8	1,943	-16.2		
Dec.	3,363	-38.7	2,503	-25.6	2,083	-16.8		

D. Liability Earned Premium

Alaska

Year	Voluntary & Auto. Ins. Plans	Auto. Ins. Plans	% In Plan
1974	12,857,000	107,806	.8%
1975	14,616,466	119,346	.8
1976	20,445,569	623,422	3.1
1977	26,399,393	2,446,715	9.3
1978	29,945,782	2,667,621	8.9
1979	30,041,000	1,896,568	6.3
1980	29,958,926	1,280,028	4.3

Countrywide

1978	12,620,966,467	1,011,415,614	8.0%
1979	13,581,985,775	1,168,765,604	8.6

Source: Automobile Insurance Plans Service Office
New York and San Francisco

PRIVATE PASSENGER AUTOMOBILE RATING EXAMPLES

The rating examples on the following pages have been compiled by the division based on data supplied by the companies listed. Our thanks to them for their cooperation. The rating examples are all based on the same coverage levels and rating information, excepting the differences noted.

The fact that a company has a rate for a particular risk does not mean to imply that they will write the risk. As much as possible, we have tried to identify what companies will not write what risk. Underwriting and marketing considerations will determine whether a particular risk is acceptable to a particular company.

The division urges prospective insureds to shop for their insurance coverages as they would for any other large purchase. A review of the rates shown for each example demonstrates the great variance in price available for the same coverage.

The product should not be judged based solely on price. Service, in all its numerous aspects, is an equally important factor.

All rates are current as of October 1, 1982.

Coverages: (Rates as of 10-1-82)

$25,000/50,000	Bodily Injury Liability
$10,000	Property Damage Liability
$ 5,000	Medical Payments
$ 100	Deductible Comprehensive
$ 200	Deductible Collision
$25,000/50,000	Uninsured Motorists
Alaska Suits	(Civil Rule 82)

The vehicle in all examples is a 1981 Ford Escort (4 door).

Coverage Exceptions:

Globe American Casualty - Medical Payments are $2,000.

Leader National - $250 deductible collision.

State Farm Mutual Automobile - $50 deductible comprehensive.

Dairyland - $250 deductible for collision, medical payments are $2,000.

National Indemnity - $50 deductible comprehensive, $250 deductible collision.

Rating Data Exceptions:

Firemans Fund
Associated Indemnity
National Surety: Rates for Anchorage and Fairbanks are for vehicles garaged in the city; rates for the suburban areas of the two cities are approximately 20% lower in Anchorage and 43% lower in Fairbanks.

Government Employees Insurance Co.: 10% bumper discount applies to collision premiums. Five year "Good Driver Discount" applied to Example A.

Dairyland: Liability rates include $10 new business policy fee that applies during first year. 5% premium credit each quarter the insured remains accident free during first year, 5% each 6 months thereafter to maximum of 40%. This company writes policies on a monthly basis.

EXAMPLE A: Adult driver (married, over 25)
No accidents or citations
Pleasure use of vehicle(less than 7,500miles annually)

TERRITORY 1 - (ANCHORAGE)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	173	320	514
Alaska Ins. Co.	185	306	513
Alaska Pacific Assurance Co.	84	141	236
Allstate Ins. Co.	134	156	323
All West Ins. Co.	182	227	447
American Automobile Ins. Co.	206	298	542
American Ins. Co.	206	298	542
Associated Indemnity Co.	134	236	402
Automobile Ins. Plan	242	680	952
Continental Ins. Co.	151	250	420
Criterion Ins. Co.	216	361	619
Dairyland Ins. Co.	286	552	901
Firemans Fund Ins. Co.	206	298	542
Globe American Casualty Ins. Co.	427	540	1,041
Government Employees Ins. Co.	153	218	403
Horace Mann Ins. Co.	157	209	385
Insurance Services Office	185	306	513
International Service Ins. Co.	204	237	463
Leader National Ins. Co.	390	530	1,010
Lumbermans Mutual Casualty Co.	187	307	518
National Indemnity Co.	462	571	1,090
National Surety Co.	268	376	688
Nationwide Mutual Fire Ins. Co.	124	201	349
Nationwide Mutual Ins. Co.	129	209	363
Progressive Casualty Co.	268	531	859
State Farm Fire & Casualty Co.	170	371	579
State Farm Mutual Automobile Ins. Co.	113	267	404
United Services Automobile Assn. (USAA)	115	215	344
USAA Casualty Ins. Co.	131	245	391

TERRITORY 2 - (FAIRBANKS)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	167	380	569
Alaska Ins. Co.	180	362	565
Alaska Pacific Assurance Co.	82	169	263
Allstate Ins. Co.	128	174	333
All West Ins. Co.	164	248	450
American Automobile Ins. Co.	302	334	666
American Ins. Co.	302	334	666
Associated Indemnity Co.	96	274	494
Automobile Ins. Plan	242	791	1,064
Continental Ins. Co.	148	295	463
Criterion Ins. Co.	187	326	555
Dairyland Ins. Co.	238	588	889
Firemans Fund Ins. Co.	302	334	666
Globe American Casualty Ins. Co.	381	633	1,080
Government Employees Ins. Co.	135	249	414
Horace Mann Ins. Co.	124	207	350
Insurance Services Office	180	362	565
International Service Ins. Co.	180	266	467
Leader National Ins. Co.	360	550	1,000
Lumbermans Mutual Casualty Co.	183	363	572
National Indemnity Co.	412	617	1,086
National Surety Co.	394	434	862
Nationwide Mutual Fire Ins. Co.	139	229	394
Nationwide Mutual Ins. Co.	145	239	410
Progressive Casualty Co.	241	567	868
State Farm Fire & Casualty Co.	172	404	612
State Farm Mutual Automobile Ins. Co.	114	301	439
United Services Automobile Assn. (USAA)	112	254	381
USAA Casualty Ins. Co.	128	290	434

TERRITORY 3 - (REMAINDER OF STATE)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	132	293	446
Alaska Ins. Co.	143	280	445
Alaska Pacific Assurance Co.	62	128	201
Allstate Ins. Co.	100	154	283
All West Ins. Co.	134	204	376
American Automobile Ins. Co.	146	306	484
American Ins. Co.	146	306	484
Associated Indemnity Co.	94	250	370
Automobile Ins. Plan	195	624	849
Continental Ins. Co.	118	229	366
Criterion Ins. Co.	151	328	521
Dairyland Ins. Co.	214	588	865
Firemans Fund Ins. Co.	146	306	484
Globe American Casualty Ins. Co.	333	552	951
Government Employees Ins. Co.	100	221	349
Horace Mann Ins. Co.	99	193	311
Insurance Services Office	143	280	445
International Service Ins. Co.	130	272	422
Leader National Ins. Co.	354	510	954
Lumbermans Mutual Casualty Co.	145	281	450
National Indemnity Co.	336	622	1,015
National Surety Co.	190	398	624
Nationwide Mutual Fire Ins. Co.	110	188	322
Nationwide Mutual Ins. Co.	115	196	335
Progressive Casualty Co.	201	510	771
State Farm Fire & Casualty Co.	144	358	539
State Farm Mutual Automobile Ins. Co.	96	262	382
United Services Automobile Assn. (USAA)	89	196	299
USAA Casualty Ins. Co.	101	224	340

TERRITORY 4 - (JUNEAU/SOUTHEAST ALASKA)

Company Name	Liability	Physical Damage	Total All Coverages
American Automobile Ins. Co.	206	230	462
American Ins. Co.	206	230	462
Associated Indemnity Co.	132	188	340
Firemans Fund Ins. Co.	206	230	462
National Surety Co.	268	298	594
Nationwide Mutual Fire Ins. Co.	100	192	315
Nationwide Mutual Ins. Co.	164	200	327
State Farm Fire & Casualty Co.	120	348	501
State Farm Mutual Automobile Ins. Co.	79	252	354

EXAMPLE B:20-year old,single, male driver (licensed 3yrs.)
Principal operator-no drivers training
No accidents or citations
Pleasure use(less than 7,500 miles annually)

TERRITORY 1 - (ANCHORAGE)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	529	988	1,564
Alaska Ins. Co.	494	826	1,316
Alaska Pacific Assurance Co.	239	402	663
Allstate Ins. Co.	456	636	1,143
All West Ins. Co.	517	655	1,274
American Automobile Ins. Co.	584	818	1,470
American Ins. Co.	584	818	1,470
Associated Indemnity Co.	388	670	1,102
Automobile Ins. Plan	731	1,980	2,769
Continental Ins. Co.	494	806	1,346
Criterion Ins. Co.	509	847	1,398
Dairyland Ins. Co.	454	1,236	1,753
Firemans Fund Ins. Co.	584	818	1,470
Globe American Casualty Ins. Co.	610	1,019	1,719
Government Employees Ins. Co.	530	756	1,347
Horace Mann Ins. Co.	556	742	1,348
Insurance Services Office	185	306	513
International Service Ins. Co.	581	675	1,302
Leader National Ins. Co.	650	1,008	1,748
Lumbermans Mutual Casualty Co.	533	875	1,458
National Indemnity Co.	693	1,184	1,934
National Surety Co.	758	1,062	1,902
Nationwide Mutual Fire Ins. Co.	507	825	1,386
Nationwide Mutual Ins. Co.	528	859	1,442
Progressive Casualty Co.	552	1,137	1,749
State Farm Fire & Casualty Co.	590	1,290	1,951
State Farm Mutual Automobile Ins. Co.	511	1,207	1,774
United Services Automobile Assn. (USAA)	307	580	916
USAA Casualty Ins. Co.	351	663	1,046

TERRITORY 2 - (FAIRBANKS)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	509	1,183	1,744
Alaska Ins. Co.	480	986	1,515
Alaska Pacific Assurance Co.	234	481	740
Allstate Ins. Co.	430	704	1,183
All West Ins. Co.	442	709	1,113
American Automobile Ins. Co.	860	948	1,864
American Ins. Co.	860	948	1,864
Associated Indemnity Co.	558	780	1,380
Automobile Ins. Plan	848	2,274	3,191
Continental Ins. Co.	480	986	1,515
Criterion Ins. Co.	433	756	1,231
Dairyland Ins. Co.	406	1,320	1,789
Firemans Fund Ins. Co.	860	948	1,864
Globe American Casualty Ins. Co.	643	1,155	1,790
Government Employees Ins. Co.	468	862	1,386
Horace Mann Ins. Co.	440	736	1,224
Insurance Services Office	480	986	1,515
International Service Ins. Co.	513	758	1,314
Leader National Ins. Co.	570	1,030	1,690
Lumbermans Mutual Casualty Co.	522	1,035	1,613
National Indemnity Co.	619	1,251	1,927
National Surety Co.	1,118	1,238	2,420
Nationwide Mutual Fire Ins. Co.	571	942	1,569
Nationwide Mutual Ins. Co.	594	981	1,633
Progressive Casualty Co.	497	1,201	1,758
State Farm Fire & Casualty Co.	597	1,404	2,067
State Farm Mutual Automobile Ins. Co.	516	1,361	1,930
United Services Automobile Assn. (USAA)	298	691	1,020
USAA Casualty Ins. Co.	341	790	1,165

TERRITORY 3 - (REMAINDER OF STATE)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	393	898	1,339
Alaska Ins. Co.	375	732	1,153
Alaska Pacific Assurance Co.	177	365	564
Allstate Ins. Co.	342	614	999
All West Ins. Co.	364	595	1,000
American Automobile Ins. Co.	414	866	1,342
American Ins. Co.	414	866	1,342
Associated Indemnity Co.	268	714	1,028
Automobile Ins. Plan	683	1,797	2,545
Continental Ins. Co.	375	752	1,173
Criterion Ins. Co.	339	758	1,139
Dairyland Ins. Co.	358	1,320	1,741
Firemans Fund Ins. Co.	414	866	1,342
Globe American Casualty Ins. Co.	474	1,027	1,575
Government Employees Ins. Co.	348	765	1,159
Horace Mann Ins. Co.	351	687	1,083
Insurance Services Office	375	752	1,173
International Service Ins. Co.	371	775	1,186
Leader National Ins. Co.	574	962	1,626
Lumbermans Mutual Casualty Co.	413	801	1,264
National Indemnity Co.	505	1,255	1,817
National Surety Co.	538	1,126	1,740
Nationwide Mutual Fire Ins. Co.	451	773	1,274
Nationwide Mutual Ins. Co.	471	805	1,328
Progressive Casualty Co.	414	1,086	1,560
State Farm Fire & Casualty Co.	502	1,245	1,813
State Farm Mutual Automobile Ins. Co.	433	1,187	1,674
United Services Automobile Assn. (USAA)	231	525	785
USAA Casualty Ins. Co.	265	601	898

TERRITORY 4 - (JUNEAU/SOUTHEAST ALASKA)

Company Name	Liability	Physical Damage	Total All Coverages
American Automobile Ins. Co.	582	652	1,284
American Ins. Co.	582	652	1,284
Associated Indemnity Co.	378	534	948
Firemans Fund Ins. Co.	582	652	1,284
National Surety Co.	756	848	1,666
Nationwide Mutual Fire Ins. Co.	408	787	1,244
Nationwide Mutual Ins. Co.	426	820	1,294
State Farm Fire & Casualty Co.	416	1,208	1,681
State Farm Mutual Automobile Ins. Co.	359	1,142	1,545

EXAMPLE C: Adult driver (married over 25)
One at fault accident in past year, over $500 damage
Drives ten miles to work daily (over 7,500 miles annually)

TERRITORY 1 - (ANCHORAGE)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	313	583	928
Alaska Ins. Co.	293	489	812
Alaska Pacific Assurance Co.	139	233	387
Allstate Ins. Co.	222	248	505
All West Ins. Co.	413	521	1,016
American Automobile Ins. Co.	338	474	860
American Ins. Co.	338	747	860
Associated Indemnity Co.	220	388	646
Automobile Ins. Plan	386	748	1,172
Continental Ins. Co.	293	489	812
Criterion Ins. Co.	299	499	846
Dairyland Ins. Co.	382	636	1,081
Firemans Fund Ins. Co.	338	474	860
Globe American Casualty Ins. Co.	455	572	1,1[illegible]
Government Employees Ins. Co.	288	410	740
Horace Mann Ins. Co.	278	371	678
Insurance Services Office	293	489	812
International Service Ins. Co.	337	391	758
Leader National Ins. Co.	390	530	1,010
Lumbermans Mutual Casualty Co.	290	476	798
National Indemnity Co.	462	571	1,090
National Surety Co.	440	616	1,112
Nationwide Mutual Fire Ins. Co.	173	282	483
Nationwide Mutual Ins. Co.	180	293	503
Progressive Casualty Co.	322	531	913
State Farm Fire & Casualty Co.	226	485	754
State Farm Mutual Automobile Ins. Co.	137	323	486
United Services Automobile Assn. (USAA)	182	343	544
USAA Casualty Ins. Co.	209	392	622

TERRITORY 2 - (FAIRBANKS)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	301	697	1,032
Alaska Ins. Co.	286	581	899
Alaska Pacific Assurance Co.	135	279	431
Allstate Ins. Co.	210	276	519
All West Ins. Co.	354	564	999
American Automobile Ins. Co.	498	550	1,086
American Ins. Co.	498	550	1,086
Associated Indemnity Co.	324	452	806
Automobile Ins. Plan	387	870	1,297
Continental Ins. Co.	286	581	899
Criterion Ins. Co.	257	449	754
Dairyland Ins. Co.	322	684	1,069
Firemans Fund Ins. Co.	498	550	1,086
Globe American Casualty Ins. Co.	406	663	1,143
Government Employees Ins. Co.	254	468	761
Horace Mann Ins. Co.	220	368	616
Insurance Services Office	286	581	899
International Service Ins. Co.	297	439	765
Leader National Ins. Co.	360	550	1,000
Lumbermans Mutual Casualty Co.	284	562	882
National Indemnity Co.	412	617	1,086
National Surety Co.	648	714	1,408
Nationwide Mutual Fire Ins. Co.	195	322	546
Nationwide Mutual Ins. Co.	203	335	568
Progressive Casualty Co.	289	567	916
State Farm Fire & Casualty Co.	229	524	793
State Farm Mutual Automobile Ins. Co.	138	364	528
United Services Automobile Assn. (USAA)	177	408	605
USAA Casualty Ins. Co.	204	466	692

TERRITORY 3 - (REMAINDER OF STATE)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	234	532	798
Alaska Ins. Co.	225	446	701
Alaska Pacific Assurance Co.	103	211	329
Allstate Ins. Co.	162	240	433
All West Ins. Co.	293	474	847
American Automobile Ins. Co.	240	526	808
American Ins. Co.	240	526	808
Associated Indemnity Co.	156	414	598
Automobile Ins. Plan	311	686	1,035
Continental Ins. Co.	225	446	701
Criterion Ins. Co.	205	450	703
Dairyland Ins. Co.	286	684	1,009
Firemans Fund Ins. Co.	240	526	808
Globe American Casualty Ins. Co.	355	583	1,004
Government Employees Ins. Co.	189	415	638
Horace Mann Ins. Co.	179	343	546
Insurance Services Office	225	446	701
International Service Ins. Co.	214	449	690
Leader National Ins. Co.	354	510	954
Lumbermans Mutual Casualty Co.	225	436	693
National Indemnity Co.	336	622	1,015
National Surety Co.	312	684	1,046
Nationwide Mutual Fire Ins. Co.	154	284	445
Nationwide Mutual Ins. Co.	161	275	463
Progressive Casualty Co.	241	510	811
State Farm Fire & Casualty Co.	192	466	699
State Farm Mutual Automobile Ins. Co.	116	317	459
United Services Automobile Assn. (USAA)	139	311	469
USAA Casualty Ins. Co.	159	356	536

TERRITORY 4 - (JUNEAU/SOUTHEAST ALASKA)

Company Name	Liability	Physical Damage	Total All Coverages
American Automobile Ins. Co.	336	378	748
American Ins. Co.	336	378	748
Associated Indemnity Co.	220	308	554
Firemans Fund Ins. Co.	336	378	748
National Surety Co.	436	492	968
Nationwide Mutual Fire Ins. Co.	139	269	435
Nationwide Mutual Ins. Co.	145	280	452
State Farm Fire & Casualty Co.	160	453	650
State Farm Mutual Automobile Ins. Co.	96	305	425

EXAMPLE D: 20 year old, single female driver (licensed 3 years +)
Principle operator- no drivers training
No accidents or citations
Pleasure use of vehicle (less than 7,500 miles annually)

TERRITORY 1 - (ANCHORAGE)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	241	448	715
Alaska Ins. Co.	227	377	629
Alaska Pacific Assurance Co.	105	177	295
Allstate Ins. Co.	260	334	639
All West Ins. Co.	272	339	663
American Automobile Ins. Co.	276	386	704
American Ins. Co.	276	386	704
Associated Indemnity Co.	180	318	532
Automobile Ins. Plan	411	821	1,272
Continental Ins. Co.	227	377	629
Criterion Ins. Co.	305	509	856
Dairyland Ins. Co.	346	792	1,201
Firemans Fund Ins. Co.	276	386	704
Globe American Casualty Ins. Co.	468	795	1,337
Government Employees Ins. Co.	270	384	695
Horace Mann Ins. Co.	252	336	615
Insurance Services Office	227	377	629
International Service Ins. Co.	255	297	577
Leader National Ins. Co.	494	768	1,352
Lumbermans Mutual Casualty Co.	299	492	823
National Indemnity Co.	477	678	1,212
National Surety Co.	358	502	908
Nationwide Mutual Fire Ins. Co.	272	443	750
Nationwide Mutual Ins. Co.	283	461	781
Progressive Casualty Co.	431	787	1,278
State Farm Fire & Casualty Co.	358	782	1,192
State Farm Mutual Automobile Ins. Co.	279	660	977
United Services Automobile Assn. (USAA)	140	264	420
USAA Casualty Ins. Co.	167	301	480

TERRITORY 2 - (FAIRBANKS)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	232	535	795
Alaska Ins. Co.	221	447	695
Alaska Pacific Assurance Co.	102	212	328
Allstate Ins. Co.	244	370	657
All West Ins. Co.	234	366	653
American Automobile Ins. Co.	408	450	892
American Ins. Co.	408	450	892
Associated Indemnity Co.	264	370	662
Automobile Ins. Plan	412	945	1,399
Continental Ins. Co.	221	447	695
Criterion Ins. Co.	262	457	761
Dairyland Ins. Co.	310	840	1,213
Firemans Fund Ins. Co.	408	450	892
Globe American Casualty Ins. Co.	417	927	1,418
Government Employees Ins. Co.	238	439	715
Horace Mann Ins. Co.	200	333	559
Insurance Services Office	221	447	695
International Service Ins. Co.	225	333	582
Leader National Ins. Co.	418	792	1,300
Lumbermans Mutual Casualty Co.	293	581	910
National Indemnity Co.	431	731	1,219
National Surety Co.	530	586	1,156
Nationwide Mutual Fire Ins. Co.	306	506	849
Nationwide Mutual Ins. Co.	319	526	883
Progressive Casualty Co.	388	831	1,279
State Farm Fire & Casualty Co.	362	851	1,262
State Farm Mutual Automobile Ins. Co.	282	744	1,062
United Services Automobile Assn. (USAA)	137	312	466
USAA Casualty Ins. Co.	157	357	532

TERRITORY 3 - (REMAINDER OF STATE)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	183	409	618
Alaska Ins. Co.	175	344	544
Alaska Pacific Assurance Co.	78	160	251
Allstate Ins. Co.	196	324	559
All West Ins. Co.	195	309	545
American Automobile Ins. Co.	196	410	644
American Ins. Co.	196	410	644
Associated Indemnity Co.	128	338	496
Automobile Ins. Plan	331	746	1,117
Continental Ins. Co.	175	344	544
Criterion Ins. Co.	209	459	710
Maryland Ins. Co.	274	840	1,177
Firemans Fund Ins. Co.	196	410	644
Globe American Casualty Ins. Co.	364	811	1,241
Government Employees Ins. Co.	177	389	599
Horace Mann Ins. Co.	159	311	495
Insurance Services Office	175	344	544
International Service Ins. Co.	163	340	526
Leader National Ins. Co.	400	734	1,224
Lumbermans Mutual Casualty Co.	232	450	714
National Indemnity Co.	354	732	1,143
National Surety Co.	254	532	830
Nationwide Mutual Fire Ins. Co.	242	414	691
Nationwide Mutual Ins. Co.	253	432	720
Progressive Casualty Co.	324	751	1,135
State Farm Fire & Casualty Co.	304	754	1,108
State Farm Mutual Automobile Ins. Co.	237	649	922
United Services Automobile Assn. (USAA)	107	241	364
USAA Casualty Ins. Co	123	275	416

TERRITORY 4 - (JUNEAU/SOUTHEAST ALASKA)

Company Name	Liability	Physical Damage	Total All Coverages
American Automobile Ins. Co.	276	308	614
American Ins. Co.	276	308	614
Associated Indemnity Co.	180	434	458
Firemans Fund Ins. Co.	276	308	614
National Surety Co.	358	400	794
Nationwide Mutual Fire Ins. Co.	219	422	674
Nationwide Mutual Ins. Co.	228	440	702
State Farm Fire & Casualty Co.	252	732	1,028
State Farm Mutual Automobile Ins. Co.	196	624	852

EXAMPLE E: Adult male driver (divorced, over 30 years old)
One, driving while intoxicated conviction, 28 months ago
SR-22 (Financial responsibility) filing required
One at-fault accident 12 months ago (over $500 damage)
Drives to work ten miles daily (over 7,500 miles annually)

TERRITORY 1 - (ANCHORAGE)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	1,955	3,669	5,783
Alaska Ins. Co.	595	995	1,644
Alaska Pacific Assurance Co.	291	486	803
Allstate Ins. Co.	460	362	821
All West Ins. Co.	848	1,041	2,057
American Automobile Ins. Co.	1,384	1,936	3,454
American Ins. Co.	1,384	1,936	3,454
Associated Indemnity Co.	900	1,588	2,582
Automobile Ins. Plan	966	1,870	2,910
Continental Ins. Co.	NA	NA	NA
Criterion Ins. Co.			
Dairyland Ins. Co.	598	840	1,501
Firemans Fund Ins. Co.	1,384	1,936	3,454
Globe American Casualty Ins. Co.	556	771	1,409
Government Employees Ins. Co.	629	897	1,595
Horace Mann Ins. Co.	608	812	1,474
Insurance Services Office	595	995	1,644
International Service Ins. Co.	704	818	1,576
Leader National Ins. Co.	574	738	1,402
Lumbermans Mutual Casualty Co.	626	1,029	1,712
National Indemnity Co.	693	785	1,541
National Surety Co.	1,798	2,518	4,484
Nationwide Mutual Fire Ins. Co.	422	624	1,090
Nationwide Mutual Ins. Co.	439	649	1,134
Progressive Casualty Co.	456	845	1,361
State Farm Fire & Casualty Co.	339	485	867
State Farm Mutual Automobile Ins. Co.	205	323	555
United Services Automobile Assn. (USAA)	369	699	1,102
USAA Casualty Ins. Co.	423	798	1,259

TERRITORY 2 - (FAIRBANKS)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	1,880	4,415	6,465
Alaska Ins. Co.	577	1,188	1,822
Alaska Pacific Assurance Co.	283	583	895
Allstate Ins. Co.	434	392	859
All West Ins. Co.	722	1,171	2,092
American Automobile Ins. Co.	2,040	2,248	4,404
American Ins. Co.	2,040	2,248	4,404
Associated Indemnity Co.	1,324	1,848	3,252
Automobile Ins. Plan	1,016	2,175	3,271
Continental Ins. Co.	NA	NA	NA
Criterion Ins. Co.	532	926	1,538
Dairyland Ins. Co.	490	888	1,441
Firemans Fund Ins. Co.	2,040	2,248	4,404
Globe American Casualty Ins. Co.	496	854	1,424
Government Employees Ins. Co.	555	1,023	1,641
Horace Mann Ins. Co.	482	805	1,338
Insurance Services Office	577	1,188	1,822
International Service Ins. Co.	621	917	1,588
Leader National Ins. Co.	518	784	1,392
Lumbermans Mutual Casualty Co.	613	1,216	1,893
National Indemnity Co.	619	845	1,527
National Surety Co.	2,652	2,922	5,720
Nationwide Mutual Fire Ins. Co.	475	712	1,233
Nationwide Mutual Ins. Co.	495	741	1,283
Progressive Casualty Co.	410	897	1,367
State Farm Fire & Casualty Co.	343	524	907
State Farm Mutual Automobile Ins. Co.	207	364	597
United Services Automobile Assn. (USAA)	359	833	1,228
USAA Casualty Ins. Co.	411	952	1,403

TERRITORY 3 - (REMAINDER OF STATE)

Company Name	Liability	Physical Damage	Total All Coverages
AIU Ins. Co.	1,446	3,332	4,936
Alaska Ins. Co.	450	905	1,409
Alaska Pacific Assurance Co.	214	442	682
Allstate Ins. Co.	338	348	717
All West Ins. Co.	592	979	1,739
American Automobile Ins. Co.	978	2,052	3,154
American Ins. Co.	978	2,052	3,154
Associated Indemnity Co.	638	1,690	2,414
Automobile Ins. Plan	828	1,716	2,618
Continental Ins. Co.	NA	NA	NA
Criterion Ins. Co.	413	928	1,421
Dairyland Ins. Co.	442	888	1,393
Firemans Fund Ins. Co.	978	2,052	3,154
Globe American Casualty Ins. Co.	432	766	1,272
Government Employees Ins. Co.	412	908	1,371
Horace Mann Ins. Co.	384	751	1,184
Insurance Services Office	450	905	1,409
International Service Ins. Co.	448	939	1,434
Leader National Ins. Co.	446	726	1,262
Lumbermans Mutual Casualty Co.	486	941	1,484
National Indemnity Co.	505	842	1,410
National Surety Co.	1,272	2,668	4,096
Nationwide Mutual Fire Ins. Co.	375	584	1,001
Nationwide Mutual Ins. Co.	392	609	1,044
Progressive Casualty Co.	342	809	1,211
State Farm Fire & Casualty Co.	288	466	795
State Farm Mutual Automobile Ins. Co.	174	317	517
United Services Automobile Assn. (USAA)	278	633	945
USAA Casualty Ins. Co.	318	723	1,079

TERRITORY 4 - (JUNEAU/SOUTHEAST ALASKA)

Company Name	Liability	Physical Damage	Total All Coverages
American Automobile Ins. Co.	1,378	1,546	3,024
American Ins. Co.	1,378	1,546	3,024
Associated Indemnity Co.	896	1,266	2,232
Firemans Fund Ins. Co.	1,378	1,546	3,024
National Surety Co.	1,792	2,010	3,928
Nationwide Mutual Fire Ins. Co.	339	595	975
Nationwide Mutual Ins. Co.	364	620	1,015
State Farm Fire & Casualty Co.	239	453	729
State Farm Mutual Automobile Ins. Co.	144	305	473

PART TWO

HOMEOWNERS

1982 - STATISTICAL ANALYSIS
HOMEOWNERS INSURANCE

- SUMMARY -

This portion of the 1982 Personal Lines Statistical Analyses is devoted to the Alaska homeowners insurance market. Following the statistical exhibits is a comparison of the rates charged by many writers of homeowners insurance in Alaska. The comments that led off the Private Passenger Automobile summary apply likewise to the profitable homeowners market.

Exhibit I illustrates the percentage of the overall market garnered by each of the top 25 writers of homeowners insurance in Alaska (rank, based on written premium). State Farm Fire and Casualty leads the pack in 1981, as they have for many years. State Farm Fire and Casualty had 41.9% of the market in 1981, the same percentage they had in 1980. They did increase their premium volume by 18.8% during 1981. Allstate, the second largest writer, lost about .3% of their share, down to 20.38% from 20.7% in 1980. Their premium volume was up 16.7%. Third place Alaska Pacific Assurance lost both market share and premium volume in 1981. They had 5.28% of the market in 1981 compared to 6.8% in 1980, a drop of about 1.5% while premium volume dropped 7.3%. Continental held onto fourth place by increasing their market share by about .6% to 4.18% up from 3.6% in 1980. Premium volume for them was up 39.4%. The largest gain in market share was by Dependable Insurance Company now in fifth place with a 2.74% share compared with 1% in 1980. Premium volume for Dependable was up 224.5%. Of the top ten companies, four increased their market share, four lost share and two stayed the same. Out of the ten companies, eight increased their premium volume in 1981. Of the 25 companies, 11 increased their share while nine lost and five stayed the same. Overall, the 25 companies in 1981 represent 98.6% of the market compared to 1980 when the 25 top companies accounted for 99.9% of the market. Premium volume for 20 of the companies was up, only five had less written premium in 1981 than 1980. For all companies writing homeowners insurance in Alaska premium volume was $24,160,000, up 18.8% from $20,357,000 written in 1980.

While we are pleased that the market has spread somewhat, we are still concerned that nearly 75% of the homeowners market is shared by five companies. Even more disturbing is the fact that two companies hold over 62% of the market. The division is rather powerless to change this concentration and, therefore, must rely on the other companies writing in Alaska to aggressively pursue a larger share of the market. Companies writing this coverage have been able to show a profit in 11 of the past 12 years and we are at a loss as to why more companies are not actively seeking more new business.

Exhibit II adds credence to the above point. Here we have the same 25 companies and their loss ratios for 1978-1981. As the chart shows, 1981 was a return to the profitable experience experienced in every year since 1969, a record marred only by 1980's wind storm losses. The loss ratio for all companies was 49.9%, an improvement of 74 percentage points over the 123.9% loss ratio of 1980 and .4% better than 1979. Of the 25 companies, 15 had loss ratios of 50% or less, 14 had 40% or less and seven had a loss ratio of 20% or less.

Exhibit III further illustrates how profitable homeowners insurance has been in Alaska. This chart lists the top 25 companies along with their expenses in 1981. In 1980, 16 companies had combined loss ratios greater than 100%; in 1981, 16 companies had less than a 100% combined loss ratio. Of the eight companies with combined ratios over 100%, six had expenses that exceeded the 45% that this division considers acceptable. Total expenses averaged 42.4% which when combined with the actual loss ratio for the 25 companies of 50.7%, indicates a combined of 93.1%, this leaves 6.9% for profit and the ever popular IBNR (incurred but not reported) claimed.

Norm Cheney
Insurance Market Analyst

EXHIBIT I
CHART I

HOMEOWNERS MARKET SHARE

Company Name	Written Premium 1981	Market Share 1981	Market Share 1980	Market Share 1979	Market Share 1978	Cumulative Market Share 1981
1. State Farm Fire & Casualty Co.	10,124	41.90	41.9	41.2	40.6	41.90
2. Allstate Ins. Co.	4,924	20.38	20.7	19.3	16.9	62.28
3. Alaska Pacific Assurance	1,275	5.28	6.8	2.8	--	67.56
4. Continental Ins. Co.	1,009	4.18	3.6	3.5	1.8	71.74
5. Dependable Ins. Co.	662	2.74	1.0	--	--	74.48
6. Horace Mann Ins. Co.	655	2.71	2.7	2.9	2.8	77.19
7. American Ins. Co.	598	2.48	3.3	4.2	4.6	79.67
8. State Farm General Ins. Co.	587	2.43	2.5	2.6	2.9	82.10
9. Alaska Ins. Co.	555	2.30	2.2	2.4	1.9	84.40
10. Associated Indemnity Corp.	514	2.13	2.0	2.3	2.7	86.53
11. Pacific Employers Ins. Co.	512	2.12	2.3	1.2	--	88.65
12. United Services Automobile Assn.	447	1.85	1.8	1.9	1.8	90.50
13. Allstate Indemnity Co.	346	1.43	1.9	2.1	1.2	91.93
14. Industrial Indemnity Co.	288	1.19	.6	.5	--	93.12
15. Industrial Indemnity Co. of Ak.	285	1.18	1.4	1.3	--	94.30
16. Great American Ins. Co. of Ak.	238	.99	1.5	--	--	95.29
17. Nationwide Mutual Fire Ins. Co.	205	.85	.8	.8	.7	96.14
18. Insurance Co. of North America	194	.80	--	--	--	96.94
19. Firemans Fund Insurance Co.	88	.36	.4	.3	.2	97.30
20. American Motorists Ins. Co.	80	.33	.5	--	--	97.63
21. Colonial Penn Ins. Co.	72	.30	.3	.4	.5	97.93
22. Umialik Ins. Co.	58	.24	--	--	--	98.17
23. Government Employees Ins. Co.	44	.18	.2	.2	.2	98.45
24. USAA Casualty Ins. Co.	39	.16	.1	.1	.1	98.61
25. American Bankers Ins. Co. of Florida	18	.07	--	--	--	98.67
Total Top 25 Companies	23,817	98.58	99.9*			
Total All Companies	24,160					

*Based on Top 25 Companies 1980

CHART II

HOMEOWNERS LOSS RATIOS

Company Name	Earned Premium 1981	Incurred Losses 1981	Loss Ratio 1981	Loss Ratio 1980	Loss Ratio 1979	Loss Ratio 1978
1. State Farm Fire & Casualty	9,250	4,450	48.1	140.1	55.1	31.3
2. Allstate Ins. Co.	4,500	2,865	63.7	158.1	61.8	40.8
3. Alaska Pacific Assurance	1,321	822	62.2	73.0	18.1	--
4. Continental Ins. Co.	839	328	39.1	106.1	24.1	106.6
5. Dependable Ins. Co.	423	112	26.5	72.9	--	--
6. Horace Mann Ins. Co.	595	175	29.4	89.7	47.6	37.7
7. American Ins. Co.	642	389	60.6	83.7	46.5	47.7
8. State Farm General Ins. Co.	541	202	37.3	167.0	69.6	65.1
9. Alaska Ins. Co.	503	352	70.0	64.7	19.5	31.6
10. Associated Indemnity Corp.	442	122	27.6	52.0	25.5	43.0
11. Pacific Employers Ins. Co.	482	286	59.3	121.9	151.7	--
12. United Services Automobile Assn.	388	64	16.5	181.3	30.1	16.0
13. Allstate Indemnity Co.	372	72	19.4	37.1	28.7	76.9
14. Industrial Indemnity Co.	284	191	67.3	66.4	11.5	--
15. Industrial Indemnity Co. of Ak.	189	218	115.3	93.1	30.5	0.0
16. Great American Ins. Co. of Ak.	295	46	15.6	33.3	--	--
17. Nationwide Mutual Fire Ins. Co.	181	65	35.9	40.6	4.4	4.7
18. Insurance Co. of North America	200	(58)	0.0	150.2	48.6	27.8
19. Firemans Fund Ins. Co.	83	166	200.0	49.3	0.0	78.5
20. American Motorists Ins. Co.	92	8	8.7	52.4	--	1.3
21. Colonial Penn Ins. Co.	71	29	40.8	64.2	131.0	15.4
22. Umialik Ins. Co.	6	0	0.0	--	--	--
23. Government Employees Ins. Co.	41	135	329.3	128.6	32.3	0.0
24. USAA Casualty Ins. Co.	33	4	12.1	--	--	--
25. American Bankers Ins. Co.	18	11	61.1	--	--	--
Total Top 25 Companies	21,791	11,054	50.7	124.6*	50.2*	35.2*
Total All Companies	22,095	11,025	49.9	123.9	50.3	35.1

*Based on Top 25 Companies 1978, 1979, 1980

Source: Insurance Reports 1978-81

CHART III

HOMEOWNERS EXPENSE EXHIBIT 1981

	Company Name	Earned Premium 1981	Loss Adjust-ment Expense	Comssn. and Brkrg.	Other Acquis. & Field Supv. Collect.	Gen Expns.	Taxes, Licenses and Fees Incurred	Total Expns.	Permis. Loss Ratio	Act-ual Loss Ratio	Comb. Loss Ratios Col. 7 and 9
1.	State Farm Fire & Casualty Co.	9,250	6.9	19.0	3.6	3.2	2.7	35.4	64.6	48.1	83.5
2.	Allstate Ins. Co.	4,500	9.0	9.7	6.9	3.1	3.5	32.2	67.8	63.7	95.9
3.	Alaska Pacific Assurance Co.	1,321	9.6	19.6	4.1	9.0	3.5	45.8	54.2	62.2	108.0
4.	Continental Ins. Co.	839	6.5	21.1	3.5	9.9	2.9	43.9	56.1	39.1	83.0
5.	Dependable Ins. Co.	423	6.1	47.4	1.4	1.6	2.7	59.2	40.8	26.5	85.7
6.	Horace Mann Ins. Co.	595	5.7	19.1	3.1	11.6	3.6	43.1	56.9	29.4	72.5
7.	American Ins. Co.	642	7.8	22.4	4.1	8.8	3.1	46.2	53.8	60.6	106.8
8.	State Farm General Ins. Co.	541	6.9	19.0	3.6	3.2	2.7	35.4	64.6	37.3	72.7
9.	Alaska Ins. Co.	503	7.7	19.7	5.5	2.9	2.9	38.7	61.3	70.0	108.7
10.	Associated Indemnity Corp.	442	7.8	22.4	4.1	8.8	3.1	46.2	53.8	27.6	73.8
11.	Pacific Employers Ins. Co.	482	9.6	19.6	4.1	9.0	3.5	45.8	54.2	59.3	105.2
12.	United Services Auto Assn.	388	8.0	(.3)	15.3	2.5	2.8	28.3	71.7	16.5	44.8
13.	Allstate Indemnity Co.	372	9.0	9.7	6.9	3.1	3.5	32.2	67.8	19.4	51.6
14.	Industrial Indemnity Co.	284	8.4	22.6	3.4	11.5	3.1	49.0	51.0	67.3	116.3
15.	Industrial Indemnity Co. of Alaska	189	8.4	22.6	3.4	11.5	3.1	49.0	51.0	115.3	164.3
16.	Great American Ins. Co. of Ak.	295	4.0	25.3	4.0	9.3	4.0	46.7	53.3	15.6	62.3
17.	Nationwide Mutual Fire Ins. Co.	181	8.0	16.2	7.2	4.2	4.4	40.0	60.0	35.9	75.9
18.	Insurance Co. of North America	200	9.1	19.4	4.0	9.4	3.5	45.4	54.6	0.0	45.4
19.	Firemans Fund Ins. Co.	83	7.8	22.4	4.1	8.8	3.1	46.2	53.8	200.0	246.2
20.	American Motorists Ins. Co.	92	6.7	21.8	8.7	6.4	3.4	47.0	53.0	8.7	55.7
21.	Colonial Penn Ins. Co.	71	14.2	.3	19.8	13.8	2.9	51.1	48.9	40.8	91.9
22.	Umialik Ins. Co.	NEW DOMESTIIC CO. FORMED 1981									
23	Government Employees Ins. Co.	41	14.1	.1	11.1	13.2	1.8	40.8	59.2	329.3	370
24.	USAA Casualty Ins. Co.	33	8.5	0	17.8	3.8	3.6	33.7	66.3	12.1	45.8
25.	American Bankers Ins. Co.	18	1.9	10.7	1.9	9.5	3.6	35.7	64.3	61.1	96.8

HOMEOWNERS INSURANCE RATE EXAMPLES

The rating examples on the following pages are all based on the same coverage levels and rating information. The product should not be judged solely on the basis of price. Service, in all its numerous aspects, is also an important consideration.

Rates are current as of 8/1/82.

Rating and Coverage Data:

Policy	- HO-3
Construction	- Frame
Premium	- Annual ($100 deductible)
Locations	- Anchorage
	- Fairbanks
	- Juneau
Protection Classes	- 4, 6, 8, 9, 10
Insured Amount Each Location & Protection Class	- $ 50,000
	- 80,000
	- 110,000

ANCHORAGE
(50,000)

	Protection Class				
	4	6	8	9	10
Alaska Ins. Co.	175	175	241	383	438
Alaska Pacific Assurance Co.	301	301	449	503	583
All State Ins. Co.	233	275	404	497	497
Allstate Indemnity Co.	350	413	606	746	746
American Ins. Co.	275	322	481	633	633
American Motorists Ins. Co.	291	291	320	509	582
Associated Indemnity Co.	228	267	399	524	524
Colonial Penn Ins. Co.	231	231	231	435	435
Continental Ins. Co.	285	285	311	499	568
Dependable Ins. Co.	220	251	292	394	476
Firemans Fund Ins. Co.	275	322	481	633	633
Government Employees Ins. Co.	295	295	325	515	589
Great American Ins. Co. of Ak.	219	219	241	383	438
Horace Mann Ins. Co.	212	249	356	393	431
Industrial Indemnity Co.	211	211	312	389	445
Industrial Indemnity Co. of Ak.	323	323	477	596	684
Insurance Co. of North America	301	301	449	503	583
Insurance Services Office	291	291	320	507	579
Nationwide Mutual Fire Ins. Co.	199	236	335	414	414
Pacific Employers Ins. Co.	241	241	359	402	466
State Farm Fire & Casualty Co.	209	246	351	435	435
State Farm General Ins. Co.	277	322	450	551	551
Umialik Ins. Co.	291	291	320	507	579
United Services Auto Assoc.	190	190	209	330	377

ANCHORAGE
(80,000)

	Protection Class				
	4	6	8	9	10
Alaska Ins. Co.	286	286	394	626	717
Alaska Pacific Assurance Co.	433	433	648	726	842
All State Ins. Co.	308	363	533	656	656
Allstate Indemnity Co.	462	545	800	984	984
American Ins. Co.	358	419	625	823	823
American Motorists Ins. Co.	402	402	442	703	804
Associated Indemnity Co.	296	347	519	681	681
Colonial Penn Ins. Co.	364	364	364	686	686
Continental Ins. Co.	411	411	452	719	820
Dependable Ins. Co.	280	212	272	505	615
Firemans Fund Ins. Co.	358	419	625	823	823
Government Employees Ins. Co.	560	560	613	981	1,121
Great American Ins. Co. of Ak.	358	358	394	626	716
Horace Mann Ins. Co.	261	307	440	637	694
Industrial Indemnity Co.	294	294	435	543	622
Industrial Indemnity Co. of Ak.	451	451	666	833	957
Insurance Co. of North America	433	433	648	726	842
Insurance Services Office	401	401	440	699	798
Nationwide Mutual Fire Ins. Co.	268	318	453	561	561
Pacific Employers Ins. Co.	346	346	518	581	674
State Farm Fire & Casualty Co.	282	332	475	589	589
State Farm General Ins. Co.	366	426	600	738	738
Umialik Ins. Co.	401	401	440	699	798
United Services Auto Assoc.	261	261	287	455	520

ANCHORAGE
(110,000)

	Protection Class				
	4	6	8	9	10
Alaska Ins. Co.	430	430	592	938	1,077
Alaska Pacific Assurance Co.	566	566	847	949	1,101
All State Ins. Co.	395	466	683	841	841
Allstate Indemnity Co.	593	699	1,025	1,262	1,262
American Ins. Co.	457	535	798	1,080	1,080
American Motorists Ins. Co.	544	544	598	951	1,088
Associated Indemnity Co.	378	443	662	870	870
Colonial Penn Ins. Co.	568	568	568	1,068	1,068
Continental Ins. Co.	567	567	620	989	1,132
Dependable Ins. Co.	358	404	482	660	807
Firemans Fund Ins. Co.	457	535	798	1,080	1,080
Government Employees Ins. Co.	860	860	948	1,509	1,721
Great American Ins. Co. of Ak.	537	537	591	940	1,075
Horace Mann Ins. Co.	319	375	536	776	847
Industrial Indemnity Co.	383	383	567	707	813
Industrial Indemnity Co. of Ak.	588	588	869	1,086	1,250
Insurance Co. of North America	566	566	847	949	1,101
Insurance Services Office	541	541	594	944	1,078
Nationwide Mutual Fire Ins. Co.	343	409	582	722	722
Pacific Employers Ins. Co.	453	453	678	759	881
State Farm Fire & Casualty Co.	362	427	611	759	759
State Farm General Ins. Co.	462	541	765	943	943
Umialik Ins. Co.	541	541	594	944	1,078
United Services Auto Assoc.	358	358	393	623	711

FAIRBANKS
(50,000)

	Protection Class				
	4	6	8	9	10
Alaska Ins. Co.	175	175	241	383	438
Alaska Pacific Assurance Co.	357	357	531	595	691
All State Ins. Co.	233	275	404	497	497
Allstate Indemnity Co.	350	413	606	746	746
American Ins. Co.	396	463	693	911	911
American Motorists Ins. Co.	291	291	320	509	582
Associated Indemnity Co.	329	385	576	757	757
Colonial Penn Ins. Co.	231	231	231	435	435
Continental Ins. Co.	285	285	311	499	568
Dependable Ins. Co.	246	271	307	422	564
Firemans Fund Ins. Co.	396	463	693	911	911
Government Employees Ins. Co.	295	295	325	515	589
Great American Ins. Co. of Ak.	219	219	241	383	438
Horace Mann Ins. Co.	212	249	356	393	431
Industrial Indemnity Co.	247	247	364	457	523
Industrial Indemnity Co. of Ak.	379	379	559	700	804
Insurance Co. of North America	357	357	531	595	691
Insurance Services Office	291	291	320	507	579
Nationwide Mutual Fire Ins. Co.	237	275	396	488	488
Pacific Employers Ins. Co.	286	286	425	476	553
State Farm Fire & Casualty Co.	248	290	416	513	513
State Farm General Ins. Co.	325	376	528	646	646
Umialik Ins. Co.	291	291	320	507	579
United Services Auto Assoc.	190	190	209	330	377

FAIRBANKS
(80,000)

	Protection Class				
	4	6	8	9	10
Alaska Ins. Co.	286	286	394	626	717
Alaska Pacific Assurance Co.	515	515	767	860	999
All State Ins. Co.	308	363	533	656	656
Allstate Indemnity Co.	462	545	800	984	984
American Ins. Co.	515	602	901	1,184	1,184
American Motorists Ins. Co.	402	402	442	703	804
Associated Indemnity Co.	428	501	749	984	984
Colonial Penn Ins. Co.	364	364	364	686	686
Continental Ins. Co.	411	411	452	719	820
Dependable Ins. Co.	245	271	307	422	564
Firemans Fund Ins. Co.	515	602	901	1,184	1,184
Government Employees Ins. Co.	560	560	618	981	1,121
Great American Ins. Co. of Ak.	358	358	394	626	716
Horace Mann Ins. Co.	261	307	440	486	532
Industrial Indemnity Co.	345	345	509	638	731
Industrial Indemnity Co. of Ak.	530	530	781	979	1,125
Insurance Co. of North America	515	515	767	860	999
Insurance Services Office	401	401	440	699	798
Nationwide Mutual Fire Ins. Co.	306	356	512	632	632
Pacific Employers Ins. Co.	412	412	614	506	799
State Farm Fire & Casualty Co.	320	375	539	665	665
State Farm General Ins. Co.	412	478	677	830	830
Umialik Ins. Co.	401	401	440	699	798
United Services Auto Assoc.	261	261	287	455	520

FAIRBANKS
(110,000)

	Protection Class				
	4	6	8	9	10
Alaska Ins. Co.	430	430	592	938	1,077
Alaska Pacific Assurance Co.	672	672	1,003	1,124	1,307
All State Ins. Co.	395	466	683	841	841
Allstate Indemnity Co.	593	699	1,025	1,262	1,262
American Ins. Co.	657	769	1,150	1,512	1,512
American Motorists Ins. Co.	544	544	598	951	1,088
Associated Indemnity Co.	546	639	956	1,257	1,257
Colonial Penn Ins. Co.	568	568	568	1,068	1,068
Continental Ins. Co.	567	567	620	989	1,132
Dependable Ins. Co.	397	444	511	705	1,035
Firemans Fund Ins. Co.	657	769	1,150	1,512	1,512
Government Employees Ins. Co.	860	860	948	1,509	1,721
Great American Ins. Co. of Ak.	537	537	591	940	1,075
Horace Mann Ins. Co.	319	375	536	592	649
Industrial Indemnity Co.	450	450	664	834	956
Industrial Indemnity Co. of Ak.	691	691	1,020	1,278	1,470
Insurance Co. of North America	672	672	1,003	1,124	1,307
Insurance Services Office	541	541	594	944	1,078
Nationwide Mutual Fire Ins. Co.	386	448	647	797	797
Pacific Employers Ins. Co.	538	538	983	899	1,046
State Farm Fire & Casualty Co.	404	473	681	841	841
State Farm General Ins. Co.	513	597	850	1,043	1,043
Umialik Ins. Co.	541	541	594	944	1,078
United Services Auto Assoc.	358	358	393	623	711

(50,000)

	Protection Class				
	4	6	8	9	10
Alaska Ins. Co.	175	175	241	383	438
Alaska Pacific Assurance Co.	265	265	393	439	511
All State Ins. Co.	212	221	318	384	384
Allstate Indemnity Co.	318	332	477	576	576
American Ins. Co.	233	256	381	524	524
American Motorists Ins. Co.	291	291	320	509	582
Associated Indemnity Co.	193	212	316	434	434
Colonial Penn Ins. Co.	212	212	212	435	435
Continental Ins. Co.	275	275	301	479	546
Dependable Ins. Co.	205	218	278	377	456
Firemans Fund Ins. Co.	233	256	381	524	524
Government Employees Ins. Co.	295	295	325	515	589
Great American Ins. Co. of Ak.	219	219	241	383	438
Horace Mann Ins. Co.	180	212	303	438	478
Industrial Indemnity Co.	211	211	312	389	445
Industrial Indemnity Co. of Ak.	323	323	477	596	684
Insurance Co. of North America	265	265	393	439	511
Insurance Services Office	291	291	320	507	579
Nationwide Mutual Fire Ins. Co.	178	201	282	340	340
Pacific Employers Ins. Co.	212	212	314	419	409
State Farm Fire & Casualty Co.	186	211	297	359	359
State Farm General Ins. Co.	250	280	383	458	458
Umialik Ins. Co.	291	291	320	507	579
United Services Auto Assoc.	190	190	209	330	377

JUNEAU
(80,000)

	Protection Class				
	4	6	8	9	10
Alaska Ins. Co.	286	286	394	626	717
Alaska Pacific Assurance Co.	381	381	567	633	738
All State Ins. Co.	279	292	420	507	507
Allstate Indemnity Co.	419	438	630	761	761
American Ins. Co.	303	333	495	681	681
American Motorists Ins. Co.	402	402	442	703	804
Associated Indemnity Co.	251	276	411	564	564
Colonial Penn Ins. Co.	332	332	332	686	686
Continental Ins. Co.	397	397	434	690	788
Dependable Ins. Co.	257	276	351	479	582
Firemans Fund Ins. Co.	303	333	495	681	681
Government Employees Ins. Co.	560	560	618	981	1,121
Great American Ins. Co. of Ak.	358	358	394	626	716
Horace Mann Ins. Co.	222	261	374	541	590
Industrial Indemnity Co.	294	294	435	543	622
Industrial Indemnity Co of Ak.	451	451	666	833	957
Insurance Co. of North America	381	381	567	633	738
Insurance Services Office	401	401	440	699	798
Nationwide Mutual Fire Ins. Co.	224	253	355	429	429
Pacific Employers Ins. Co.	305	305	454	506	590
State Farm Fire & Casualty Co.	233	264	372	451	451
State Farm General Ins. Co.	306	343	475	571	571
Umialik Ins. Co.	401	401	440	699	798
United Services Auto Assoc.	261	261	287	455	520

JUNEAU
(110,000)

	Protection Class				
	4	6	8	9	10
Alaska Ins. Co.	430	430	592	938	1,077
Alaska Pacific Assurance Co.	497	497	740	828	965
All State Ins. Co.	358	374	539	650	650
Allstate Indemnity Co.	537	561	809	975	975
American Ins. Co.	387	425	632	870	870
American Motorists Ins. Co.	544	544	598	951	1,088
Associated Indemnity Co.	320	352	525	720	720
Colonial Penn Ins. Co.	511	511	511	1,068	1,068
Continental Ins. Co.	547	547	596	948	1,088
Dependable Ins. Co.	328	349	450	623	760
Firemans Fund Ins. Co.	387	425	632	870	870
Government Employees Ins. Co.	860	860	948	1,509	1,721
Great American Ins. Co. of Ak.	537	537	591	940	1,075
Horace Mann Ins. Co.	271	319	456	660	720
Industrial Indemnity Co.	383	383	567	707	813
Industrial Indemnity Co. of Ak.	588	588	869	1,086	1,250
Insurance Co. of North America	497	497	740	828	965
Insurance Services Office	541	541	594	944	1,078
Nationwide Mutual Fire Ins. Co.	284	323	455	548	548
Pacific Employers Ins. Co.	398	398	542	622	772
State Farm Fire & Casualty Co.	298	338	478	579	579
State Farm General Ins. Co.	385	433	603	726	726
Umialik Ins. Co.	541	541	594	944	1,078
United Services Auto Assoc.	358	358	393	623	711

16

Sec. 21.36.400 LIMITATION ON SURCHARGES FOR AUTOMOBILE INSURANCE FOR ACCIDENTS OR VIOLATIONS.

(a) An insurer may not charge increased premium or surcharge a rate for automobile insurance based upon an automobile violation unless the insured or other operator residing in the same household has been convicted of that violation.

(b) An insurer may not charge increased premium or surcharge a rate for automobile insurance if;

(1) The automobile was lawfully parked except that an automobile rolling from a parked position may be considered as the operation of the last operator;

(2) Reimbursement by or on behalf of a person reponsible for the accident has been made or a judgement against such persons exist;

(3) The insured or other operator residing in the same household was struck in the rear and has not been convicted of a moving traffic violation in connection with the accident;

(4) The other party was convicted of a moving traffic violation in connection with the accident;

(5) The insured or other person residing in the same household was hit by a hit and run driver and the accident was reported to the appropriate authorities within 24 hours;

(6) Damage is the result of contact with animals or fowl;

(7) Damage is limited to and caused by flying gravel, missiles or falling objects; or

(8) Loss is subject to coverage under comprehensive coverage.

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF COMMERCE

DIVISION OF INSURANCE / POUCH D — JUNEAU 99801

February 26, 1973

BULLETIN 73-5

TO: ALL INSURERS WRITING AUTOMOBILE INSURANCE FOR DELIVERY IN THE STATE OF ALASKA

RE: USE OF ACCIDENT INFORMATION APPEARING ON MOTOR VEHICLE RECORD ABSTRACTS ISSUED BY THE ALASKA DEPARTMENT OF PUBLIC SAFETY

An increasing number of complaints reveal that a substantial degree of abuse is occurring in connection with accident information appearing on individual motor vehicle record (MVR) "Abstracts issued by the Alaska Department of Public Safety." We have found that insurers are applying "Safe Driver Points" or rate surcharges for accidents shown on the abstract without first determining that such accidents are "At Fault" accidents.

Since the MVR abstract displays accidents without regard to fault, it is improper for an insurer to rely solely upon such an indication as justification for an additional charge. No insurer may blindly charge points or surcharge a risk for an accident appearing on the MVR abstract. In the same light, cancellations or non-renewals based on accident information appearing on the abstract will not be condoned unless supporting determination is made concerning the fault of the accident.

"Safe Driver Points" or rate surcharges may be charged for "At Fault" accidents involving injury to person or damage to property in excess of $100 in which the insured or person covered under the policy is involved except accidents where:

1. The automobile was lawfully parked (An automobile rolling from a parked position need not be considered as lawfully parked, but may be considered as the operation of the last operator); or

2. Reimbursement by or on behalf of a person responsible for the accident has been made or a judgement against such persons exist; or

3. The insured or other operator residing in the same household was struck in the rear and has not been convicted of a moving traffic violation in connection with the accident; or

4. The other party was convicted of a moving traffic violation in connection with the accident and the insured was not; or

5. The insured or other operator residing in the same household was hit by a "Hit and Run" driver and same was reported to authorities within 24 hours; or

6. Damage is the result of contact with animals or fowl; or

7. Damage is limited to and caused by flying gravel, missiles or falling objects.

THIS BULLETIN IS EFFECTIVE IMMEDIATELY.

John J. O'Shea
Director

Sec. 21.36.400 LIMITATION ON SURCHARGES FOR AUTOMOBILE INSURANCE FOR ACCIDENTS OR VIOLATIONS.

(a) An insurer may not charge increased premium or surcharge a rate for automobile insurance based upon an automobile violation unless the insured or other operator residing in the same household has been convicted of that violation.

(b) An insurer may not charge increased premium or surcharge a rate for automobile insurance if;

(1) The automobile was lawfully parked except that an automobile rolling from a parked position may be considered as the operation of the last operator;

(2) Reimbursement by or on behalf of a person reponsible for the accident has been made or a judgement against such persons exist;

(3) The insured or other operator residing in the same household was struck in the rear and has not been convicted of a moving traffic violation in connection with the accident;

(4) The other party was convicted of a moving traffic violation in connection with the accident;

(5) The insured or other person residing in the same household was hit by a hit and run driver and the accident was reported to the appropriate authorities within 24 hours;

(6) Damage is the result of contact with animals or fowl;

(7) Damage is limited to and caused by flying gravel, missiles or falling objects; or

(8) Loss is subject to coverage under comprehensive coverage.

~~fire, theft, vandalism, etc.~~

Sec. 21.39.090. Information to be furnished insureds: Hearings and appeals of insureds. Each rating organization and each insurer which makes its own rate shall, within a reasonable time after receiving written request and upon payment of the reasonable charge as it may make, furnish to an insured affected by a rate made by it, or to the authorized representative of the insured, all pertinent information concerning the rate. Each rating organization and each insurer which makes its own rates shall provide within this state reasonable means for a person aggrieved by the application of its rating system to be heard, in person or by his authorized representative, on his written request to review the manner in which the rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject the request within 30 days after it is made, the applicant may proceed in the same manner as if his application had been rejected. A party affected by the action of the rating organization or the insurer on the request may, within 30 days after written notice of the action, appeal to the director, who, after a hearing held upon not less than 10 days' written notice to the appellant and to the rating organization or insurer, may affirm or reverse the action. (§ 1 ch 120 SLA 1966)

Alaska National
INSURANCE COMPANY

A policy of service and protection

Wes Cagner
3111 Douglas Hwy
586-1931

LEGISLATIVE POSITION PAPER

HOUSE BILL NO. 16 (Fritz)

PURPOSE

An Act relating to premium increases for automobile insurance policies.

BACKGROUND

This measure appears to address the problem of an insurance company increasing the rates for an individual insured. Perhaps it attempts to address the problem of a person who has been found to have too many violations, or traffic accidents, by an underwriter who then re-rates the policy in light of these new underwriting criteria.

The procedure established in the proposed Statute is very elaborate and unrealistic.

The sponsors of the legislation need to be aware of the following:

1. In personal lines automobile insurance all rates are approved by the Division of Insurance, and the rating plan together with all underwriting criteria are all on file with and approved by the Division. For example, if an insurance company has a policy of increasing premium for an insured who has three moving violations, that provision will be on file with the Division and will have been approved.

7001 Jewel Lake Road • Post Office Box 3440, Anchorage, Alaska 99510 • Telephone (907) 248-2642 • Telex (090) 25-456

If an insured is found to have three moving violations, then it is appropriate for the underwriter to re-rate the policy in accordance with terms of the approved filing.

So long as any change in premium is made in accordance with the rate filings on file with and approved by the Division, there is little for the insurance company and the insured to discuss other than the facts which give rise to the underwriting judgment, in other words, did in fact the person receive three moving violations?

2. There already exists a procedure in the Division of Insurance for a person who believes that the underwriting criteria, or re-rating, is not in accordance with the facts or the filing. The Division has a consumer complaints section located in Anchorage that investigates complaints filed with it by any policyholder who believes that they have been improperly charged a premium on their policy.

   The Division has the capacity to investigate the consumer complaint to determine the propriety of the charges and to determine that the charges are in accordance with approved filings.

3. The procedure proposed calls for a meeting with a representative of the insurer to discuss the reasons for the increase.

   The fact is that the two largest automobile insurance writers in the State, State Farm and Allstate, market insurance policies which are computer issued by facilities located in the Lower 48. I suspect there is no one who represents either of those insurers in the State of Alaska who could explain the rate, or change the rate, other than perhaps an informal explanation by one of their representative agents.

   This is even more so with respect to the stock insurance companies which market their automobile insurance in the State but have no representatives in the State.

COMMENT

Since this measure is limited to private passenger automobile insurance, it does not directly affect this Companys book of business, but we do not wish to be precluded from entering the private passenger automobile insurance business in Alaska because of unnecessary burdens placed on underwriters by ill conceived Statutes.

Alaska State Legislature

Representative Milo Fritz
District 5
P.O. Box 158
Anchor Point, Alaska 99556
(907) 235-8366

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4837

House of Representatives

MILO FRITZ

HOUSE BILL 16, AUTOMOBILE INSURANCE PREMIUM INCREASES

I INTRODUCED HB 16, AN ACT RELATING TO PREMIUM INCREASES FOR AUTOMOBILE INSURANCE POLICIES DUE TO A LARGE NUMBER OF COMPLAINTS BY MY CONSTITUENTS. THESE PEOPLE HAVE FELT THAT THEIR INSURANCE PREMIUMS WERE UNJUSTLY RAISED AND THAT THEY HAD NO PROCEDURE AVAILABLE TO APPEAL THE INSURER'S DECISION. THIS BILL SETS FORTH A PROCEDURE FOR AN APPEAL PROCESS BY WHICH THE GENERAL PUBLIC CAN HAVE JUSTICE SERVED. IT WILL NOT ALLOW INSURANCE COMPANIES TO RAISE THE INSURED'S PREMIUM UNLESS THEY ARE UNIFORM IN THEIR POLICY AND HAVE GIVEN THE INSURED AN OPPORTUNITY TO REFUTE THE INSURER'S CLAIM.

BULLETIN 73-5 FROM THE DEPARTMENT OF COMMERCE, DIVISION OF INSURANCE IS ADDITIONAL PROOF THAT THERE HAS BEEN A PROBLEM FOR SOME TIME. THE FACT IS THAT THIS BULLETIN AND THE PRESENT STATUTE, TITLE 21, WHICH GOVERNS INSURANCE, HAVE NOT TAKEN CARE OF THIS PROBLEM.

THERE HAS BEEN SOME CONCERN FROM THE INSURANCE INDUSTRY THAT HB 16 WOULD BE BURDENSOME ON THEM. I HOPE THAT THEY WILL PROPOSE ALTERNATIVES WHICH THE COMMITTEE CAN ACT UPON.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 16 Date on Bill: 1/17/83
Title: An Act relating to premium increases for automobile insurance policies
Sponsor: Fritz
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

Revenue		0	0	0

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

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: ~~Kenneth C. Moore, Director~~ Phone: 465-2515
Division: Insurance Date: 3/9/83

Approved by Commissioner: Richard A. Lyon Date:
Department: Commerce & Economic Development

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

HB

22

Introduced: 1/20/83
Referred: Labor & Commerce,
Judiciary and Finance

1.) HANGER —
2.) —

INTERSTATE BANKING
RESIDENCY REQUIREMENT

IN THE HOUSE BY LINDAUER

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 22

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a state residence requirement for loans purchased by the Alaska Industrial Development Authority."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 44.88.105(d) is amended by adding a new paragraph to read:

(9) may not be made unless the project applicant is a

(A) resident of the state;

(B) business enterprise in which the majority interest is owned by residents of the state; or

(C) business enterprise that maintains its headquarters, executive offices, and administrative offices in the state, that maintains its principal place of business in the state, and that derives more than half of its business revenue from business done in the state; in this paragraph "business enterprise" includes the parent company of a business enterprise.

① BANKS —
② S.B.A. —
③ CORPORATION DOMESTIC OWNED BY MAJORITY SHARE. OUT OF STATE CORPORATION
④ EQUAL PROTECTION LAWS
⑤ PROJECT HAS TO BE IN STATE
⑥ FROM ONE OF
⑦ ALASKA BUSINESSES FIRST / INTERFACE
OUTSIDE — ⑧

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

Alaska State Legislature

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

January 21, 1983

TO: House Labor and Commerce Committee

FROM: Representative John Lindauer John Lindauer

SUBJECT: House Bill #22: "An Act establishing a state residence requirement for loans purchased by the Alaska Industrial Development Authority."

The purpose of this bill is to limit AIDA loans to residents of Alaska and businesses operating in Alaska.

"Many state loan programs and programs using state money already have restrictions that prohibit them from making loans to anyone but state residents. This is the case with agricultural loans (AS 03.10), commercial fishing loans (AS 16.10.300. et seq.), mining loans (AS 27.09), student loans (AS 14.40.741, et seq.), and loans made by the Commercial Fishing and Agricultural Bank (AS 44.81.210 (a) (1)). Other loan programs tend to be limited to state residents by their internal structure. AHFC loans, for example, are generally limited to owner-occupied residencies and thus are made only to persons actually residing in the state. Other examples of self-limiting loan programs are the Municipal Bond Bank Authority (AS 44.85), assisting Alaskan municipalites only, and the Bulk Fuel Revolving Loan Fund (AS 45.87) which assists Alaskan communities and individuals. These programs do not have specific residency requirements, but such requirements are probably not necessary due to the nature of the loan programs."[1]

AIDA has no residency provisions and it is the intent of this bill that only Alaskans participate in this loan program.

The intent is to only qualify business entities who (a) do business within the state of Alaska; (b) have a majority of their employees employed within the geographic bounds of Alaska; and (c) have their corporate headquarters within Alaska.

---

[1] Linn H. Asper, Legislative Counsel, memorandum to Representative John Lindauer, December 2, 1982.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

April 5, 1983

To: Representative Walt Furnace, Chairman
House Labor and Commerce Committee

From: Jefferson B. Barry
Professional Aide

Re: Sponsor Substitute for House Bill 22

Introductory Analysis

SSHB22 is an act which establishes a state residence requirement for loans purchased by the Alaska Industrial Development Authority. The purpose, as stated by the sponsor, is "to only qualify business entities who (a) do business within the state of Alaska; (b) have a majority of their employees employed within the geographic bounds of Alaska; and (c) have their corporate headquarters within Alaska." In dealing with any program which requires residency immediate questions of constitutionality need to be addressed. The attached memorandum from Legislative Counsel Linn Asper touch on the surface of these concerns but skirt the main questions. Even with a narrow scope of review, Mr. Asper could only conclude, "that a case can be made that the residence requirement it contains is constitutional."

Zobel, Hicklin, Lynden, Shelev, and other cases which have been filed over residency requirements have pointed out the necessity for the legislation to clearly enunciate a state benefit, public purpose, not intrude into commerce (private), and be based on a rational basis for establishing the residency requirement. Since SSHB22 establishes a residency requirement for AIDA, it is necessary to examine the purpose, policy, and rational which created AIDA and see where SSHB22 fits into the general statutes.

The legislative findings, determinations and declarations about AIDA are found in AS 44.88.010(a)(1)-(7). These seven findings relate to unemployment and the need to stimulate economic activity in the state. AS 44.88.010(b) states; "It is declared to be the policy of the state, in the interests of promoting the health, security and general welfare of all the people of the state, and a public purpose, to increase job opportunities and otherwise to encourage the economic growth of the state, including the development of its natural resources, through the establishment and expansion of manufacturing, industrial, and business enterprises and the other facilities referred to in (a)(5) of this section by creating the public corporation with power, duties and functions as provided in AS 44.88.010-44.88.220." The purpose of SSHB22 would be to create a benefit for "Alaska" businesses and may create a climate detrimental to the stated purposes of AS 44.88.010(a) and (b).

Since the purpose of AIDA is to encourage the development of the economy, not to see who may get the profit of a particular enterprise, SSHB22 may have a chilling effect on the ability of otherwise eligible business to invest in the Alaskan marketplace and create the jobs, etc. if they are disqualified on the basis of residency. This also raises the question of how to treat franchises of national corporations.

The questions of interstate commerce certainly need to be addressed. If the purpose of AIDA is to develop the economy, it would seem contradictory to prevent qualified firms from participating based on the location of home office or where they were incorporated. The idea of giving an Alaska based firm a competitive advantage in industry engaged in interstate commerce has not found favor in the courts. The fundamental policy question that needs to be answered is for whose benefit is AIDA established? Is it to meet the goals set forth in AS 44.88.010 or to ensure that only Alaska businessmen receive the profits of business conducted in or based out of Alaska? Should the state be concerned and use the resources of the state for the establishment and development of the economy or should the state underwrite the profit(s) of "Alaska business."

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

February 2, 1983

SUBJECT: Residence requirement for applicants for AIDA loans (CSSSHB 22)

TO: Representative John Lindauer

FROM: Linn H. Asper
Legislative Counsel

I have prepared a proposed committee substitute for SSHB 22, that would impose a residence requirement for applicants for AIDA loans. Your concern in making this request, as I understand it, was to eliminate constitutional problems raised by the bill. The only significant change I have made is to delete the inclusion of parent companies in the concept of "business enterprise". The effect of that clause was to bar all out-of-state enterprises from consideration for an AIDA loan unless they relocated in Alaska. As rewritten an outside enterprise could get a loan if an Alaskan subsidiary were formed, controlled by state residents.

The primary purpose of this memorandum is to advise that it may be impossible to write a bill that will accomplish your purpose and still escape constitutional scrutiny. This is so largely because the state of the law is that residence requirements are in full retreat in this state and elsewhere. You are well aware of the Zobel cases, involving durational residency requirements for individuals, but in addition a 1974 case, Lynden Transport v. State, 532 P.2d 700 (Alaska), held that an advantage given resident trucking enterprises over nonresidents was an unconstitutional violation of the equal protection clauses of the federal and state constitutions. Since Lynden Transport involved a permit to do business in the state and your bill concerns access to state subsidized loans, a distinction might be drawn that would favor your proposed legislation, but the potential for a court challenge remains. Lynden Transport has since been cited with favor in Hicklin v. Orbeck, 565 P.2d 167, and Sheley v. Alaska Bar Association, 620 P.2d

642, both of which struck down state durational residence requirements. Nevertheless, because your bill relates to access to a state benefit rather than the ability to do business in the state and because it does not impose a durational residence requirement, it may be easier to establish a rational basis for the residence requirement to justify the distinction between residents and nonresidents. Therefore, although I am not able to guarantee that your bill, as rewritten, satisfies all constitutional requirements, I do believe that a case can be made that the residence requirement it contains is constitutional.

LHA:ljb

Enclosure

400 -
200-million - BONDING

January 25, 1983

Honorable Walt Furnace, Chairman
House Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Furnace:

On January 25th, at your committee hearing for SS HB22 there were certain questions which Commissioner Lyon indicated would be answered by letter.

Question #1: Does the Authority finance any projects located outside Alaska?

Answer: No. Any project financed by the Authority must be located within the State of Alaska.

Question #2: Please supply the committee with information on the six loans made to possible non-residents.

NAME	$ AMOUNT	PROJECT DESCRIPTION LOCATION/JOBS	HEADQUARTERS LOCATION
ADA Investment	$ 455,000	Construct Warehouse Anchorage/10	Seattle
Lynden Transport	$ 610,000	Purchase Freight Terminal Deadhorse/15	Seattle
Mueller, Robert	$ 560,000	Purchase Warehouse — Anchorage/05	Honolulu
Holiday-Parks	$ 525,000	Construct Manufacturing Bldg Fairbanks/10	Seattle
Forward Alaska, Inc.	$1,000,000	Purchase/Renovate Camp Deadhorse/10	Texas
Petess Pete	$ 130,000	Remodel Building Anchorage/15	Seattle

If we can provide any further information please let us know.

Sincerely,

Bertram L. Wagnon
Executive Director

BLW:ty

1 — 100 million - BONDS ISSUED —
§ TAX EXEMPTION,
§ VALUE OF ASSET BASE -
CASHFLOW - HOW MUCH OF THE INCOME IS PLEDGED FOR MORE!

12/30/82 -
6[illegible]/82 -

Sec. 44.88.010. LEGISLATIVE FINDING AND POLICY.

(a) The legislature finds, determines and declares that

(1) there exist areas of the state in which seasonal and nonseasonal unemployment exist;

(2) this unemployment is a serious menace to the health, safety and general welfare, not only to the people in those areas, but also to the people of the entire state;

(3) the state lacks the basic manufacturing, industrial, and business enterprises and the other facilities referred to in (5) of this subsection necessary to permit adequate development of its natural resources and the balanced growth of its economy;

(4) the establishment and expansion of industrial, manufacturing, and business enterprises in Alaska and the other facilities referred to in (5) of this subsection are essential to the development of the natural resources and the long-term economic growth of the state, and will directly and indirectly alleviate unemployment in the state;

(5) the achievement of the goal of full employment, and of establishment and continuing operation and development of industrial, manufacturing, and business enterprises in the state, including facilities for air and water transportation, facilities for pollution control and waste disposal, facilities for the local furnishing of gas, facilities for water, and facilities for industrial parks, will be accelearated and facilitated by the creation of an instrumentality of the state with powers to incur debt and to make and insure loans to finance, and to assist private lenders to make loans to finance, the establishment, operation, and development of industrial, manufacturing, and business enterprises, including facilities for air and water transportation, facilities for pollution control and waste disposal, facilities for the local furnishing of gas, facilities for water, and facilities for industrial parks;

(6) it is in the public interest to promote the prosperity and general welfare of all citizens of the state by stimulating commercial and industrial growth and expansion by encouraging an increase of private investment by banks, investment houses, insurance companies, and other financial institutions, including pension and retirement funds, to help satisfy the need for economic expansion;

(7) it is in the state's interest to import private capital to create new economic activity which would not otherwise take place in the state.

(b) It is declared to be the policy of the state, in the interests of promoting the health, security and general welfare of all the people of the state, and a public purpose, to increase job opportunities and otherwise to encourage the economic growth of the state, including the development of its natural resources, through the establishment and expansion of manufacturing, industrial, and business enterprises and the other facilities referred to in (a)(5) of this section by creating the public corporation with power, duties and functions as provided in AS 44.88.010 44.88.220.

HISTORY (Sec. 1 ch 64 SLA 1967; am sec. 1 ch 64 SLA 1977; am secs. 44 48 ch 106 SLA 1980; am sec. 28 ch 115 SLA 1981)

Sec. 44.88.020. CREATION OF AUTHORITY.

There is created the Alaska Industrial Development Authority. The authority is a public corporation of the state and a body corporate and politic constituting a political subdivision within the Department of Commerce and Economic Development, but with separate and independent legal existence.
HISTORY (Sec. 1 ch 64 SLA 1967; am sec. 104 ch 218 SLA 1976)

Sec. 44.88.030. MEMBERSHIP OF AUTHORITY.

(a) The membership of the authority consists of

(1) the commissioner of revenue and the commissioner of commerce and economic development;

(2) one other person appointed by the governor who serves as the head of a principal department of the executive branch; and

(3) two public members appointed by the governor.

(b) If a member described in (a)(1) or (a)(2) of this section is unable to attend a meeting of the authority, he may by an instrument in writing filed with the authority, designate his deputy or assistant to act in his place as a member at the meeting. For all purposes of this chapter, the designee is a member of the authority at the meeting.

(c) Members of the authority described in (a)(2) and (a)(3) of this section serve two-year terms. However, the initial appointment of one member described in (a)(3) of this section shall be for a one-year term.

(d) If a vacancy occurs in the membership of the authority, the governor shall immediately appoint a member for the unexpired portion of the term POSTPONED EFFECTIVE DATE

(e) Effective on the effective date of the amendment to the Constitution proposed in 1980 Legislative Resolve No. 43 The appointment or reappointment of a member of the authority under (a)(2) or (a)(3) of this section is subject to confirmation by a majority vote of the members of the legislature in joint session. If the legislature fails to confirm the appointment of the head of a principal department of the executive branch as a member, the governor shall appoint the head of another principal department of the executive branch to serve as a member subject to confirmation under this subsection. A member appointed to fill a vacancy under (d) of this section is subject to confirmation under this subsection.
HISTORY (Sec. 1 ch 64 SLA 1967; am sec. 7 ch 207 SLA 1975; am sec. 2 ch 64 SLA 1977; am secs. 49, 50 ch 106 SLA 1980)

Sec. 44.88.040. CHAIRMAN AND VICE-CHAIRMAN.
The members of the authority shall elect a chairman from among themselves. A vice-chairman may be elected by the authority from among its other members. The vice-chairman presides over all meetings in the absence of the chairman and has other duties which the authority may direct.
HISTORY (Sec. 1 ch 64 SLA 1967; am sec. 105 ch 218 SLA 1976; am sec. 51 ch 106 SLA 1980)

Sec. 44.88.050. MEETINGS, COMPENSATION, OFFICERS AND EMPLOYEES.

(a) A majority of the members of the authority constitutes a quorum for the transaction of business or the exercise of a power or

function at a meeting of the authority. In case of a tie vote on a motion or resolution pending before the authority the motion or resolution shall be presented to the governor and if approved by him, is considered adopted by the authority. The authority may meet and transact business by electronic media if

(1) public notice of the time and locations where the meeting will be held by electronic media has been given in the same manner as if the meeting were held in a single location;

(2) participants and members of the public in attendance can hear and have the same right to participate in the meeting as if the meeting were conducted in person; and

(3) copies of pertinent reference materials, statutes, regulations, and audio-visual materials are reasonably available to participants and to the public. A meeting by electronic media as provided in this subsection has the same legal effect as a meeting in person.

(b) The public members of the authority receive $100 compensation for each day spent on official business of the authority and may be reimbursed by the authority for actual and necessary expenses at the same rate paid to members of state boards under AS 39.20.180.

(c) The authority may appoint persons as officers it considers advisable, including an executive director, and may employ professional advisors, counsel, technical experts, agents, and other employees it considers advisable. The executive director and employees of the authority are in the exempt service under AS 39.25.010 - 39.25.220.

(d) The authority shall keep minutes of each meeting and send a certified copy to the governor and to the Legislative Budget and Audit Committee.

HISTORY (Sec. 1 ch 64 SLA 1967; am secs. 52, 53 ch 106 SLA 1980; am secs. 29, 30 ch 115 SLA 1981)

Sec. 44.88.070. PURPOSE OF THE AUTHORITY.

The purpose of the authority is to promote, develop and advance the general prosperity and economic welfare of the people of Alaska, to relieve problems of unemployment, and to create additional employment by providing various means of financing and means of facilitating the financing of industrial, manufacturing, and business enterprises and the other facilities referred to in AS 44.88.010(a)(5) within the state.

HISTORY (Sec. 1 ch 64 SLA 1967; am sec. 54 ch 106 SLA 1980; am sec. 31 ch 115 SLA 1981)

Sec. 44.88.080. POWERS OF THE AUTHORITY.

In furtherance of its corporate purposes, the authority has the following powers in addition to its other powers:

(1) to sue and be sued;

(2) to have a seal and alter it at pleasure;

(3) to make and alter bylaws for its orgnization and internal management;

(4) to adopt regulations governing the exercise of its corporate powers;

(5) to acquire an interest in a project as necessary or appropriate to provide financing for the project, whether by purchase, gift or lease;

(6) to lease to others a project acquired by it for the rentals and upon the terms and conditions the authority may consider advisable, including, without limitation, provisions for options to purchase or renew;

(7) to issue bonds, in accordance with AS 44.88.090, to pay the cost of a project and to secure payment of the bonds as provided in AS 44.88.010 44.88.220;

(8) to sell, by installment sale or otherwise, exchange, donate, convey or encumber in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, including a project, when, in the judgment of the authority, the action is in furtherance of its corporate purposes;

(9) to accept gifts, grants or loans from, and enter into contracts or other transactions regarding them, with a federal agency or an agency or instrumentality of the state, a municipality private organization or other source;

(10) to deposit or invest its funds, subject to agreements with bondholders;

(11) to enter into contracts or agreements with respect to the exercise of any of its powers, and do all things necessary or covenient to carry out its corporate purposes and exercise the powers granted in AS 44.88.010 - 44.88.220;

(12) to purchase or insure loans to finance the costs of manufacturing, industrial, and business enterprise projects;

(13) to enter into loan agreements with respect to one or more projects upon the terms and conditions the authority considers advisable;

(14) to acquire, manage, and operate a project when it becomes necessary or desirable to do so to safeguard the authority from losses;

(15) to assist private lenders to make loans to finance the costs of projects through loan commitments, short-term financing, or otherwise;

(16) to accept gifts, grants, or loans from a federal agency, from an agency or instrumentality of the state or of a municipality, or from any other source;

(17) to enter into contracts or other transactions with a federal agency, with an agency or instrumentality of the state or of a municipality, or with a private organization or other entity consistent with the exercise of any power under AS 44.88.010 44.88.220;

(18) to facilitate the expansion of a secondary market for the resale of federally or commercially insured loans made to finance the costs of projects in Alaska held by federal and state chartered financial institutions or by the Alaska Commercial Fishing and Agriculture Bank.

HISTORY (Sec. 1 ch 64 SLA 1967; am secs. 55 - 59 ch 106 SLA 1980; am secs. 32, 33 ch 115 SLA 1981)

Sec. 44.88.090. BONDS OF THE AUTHORITY.

(a) Subject to (g) of this section, the authority may borrow money and may issue bonds, including but not limited to bonds on which the principal and interest are payable,

(1) exclusively from the income and receipts or other money derived from the project financed with the proceeds of the bonds,

(2) exclusively from the income and receipts or other money derived from designated projects whether or not they are financed in whole or in part with the proceeds of the bonds, or

(3) from its income and receipts or other assets generally, or a designated part or parts of them.

(b) Bonds shall be authorized by resolution of the authority, and be dated and shall mature as the resolution may provide, except that no bond may mature more than 40 years from the date of its issue. Bonds shall bear interest at the rate or rates, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption which the resolution or a subsequent resolution may provide.

(c) All bonds, regardless of form or character, shall be negotiable instruments for all the purposes of the Uniform Commercial Code.

(d) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times which the authority may determine.

(e) Before the issuance of any bonds, the authority shall make provision by lease or other agreement regarding the project or projects being financed by the issue of the bonds for rentals or other considerations at least sufficient, in the judgment of the authority, to pay the principal of and interest on the bonds as they become due and to create and maintain the reserves therefor as the authority considers necessary or desirable and to meet all obligations in connection with the lease or other agreement and all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(f) The superior court shall have jurisdiction to hear and determine suits, actions or proceedings relating to the authority, including suits, actions or proceedings brought to foreclose or otherwise enforce a mortgage, pledge, assignment or security interest or brought by or for the benefit or security of a holder of its bonds or by a trustee for or other representative of the holders.

(g) The authority may not

(1) issue bonds, other than refunding bonds, in any 12-month period beginning after June 30, 1982, in an amount that exceeds the amount of bonds authorized to be issued during the preceding 12-month period, unless a different amount is authorized by the legislature; or

(2) issue revenue bonds other than refunding bonds for a project under this chapter in an amount greater than $50,000,000 during any 12-month period beginning after June 30, 1981, unless the issuance is included separately in the estimates required in the report of the authority under AS 44.88.210(b) and unless the legislature, by law, approves the issuance.

(h) The authority may combine, for the purposes of a single offering, bonds financing more than one project under AS 44.88.010 - 44.88.220.

HISTORY (Sec. 1 ch 64 SLA 1967; am secs. 60, 61 ch 106 SLA 1980; am sec. 35 ch 115 SLA 1981)

Sec. 44.88.100. TRUST INDENTURES AND TRUST AGREEMENTS. In the discretion of the authority, an issue of bonds may be secured by a trust indenture or trust agreement between the authority and a corporate trustee (which may be a trust company, bank, or national banking association, with corporate trust powers, located inside or outside the state) or by a secured loan agreement or other instrument or under a resolution giving powers to a corporate trustee (hereinafter in this section referred to as "trust agreement") by means of which the authority may:

(1) make and enter into any and all the covenants and agreements with the trustee or the holders of the bonds which the authority may determine to be necessary or desirable, including, without limitation, covenants, provisions, limitations and agreements as to

(A) the application, investment, deposit, use and disposition of the proceeds of bonds of the authority or of money or other property of the authority or in which it has an interest;

(B) the fixing and collection of rents or other consideration for, and the other terms to be incorporated in a lease or contract of sale of a project;

(C) the assignment by the authority of its rights in the lease or contract of sale of a project or in a mortgage or other security interest created with respect to a project to a trustee for the benefit of bondholders;

(D) the terms and conditions upon which additional bonds of the authority may be issued;

(E) the vesting in a trustee of rights, powers, duties, funds or property in trust for the benefit of bondholders, including, without limitation, the right to enforce payment, performance and all other rights of the authority or of the bondholders, under a lease, contract of sale, mortgage, security agreement, or trust agreement with respect to a project by mandamus or other proceeding or by taking possession of by agent or otherwise and operating a project and collecting rents or other consideration and applying the same in accordance with the trust agreement;

(2) pledge, mortgage or assign money, leases, agreements, property or other assets of the authority either presently in hand or to be received in the future, or both; and

(3) provide for any other matters of like or different character which in any way affect the security or protection of the bonds.

HISTORY (Sec. 1 ch 64 SLA 1967)

Sec. 44.88.105. CAPITAL RESERVE FUNDS AND CAPITAL RESERVE FUND REQUIREMENT.

(a) For the purpose of securing one or more issues of its bonds, the authority may establish one or more special funds, called "capital reserve funds", and shall pay into those capital reserve funds the proceeds of the sale of its bonds and other money which may be made available to the authority from other sources for the purposes of the

capital reserve funds. A capital reserve fund may be established only if the authority determines that the establishment of the fund would enhance the marketability of the bonds, and if those costs of a project, as defined in AS 44.88.220, which are to be financed with the proceeds of the bonds, do not exceed $10,000,000. Money in a capital reserve fund, except as provided in this section, may be used as required only for

(1) the payment of the principal of, and interest on, bonds or of the sinking fund payments with respect to those bonds;

(2) the purchase or redemption of the bonds; or

(3) the payment of a redemption premium required to be paid when the bonds are redeemed before maturity. However, money in a capital reserve fund may not be withdrawn if the withdrawal would reduce the amount in the capital reserve fund to less than the capital reserve requirement, except for the purpose of making payment, when due, of principal, interest, redemption premiums on the bonds, and sinking fund payments when other money of the authority is not available for the payments. Income or interest earned by, or increment to, a capital reserve fund, from the investment of all or part of the fund, may be transferred by the authority to other funds or accounts of the authority if the transfer does not reduce the amount of the capital reserve fund below the capital reserve fund requirement.

(b) If the authority decides to issue bonds secured by a capital reserve fund, the bonds may not be issued if the amount in the capital reserve fund is less than the capital reserve fund requirement, unless the authority, at the time of issuance of the bonds, deposits in the capital reserve fund from the proceeds of the bonds to be issued or from other sources, an amount which, together with the amount then in the fund, is not less than the capital reserve fund requirement.

(c) In computing the amount of a capital reserve fund for the purpose of this section, securities in which all or a portion of the fund is invested shall be valued by a reasonable method established by the authority by resolution. Valuation shall include the amount of interest earned or accrued as of the date of the valuation.

(d) The chairman of the authority shall annually, no later than January 2, certify in writing to the governor and the legislature the amount, if any, required to restore a capital reserve fund to the capital reserve fund requirement. The legislature may appropriate to the authority the amount certified by the chairman of the authority. The authority shall deposit the amounts appropriated under this subsection during a fiscal year in the proper capital reserve fund. Nothing in this section creates a debt or liability of the state.

(e) In this section, "capital reserve fund requirement" means the amount required to be on deposit in the capital reserve fund as of the date of computation as determined by resolution of the authority.

(f) The authority may not establish a capital reserve fund to secure an issue of bonds in an amount in excess of $1,000,000 unless at least 20 percent of the principal amount of the loan for the project is retained by a federal or state chartered financial institution or the Alaska Commercial Fishing and Agriculture Bank.

(g) The authority may establish reserve funds, other than capital reserve funds, to secure one or more issues of its bonds. The authority may deposit in a reserve fund established under this subsection the proceeds of sale of its bonds and other money which may be made

available from any other source. A reserve fund established under this subsection must comply with (a) - (c) of this section. The authority may allow a reserve fund established under this subsection to be depleted without complying with (d) of this section.
HISTORY (Sec. 62 ch 106 SLA 1980; am secs. 36, 37 ch 115 SLA 1981)

Sec. 44.88.110. VALIDITY OF PLEDGE.
It is the intention of the legislature that a pledge made in respect of bonds shall be valid and binding from the time the pledge is made; that the money or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without physical delivery or further act; and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether the parties have notice. Neither the resolution, trust agreement nor any other instrument by which a pledge is created need be recorded or filed under the provisions of the Uniform Commercial Code to be valid, binding or effective against the parties.
HISTORY (Sec. 1 ch 64 SLA 1967)

Sec. 44.88.120. NONLIABILITY ON BONDS.
(a) Neither the members of the authority nor a person executing the bonds are liable personally on the bonds or are subject to personal liability or accountability by reason of the issuance of the bonds.
(b) The bonds issued by the authority do not constitute an indebtedness or other liability of the state or of a political subdivision of the state, except the authority, but shall be payable solely from the income and receipts or other funds or property of the authority. The authority may not pledge the faith or credit of the state or of a political subdivision of the state (except the authority) to the payment of a bond and the issuance of a bond by the authority does not directly or indirectly or contingently obligate the state or a political subdivision of the state to apply money from, or levy or pledge any form of taxation whatever to the payment of the bond.
HISTORY (Sec. 1 ch 64 SLA 1967)

Sec. 44.88.130. PLEDGE OF THE STATE.
The state pledges to and agrees with the holders of bonds issued under this chapter and with the federal agency which loans or contributes funds in respect to a project, that the state will not limit or alter the rights and powers vested in the authority by this chapter to fulfill the terms of a contract made by the authority with the holders or federal agency, or in any way impair the rights and remedies of the holders until the bonds, together with the interest on them with interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state, insofar as it refers to holders of bonds of the authority, in a contract with the holders, and insofar as it relates to a federal agency, in a contract with the federal agency.

HISTORY (Sec. 1 ch 64 SLA 1967)

Sec. 44.88.140. EXEMPTION FROM TAXATION.

(a) The real and personal property of the authority and its assets, income and receipts are declared to be the property of a political subdivision of the state and, together with any project financed under this chapter and a leasehold interest created in a project applicant or other person under this chapter, devoted to an essential public and governmental function and purpose, and the property, assets, income, receipts, project and leasehold interests shall be exempt from all taxes and special assessments of the state or a political subdivision of the state, including, without limitation, all boroughs, cities, municipalities, school districts, public utility districts and other taxing units. All bonds of the authority are declared to be issued by a political subdivision of the state and for an essential public and governmental purpose and to be a public instrumentality and the bonds, and the interest on them, the income from them and the transfer of the bonds, and all assets, income and receipts pledged to pay or secure the payment of the bonds, or interest on them, shall at all times be exempt from taxation by or under the authority of the state, except for inheritance and estate taxes and taxes on transfers by or in contemplation of death. Nothing in this section affects or limits an exemption from license fees, property taxes, or excise, income or any other taxes, provided under any other law, nor does it create a tax exemption with respect to the interest of any business enterprise or other person, other than the authority, in any property, assets, income, receipts, project or lease whether or not financed under this chapter.

(b) The authority may enter into agreements with a proposed project applicant or project applicant providing for payments, computed on a formula basis or otherwise, in lieu of taxes, which the authority may consider appropriate. The agreement may provide that the payments be made to the political subdivision of the state in which a project is or is to be located or to any other taxing unit of the state including, without limitation, a borough, city, municipality, school district or public utility district, the area of which is coterminous in whole or in part with that of the political subdivision.

(c) For the purposes of AS 14.17 relating to the computation of the required local effort by a district as defined in AS 14.17.250(3), all property exempted from taxation by this chapter shall be considered taxable real and personal property.

HISTORY (Sec. 1 ch 64 SLA 1967; am sec. 3 ch 64 SLA 1977; am secs. 63, 64 ch 106 SLA 1980)

Sec. 44.88.150. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES.

The bonds of the authority are securities in which all public officers and bodies of the state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations and building and loan associations, investment companies and other persons carrying on a banking business, all administrators,

guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of the authority are also securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.
HISTORY (Sec. 1 ch 64 SLA 1967)

Sec. 44.88.155. ENTERPRISE DEVELOPMENT FUND.

(a) The enterprise development fund is established in the authority. The enterprise development fund is a trust fund for the uses and purposes of AS 44.88.010 44.88.220. The enterprise development fund consists of money or assets appropriated or transferred to the authority and other money or assets deposited in it by the authority.

(b) The authority may establish in the enterprise development fund a small enterprise loan account, a loan insurance account, and other accounts it considers appropriate.

(c) Money and other assets of the enterprise development fund may be used to secure bonds of the authority, and shall be held and invested by the authority in the types of investments described in AS 37.10.070(a) and AS 39.35.110(a)(9) and (14) or shall be used to purchase loans for projects as defined in AS 44.88.220.

(d) A loan purchased in whole or in part by the authority, other than a loan which is financed with the proceeds of bonds of the authority and secured only by a project applicant or a project,

(1) may not exceed

(A) $10,000,000; or

(B) $500,000 if the loan is purchased under AS 44.88.158;

(2) may not exceed the cost of the project or 75 percent of the appraised value of the project, whichever is less, unless the amount of the loan in excess of this limit is federally insured or guaranteeed or is insured by a qualified mortgage insurance company;

(3) may not be for a term longer than three-quarters of the authority's estimate of the life of the project or 25 years from the date the loan is made, whichever is earlier;

(4) shall contain complete amortization provisions satisfactory to the authority requiring periodic payments by the borrower;

(5) shall be in the form and contain the terms and provisions with respect to insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, acceleration of maturity, secondary liens and other matters the authority prescribes;

(6) shall be secured as to repayment by a mortgage or other security instrument in the manner the authority determines is feasible to assure timely repayment under a loan agreement entered into with the borrower;

(7) may not be made unless

(A) at least 10 percent of the principal amount of the loan is retained by the originator of the loan; or

(B) 100 percent of the principal amount of the loan is guaranteed by the United States or an agency or instrumentality of the United States;

(8) must be

(A) at least partially guaranteed by the United States or an agency or instrumentality of the United States, subject to the provisions of AS 44.88.158; or

(B) financed from the proceeds of bonds; or

(C) expected by the authority to be financed from the proceeds of bonds.

(e) The authority may adopt regulations for the administration of the enterprise development fund which may include, without limitation, provisions for fees and agreements relating to application, loan commitment, servicing, and origination of loans by other lenders.

(f) The authority may enter into agreements as to the use of the money in the enterprise development fund, including without limitation, trust or custody arrangements with banks or trust companies. It may also pledge, assign, or grant the agreement, interests under an agreement, or interests in the enterprise development fund as may be necessary or appropriate to provide for payment and security for bonds of the authority.

HISTORY (Sec. 65 ch 106 SLA 1980; am sec. 38 ch 115 SLA 1981)

Sec. 44.88.157. LOAN INSURANCE AND LOAN INSURANCE ACCOUNT.

(a) The purpose of the loan insurance account is to provide insurance of mortgage loans and other loans made or purchased by the authority, or made by others and approved for insurance by the authority, for a project. The authority may enter into agreements as to the use of money in the loan insurance account and may pledge, assign, or grant interests in the loan insurance account as provided in this section. The authority may adopt regulations and enter into agreements with respect to the exercise of any power or approval relating to the loan insurance account under this section, including, without limitation, agreements as to the use of money in the loan insurance account, agreements with respect to the terms and conditions upon which payments from the loan insurance account will be made with respect to a loan insured under this section, agreements as to separate subaccounts in the loan insurance account for different categories of loans or as to loans made by the authority or any other person, and agreements regarding the payment of and security for bonds issued by the authority. An agreement, the rights of the authority under an agreement, or payments received or to be received under an agreement may be pledged or assigned by the authority for the benefit of the holders of bonds issued by the authority.

(b) The authority may, upon application of a borrower or proposed borrower, insure and make advance commitments to insure loan repayments required under the terms of a loan made by it or by another lender with respect to a project, upon the terms and conditions the authority prescribes. To be eligible for insurance under AS 44.88.010 - 44.88.220, a loan for a project

(1) shall be held by the authority or by a lender approved by the authority as responsible and able to service the loan;

(2) may not exceed $10,000,000 for a project, or 90 percent of the cost of the project or 90 percent of the appraised value of the project, whichever is less;

(3) may not be made for a term longer than three-quarters of the authority's estimate of the life of the project or 25 years from the date of issuance of the insurance, whichever is earlier;

(4) shall contain complete amortization provisions satisfactory to the authority requiring periodic payments by the borrower; and

(5) shall be in the form and contain the terms with respect to insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, acceleration of maturity, additional and secondary liens, and other matters that the authority prescribes.

(c) In addition to other fees which the authority may charge on loans, the authority may collect or cause to be collected on loans insured under this section, either a loan insurance commitment fee or a loan insurance premium or both. Loan insurance fees and loan insurance premiums are not required to be uniform among the various loans insured. Loan insurance commitment fees and loan insurance premiums shall be deposited in the insurance account by the loan servicer, trustee, or agent designated by the authority to receive them.

(d) If, at any time after receipt by the authority of a payment from the loan insurance account with respect to a loan, the authority recovers an amount on the loan or portion of it from a source other than the loan insurance account, the authority shall apply the amount recovered in the following order: first, to repay the general fund of the state for appropriations made under (g) of this section, and second, to repay the loan insurance account.

(e) Loans may be insured only when the amount either in the loan insurance account insuring the loans or a subaccount in the loan insurance account insuring the loans, as a percentage of the sum of the loans to be insured and all unpaid principal on loans insured by the loan insurance account or the subaccount, equals or exceeds the fund requirement. The fund requirement is calculated as a percentage which the authority determines is actuarially sound for operation of the loan account or a subaccount.

(f) When the authority determines what is actuarially sound with respect to the operation of the loan insurance account or a subaccount in the loan insurance account, it shall consider means of providing sufficient revenue for the operation of the account or subaccount, without regard to amounts which may have been or may, after the date of determination of actuarial soundness, be appropriated under (g) of this section. The authority shall also consider factors including, without limitation, estimates of future defaults and losses of loans insured under this section based on actual default and loss experience on those loans or on similar loans in the state or elsewhere, estimates of recoveries on defaulted or foreclosed loans based on actual default and foreclosure experience on those loans or similar loans in the state or elsewhere, the terms and conditions of the loans insured under this section, estimates of earnings and income of amounts on deposit in the loan insurance account, and other appropriate factors.

(g) On December 1 of each year the authority shall determine the amount on deposit in the loan insurance account and in each subaccount in the loan insurance account. If the amount in the loan insurance account or the amount in a subaccount in the loan insurance account is less than the fund requirement for the account or for the subaccount, the authority shall transfer the amount necessary to restore the loan insurance account or the subaccount to the fund requirement. The transfer shall be made from available money which is not encumbered or restricted for other use under the terms of contracts with bondholders or others. If sufficient money is not available for transfer, the chairman of the authority shall, no later than January 2 of the following year, certify in writing to the governor and to the legislature the amount, if any, required to restore the account or a subaccount to the fund requirement. The legislature may appropriate the

Sec. 44.88.158. SMALL ENTERPRISE LOAN ACCOUNT.

(a) A small enterprise loan account is established in the enterprise development fund. The account may be composed of money or assets appropriated or transferred to the authority, interest on investments and loans of the small enterprise loan account, the unpledged income of the enterprise development fund, and other money or assets deposited in it by the authority.

(b) The authority may use money in the small enterprise loan account to purchase the guaranteed portion of a loan made by a private financial institution after June 30, 1981, to a small enterprise to pay the cost of a project, as defined in AS 44.88.220, if the loan is guaranteed by the United States or an agency or instrumentality of the United States, including, but not limited to, the Small Business Administration, the National Marine Fisheries Service, and the Farmers Home Administration.

(c) The authority may purchase loans originated by the Alaska Rural Rehabilitation Corporation which are made to agricultural enterprises. Loans purchased under this subsection may be secured by substitute collateral if the amount of the loan does not exceed 75 percent of the value of the total collateral for the loan. Loans may be purchased under this subsection only from money appropriated to the small enterprise loan account for that purpose.

HISTORY (Sec. 65 ch 106 SLA 1980; am sec. 40 ch 115 SLA 1981)

Sec. 44.88.159. INTEREST RATES.

(a) The interest rate on a loan financed from the proceeds of tax-exempt bonds or excepted by the authority to be financed from the proceeds of tax-exempt bonds is equal to the cost of funds to the authority. In this subsection "cost of funds" means the true interest cost expressed as a rate on tax-exempt bonds of the authority plus an additional percentage as determined by the authority to represent the allocable expenses of operation, costs of issuance, and loan servicing.

(b) The interest rate on a loan financed from the proceeds of taxable bonds or expected by the authority to be financed from the proceeds of taxable bonds is equal to the cost of funds to the authority. In this subsection "cost of funds" means the true interest cost expressed as a rate on taxable bonds, plus an additional percentage

as determined by the authority to represent the allocable expenses of operation, costs of issuance, and loan servicing costs.

(c) The interest rate on a loan purchased by the authority with money in the small enterprise loan account that is not from the proceeds of the sale of a series of bonds is equal to the most recent index of Aa corporate bond yield averages as published by Moody's Investors Service.
HISTORY (Sec. 41 ch 115 SLA 1981)

Sec. 44.88.160. FINDINGS OF THE AUTHORITY.
Before entering into a lease or other agreement as provided in AS 44.88.090(e) regarding a project for which bonds are agreed to be issued by the authority in an amount in excess of $6,000,000, or before approving insurance or a commitment to insure a loan as provided in AS 44.88.157(b) with a principal amount in excess of $6,000,000, there must have been filed with the authority a certified copy of a resolution of the governing body of the political subdivision of the state, if any, in which the project is to be located, consenting to the location (which consent need only refer to the general nature of the project ultimately to be acquired as set out in a request of the proposed project applicant). Before entering into a lease or other agreement as provided in AS 44.88.090(e) regarding a project, the authority must find, on the basis of all information reasonably available to it, that

(1) the project and its development under this chapter will be economically advantageous to the state and the general public welfare and will contribute to the economic growth of the state;

(2) the project applicant is financially responsible;

(3) provision to meet increased demand upon public facilities that might result from the project is reasonably assured;

(4) the project will provide or retain employment reasonably related to the amount of the financing by the authority considering the amount of investment per employee for comparable facilities and other relevant factors; and

(5) the scope of the project is sufficient to provide a reasonable expectation of a benefit to the economy of the state.
HISTORY (Sec. 1 ch 64 SLA 1967; am sec. 66 ch 106 SLA 1980)

Sec. 44.88.165. DELINQUENT LOANS.
If more than two percent of the total outstanding balance of loans purchased from a financial institution under AS 44.88.010 - 44.88.220 becomes delinquent for 90 days or more, the authority shall discontinue purchasing loans from that financial institution until the delinquency is reduced to less than two percent.
HISTORY (Sec. 42 ch 115 SLA 1981)

Sec. 44.88.170. PURCHASE OF PROJECT AND LEASES.
(a) No provision of this chapter may prevent the inclusion in a lease or other agreement relating to a project of a provision granting the right to purchase the project, or to renew or extend the lease or agreement, upon the terms and conditions which may be provided for in the lease or agreement.

(b) A lease with respect to a project may provide for two or more lessees with the legal relationship between themselves and the authority which the authority may approve, including without limitation, provisions to the effect that the obligations of the lessees under the lease for payment of rental or otherwise between themselves and the authority are several, joint, or joint and several and that the lessees lease the project as tenants-in-common, or otherwise.
HISTORY (Sec. 1 ch 64 SLA 1967)

Sec. 44.88.180. CONFLICTS OF INTEREST.
(a) No member of the authority may vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if he is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation or association which may be a party to the contract or lease. If a person may not vote because of this prohibition, for all purposes regarding action of the authority relating to adoption of the resolution, the position of the persons as a member shall be transferred to the first one of the following state officers who is not then acting as a member and would not be prohibited from voting on the resolution because of the same prohibition: commissioner of administration, attorney general, commissioner of revenue, commissioner of health and welfare, commissioner of labor, commissioner of public works, commissioner of public safety.
(b) The state officer serves as a member from time to time and for all purposes of this chapter is a member for the purpose of voting on the resolution but after each vote the authority shall again consist of members referred to in AS 44.88.030 only, until one or more members may not again vote on a resolution because of the prohibition.
HISTORY (Sec. 1 ch 64 SLA 1967)

Sec. 44.88.190. OPERATION OF CERTAIN STATUTES EXCEPTED.
(a) The authority shall not be considered or constitute
(1) a political subdivision of the state as the term is used in AS 37.10.085,
(2) a municipal corporation or political subdivision of the state as the terms are used in AS 29, or
(3) except as provided in AS 44.88.205, a state agency as the term is used in AS 37, but for all other purposes the authority constitutes a political subdivision and an instrumentality of the state as provided in this chapter.
(b) The funds, income or receipts of the authority shall not be considered or constitute money of the state, nor shall real property in which the authority has an interest be considered land owned in fee by the state or to which the state may become entitled or in any way lands belonging to the state, or state lands referred to in Art. VIII of the Alaska Constitution.
HISTORY (Sec. 1 ch 64 SLA 1967; am sec. 67 ch 106 SLA 1980)

Sec. 44.88.200. ANNUAL AUDIT.

The authority shall have its financial records audited annually by the legislative auditor or by a certified public accountant approved by the legislative auditor. The legislative auditor may prescribe the form and content of the financial records of the authority and shall have access to these records at any time.
HISTORY (Sec. 1 ch 64 SLA 1967)

Sec. 44.88.205. OPERATING BUDGET.
For fiscal years beginning after June 30, 1981, the operating budget of the authority is subject to the Executive Budget Act (AS 37.07).
HISTORY (Sec. 68 ch 106 SLA 1980)

Sec. 44.88.210. REPORTS AND PUBLICATIONS.
(a) By January 10 of each year, the authority shall publish a report for distribution to the governor, legislature, and the public. The report shall be written in easily understandable language. The report shall include a financial statement audited by an independent outside auditor, a statement of the authority's investments under this chapter including an appraisal of the investments at market value, a comparison of the authority's performance with the goals of the authority and the levels of bonding and investment activities anticipated in the previous year's report under (b) of this section, and any other information the members of the authority believe would be of interest to the governor, the legislature, and the public. The annual income statement and balance sheet of the authority shall be published in at least one newspaper in each judicial district. The authority may also publish other reports it considers desirable to carry out its purpose.
(b) The authority shall include in its annual report under (a) of this section
(1) an estimate of the investment activity of the authority under this chapter for the following 12-month period; and
(2) an estimate of the amount of bonds to be issued during the following 12-month period.
HISTORY (Sec. 1 ch 64 SLA 1967; am sec. 69 ch 106 SLA 1980)

Sec. 44.88.212. FEES CHARGED BY AUTHORITY.
(a) An application fee may not be charged for an application for authority participation in a loan under AS 44.88.158.
(b) The commitment fee for a loan commitment by the authority may not exceed two percent of the principal amount of the loan.
HISTORY (AS 44.88.085; sec. 34 ch 115 SLA 1981)

Sec. 44.88.220. DEFINITIONS. In AS 44.88.010 - 44.88.220
(1) "authority" means the Alaska Industrial Development Authority created by AS 44.88.010 44.88.220;
(2) "business enterprise" means a single proprietorship, corporation, firm, partnership, or other association of persons organized in any manner, for any business purpose, other than on a nonprofit basis;

(3) "federal agency" means the United States and any officer, department, agency or instrumentality of the United States;

(4) "governing body of a political subdivision" means, when used with respect to the location of a project, the council of a city if the project is to be located in a city in the unorganized borough, or the assembly if the project is to be located in an organized borough or a unified municipality;

(5) "project" means

(A) a plant or facility used or intended for use in connection with making, processing, preparing, or producing in any manner, goods, products or substances of any kind or nature or in connection with developing or utilizing a natural resource, or extracting, smelting, transporting, converting, assembling or producing in any manner, minerals, raw materials, chemicals, compounds, alloys, fibers, commodities and materials, products or substances of any kind or nature, any plant or facility used or intended for use as an industrial park or in connection with air and water transportation, or any plant or facility for the prevention, limitation or control of air or water pollution, for the disposal of sewage or solid waste, for the local furnishing of gas, or for the furnishing of water;

(B) a plant or facility used or intended for use in connection with a business enterprise;

(C) commercial activity by a small enterprise;

(6) "plant" or "facility" means real property, whether above or below mean high water, or an interest in it, and the buildings, improvements and structures constructed or to be constructed on or in it, and may include fixtures, machinery, and equipment on it or in it, and tangible personal property, regardless of whether the tangible personal property is attached to or connected with real property, if the owner has agreed not to remove the tangible personal property permanently from the state for the period the authority sets; "plant" or "facility" does not include work in process or stock in trade;

(7) Repealed by sec. 70 ch 106 SLA 1980;

(8) "project cost" or "cost of a project" means all or any part of the aggregate costs determined by the authority to be necessary to finance the construction, expansion, or acquisition of a project, including without limitation the cost of acquiring real or tangible personal property, and, in connection with real property, the cost of constructing buildings and improvements, the cost of constructing means of access to and from the project, the cost of constructing extensions of utility systems to the site of the project; the cost of a project includes, without limitation, the cost of financing the project, interest charges before, during or after construction, expansion, or acquisition of the project, costs related to the determination of the feasibility, planning, design or engineering of the project and, to the extent determined necessary by the authority, administrative expenses, the cost of machinery or equipment to be used in the operation of the project and expenses of installation, replacement or rehabilitation, and all other costs, charges, fees and expenses which may be determined by the authority to be necessary to finance the construction, expansion, or acquisition;

(9) "project applicant" means a business enterprise or enterprises proposing to

(A) use or occupy a project; or

(B) agree to permit others to use or occupy a project;

(10) "real property" means land and rights and interests in land, including, without limitation, interests less than full title such as easements, uses, leases, and licenses;

(11) "lease" includes, when used as a noun, an interest in, or when used as a verb, the transfer of an interest in, property less than fee simple title, including, without limitation, when used as a noun, agreements to use or occupy property;

(12) "small enterprise" means a business enterprise which is a project applicant with gross income of $10,000,000 or less for its annual reporting period ending immediately before the application to the authority for a loan;

(13) Repealed by sec. 51 ch 115 SLA 1981.

(14) Repealed by sec. 51 ch 115 SLA 1981.

(15) Repealed by sec. 51 ch 115 SLA 1981.

(16) "commercial activity" includes work in process or activity involving stock in trade, accounts receivable, or the refinancing of existing indebtedness, subject to the provisions of AS 44.88.158.

HISTORY (Sec. 1 ch 64 SLA 1967; am secs. 4, 5 ch 64 SLA 1977; am sec. 70 ch 106 SLA 1980; am secs. 43 - 47, 51 ch 115 SLA 1981)

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 22
Title Establishing a State residence requirement for loan purchased by AIDA
Requested by House Labor and Commerce Date

II. FISCAL DETAIL
Agency Affected Alaska Industrial Development Authority
Program Category Affected Economic Development
BRU, Program, Or Subprogram(s) Affected Alaska Industrial Development Authority
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

IV. DATE 1/24/83 PREPARED BY Bertram Wagnon
AGENCY Alaska Industrial Development Authority
PHONE 274-1651

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)
OMB review by Guy Bell

HB

25

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

information of CHAIR!

January 19, 1984

TO: Representative Rick Uehling, Vice-Chairman
House Labor and Commerce Committee

FROM: Ken Johnson
Professional Assistant

RE: House Bill 25

Kay Brown, Director of the Division of Minerals and Energy Management, had h ped to testify today on HB 25. However, due to change in the Committee Calendar and prior committment, Miss Brown could not be present today. She has asked the committee be briefed on the Divisions position on HB 25.

As Director of the Division of Minerals and Energy Management, Kay Brown stated she was in opposition to HB 25 on the following points:

1. Technical difficulties in the bills drafting.

   A. Definition of State Crude
   B. Definition of State Coal

2. Existing priorities have served the state well. She asks "Why should coal purchasers be given preference over in-state refiners"?

3. Will the bill be effective in promoting coal development? Because of the export ban, oil cannot be sold to Pacific Rim nations, so there is no incentive for such countries to purchase coal.

4. Such package deals could be made now without passing legislation.

5. If companies were forced to enter into an interuptable sales contracts, refering to Section G, the result could be devalued resources.

Introduced: 1/17/83
Referred: Labor & Commerce,
Resources and Finance

IN THE HOUSE BY LINDAUER

HOUSE BILL NO. 25

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act providing for preferences and reservations in sale or purchase of state royalty oil to companies purchasing state coal."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38.05.183 is amended by adding new subsections to read:

(f) Notwithstanding other provisions in this chapter, the commissioner of natural resources shall ~~first offer~~ (GIVE PRIORITY in) sale of state crude oil to companies purchasing state coal. { largest amount of State to instate Refiners Coal

(g) A contract for sale of state oil is subject to the reservation of a state right to purchase refined products for offer to companies purchasing state coal.

— UPWARD DOWNWARD PRICES
— FURTHER IPLD ON GOING
— COAL PRODUCTION DIFF. CONDITIONS MARKETING
— FORM OF SUBSIDY; REMOVES MARKET UNCERTAINTY -
A. ADMINISTRATION; CONTRACTS
SUBSIDY; MEDIUM VALUE
DIFFERENT

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

April 4, 1983

To: Representative Walt Furnace, Chairman
House Labor and Commerce Committee

From: Jefferson B. Barty
Professional Aide

Re: House Bill 25

Introductory Analysis

HB25 purports to provide a preference and reservation in the sale or purchase of state royalty oil to companies purchasing state coal. Without knowing the intended definition of the term "purchasing state coal" as used in this bill, it is difficult to analyze the effect of the legislation. Nonetheless, under any definition, the bill raises some questions. First, HB25 would appear to mix two separate categories of natural resources into one for the purpose of state action.

The provisions relating to the lease of coal are found under AS 38.05.150. Unlike oil, coal is not required to be competitively bid and there is no statement that the state will take coal "in kind" unless it is determined to be in the best interest of the state to sell it. The lessee of coal "shall pay to the state the royalties".[AS 38.05.150(c)] No mention is made for the extraction of any

royalty coal for the use of, processing within, or ownership by the state.

On the other hand, AS 38.05.183 provides for competitively bidding on the sale of state royalty oil. Sections (a) - (e) provide for the terms and conditions of the sale and usage of state royalty oil. Section 1 of HB25 would supercede these sections and give an absolute right to the use, marketing, and distribution of state royalty to "companies purchasing state coal". HB25 would not require the price to be competitively bid, that the use of the oil be in state for the benefit of Alaska, or any of the other express purposes set forth by the constitution or established law.

Under Section 1, paragraph (g) of HB25, there is a reservation of a state right to purchase refined productis "for offer to companies purchasing state coal." Since there is no restriction on thecompanies which would receive the refined product on resale, it is conceivable that the products would be funneled through them (as a middleman before reaching the market. There is no requirement that the refined product even be made available to the people and communities of Alaska or even that it be consumed by the beneficiary in its Alaskan operations.

Implementation of Section (g) would probably negatively impact the ability of the state to receive top dollar for the sale of royalty oil. If a purchaser and/or refiner could not be free to establish long term relationships with consuming groups, i.e. guaranteed delivery for guaranteed acceptance, then their bids on the use of royalty oil would become one of a risk venture rather than normal business. Also, there would be less incentive to bid if the state were to take their price and then offer the oil to a "purchaser" of state coal.

Finally, HB25 raises the policy question of deciding for whose benefit state royalty oil should be given. The legislature has previously interpreted the constitutional

requirements regarding natural resources to mean that ways of acheiving maximum benefit to all of the people and communities of Alaska be found and implemented. HB25 would require that the benefits of royalty oil accrue to "companies purchasing state coal." Such a finding of need and attendant statement of public policy by the legislature would be appropriate if HB25 is adopted.

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

April 4, 1983

TO: House Labor and Commerce Committee

FROM: Representative John Lindauer

RE: House Bill #25: "An Act providing for preferences and reservations in sale or purchase of state royalty oil to companies purchasing state coal."

The buyers of coal, typically major industrial companies and public utilities, tend to also be the major users of other energy sources such as oil and oil products.

The purpose of House Bill 25 is to encourage the development of coal production within the state of Alaska without losing one cent of oil revenues.

HB

26

HB-26 –
HB-22 –

1/27

⊛ AIDA – NO PRIMARY LOANS; ONLY SECONDARY MARKET; LIMIT OF $5,000;
INTEREST RATE-
SBA. PURCHASE PROGRAM. MOODYS A.A. 12 1/4
BONDED INTEREST ⊛ $; MATURITY RATES;
FORMULA - 20 YR - 40-45 BASIS POINT
10 YR 30 BASIS POINT -
RATE OF INTEREST OVER LAST 18 MONTHS
57-M – 20-25 14% - LOAN RATE -
13% LOAN RATE - Aug
11.5% " " - OCT

FORMULA
1. COMMERCIAL BANK – SBA. –
2. ELIGABILITY APPLICATION; I.R.S. - TAXEMPTIONS
BANK CREDIT PACKAGE; PAYMENT -
3. BANK SERVICES THE LOAN; 3/8
4. QUALIFICATIONS FOR LOANS;
5. PROVISION - CONCERNS
6. – 35 LOAN PROGRAMS – SOLUTION TO PROBLEM

27 – STATE BANKS
20 – 10,000 UNDER

– PERMANT FUND QUESTION;
– BILL COVERS EVERYTHING BUT HOW DO
– SBA - REFINANCE FLEXABLE PROGRAM, LEGISLATION
– FIXING AMOUNT ABOVE SBA. – NO FIXING OF LOAN AMOUNT –
–

Introduced: 1/17/83
Referred: Labor & Commerce and Finance

IN THE HOUSE

BY LINDAUER, FURNACE AND BETTISWORTH

HOUSE BILL NO. 26

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing the business refinancing and expansion loan program in the Alaska Industrial Development Authority; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 37.13.120 is amended by adding a new subsection to read:

(n) Notwithstanding the other provisions of this section, the board shall invest up to 25 percent of the assets of the corporation to purchase, on the date offered, Alaska Industrial Development Authority Bonds, bearing interest of 10 percent, guaranteed by the Alaska Industrial Development Authority, and secured by loans made under the Alaska Industrial Development Authority business refinancing and expansion loan program (AS 44.88.300 - 44.88.390).

* Sec. 2. AS 44.88 is amended by adding new sections to read:

ARTICLE 5. BUSINESS REFINANCING AND EXPANSION LOAN PROGRAM.

Sec. 44.88.300. PROGRAM ESTABLISHED; PURPOSE AND INTENT. The Alaska Industrial Development Authority business refinancing and expansion loan program is established in the authority. The purpose of the business loan program is to enable state residents to refinance existing business debt and finance business expansion. It is the intention of the legislature that business loans be made through state banks and other financial institutions without unnecessary involvement of the authority.

Sec. 44.88.310. POWERS AND DUTIES OF THE AUTHORITY. The authority shall sell its bonds to the Alaska permanent fund under AS 37.13.120(n) and shall use the bond sale proceeds to purchase business loans under the terms and conditions set out in AS 44.88.300 - 44.88.390.

Sec. 44.88.320. LOAN PURCHASE REQUIRED. Subject only to the availability of funds from the sale of bonds to the Alaska permanent fund under AS 37.13.120(n) and the priorities set out in AS 44.88.330, the authority shall purchase a business loan when offered by a bank or other financial institution if the business loan meets the conditions set out in AS 44.88.340 and is made to an eligible borrower under AS 44.88.350. The authority shall accept a sworn statement from the bank or financial institution that the loan conforms to the requirements of AS 44.88.300 - 44.88.390 in purchasing a business loan under this section.

Sec. 44.88.330. PRIORITIES. If insufficient money is available from the sale of bonds to the Alaska permanent fund under AS 37.13.120(n) to purchase all qualifying business loans offered to the authority, the following priorities shall be followed by the authority in purchasing business loans:

(1) loans for expansion of business in communities having a population under 10,000 have priority over all other qualifying business loans; and

EXPANSION - POLICE -

(2) loans that use at least 25 percent of the loan proceeds for expansion of a business have priority over loans that use less than 25 percent of the loan proceeds for business expansion.

Sec. 44.88.340. LOAN CONDITIONS. (a) To qualify for purchase by the authority under the business loan program a business loan

(1) may not exceed $2,000,000 or 75 percent of the net market value of the borrower's business, whichever is less;

loans

(2) may not bear interest in excess of 10.9 percent or one percent above the prime lending rate, whichever is less;

(3) shall have a fixed interest rate and fixed monthly payments;

(4) shall have a term of 15 years but may not impose a penalty for acceleration of payments;

(5) may be assumed;

(6) shall be made to refinance the business debt or expand the business of an eligible sole proprietorship, partnership, corporation, or other business entity doing business primarily in the state;

(7) may not be made to a business that is engaged in the construction or rental of single or multiple housing units;

(8) shall be personally guaranteed by the sole proprietor, partners, corporate shareholders, or other owners of the business; and

(9) shall be secured by documents establishing a first priority on assets of the business, including assets to be acquired with the proceeds of the loan, valued at an amount equal to the amount of the loan.

(b) In order to qualify a business loan for purchase by the authority under the business loan program the bank or financial institution that originates the loan must retain at least 10 percent of the financing of the loan, or the maximum amount that the bank or financial institution is allowed, as a matter of law, to invest in a single loan, whichever amount is less.

Sec. 44.88.350. BORROWER ELIGIBILITY. To be eligible for a business loan that qualifies for purchase by the authority under the business loan program the borrower must do business in the state for at least one year before applying for the loan and shall be

(1) a sole proprietorship owned by a state resident;

(2) a partnership in which all of the partners are state residents;

(3) a corporation in which the controlling interest is owned by state residents; or

(4) a business entity that is not a sole proprietorship, partnership, or corporation, in which a controlling interest is owned by state residents.

Sec. 44.88.360. LIMIT ON THE NUMBER OF LOANS. A business may receive only one loan under the business loan program except that a corporation that is eligible to receive a business loan is not disqualified from receiving a loan by the fact that a prior business loan was made to a shareholder of the corporation.

Sec. 44.88.370. FEES. (a) The bank or other financial institution that originates a business loan purchased by the authority may charge the borrower an amount not to exceed three percent of the total loan amount as an application or origination fee.

(b) The bank or other financial institution that originates a business loan purchased by the authority shall act as the collection agent for the authority and shall receive six-tenths of one percent of all amounts collected as a collection fee. C/10 #1644

(c) The authority may not charge a fee for authority participation in a business loan.

Sec. 44.88.380. REGULATIONS. The authority may make and enforce reasonable regulations to carry out the purposes of the business loan program.

Sec. 44.88.390. DEFINITIONS. In AS 44.88.300 - 44.88.390

(1) "business loan" or "business loan program" refers to the Alaska Industrial Development Authority business refinancing and expansion loan program;

(2) "net market value" means the total assets of a business less the total liabilities of the business and less an amount equal to the total amount of interest due on business debts that are not to be retired by using the proceeds of a business loan, plus the increased value of the business that will result from use of the business loan proceeds, as valued by an appraiser acceptable to the originating bank or other financial institution.

* Sec. 3. AS 44.88.320 enacted in sec. 2 of this Act applies to the first $2,000,000 of loans made by a bank or other financial institution after June 1, 1983.

* Sec. 4. This Act takes effect July 1, 1983.

GETTING MONEY OUT TO RURAL AREAS, GEOGRAPHIC CONTINUATION;

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 26 Date on Bill: 1/17/83
Title: Act establishing the business refinancing and expansion loan program...
Sponsor: Lindauer, Furnace and Bettisworth
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating	-0-	200.0	100.0	-0-
Total	-0-	200.0	100.0	-0-

b. Revenues: Program Receipts

Revenue	-0-	200.0	100.0	-0-

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

3. Assumptions: It is anticipated that 18 months will be the maximum duration of the program. Additional personnel may be necessary to handle volume. Program will be short lived due to exhaustion of funds and large default rate. Please note that although program receipts is shown as a funding source (since A.I.D.A. is funded 100% with program receipts) the actual source of funds will have to come from other A.I.D.A. activities, since thi bill essentially precludes A.I.D.A. from charging any fees for this program This means users of other A.I.D.A. programs will have to pay for the operation of this program.
These figures represent only increased operational costs. No estimate is included as to the amount of loss on A.I.D.A. investment funds, or the costs of potential interest rate subsidies.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Bert Wagnon Phone: 274-1651
Division: Alaska Industrial Development Authority Date:

Approved by Commissioner: Richard A. Lyon Date:
Department: Commerce & Economic Development

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

HB

51

Alaska State Legislature

JUNEAU, ALASKA

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

January 25, 1983

TO: House Labor and Commerce Committee

FROM: Teresa B. Cramer
Administrative Assistant

SUBJECT: House Bill 51 - Limiting the Adjustment of Retirement Benefits

On several occasions the Blue Ribbon Commission has heard testimony about problems created by overpayments of retirement benefits. Retired state employees may have substantial difficulties if they are required to repay retirement benefits improperly received because of errors made by the Division of Retirement and Benefits or because of a change in law. The commission is proposing legislation to limit the authority of the division to collect amounts paid improperly through no fault of the beneficiary or retired person if the error is not corrected within two years.

One woman testified to the commission that before she retired she asked the division to verify her years of credited service. Several years later a court-ordered change in retirement regulations reduced the number of years for which she received credit. Her employment with the University of Alaska could no longer be counted as credited service in PERS. As a result she had received more than $5000 in benefits to which she was not entitled. The division reduced her benefit to the correct amount and began withholding an additional $100 per month to be applied to the overpayment. She appealed to the Public Employees Retirement Board asking that collection of the overpayment be waived.

Both the Public Employees' Retirement Board and the Teachers' Retirement Board have authority to waive collection of overpayments, but the uncertainty of an appeal can cause considerable stress to people on fixed incomes. Both boards are required to determine whether there would be undue hardship imposed by requiring repayment. AS 14.25.175 and AS 39.35.522. In establishing whether there is financial hardship, the entire family financial situation is considered, not just the resources of the petitioner.

The commission recommends that a two-year statute of limitations be placed on the collection of overpayments which resulted from errors which were not caused by the retired state employee. Two years provides ample opportunity for the division to audit its records and correct any errors. After that [illegible] a retired person should not be required to repay benefits erroneously received if he or she did not cause the error. The division will still correct the amount of future benefits paid to the retired person.

Bill Analysis

Page 1 Line 9	The first section of the proposed legislation adds the two-year statute of limitations to the Teachers' Retirement System.
Line 18	The second section adds the same provision to the Public Employees' Retirement System. The amendment to PERS is applied only to state employees because the Blue Ribbon Commission considered that requiring other participating employers to pay for errors made by the state was inappropriate.
Line 29	The third section makes the bill effective retroactively to July 1, 1979, in order to apply to those individuals whose situations came to the commission's attention.
Page 2 Line 2	The fourth section of the bill contains an immediate effective date clause.

HB

66

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

TO: House Labor and Commerce Committee

FROM: Representative John Lindauer

RE: House Bill 66: "An Act relating to fiscal notes on bills that affect state retirement systems; and providing for an effective date."

The intent of this bill is to close a loophole within the current statute. While fiscal notes are currently required on bills affecting the state retirement systems, the entity who is to prepare these fiscal notes is no longer in existence.

The bill amends AS 24.30.036 by replacing the Legislative Board of Reitrement Benefits, which no longer exists, with the Division of Retirement Benefits in the Department of Administration.

In addition, this section has been changed to conform with AS 24.30.035 requiring the fiscal note to be prepared before the bill is reported from the committee of first reference.

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

February 3, 1983
to: House Labor and Commerce Committee
from: Ginny Chitwood, AML Executive Director
re: HB 66

Because many municipalities participate in the state retirement system and are also affected financially by changes to the system, the League asks that the proposed analysis be extended to them. A possible amendment to accomplish that intent would be to add "and participating municipalities" on line 25 after the word, "state".

HB

93

John:

Basically, what HB 93 does is not allow departments to hire additional employees unless the department follows proper porcedure. Proper procedure is to: submit in the department's budget the total amount of employees, and how much the employee force will cost. Currently, what is happening is that certain departments are adding n additional employees if they have extra money in thier budget, instead of returning thier unused portion of thier budget back into the general fund.

Question: How about making this bill even more tough, by requiring departments to fire all employees assosiated with a certain program when that program is finished Example: all the revenue workers who worked with the ineme tax program. When it was repealed, the workers still stayed.

HB

99

Additional Information: HB 99, Appropriation for Susitna Hydropower

According to Milt Barker of Legislative Finance Agency, the following appropriations have been made to Alaska Power Authority from 1979-1982:

Chapter 101 SLA 1982	$25,600,000
Chapter 7 SLA 1981	2,540,000
Chapter 90 SLA 1981	18,100,000
Chapter 120 SLA 1980	3,095,800
Chapter 54 SLA 1980	1,365,000
Chapter 50 SLA 1980	7,000,000
Chapter 76 SLA 1979	8.178,000

According to Ray Bennish of Alaska Power Authority, the appropriations have been spent in the following manner, through 12/31/82:

APA personal services (staff)	$ 749,372
Travel	100,298
Contractual:	
Feasibility studies--Akers American	36,682,000
Big Games studies--Ak Dept Fish & Game	1,991,000
Fisheries studies--Ak Dept Fish & Game	3,355,000
Land Use, Cook Inlet Villages	125,709
Stream Gauging--USGS	475,000
Power Supply Forecast--ISER #1	30,000
Cost Estimate	220,000
External Review Panel	144,000
Office of the Governor	4,500
Habitat Studies, US Fish & Wildlife	26,000
Bond Council	4,800
Management Assistance	4,300
Computerized Accounting	1,000
Permitting	8,000
Insurance Consultant	2,400
Other Contractual (leasing space, etc.)	67,000
Supplies	8,000
Equipment	20,000

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

MEETING SCHEDULE

Prepared by the Chief Clerk's Office

FOR THE WEEK OF (FEBRUARY 21 - 25)

LABOR & COMMERCE

Meets: Behrends Room 209
Monday - Friday
8:45 am - 10:00 am

Monday, February 21

NO MEETING SCHEDULED - STATE HOLIDAY

Tuesday, February 22

** HB 99 - An act making a special appropriation to the Alaska Power Authority for construction of the Susitna River hydroelectric project.

Sunset Review - Board of Nursing

Wednesday, February 23

HB 93 - An act relating to limitation of the number of state employees.

Thursday, February 24

** Sunset Review - Board of Medical Examiners

Friday, February 25

Sunset Review - Board of Medical Examiners

** Indicates notice of first public hearing on a new bill.

STATE OF ALASKA

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JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

February 22,1983

Representative Joe Hayes, Speaker of House
Alaska House of Representatives
Pouch V,
Juneau, Alaska 99811

Re: Board of Nursing

Dear Mr. Speaker:

Pursuant to AS 44.66.050(a) the House Labor and Commerce Committee has held hearings regarding the above referred Board. Under AS 44.66.050(e) the Committee recommends adoption of the attached Committee Bill continuing the Board of Nursing.

Specifically, the findings of the Committee of the public need for the Board as required under AS 44.66.050(c) are as follows:

AS 44.66.050(c) " A determination as to whether a board or commission or agency program has demonstrated a public need for its continued existence shall take into consideration the following factors:"

"(1) the extent to which the board, commission or program has operated in the public interest;"

The Committee finds that the Board of Nursing has operated in the public interest by holding public hearings to discuss statute and regulation revisions concerning continuing competency requirements, Board membership, foreign nurse graduate requirements, and the definition of license violations. The Board of Nursing accredits and periodically surveys Alaska nursing education programs to ensure that educational standards are being maintained.

"(2) the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters;"

The usage of the teleconference network by the Board of Nursing has allowed them to communicate throughout the State during subcommittee meetings and public hearings.

"(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest;"

The Board of Nursing is currently developing regulations that will maintain a level of competence for practitioners. The Board is in the process of developing formal regulations which define and list examples of license violations.

"(4) the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided;"

Applicants who have repeatedly failed the examination are helped through counseling or referred to useful textbooks.

"(5) the extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions;"

In addition to teleconferencing, the Board of Nursing advertises meeting and examinations in newspapers in Anchorage, Fairbanks and Juneau.

"(6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved;"

The Committee finds that the Board of Nursing is handling complaints in a timely manner. During the fiscal years 1979 through 1981 two complaints were filed with the Ombudsman. Both were subsequently resolved.

"(7) the extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;"

During the fiscal years 1979 through 1981, the Board of Nursing issued approximately 1800 licenses and 1235 temporary permits to practice nursing in Alaska.

"(8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest; and"

The Committee determined that the Board of Nursing is in compliance.

"(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection."

The Board of Nursing needs to adopt formal regulations which define and list examples of license violations. In addition, it would be helpful if the Board of Nursing would continue its efforts towards developing relevant and effective regulations that will maintain a level of competence for practitioners.

Pursuant to AS 44.66.050(d) the Committee recommends the following:

"(d) As to each board, commission, or agency program assigned to it for purposes of review, the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of the house. The report shall contain a summary of the findings of the committee as to the compliance of the board, commission or program with the factors enumerated in (c) of this section, together with a summary or recommendations of the committee as to each of the following:"

"(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;"

The Board of Nursing was created in 1941 with the primary purpose to protect the public's health, safety, and welfare through the regulation of the nursing practice.

"(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;"

The Board of Nursing determines the minimum allowable quality of nursing care in the State by establishing or amending rules and regulations necessary to ensure compliance with State statutes. They also approve curricula, adopt standards and accredit nursing education programs. The Board of Nursing examines and issues licenses to qualified applicants and the Board of Nursing hold hearings which may revoke, suspend, or take other appropriate action on the license of a person violating the nursing statutes and regulations.

The Board of Nursing has staff support from the Division of Occupational Licensing which employs an Executive Officer of the Board who is statutorily responsible for performing administrative duties and assisting the Board in conducting examinations and educational programs.

"(3) an identification of any other programs having similar, conflicting or duplicate objectives;"

The Committee did not find other programs which had conflicting or duplicate objectives.

"(4) an assessment of alternative methods of achieving the purposes of the program;"

The Committee found no viable alternative method of achieving the purposes administered by the Board of Nursing.

"(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;"

The Committee finds that to eliminate the Board of Nursing or consolidating its activities would denigrate the level to protection to the public's health, safety, and welfare.

"(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts; and"

The Board of Nursing has recommended changes to statute and regulation in the public interest, helped develop cirriculum to enhance the professionalism of nursing, conducted necessary examination of applicants for licensure to protect the health, safety, and welfare of the public.

"(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest."

The Committee commends the dedication, time, and effort on the part of each Board member for their service in a complex and difficult job.

Respectfully submitted:

_____

Representative Walt Furnace, Chairman

_____

Representative Rick Uehling, Vice Chairman

_____

Representative John Cowdery

Representative Niilo Koponen

Representative Hugh Malone

Representative John Ringstad

Representative Ron Wendte

Alaska State Legislature

REPRESENTATIVE
BARBARA LACHER
P.O. BOX 478
PALMER, ALASKA 99645
(907) 376-4215

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4894

House of Representatives

To: House Labor & Commerce Committee
From: Representative Barbara Lacher
Date: February 21, 1983
Subject: HB 99--Appropriation for Susitna Hydroelectric Project

Alaska Power Authority has requested $47 million for FY 84 in order to continue design and studies of the Susitna Hydroelectric project. I have attached a letter from Eric Yould, executive director of APA, which breaks out how the appropriation will be used.

The Susitna Hydroelectric Project Draft Summary Report, prepared by APA, forecasts that railbelt energy demands could double by the year 2000--just seventeen years from now. APA also predicts that the costs of electricity will nearly triple between 1994 and 2010, if thermal energy, which is produced by coal or gas fired plants, is selected as an alternative to hydroelectricity. This is illustrated in the attached charts and graphs, taken from APA's draft Susitna Hydroelectric Summary Report.

On the other hand, Susitna could eventually produce cost advantages as high as $5.5 billion.

In order to continue the work necessary to receive licensing from the Federal Energy Regulatory Commission, Alaska Power Authority must complete studies of the environment, of the impact of the dams on fisheries and wildlife, and meet other licensing requirements. APA will also continue with engineering and design work.

In light of the great benefits Susitna Hydropower will bring to so many Alaskans, I strongly urge your support for House Bill 99.

Points
1.) LEGISLATURE MUST LOOK AT FEASABILITY
2.) A.P.A.
3.) ACKERS AMERICAN / DESIGN AND CONSTRUCTION COSTS
4.) AFFORD ELECTRIC POWER,
5.) READY INFORMATION, FOUR BILLS

ALASKA POWER AUTHORITY

334 WEST 5th AVENUE - ANCHORAGE, ALASKA 99501

Phone: (907) 277-7641
(907) 276-0001

JAY NELSON APA ALASKA CENTER FOR ENVIRONMENT

January 27, 1983

30¢ KWH - INFLATED COSTS

2.3 BILLION APPROPRIATION

The Honorable Barbara Lacher
House of Representatives
P.O. Box 30
Wasilla, Alaska 99687

Dear Representative Lacher:

Through your assistant you have asked for information relating to the Alaska Power Authority's $47 million FY84 request for the Susitna project.

The basis of the estimate follows:

Item	Amount ($ Million)
Harza-Ebasco Contract	35.5
Site explorations, logistical support, licensing support, environmental analysis, detailed engineering and design.	
Alaska Department of Fish & Game	4.0
Fish and wildlife data collection program.	
Land Analysis and Acquisition	0.3
USGS Sediment Studies	0.2
External Review	0.2
Legal Support of FERC Licensing	0.2
USF&WS Support of Environmental Program	0.1
Design Review	1.0
Construction Manager Support	2.0
Transmission Facilities Design	2.0
Power Authority Personnel and Related Costs	1.5
Total	47.0

ADAMS

Over the next month, the basis of this estimate will be reviewed in light of the design contract presently under negotiation with Harza-Ebasco and the current outlook for project licensing.

Sincerely,

Eric P. Yould

Eric P. Yould
Executive Director

cc: Commissioner Richard Lyon
Pete McDowell
David Wozniak

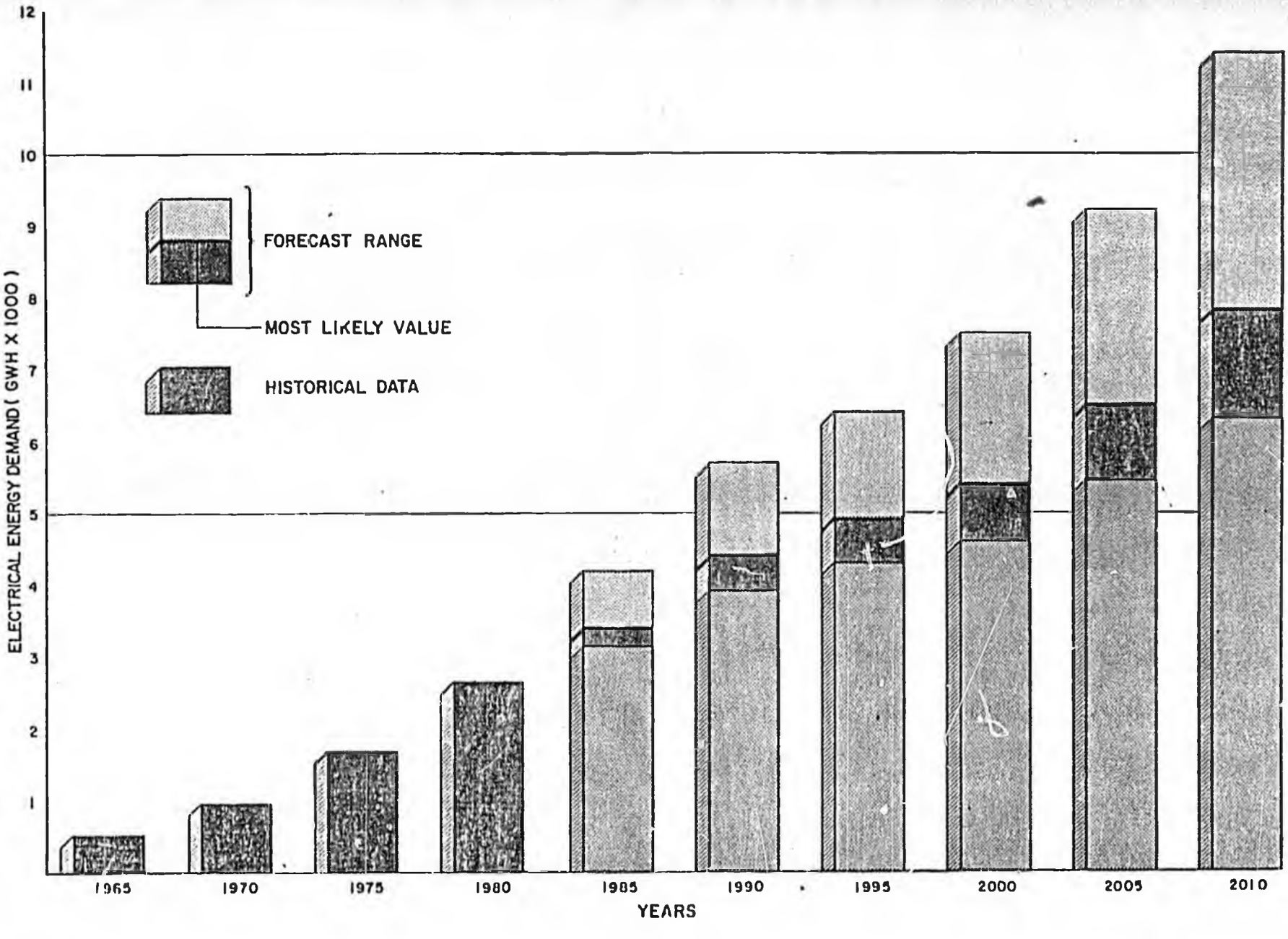
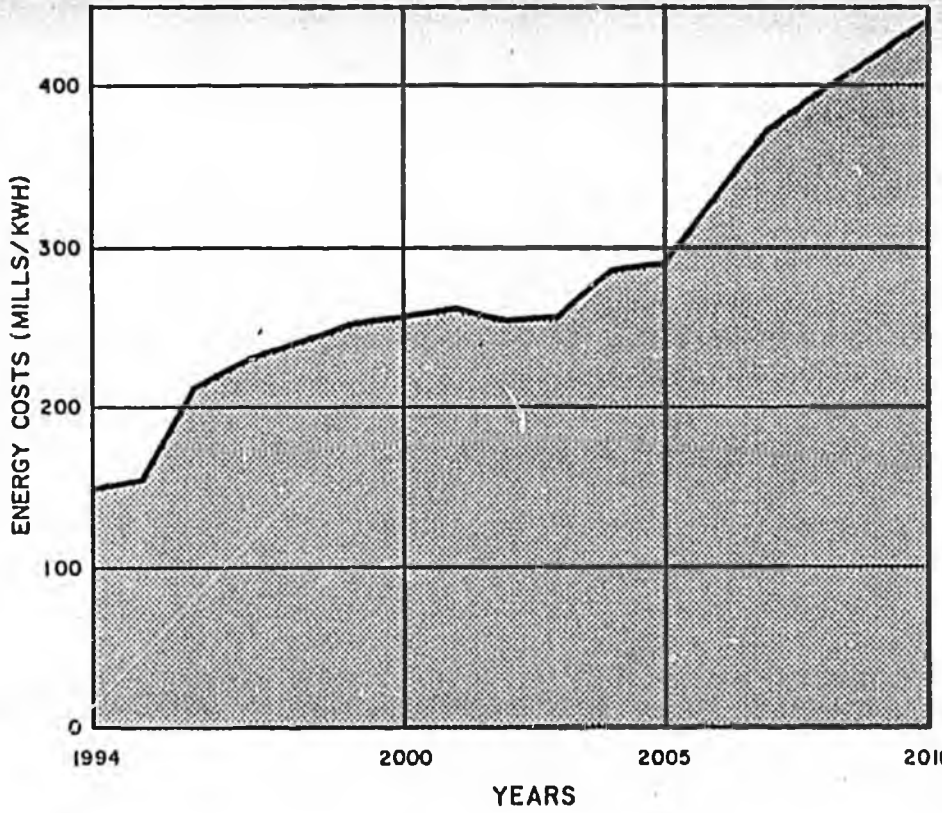


PLATE 3 | **RAILBELT ENERGY DEMANDS**



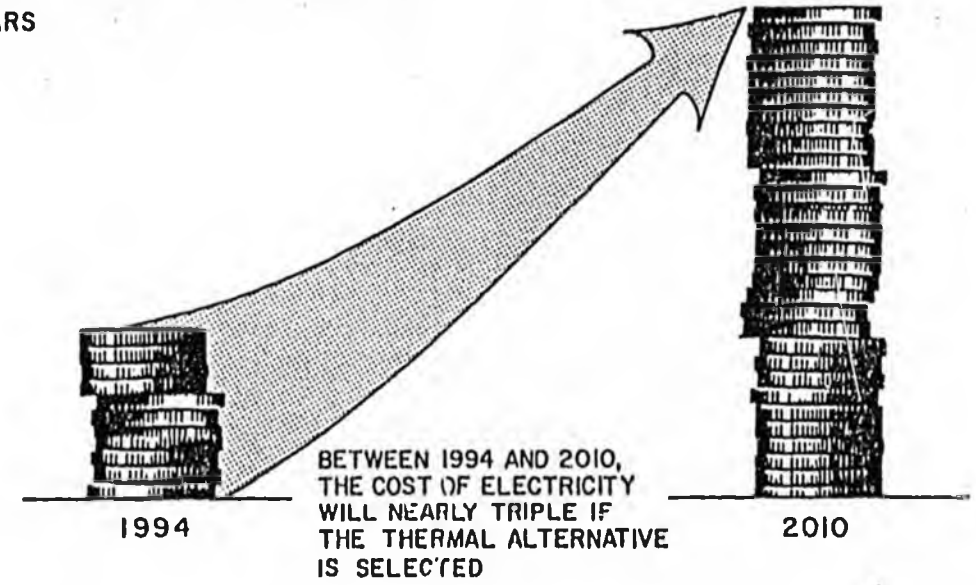


PLATE 5 | **ANNUAL COSTS - BASE CASE**

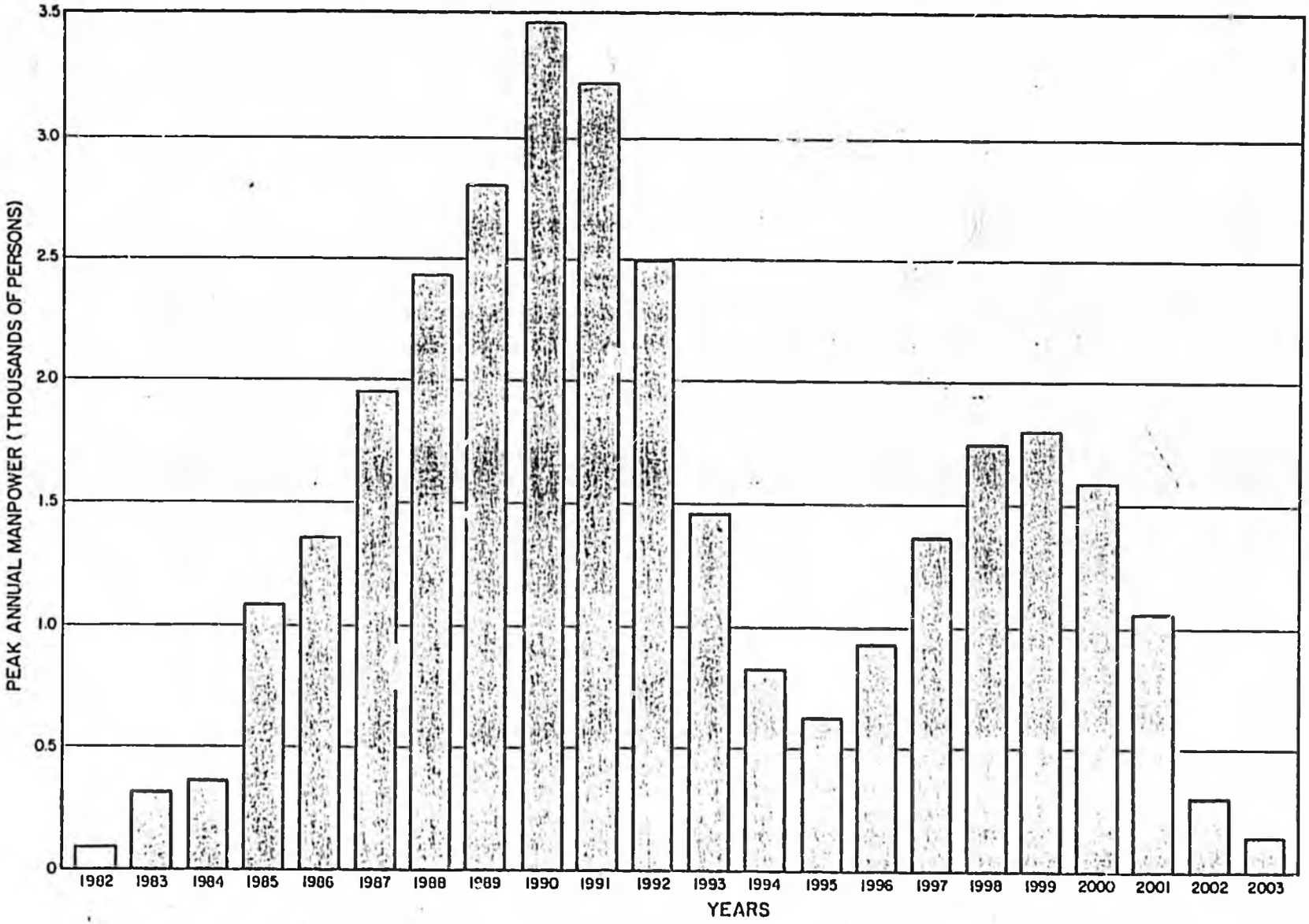
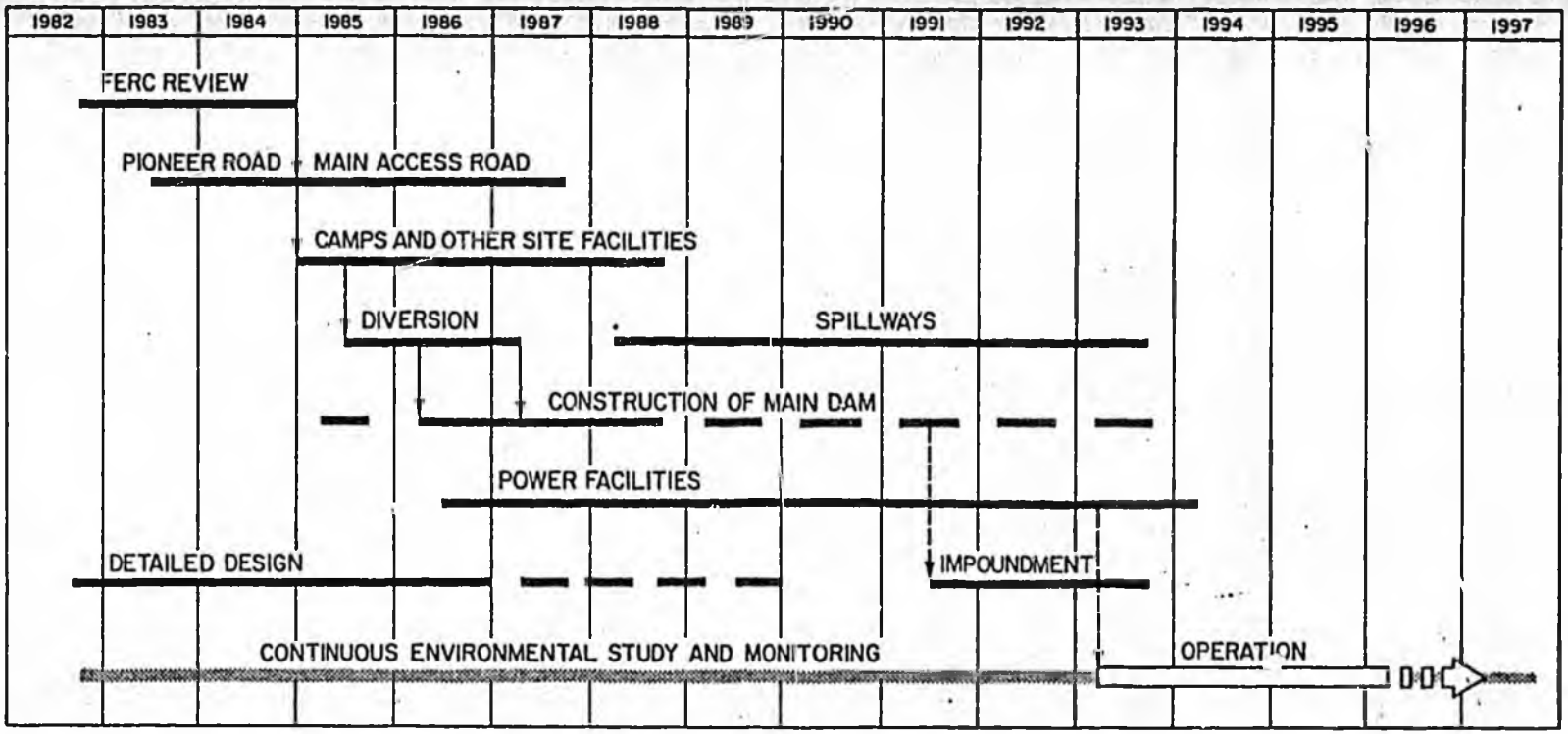


PLATE 17 | **WORK FORCE**

DEVIL CANYON



WATANA

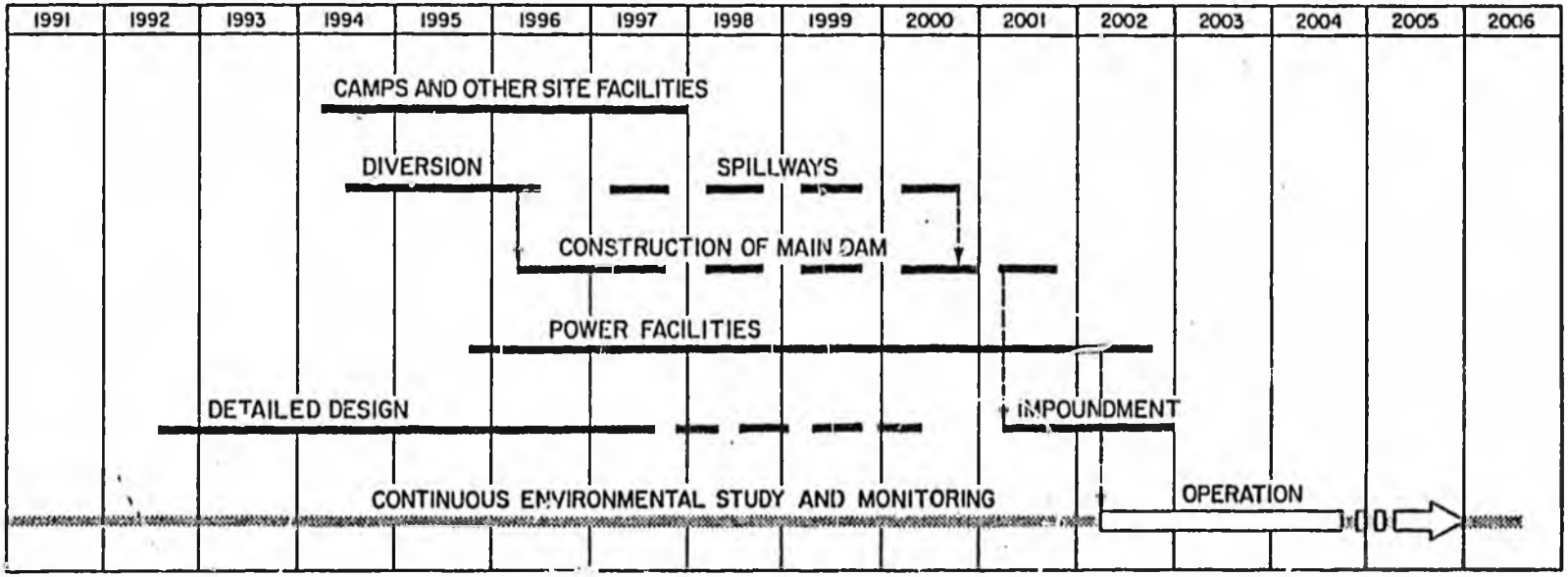
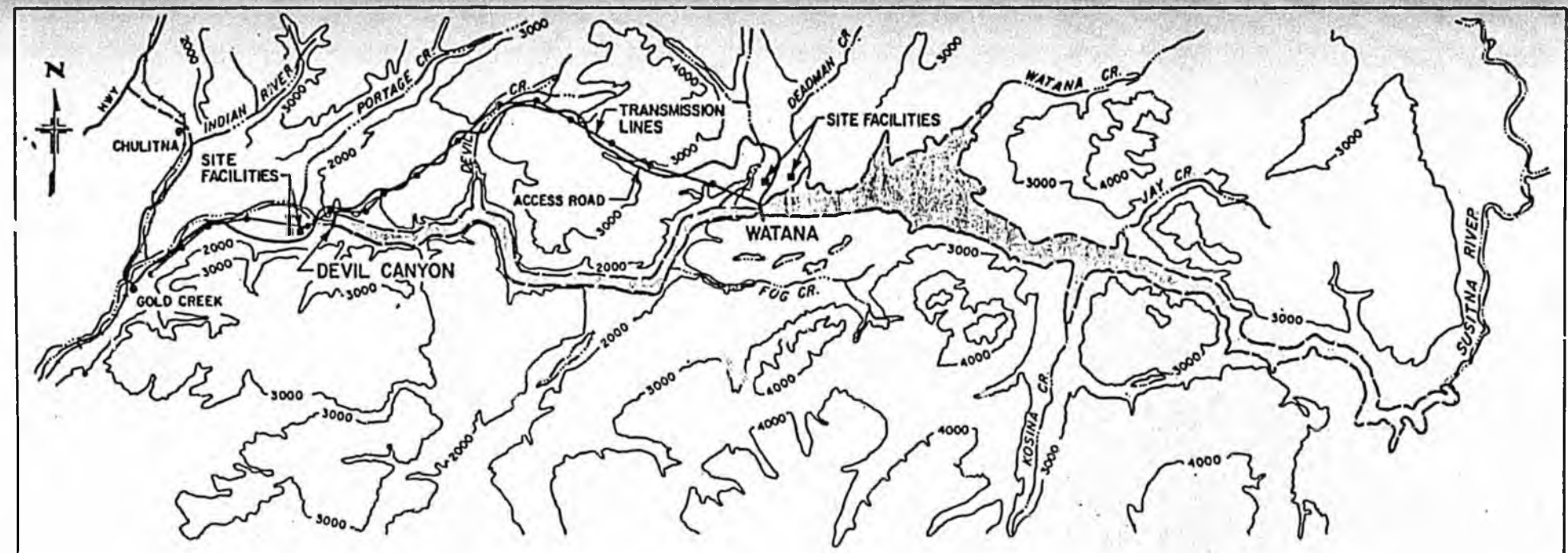


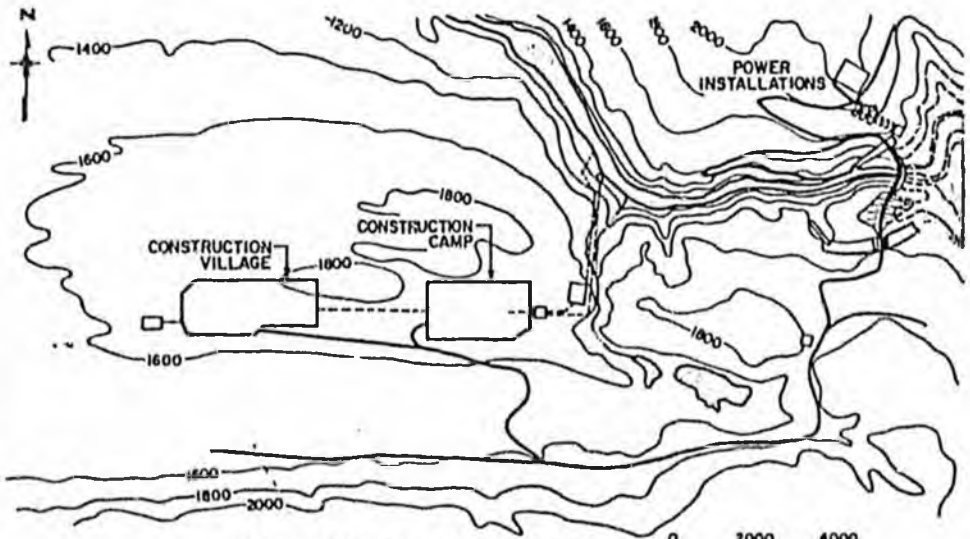
PLATE 16 | **PROJECT SCHEDULE**



RESERVOIR PLAN

0 6 12

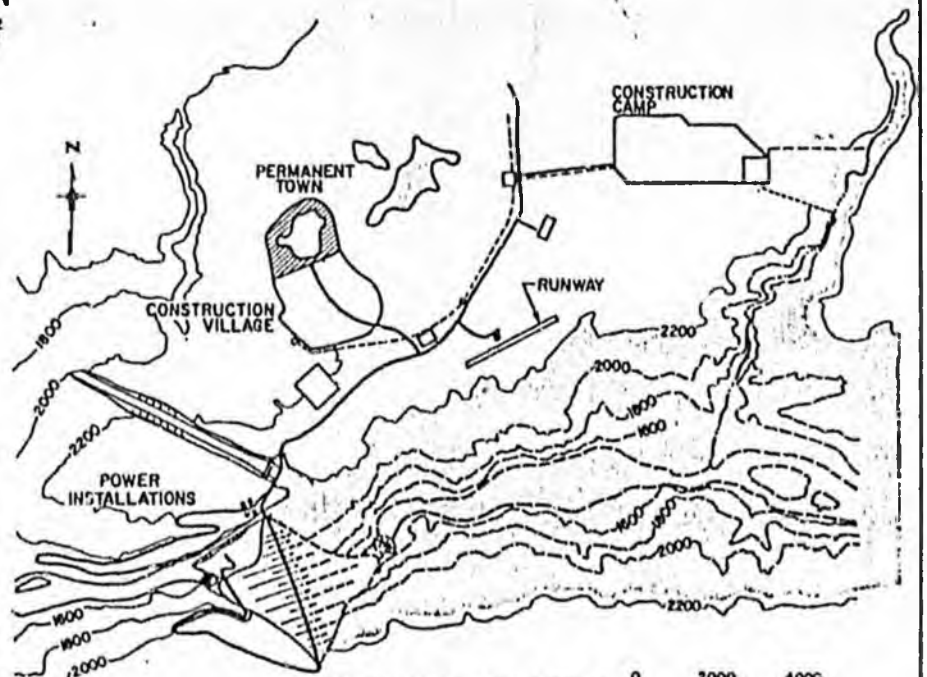
MILES



DEVIL CANYON SITE FACILITIES

0 2000 4000

FEET

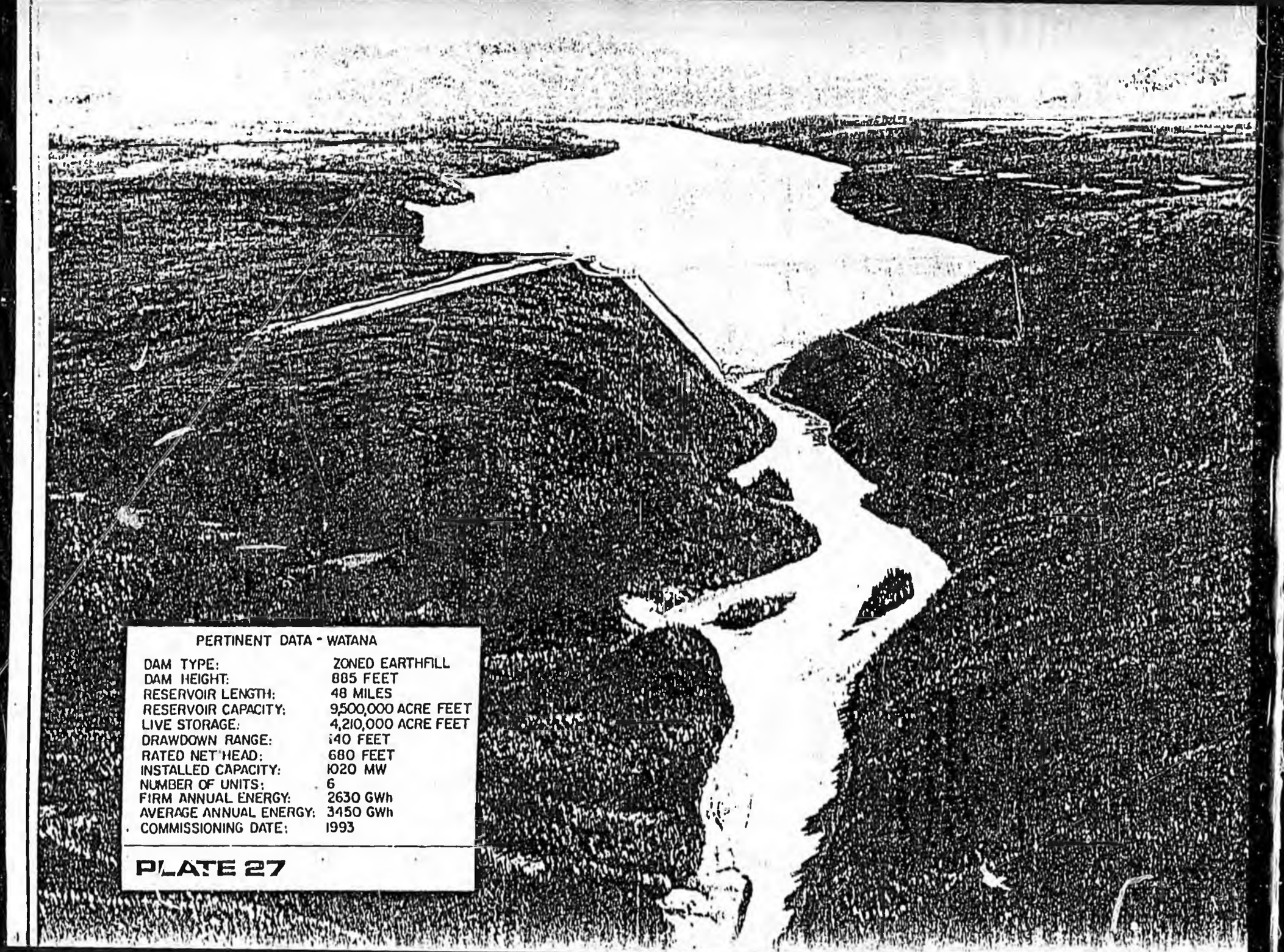


WATANA SITE FACILITIES

0 2000 4000

FEET

PLATE 9 | **PREFERRED DEVELOPMENT PLAN**



PERTINENT DATA - WATANA

DAM TYPE:	ZONED EARTHFILL
DAM HEIGHT:	885 FEET
RESERVOIR LENGTH:	48 MILES
RESERVOIR CAPACITY:	9,500,000 ACRE FEET
LIVE STORAGE:	4,210,000 ACRE FEET
DRAWDOWN RANGE:	340 FEET
RATED NET HEAD:	680 FEET
INSTALLED CAPACITY:	1020 MW
NUMBER OF UNITS:	6
FIRM ANNUAL ENERGY:	2630 GWh
AVERAGE ANNUAL ENERGY:	3450 GWh
COMMISSIONING DATE:	1993

PLATE 27

MATANUSKA ELECTRIC ASSOCIATION, INC.

P.O. BOX 1148

PALMER, ALASKA 99645

TELEPHONE
(907) 745-3231

RESOLUTION NO. AM-1

SUBJECT: SUSITNA HYDROELECTRIC PROJECT ENDORSEMENT
REFERENCE: ANNUAL MEMBERSHIP MEETING, 4/21/82

WHEREAS, energy costs directly affect the economic stability of individual households, businesses and the community as a whole; and

WHEREAS, energy costs are dependent on energy availability; and

WHEREAS, hydro power is by far the most viable energy source, and is economically and environmentally desirable; and

WHEREAS, the Susitna Hydroelectric Project has been sufficiently planned, studied and reviewed;

NOW THEREFORE BE IT RESOLVED that the Members of Matanuska Electric Association, Inc., assembled at this 1982 Annual Membership Meeting, go on record as being in support of the Susitna Hydroelectric Project; and

BE IT FURTHER RESOLVED that the General Manager and Board of Directors are hereby instructed to forward this resolution to the Governor of Alaska, the Alaska State Legislature, and the Alaska Power Authority immediately.

CERTIFICATION

I, Phil O'Neill, do hereby certify that I am Secretary-Treasurer of Matanuska Electric Association, Inc., an electric nonprofit cooperative membership corporation organized and existing under the laws of the State of Alaska; that the foregoing is a complete and correct copy of the resolution adopted at the Annual Meeting of the Members of this corporation duly and properly called and held on the 21st day of April, 1982; that a quorum was present at the meeting; that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation this 21st day of April, 1982.

Phil O'Neill

PHIL O'NEILL, SECRETARY-TREASURER
MATANUSKA ELECTRIC ASSOCIATION, INC.

(SEAL)

Dittman poll reports Alaskan support for Susitna dam project

by Ed Bennett
Times Business Writer

Seventy-two percent of Alaskans contacted in a recent poll say they support construction of the Susitna hydroelectric dam project.

"We're ecstatic," said Bob Penney, who as head of the Anchorage Chamber of Commerce Energy Subcommmittee helped sponsor the poll.

But Eric Myers, a consultant to the Northern Alaska Environmental Center who has long opposed the project, said the poll was "about as relevant as asking people if they want a free lunch or a free car."

The poll was conducted Jan. 14-31 by Dittman Research Corporation. A total of 585 persons in 51 Alaskan communities were contacted on a random basis by telephone. The poll was conducted for a group of organizations which included electrical cooperatives, chambers of commerce and labor organizations.

According to Penney, the poll cost $5,000 and was paid for by a combination of funds from private donors, the International Brotherhood of Electrical Workers and the Alaska State Chamber of Commerce.

The poll results indicate support for the Susitna project in all areas of the state, even though the electricity it would produce would serve only the railbelt. Fifty-four percent of persons contacted in rural areas supported the project, 18 percent opposed it, and 28 percent were undecided. In Southeastern Alaska, 60 percent of the respondents support Susitna, the poll said, while 19 percent oppose it and 21 percent are undecided.

The highest support for Susitna came from the areas the dam would serve. Central Alaska indicated 70 percent support, Southcentral 81 percent, and Anchorage 79 percent.

But many people polled were unclear on the actual details of the project. Only about half the persons polled knew which areas the dam would serve; 36 percent said correctly that current plans call for a ten-year construction period; and a mere nine percent knew construction of the project would employ 1000-2000 persons.

Penney said these results were "one of the main purposes for conducting the poll. It tells us what our next stage of education or public awareness will be." Myers refers to those public awareness efforts as a "propaganda campaign."

Over half the persons polled had no idea what the project would cost. Penney uses a $5.4 billion figure which does not include inflation; Myers estimates the real dollars spent over the ten-year construction phase at $12-15 billion, depending on inflation.

Myers said that cost was the real stumbling block to the project. "The real question to ask is whether people would support Susitna if it meant bringing back the personal income tax, or going without new roads or schools," he said. "It's that kind of choice."

The poll showed that of those persons who support the Susitna project, the biggest reason for building it was that "it's the cheapest power source." Of those that oppose the dam, environmental concerns outweighed other considerations, followed by cost.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

April 5, 1983

To: Representative Walt Furnace, Chairman
House Labor and Commerce Committee

From: Jefferson B. Barry
Professional Aide

Re: House Bill 111

Introductory Analysis

HB111 provides that investments and deposits of public money managed by the Department of Revenue be placed with Alaska state banks if the banks will offer the same terms and conditions as a foreign bank. Testimony by the Department of Revenue, verfied by the banking industry, indicates that this is the current practice by the Department of Revenue. No financial institution which feels that they have been left out has been identified, nor has anyone come forward with testimony which would show that this is not the current practice. There has been no indication nor testimony that the Department of Revenue has any plans to change their practice.

While the focus of this legislation is consistent with public policy, it would appear that there is not a demonstrated need for it at this time. HB111 also carries a $72,000 fiscal note for FY84and would increase the bureauacracy by adding people to maintain records and be able to show compliance with the provisions of HB 111. The fiscal requirements are $71,000 for FY85, and $78,000 for FY86.

Introduced: 1/24/83
Referred: Labor & Commerce
and Finance

120% increase (660-M) money market MM

INTERSTATE BANKING

IN THE HOUSE BY LINDAUER

HOUSE BILL NO. 111

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to investments and deposits of public money with foreign banks."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 37.10.078 is amended by adding new subsections to read:

(b) The commissioner of revenue may not make an investment or deposit with a foreign bank unless there is no state bank that will accept all or a portion of the investment or deposit under the same terms or conditions. The commissioner shall promulgate regulations which provide for equal participation by all state banks which desire to participate in the investment or deposit of funds under this subsection.

(c) In this section

(1) "foreign bank" means a bank, trust company, savings bank, industrial bank, building and loan association, savings and loan association, credit union or other similar lending organization the principal office of which is in another state;

(2) "state bank" means a bank chartered to conduct the business of banking in this state but does not include a state bank which is controlled by an out-of-state bank holding company.

C/O ALASKA DEPOSITS WIRE
3/1/83
Will look into: 1) LOAN DEPOSIT RATIOS
2) LENGTH OF MATURITIES (REVENUE DEPT.)
3.) FUNDS TO ALASKA COMMUNITIES
OR WILL MONEY FLOW OUTSIDE!
4.)

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

March 1, 1983

TO: House Labor and Commerce Committee

FROM: Representative John Lindauer

RE: House Bill #111: "An Act relating to investments and deposits of public money with foreign banks."

The intent of HB #111 is to require that Alaska's money be deposited, invested, and administered by Alaskan financial institutions to the greatest extent possible without loss of income or service.

Currently, 97.2% of Alaska's public funds are invested outside. 90.9% ($3,469,366,022 as of 12/31/82) of those funds are invested through Bank of America in federal securities. The remaining 6.3% ($240,259,245 [illegible] of 12/31/82) is invested, primarily through the Bank of America, [illegible]ficates of Deposit, Corporate Bonds, Bankers Acceptances, [illegible]ial paper and gold (held in Hanover Trust).

The 2.7% (105,[illegible]16 as of 12/31/82) of Alaska's money that is actually held in Alaska is deposited with twenty-three federal credit unions, Alaska National Bank, Alaska Pacific Bank, B.M. Behrends Bank, Alaska Mutual Bank and Mt. McKinley Mutual Savings Bank.

While federal banking laws may limit how much of the money could actually be placed in any one Alaskan bank, keeping as much as possible in Alaska would strengthen the state's economy.

The Bank of America, which is currently the primary beneficiary of the state's investments, is a fine California bank. All Californians, will be sorry about the termination of our efforts to provide their bank with loanable funds and higher earnings. Our own bureaucrats will regretfully be deprived of excuses to visit San Francisco. Our responsibility, however, is to Alaskans and the prosperity of Alaska.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 111 Date on Bill: 1/24/83
Title: An act relating to investments and deposits of public money with foreign banks.
Sponsor: Lindauer
Requestor: Labor & Commerce

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating		72	71	78
Total	-0-	72	71	78

b. Revenues:

Revenue	

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

3. Assumptions:

The operating costs are for an Investment Officer I and an Accounting Technician I. A 10% increase is added each year thereafter, with a $5,000 equipment cost in FY 84.

The Investment Officer is needed because investing in Alaska requires a greater amount of time than in the national market. Due to the lack of a secondary market for state bank securities each bank must be contacted on a daily basis for their current offerings.

The Accounting Technician I is needed to account for the increased number of collateral requirements. Investments in smaller state banks have higher collateral requirements by law than deposits in larger foreign banks.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Marian Rehfeld Phone: 465-2300
Division: Comm Affairs Date: 2/28/83

Approved by Commissioner: Robt D Hoth Date: 2/28/83
Department: Revenue

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

HB

126

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

April 6, 1983

To: Representative Walt Furnace, Chairman
House Labor and Commerce Committee

From: Jefferson B. Barry
Professional Aide

Re: House Bill 246

Introductory Analysis

HB246 is titled "An Acc relating to the deregulation of interest rates...". HB246 does much more than the title implies. As written, it would affect all of the protections that individuals, businesses, and the public have regarding service fees, service charges, late charges and any civil or criminal penalties for violation of the protections that people now have. There would seem to be a fundemental difference to deregulating interest rates and allowing any fee, service, or penalty charge to be imposed at the discretion of financial institutions.

The very reason that laws were passed to protect the public from "loan sharking" was the inability of any one individual or small business to deal with the financial institutions when setting "service fees". If HB246 is enacted in its present form, it is conceivable that an

individual could pay for the rest of their life on a $100 loan. A business could pay the principal and interest 100 times on a $2,500 note.

None of the testimony indicates that this was the intent in the proposal of this legislation, and it would be appropriate to consider the deregulation of interest rates separately from the service charges, fees, and penalties. The repealers in Section 7 should be studied carefully as they also affect AS 06.20.250, AS 06.20.260, AS 06.20.270, AS 06.20.285, AS 06.20.320, AS 18.80.250, AS 06.40.160, AS 45.45.050 and possibly others as well.

HB

131

March 16, 1983

Representative Walt Furnace
Chairman
House Labor and Commerce
Committee,
Juneau, Alaska

Dear Representative Furnace:

Here is my testimony supporting HB 81 in which I was not heard due to hearing Anchorage landlords first and I had an appointment to see my attorney at 9:00 am, on March 15th

I am currently living at the AWARE (Aiding Women in Abuse and Rape Emergencies) Shelter due to domestic violence in my living situation and have been looking for housing since January. It is a frustrating and almost impossible feat to find housing in Juneau, when you have children. In addition to finding housing

when you have children trying to find a reasonably priced apartment or house that is affordable with three children would be a miracle. Being on A.F.D.C. (Aid to Families with dependent Children) is an added burden and attempting to attend school is a challenge.

I had to leave my trailer because I did not feel safe; on March 8th, 1983 I went to court on a Contempt of Court charge against my ex-husband to see who would be allowed to live in the trailer. Judge Segues allowed my ex-husband to stay at the trailer until the following week because he did have a place to live and my ex-husband's court appointed attorney said I had a temporary place to live at A.W.A.R.E.

Needless to say, my frustration and helplessness in finding housing that accepts children is a major undertaking for me. I am currently on the waiting list at Coho Housing (who have 12 - suitable number of bedrooms for myself & 3 children.) and at Sleepy Hollow by the hospital (who have 103 people on their waiting lists).

Thank you for your consideration of my thoughts.

Sincerely,

Dorothy Jorgensen
Box 809
Juneau Alaska 99802
(mess. 586-6604)

Introduced: 1/28/83
Referred: Labor & Commerce
and Judiciary

1882.10 CIVIL RIGHTS REGARDLESS OF PARENTHOOD

IN THE HOUSE BY HURLBERT

HOUSE BILL NO. 131

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to unlawful practices in the sale or rental of real property."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 18.80.240 is amended to read:

Sec. 18.80.240. UNLAWFUL PRACTICES IN THE SALE OR RENTAL OF REAL PROPERTY. It is unlawful for the owner, lessee, manager or other person having the right to sell, lease or rent real property

(1) to refuse to sell, lease or rent the real property to a person because of sex, marital status, changes in marital status, pregnancy, parenthood, race, religion, color or national origin [; HOWEVER, NOTHING IN THIS PARAGRAPH PROHIBITS THE SALE, LEASE OR RENTAL OF CLASSES OF REAL PROPERTY COMMONLY KNOWN AS HOUSING FOR "SINGLES" OR "MARRIED COUPLES" ONLY];

(2) to discriminate against a person because of sex, marital status, changes in marital status, pregnancy, parenthood, race, religion, color or national origin in a term, condition or privilege relating to the use, sale, lease or rental of real property [; HOWEVER, NOTHING IN THIS PARAGRAPH PROHIBITS THE SALE, LEASE OR RENTAL OF CLASSES OF REAL PROPERTY COMMONLY KNOWN AS HOUSING FOR "SINGLES" OR "MARRIED COUPLES" ONLY];

(3) to make a written or oral inquiry or record of the sex, marital status, changes in marital status, race, religion, color or national origin of a person seeking to buy, lease or rent real property;

IT

(4) to offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or sources in connection therewith because of a person's sex, marital status, changes in marital status, pregnancy, parenthood, race, religion, color, national origin or age;

(5) to represent to a person that real property is not available for inspection, sale. rental, or lease when in fact it is so available, or to refuse a person to inspect real property because of the race, religion, color, national origin, age, sex, marital status, change in marital status, parenthood, or pregnancy of that person or of any person associated with that person;

(6) to engage in blockbusting;

(7) to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement, with respect to the sale or rental of real property that indicates any preference, limitation, or discrimination based on race, color, religion, sex, parenthood, or national origin, or an intention to make the preference, limitation or discrimination.

(8) ADD

(8) As to (1) and (2) above, however, nothing prohibits the owner, lessee, manager or other person having the right to sell, lease or rent real property from promulgating reasonable rules and regulations and requiring a reasonable damage deposit; and,

The following classes of real property are exempt from the provisions relating to parenthood;

(A) A private residence offered for short term occupancy;

(B) Housing established primarily for the handicapped, developmentally disabled, or elderly;

(C) Housing established as a dormitory; and,

(D) Housing, OR established solely for occupancy by singles.

DESIGNED

JAY S. HAMMOND
GOVERNOR

PHONE
(907) 276-3003

STATE OF ALASKA
OFFICE OF THE GOVERNOR

ALASKA COMMISSION ON THE STATUS OF WOMEN
338 DENALI STREET, SUITE 850
ANCHORAGE, ALASKA 99501

March 11, 1983

Testimony before: House Labor & Commerce
Re: HB131
Prepared by: Carla Timpone, Chair
Legislative Committee

Since June of 1979 the city of Seattle has had in effect an ordinance prohibiting discrimination in housing based on parenthood. Many of the concerns expressed here regarding the possible effects of the passage of HB131 were addressed in Seattle during hearings on the ordinance:

- landlords were concerned that they would be required to allow any number of occupants; however, landlords are now and will continue to be permitted to set reasonable and lawful occupancy rates

- what about the right of other tenants to peace and quiet? landlords can now and will continue to be permitted to establish and enforce reasonable rules regarding noise

- what about increased damage to rental property? landlords are well aware that any tenant, regardless of age, is potentially capable of causing property damage

A study of five cities in California, concluded in December of 1979, reached the same conclusions: the presence of children in a dwelling has no impact on property valuation, insurance rates, or maintenance costs.

There is, however, an impact on those being discriminated against. The majority of families in the rental market are female headed households. Consequently, refusing to rent

JAY S. HAMMOND
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to families with children constitutes de facto discrimination against a large percentage of women.

It should be noted that the statute currently in effect prohibits discrimination in housing based on pregnancy. Since pregnancy frequently results in parenthood, it seems logical that either both or neither of those conditions should be protected.

The Alaska Commission on the Status of Women strongly urges the passage of HB131.

Rick

This is not a major change.

The main effect is to lower housing costs for families with children. Even in cases where people operate "singles only" or "married couples only" rentals, the actual construction is quite suitable for people of all ages (altho the furnishings and appointments may not be). The risks can be controlled to a large degree by the security deposits, etc.

DO WE HAVE A ~~CONSULTANT~~

(KENNY) ⊗ LL.

(25%)

(HB-56) STUDENT LOAN BILL
HESS.

SOLUTION

A.H.F.C. MOBILE HOME
LOAN PROGRAM / AS PER BARNES
CHECK INTO IT!

~~CRUISE~~ BAIL
~~3 OF 6~~

BAIL BILLS
536 PARK ST APT A
JUNEAU, AK

(A.I.D.A.
(ALCOHOL ACT)

Juneau NOW
536 Park St. Apt. C
Juneau, Ak 99801
586-9739

Testimony to House Committee on Labor and Commerce:

March 11, 1983

My name is Lillian Ruedrich, and I am testifying on behalf of the Juneau chapter of the National Organization for Women. We support HB 131 which proposes the addition of the word "parenthood" as an acceptable condition for renters; one which could not be used as a basis for discrimination. The housing situation is desperate enough for a vast majority of the people of this state due to the general shortage of rental units and the prohibitive cost of buying a home. It makes no social or economic sense to doubly burden people in search of housing simply because they have children. Maintenance and insurance costs in fact do not differ significantly between buildings allowing families with children and those prohibiting children, according to a study done in the state of California. We sincerely hope this committee and the Legislature will work to provide renters with this gararantee of equitable treatment in the same sense that the state seeks to aid homeowners with that loan program. This bill would go a long way toward alleviating the burdens of overcrowding and overpaying which face many families seeking affordable housing. Thank you.

Lillian Ruedrich

HB 131

Although the bill prohibits discrimination in the sale, lease, or rental of real property because of my status as a parent, I wish to point out that the bill does not proscribe any other existing management tools that a landlord may have with regard to rental regulations concerning a tenant's use and occupancy of the premises in order to promote safety, health, or welfare of the tenants.

A landlord may also regulate the tenant's use of the property to avoid abusive use, or to make a fair distribution of services and facilities for tenants generally. This bill also does not prohibit a landlord from taking action against a tenant who fails to; quietly enjoy the premises, or fails to occupy and use the premises in a clean and safe condition. Also, it is clear that a landlord can provide resonable provisions in a lease limiting the number of persons occupying a unit, without regard issues of parentage.

In conclusion, I believe this legislation should prohibit discrimination against individuals due to their parenthood status, while still allowing a landlord the existing legal controls over the use and occupancy of his rental units.

94% EXCEPT CHILDREN
EFFICENCY UNITS

DR. GEORGE HANSON

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

ALASKA DIVISION

Susan R. Clark
1109 C Street
Juneau, Ak. 99801

1 June 1981

To: Alaska State Senators
Re: CS HB 356 (Judiciary)

A.A.U.W. supports the bill for we have a national position supporting the the reinforcement of families through legislation and improved accessibility to housing not only for the elderly, the economically disadvantaged, and minorities, but also for middle-income families.

We are in the midst of a housing shortage, both nationally and in Alaska, and during such periods landlords can afford to be more selective because full occupancy is almost assured. On the other hand, such situations present the greatest problem to a family with children because only a portion of the already small number of vacant units will be open to them, forcing the family, in many cases, into unsuitable, overpriced or poorly located apartments. That portion of units available to families can even reach zero in areas where the housing shortage is most acute, as was pointed out on C.B.S. program "60 Minutes": "No Kids Allowed."

Love of children in general is no longer the common denominator of public opinion it was just twenty years ago. The "baby boom" has gone bust. Today the availability of family planning, the unwillingness to make economic and social sacrifices for children, the decision to have later or no children have all helped to bring about a sharp increase in housing discrimination against children. The 1960 census showed for the first time that a majority of American homes contained less than three members, and the 1970 census indicated that over 60% of all rental households had no children. Yet as private homes continue to be priced beyond the reach of more and more Americans, apartment complexes and condominiums will provide a major portion of our housing needs. The failure to rent to families with children - whether by private landowners or by direction of government units which may create special zoning classifications for the elderly or prevent large increases in the number of school children in a certain area to maintain educational quality and low taxes - is a form of action resulting from economic self=interest rather than any intent to injure families with children. But injury is in fact the result.

We are rapidly becoming a nation which segregates its citizens on the basis of age as more and more people separate themselves from those with different needs. As our population begins to accomodate a higher percentage of people of retirement age who draw off to themselves into segregated communities, a growing percentage of singles and couples without children who

do not identify closely with families raising children, such families begin to collect in concentrations where they, too, are not exposed to the multi-generational neighborhoods that can provide richness and understanding between peoples. In a highly mobile society where adult children have left their parents in far distant states, youngsters are raised without experiencing or understanding anyone older than they by more than a score of years. As contact and understanding goes, we become pockets of self-interest - socially, economically, politically and even racially - too often losing the vision of the common good.

Housing that segrates by age can have the unfortunate side effect of racial segration as well. A court in Missouri found that prohibiting children would constitute a prima facie case of racial discrimination, because recent national statistics indicate that 48% of black familial renters have children while less than 37% of white families living in rental units have children. These statistics may show an even further discrepancy when considering Native or Hispanic families. Thus, the refusal to rent to families with children has a disproportionate effect on non-whites. In addition, indigenous families are more likely to have an elderly person or multi-generations living in the same home, a fact that could result in discrimination against both ends of the age spectrum in terms of housing if children are prohibited. Again, this would also be felt more strongly by non-white families.

There are six states which have legislation prohibiting housing discrimination against families with children, legislation which has been in effect for over fifty years (Ariz., Ill., N.J., N.Y., Mass., and Del.). In fact, while Alaska does not now prohibit discrimination against children in rental property, the Alaska civil rights statutes include a provision that the "opportunity to obtain...housing accommodations and other property without discrimination because of ... pregnancy or parenthood... is a civil right." It would seem only just to follow our own good lead, and truely mean what we have written. Even Congress, which has generally held that the problem could best be handled at local or state levels, did provide in 1976 housing program mortgage insurance benefits to landlords who could certify that they did not discriminate against families with children.

Discrimination based on age, as on race, sex, creed, etc..., is discrimination not founded on actual basis, because individual differences between humans result in some children being disruptive, but so are some adults, some Blacks, some whites, some men, some women, some Protestants, some atheists. Others of these same samplings make excellent tenants. A landlord offering housing to the public should make a decision directly related to issues of merit - past rental history, ability to pay, references - not on the basis of one's age, race, gender, etc....

One of the recommendations from the White House Conference of Families where there was agreement at all three national conferences, was the need to "improve fair housing laws and enforcement - [with] no discrimination against families with children...." A.A.U.W. strongly supports this recommendation and the bill now before you.

JOHN
THIS HAS NOTHING TO DO WITH THE BILL?

(8) As to (1) and (2) above, however, nothing prohibits the owner, lessee, manager or other person having the right to sell, lease or rent real property from promulgating reasonable rules and regulations and requiring a reasonable damage deposit; and,

The following classes of real property are exempt from the provisions relating to parenthood;

(A) A private residence offered for short term occupancy;

(B) Housing established primarily for the handicapped, developmentally disabled, or elderly;

(C) Housing established as a dormitory; and,

(D) Housing established solely for occupancy by singles.

Judy

IN MY TEAM
ALICE BREWER
DENNIS KENDALL
W.R. VARNELL; 100 UNITS/ 25% 1 BEDROOM 75% 2 BEDROOM APT

BEN MARSH — EXEMPTION FOR EFFICENCY AND ONE BEDROOM APARTMENTS

— OWNER OCCUPIED DUPLEXES
— EXEMPTION FOR HANDICAPPED
— LANDLORD PROMULGATE REASONABLE RULES

{CIVIL}

- DISCRIMINATION
  - SEX OR PARENTHOOD / STATE LAW
  - MUNICIPAL CODE;
  - CONSTITUTION
  - NO OCCUPIENTS — (OCCUPANTS)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M

April 15, 1982

SUBJECT: Discrimination in rental housing accommodations (Work Order No. 12-2776)

TO: Representative Hugh Malone

FROM: Tamara Brandt Cook
Legislative Counsel TBC

You have asked whether a recent California case, Marina Point, Ltd. v. Wolfson, 180 Cal. Rep. 496 (California 1982), has any application under Alaska law. The case deals with the question of whether an owner of an apartment complex may refuse to rent an apartment to a family solely because the family includes a minor child. The California Supreme Court concluded that the owner could not, but two justices dissented.

Although the exclusionary policy was challenged on the basis of an impermissible infringement on state and federal constitutional rights of familial privacy and equal protection of the law as well as on the basis of statutory rights, the case was decided under the Unruh Civil Rights Act of California. The court specifically declined to reach either state or federal constitutional contentions. Marina Point, supra, page 497, page 501. The dissent noted that equal protection and due process principles place no restrictions on purely private actions, but affect only state action. Marina Point, supra, page 512.

In general, a case decided by another state court has no precedential value in Alaska. Nevertheless, had the case been decided on federal constitutional grounds the reasoning in the case could have been directly applied. The Alaska court could also have rejected the reasoning of the California court in interpreting the federal constitution. Although each state court interprets its own constitution and its own statutes, the Alaska court relies on case law from other jurisdictions to support similar conclusions.

The court could rely on the reasoning in this case, especially if the court were interpreting a statute similar to the Unruh Civil Rights Act of California. However, AS 18.80.230 and AS 18.80.240 differ considerably from the Unruh Act, so I suspect that Marina Point, supra, would be deemed to be of little value in interpreting Alaska law.

The pertinent part of the Unruh Act, Civil Code section 51 provides:

> All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges or services in all business establishments of every kind whatsoever.

The phrase "all business establishments" has been held to apply to the business of renting housing accommodations. Marina Point, supra, page 501. In addition, the California court has interpreted the statute to prohibit all arbitrary discrimination by business establishments, with the particular bases of discrimination listed (sex, race, color, etc.) being illustrative rather than restrictive. In re Cox, 474 P.2d 992 (California 1970). This judicial interpretation has not been disturbed by the legislature. The court notes that the legislature is presumed to be aware of and to have acquiesced in the judicial construction when it amends a statute without altering the portions that have been construed as was done with the Unruh Act in 1974. Marina Point, supra, page 504. The court bases its holding that an owner may not refuse to rent an apartment to a family solely because the family includes a minor child on the fact that this amounts to arbitrary discrimination within the terms of the Unruh Act as judicially construed.

The pertinent Alaska statutes have not been judicially construed to forbid any arbitrary discrimination as was done in California nor have they been construed to forbid discrimination on any basis other than those specifically listed in the statute. AS 18.80.230 forbids discrimination in public accommodations on the basis of "sex, marital status, changes in marital status, pregnancy, parenthood, race, religion, color or national origin". (Emphasis added). AS 18.80.240 deals with the discrimination in the sale or rental of real

property separately from the section that deals with discrimination in public accommodations. Discrimination is forbidden on the basis of "sex, marital status, changes in marital status, pregnancy, race, religion, color or national origin". Discrimination in public accommodations and discrimination in rental of property are treated the same under the Unruh Act, while discrimination in these two areas are treated differently in Alaska. In fact, AS 18.80.250(1) and (2) specifically authorizes discrimination in the rental of housing as between married and single people. It would be difficult for the court in Alaska to conclude, as the court in California concluded, that the legislature intended to forbid all arbitrary discrimination with respect to the rental of housing. The fact that "parenthood" is included in the list of protected classes for purposes of public accommodations and excluded from the list for purposes of rental housing suggests the opposite, that the legislature intended to forbid discrimination in the rental of housing only on the basis of specifically listed factors.

In conclusion, since the decision in Marina Point, supra, is based on a statutory scheme that differs markedly from the statutory scheme in Alaka, it will have no direct affect on Alaska law.

TBC:ljb

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M March 2, 1983

SUBJECT: Methods of payment of overtime (HB 223)

TO: Representative Walt Furnace

FROM: Thomas A. Sofo AS
Legislative Counsel

You have asked this office for an opinion regarding the constitutionality of HB 223. That bill prohibits certain methods for the payment of overtime and excuses employers from the payment of liquidated damages for good faith violations of AS 23.10 (Employment Practices and Working Conditions). Section 3 of the bill extinguishes any criminal or civil liability of employers who may have used one of the prohibited methods since December 9, 1978, while sec. 4 of the bill makes the relevant statutory provisions retroactive to that date.

The retroactivity aspect of this bill opens it for challenge on several constitutional grounds. One basis for a challenge would be the prohibition against the impairment of contracts, found in both the United States and the Alaska Constitutions (U.S. Constitution, Article I, section 10; Alaska Constitution, Article I, section 15). Another basis for attack would be the due process guarantees of the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, section 7 of the Alaska Constitution.

More recently, it has come to my attention that litigation is currently underway concerning the very issues covered by this bill. An attempt to address the subject matter in this manner may be considered special legislation when viewed in that larger context.

Another point to be made concerning litigation in this area is raised by Dresser Industries, Inc. v. Alaska Department of Labor, 633 P.2d 998 (Alaska 1981). In that case, the Alaska Supreme Court upheld the regulatory prohibition of

the very same conduct which is the subject of the present bill. Since there has already been enforcement of these provisions on certain employers, there may be equal protection problems in trying to retroactively excuse other employers from having to comply with those same provisions.

Although authority does exist which holds that the legislature may abolish purely statutory rights and even remedies in a retroactive manner, this office is not prepared to conclude that those general statements regarding legislative authority have application to this specific case. In the case of a person who worked during the time elapsed since December 9, 1978, and was paid overtime under a prohibited method with the result of denying that person compensation to which otherwise entitled, I am not convinced that the Alaska Supreme Court would be persuaded by the argument that rights to minimum wages and overtime pay are purely statutory and are not vested.

TAS:ljb
9/036

WHERE HAVE ALL the CHILDREN GONE ?

TODAY, THROUGHOUT THE U.S., 27% OF ALL RENTAL HOUSING IS NOT OPEN TO PARENTS WITH MINOR CHILDREN. IN JUNEAU THE FIGURE IS MUCH HIGHER. WE ARE WORKING TO GIVE ALL FAMILIES THE SAME OPPORTUNITIES THAT SINGLES AND COUPLES WITHOUT CHILDREN HAVE.... BELOW ARE A FEW QUESTIONS AND ANSWERS ABOUT FAIR HOUSING.... PLEASE GIVE IT SOME THOUGHT.

2 br. apt.; adults only, no pets. $500 plus $150 cleaning deposit. Call between 7-9 p.m. Available Nov. 1st.

from, JUNEAU EMPIRE 10/9/80

ANCHORAGE DAILY NEWS 6/1/81

COZY 2-3 BR, 1½ bath, excellent cond, near West High, fireplace, carport, w/d, dw, gd, $650/mo no pets or child. Call Joyce, 276-8010, or 344-0611.

DOWNTOWN WALK TO WORK

NOW RENTING!
Apartments in newly renovated building. 1 blk from park Strip, off street parking and laundry room for your convenience, no dogs or children.
EFFICIENCY/$275
1 BR./$315
2 BR./$360
ALL UTIL. INCLUDED
Resident Manager, 277-7151

from, JUNEAU EMPIRE 10/15/80

2 br. unfurnished and 1 br. furnished, in West Juneau. Carpeting, dishwasher, garbage disposal, off street parking. No pets or children. Mature adult preferred. 586

Q: AREN'T MAINTAINENCE COSTS HIGHER WHEN YOU RENT TO FAMILIES WITH CHILDREN?

A: ACCORDING TO A NEW YORK COMPANCY WHICH SUPPLIES THE INSURANCE INDUSTRY WITH NATIONWIDE STATISTICS ON DAMAGES, THERE IS NO EMPIRICAL DATA TO PROVE THAT THE PRESCENCE OF FAMILIES RESULTS IN GREATER DESTRUCTION TO PROPERTY.

Q: WOULDN'T A FAIR HOUSING LAW FORCE LANDLORDS TO OVERCROWD THEIR APARTMENTS?

A: NO. FAIR HOUSING LAWS ARE REASONABLE AND ARE NOT WRITTEN IN AN ARBITRARY MANNER. A LANDLORD WOULD NOT HAVE TO RENT A ONE BEDROOM APARTMENT TO A PARENT OR PARENTS WHO HAD THREE CHILDREN. OR, A PROJECT DESIGNED FOR THE ELDERLY OR HANDICAPPED WOULD NOT BE FORCED TO ACCEPT TENANTS WHO HAD CHILDREN. A FAIR HOUSING LAW WOULD BE REASONABLE AND GIVE EQUAL OPPORTUNITIES TO PARENTS AND INSURE THAT AN ADEQUATE SIZED APARTMENT WOULD NOT BE DENIED TO THEM BECAUSE OF PARENTHOOD.

Q: ISN'T THE SOLUTION TO BUILD MORE HOUSING?

A: THIS SOLUTION IGNORES THE FACT THAT OFTEN NEW BUILDINGS WILL NOT RENT TO FAMILIES WITH CHILDREN. ALSO, THERE IS NOTHING TO PREVENT EXISTING BUILDINGS TO ADOPT NEW RULES BANNING CHILDREN. IN THE LAST TWO MONTHS TWO APARTMENT BUILDINGS IN JUNEAU HAVE CHANGED THE RULES AND NOW EXCLUDE CHILDREN.

Q: DON'T INSURANCE COMPANIES CHARGE HIGHER RATES FOR BUILDINGS THAT ALLOW CHILDREN?

A: NO. PRUDENTIAL, SAFECO, AETNA, REPUBLIC, NORTHWESTERN, AND CONTINENTAL INSURANCE COMPANIES SAY THAT IT IS THE CONDITION OF THE BUILDING THAT DETERMINES THE RATES, NOT THE AGE OF THE TENANTS. (IT IS IMPORTANT TO NOTE THAT IF TENANT AGE WERE A FACTOR IN SETTING ACCIDENT LIABILITY RATES, THE HEAVIEST BURDEN MIGHT FALL ON THE ELDERLY).

Q: WOULDN'T FAIR HOUSING LAWS FORCE LANDLORDS TO ACCEPT CHILDREN IN BUILDINGS THAT ARE UNSAFE FOR THEM?

A: THIS ISSUE IS MISLEADING. ACCORDING TO OUR STATE AND LOCAL BUILDING CODES, ANY BUILDING WHICH IS UNSAFE FOR A CHILD IS ALSO UNSAFE FOR ADULTS. THE REAL SAFETY ISSUE IS THAT ANTI-CHILD RENTAL POLICIES FORCE MANY FAMILIES TO LIVE IN THE MOST DILAPIDATED, UNSAFE, AND OVERCROWDED HOUSING.

Q: ARE THERE FAIR HOUSING LAWS IN OTHER AREAS OF THE COUNTRY?

A: YES. LAWS TO PROTECT RENTERS WITH CHILDREN HAVE BEEN PASSED IN MANY AREAS THROUGHOUT THE UNITED STATES. ARIZONA, MICHIGAN, ILLINOIS, NEW JERSEY, NEW YORK, DELAWARE, CONNECTICUT, MINNESOTA, AND THE DISTRICT OF COLUMBIA HAVE PASSED FAIR HOUSING LAWS. NUMEROUS CITIES HAVE ENACTED LAWS THAT PROTECT FAMILIES AND CHILDREN, THEY INCLUDE SAN FRANCISCO, SPOKANE, LOS ANGELES, OAKLAND, AND SEATTLE.

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4342
(TTY) 279-4725

TONY KNOWLES
MAYOR

EQUAL RIGHTS COMMISSION
670 East 10th Avenue

February 23, 1983

Hugh Malone, Representative
State of Alaska
Pouch V
Juneau 99811

Dear Mr. Malone:

The following information is provided in response to an inquiry from your office.

The Anchorage Equal Rights Commission is an administrative agency which is charged with enforcement of the municipal discrimination ordinance. This ordinance is found in the Anchorage Municipal Code, Section 5, a copy of which is enclosed.

In 1982, the Equal Rights Commission opened 97 investigations of alleged discriminatory practices. Of this total, 20 cases or 21%, were filed in the category of housing. Of these housing cases, 9 were filed on the basis of parenthood, which by definition is included under sex discrimination (see Section 5.20.010). This represents 9% of the total cases filed with the agency.

Additionally, the Equal Rights Commission received numerous inquiry calls regarding housing discrimination against parents with children. These callers generally sought clarification of our jurisdiction and were from both property seekers and property owners.

It is significant that prior to 1982, no cases had been filed with the Commission on the basis of parenthood. These 1982 filings are attributed to the severe shortage of rental units in the Anchorage area. With a vacancy rate that at times stood at 1%, parents found it extremely difficult to obtain rental units.

As the problem continued to accelerate throughout the year, the Equal Rights Commission took steps to alert the community to the requirements of the local ordinance. Advertisements were placed in the local papers which spelled out the Commission's jurisdiction. A public forum on Housing Discrimination and meetings were held with property owners and interested public, to discuss the situation and the method in which the Equal Rights Commission would handle complaints. These actions were of particular importance in raising the awareness level of property seekers and in reassuring property owners that each allegation resulting in a complaint, would be reviewed on a case-by-case basis.

In 1983, we will continue in our efforts to prevent and eliminate alleged discrimination and aggressively enforce Title 5 of the Anchorage Municipal Code.

If I can be of further assistance, please do not hesitate to call me.

Sincerely,

PAUL L. CONNERTY,
Executive Director
Anchorage Equal Rights Commission

jf
Enc.

With pullout section: Page B1

THE CHRISTIAN SCIENCE MONITOR

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2

Opening apartment doors closed to kids

By Randy Shipp

Boston

Anyone trying to find an apartment that accepts children will not be surprised by the conclusions of a recent US Housing and Urban Development survey. It shows that, nationwide, 26 percent of all rental units have "no children" policies, and many that do accept children have restrictions on the number, sex, or age of the youngsters.

These restrictions affect roughly 2 million families, says Elizabeth Roistacher, HUD's deputy assistant secretary for policy development and research.

The report adds that restrictive rental policies also may mean that families may be split up, with children being sent to live with other relatives, until parents can find some place for them to live, or doubling up with another family, leading to increased family tension.

"There is also a real feeling among people who are hit by this that society thinks there's something wrong in having children," Dr. Roistacher says. "Children react to this. They are hurt, they're parents are hurt. They're all really disturbed by the fact that children don't seem to be wanted."

The problem is growing worse. The number of rental units unavailable to families with children is rising. And with more apartment buildings switching to "no children" policies, and more one-bedroom rather than multi-bedroom units being built, it is likely to continue to rise.

In Massachusetts, state law prohibits such discrimination in dwellings with three or more units. Violations carry a fine of up to $1,000. Even so, discrimination against families with children is "the biggest problem right now for housing," according to a spokesman for the Massachusetts Commission Against Discrimination. Because of exemptions under the law, he says, very few rental units actually are affected.

The California-based Fair Housing for Children Coalition (FHCC) conducted a survey of apartment ads in newspapers. In Los

Focus

Angeles, 71 percent allowed no children of any age, and Fresno, San Diego, and San Jose showed 53 percent, 65 percent, and 70 percent respectively.

"We've dealt with people who are living with six kids in a station wagon on the Santa Monica pier, and a woman living with two kids in a tent on the beach," says FHCC executive director Dora Ashford.

FHCC also gets calls from pregnant women worried that they will lose their apartment when they have their baby.

"We had a recent case of a couple in Santa Monica who had a baby a few months ago. They got a letter from [the apartment management company] saying, 'Congratulations on your new baby – and we would like you to find another place to live in 60 days.'"

But when FHCC lawyers took the case and pointed out that the family would not be violating any occupancy codes, and that a local ordinance forbade age discrimination, the family was allowed to stay.

The generally tight housing market is a major cause of the problem, Ms. Ashford says.

"As long as the housing crisis worsens [the discrimination problem] will, too. Families with children are in a worse position to buy their way out, as are the elderly, when housing crunches hit, so they're hurt a lot worse than other people."

Helen Blank of the Children's Defense Fund (CDF) says positive steps are being taken. The HUD study, for instance, is an example of interest in the issue on the part of the federal government.

Moreover, anti-discrimination statutes have been passed in Arizona, Connecticut, Delaware, Illinois, Massachusetts, Minnesota, New Jersey, New York, and the District of Columbia. The California Legislature is considering similar legislation.

The CDF has set up a national network of organizations concerned with discrimination against families with children. Its purpose, Ms. Blank says, is ". . . to communicate with each other about local ordinances they are working on, share strategy, and give each other mutual support."

Dr. Roistacher says increasing the number of available homes and apartments would help solve the problem. She says HUD is looking into possible roles that it can take, and also would like state and local governments to get involved with the issue.

HH 356

The following letter of intent on COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 356 (relating to unlawful practices in the sale or rental of real property) dated April 30, 1981 was received (the Judiciary committee report appears on page 894 of the journal) and appears as follows:

LETTER OF INTENT

CSHB 356

April 30, 1981

The Honorable Jim Duncan
Speaker of the House

Dear Mr. Speaker:

The Committee on Judiciary has had under consideration House Bill 356, "An Act relating to unlawful practices in the sale or rental of real property", and has provided you with a committee report recommending that it be replaced with our committee substitute for that bill, and that committee substitute for House Bill 356 do pass.

Although the bill prohibits discrimination in the sale, lease, or rental of real property because of a person's status as a parent, the committee wishes to point out that the bill does not proscribe any other existing management tools that a landlord may have with regard to rental units. For example, a landlord may still adopt rules and regulations concerning a tenant's use and occupancy of the premises in order to promote safety, health, or welfare of the tenants.

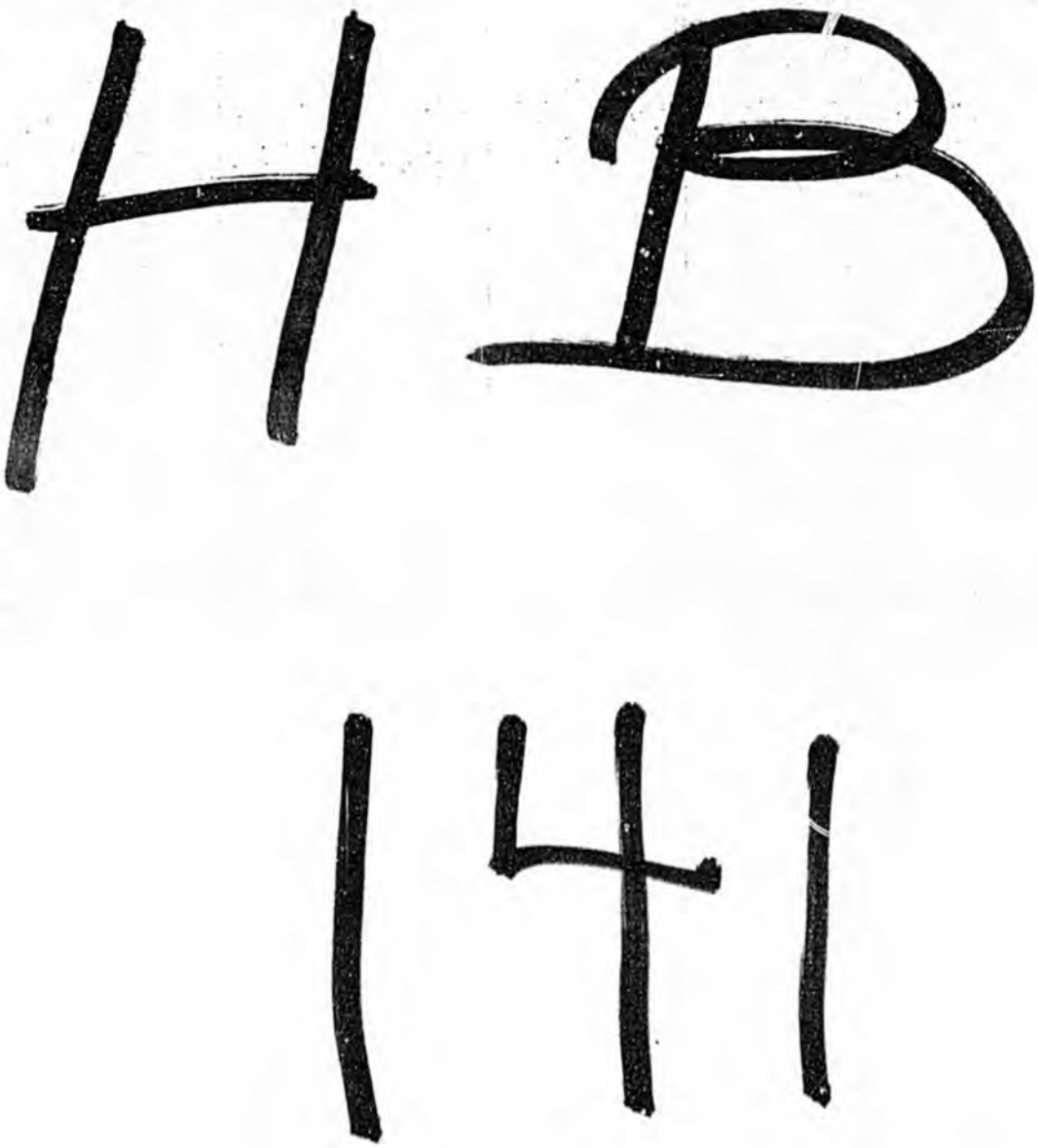
A landlord may also regulate the tenant's use of the property to avoid abusive use, or to make a fair distribution of services and facilities for tenants generally. This bill also does not prohibit a landlord from taking action against a tenant who fails to quietly enjoy the premises, or fails to occupy and use the premises in a clean and safe condition. Also, it is clear that a landlord can provide reasonable provisions in a lease limiting the number of persons occupying a unit, without regard to issues of parentage.

In conclusion, we believe this legislation should prohibit discrimination against individuals due to their parenthood status, while still allowing a landlord the existing legal controls over the use and occupancy of his rental units.

Very truly yours,

Rep. Fred Brown, Chairman
Committee on Judiciary

FB/MF/dm


HB
141

Alaska State Legislature

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE LABOR AND COMMERCE COMMITTEE
HOUSE SPECIAL COMMITTEE ON LOANS
HOUSE FINANCE SUBCOMMITTEE FOR NATURAL RESOURCES, FISH AND GAME, AND ENVIRONMENT CONSERVATION

KETCHIKAN
3855 EVERGREEN
KETCHIKAN, ALASKA 99901

(DURING SESSION)
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4944

House of Representatives

REPRESENTATIVE
RON WENDTE

MEMORANDUM

To: Representative Furnace, Chairman
Labor and Commerce Committee
House of Representatives

From: Representative Ron Wendte R.W.W.

Date: March 9,1982

Re: Review of Alaska Power Authority

In recent weeks, there has been much discussion concerning Alaska Power Authority, the Tyee Hydro Project, Susitna, etc. in legislative committees and in the news. The Alaska Power Authority (APA) and hydro power in themselves are viable concepts. However, the questions surrounding APA leave considerable doubts in the mind of the public. I believe that we, in the House Labor and Commerce Committee, should begin a review of the Alaska Power Authority in order to outline what the problems are and to make recommendations to resolve those problems.

Because Tyee is only nine months from completion and has been very nearly an APA project from inception, I feel that it would be an extremely good example for review.

It is my suggestion that the Labor and Commerce Committee appoint a sub-committee of one-month duration to look into Alaska Power Authority and the Tyee Project with a final report and recommendations due on April 15, 1983. Because of the vast amounts of material and the workload already placed on most staff people, I would also suggest that an aide or researcher be hired to serve as staff to the sub-committee during that one-month.

The Sub-committee should do an overview of Tyee that would consist of the following points:

1) Were the proper feasibility studies done, in particular, were they rechecked when the original cost estimates of the project were shown to be too low?

2) Did APA look carefully at alternate sites, smaller projects, or even alternative power sources?

3) Has APA followed legislative mandate in all annual reports and project status reports?

   a) On the basis of what information did the Legislature approve the funding of Tyee?

   b) Have the statements made to the Legislature been consistent with development of information on Tyee as the project progressed?

4) Was management thorough in using correct contracting procedures?

   a) The problem of wrap-up has been discussed and legislation has been recommended. However, further study should be done on wrap-up as one element of the total project and what impact wrap-up had on cost over-runs and contracting procedures.

   b) What were the trade-offs in the decision to not relieve the engineer of responsibility for the project?

4) What procedures are used in developing cost estimates and how thorough is management in checking those estimates?

   a) What is the explanation for significant differences in the various estimates on the project costs?

   b) Do we know with certainty at this time what the final costs of the project will be?

5) Did the project costs get out of control and, if so, at what time did the project costs get out of control?

   a) What steps were taken to control the escalating costs of the project?

   b) There are excessive numbers of change orders in the Tyee project. Were all of these necessary and what could have been done to prevent this problem?

6) Has the Legislature been at fault by constantly changing the ground rules by which APA operates or allowing too much latitude in the operation of APA?

7) What has been the specific impact of each legislative change

as the Tyee project progressed (i.e., "Blackmail Clause, SB 25 and 26, HB 9, etc.)?

8) What steps are necessary to resolve the crisis we face with the Tyee project?

a) Do the problems with Tyee apply to other APA projects?

b) Who should bear the burden for the cost over-runs -- the utilities, municipalities (customers) or the State of Alaska?

And finally and most importantly,

9) What recommendations or legislation should be adopted by the Labor and Commerce Committee to prevent these problems from arising again?

Increased energy usage throughout the State, declining oil revenues and an eventual end to fossil fuels demand a workable energy plan for Alaska. Some corrections have been made within APA by changes in legislation, by the APA board and by the APA management. This review should not be a surgical procedure, but rather, an examination, diagnosis and cure.

IDITAROD TRAIL RACE

1981 BUDGET

1982

INCOME:

Sweepstakes	$104,000
Entry Fees	73,430
Appropriation	50,000
Grants	25,000
Plaque Sales	20,000
Memberships	6,000
Runner	9,000
Promotional Sales	60,000
Banquet	26,225
Misc.	7,000
Total Income	$380,655

ADMINISTRATIVE EXPENSE:

Meetings	$ 550
Travel	300
Rent & Leases	1,820
Wages	19,000
Telebone	8,500
Office Supplies & Postage	4,300
Stationery & Printing	6,300
Runner	7,000
Legal	750
Misc.	4,100
	$ 52,620

DIRECT RACE EXPENSE:

Trail	$ 12,000
Ham Radio	12,000
Checkers & Officials	21,500
Veterinarians	7,000
Air Transportation	39,000
Prize Money	101,500
Trophies	1,300
Headquarters	4,300
Banquet	18,900
Misc.	4,035
	$221,535

INDIRECT RACE EXPENSE:

Goods for Resale	$ 40,000
Advertising & Public Relations	12,000
Sweepstakes & Raffles	51,000
Misc.	3,000
	$106,000

TOTAL EXPENSE: $380,655

MARCH 20, 1984

TO: JOHN

FROM: KEN

RE: HB 141 "MAKING AN APPROPRIATION TO THE IDITAROD TRAIL COMMITTEE"

HB 141 WOULD AUTHORIZE AN APPROPRIATION TO THE IDITAROD TRAIL COMMITTEE TO BUILD A HEADQUARTERS BUILDING IN THE WASILLA AREA. THE BILL WOULD PROVIDE 422 THOUSAND DOLLARS FOR CONSTRUCTION OF THE BUILDING. SINCE ITS INTRODUCTION THE AMOUNT NEEDED FOR THE FACILITY HAS BEEN REVISED TO 388 THOUSAND DOLLARS.

1. THE DEPARTMENT HAS STATED IT DOES NOT HAVE THE AUTHORITY TO GRANT THE IDITAROD TRAIL COMMITTEE THIS FUNDING. WHY IS THAT ?

2. HOW DID THE IDITAROD TRAIL COMMITTEE ARRIVE AT ITS FIGURES FOR CONSTRUCTION OF THE HEADQUARTERS FACILITY ?

3. IF FUNDING FOR THE THE HEADQUARTERS IS APPROVED, WILL THE TRAIL COMMITTEE BE ABLE TO GENERATE ENOUGH REVENUE SO IT WILL NOT NEED TO ASK FOR GRANTS FROM THE STATE EACH YEAR TO PUT ON THE RACE ?

IDITAROD TRAIL COMMITTEE, INC.

POUCH X

WASILLA, AK. 99687

GRANT PROPOSAL

IDITAROD TRAIL COMMITTEE, INC

January 19, 1983

Ronald L. Larson
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Ak. 99811

Dear Mr. Larson:

Iditarod '83 will start our second decade of the longest sled dog race in the world. And, quite frankly, we are proud of our contribution to promoting Alaska and long distance sled dog racing. Our emphasis has always been on strict rules regarding treatment of dogs on the trail and sportsmanship among the mushers. ITC has always wanted to reflect the most positive image possible on both the Iditarod and the State of Alaska.

This race we are expecting a record breaking number of mushers to sign up. In addition to the teams, we have hundreds of volunteers working hundreds of hours seeing to the details of the race from Anchorage to Nome. Our volunteers give of their time and many put expensive equipment, such as HAM radios and airplanes, on the line for us. People from every walk of life, lawyers, vetranarians, pilots, trappers, engineers clerks, subsistence dwellers, all join together in a special comaraderie.

Pouch X, Wasilla, Alaska 99687 – (907) 376-5155

Our news media coverage is international. The race has been filmed and reported by the British, Spaniards, Canadians, Germans, and we are working with STV in Japan on the possibility of filming Iditarod '83. CBS and ABC have covered the race. The thirty minute ABC 20/20 show last spring on the race and Susan Butcher has prompted inquiries from all over the lower 48.

The January issue of GEO Magazine has an article on Iditarod. National Geographic will follow with a story in their March issue. And once again, CBS has international rights to live coverage of Iditarod '83.

Iditarod Sled Dog Race has become a year 'round business. Although we have tremendous sponsors for the race, we must turn to the State again and hope you merit our contributions to tourism and State exposure worthy of support of our two proposals.

The first proposal deals with the race itself. These requests are ones we feel will enhance the quality, safety, and organization of the Iditarod.

Our second proposal is for a much needed permanent headquarters. This building would include our offices, a sales outlet, and a museum.

old for draft

IDITAROD '84

MEDICIAL CARE AND DRUG TESTING PROGRAM FOR DOGS

Our vetranarians try to be at every checkpoint to check and administer any needed care to the dogs. The vets have the final say on a dog continuing in the Race. They also have medical supplies available to treat minor irritations and injuries. And, as our rules state, any dog that expires on the trail must have an autopsy.

Because of the rich purse and intense competition among mushers, ITC makes it a priority to keep drugs from being used on a dog. The vets have a right to randomly check dogs during the race for drugs. Then all dogs are checked at the end of the race. These samples are sent to Cornell University in New York for analysis.

For medical supplies, autopsies, drug testing supplies, sample shipping cost, and analysis.

Cost.....$9,850.00

IDITAROD AIR FORCE

Our trail Air Force is composed of volunteers who are willing to fly their planes along the trail to move dog food, vets, hams, dropped dogs, race officials, and any other person or object needing to go from checkpoint to checkpoint. Because of the financial restrictions on the Iditarod, we have never been able to provide the full protection the private pilot needs. Airplanes and parts have become so expensive, we can no longer recruit pilots and expect them to "outofpocket" any damage to their plane while flying for the Iditarod.

Full coverage aviation insurance for Iditarod Air Force during March.....$5,050.00

AIRCRAFT

Each year our trail manager must start earlier flying up the trail. Checkpoints and checkers must be secured. Trail breaking, marking, and maintenance must be coordinated. All of this is done before the race.

During the race, it is becoming essential ITC have a plane at our disposal. Each year brings different emergencies. We must get our Race Marshal to a checkpoint, or a doctor in to treat an injured musher, or a vet to an injured dog. To ensure the safety of our mushers and their teams, the enforcements of our rules, and a organized operation, we are requesting funding for a Maule M-6 airplane.

Cost.....$48,000.00

RADIOS

For better communications so we are able to respond to problems and emergencies, we need high frequency portable radios. These radios may be used by our pilots or ground crews.

Four (4) HF Radios.....$4,750.00

SNOWMACHINES

Of course there are times when all air support is grounded by weather. But our race continues. To enable our officials and trail breaking crews to operate we need double track machines. If we have an emergency somewhere a plane cannot land, we need the machines to get to the location. And, just to have the ability to maintain surveillance between checkpoints, the machines would be invaluable.

Two Alpine double track snowmachines.....$10,400.00

Each year we offer a $100,000.00 purse to the top twenty mushers. This distinguished the Iditarod as not only the longest sled dog race in the world, but also the richest. This purse also ensures the Iditarod a place in the major athletic events in the world. The purse gives mushers the incentive to train for the race. Consequently we have mushers and teams that are physically and mentally prepared to challenge the Iditarod Trail.

Money for purse.....$35,000.00

TOTAL OF PROPOSAL #1 $113,050.00

plus (48.0 >

65,050

PERMANENT IDITAROD HEADQUARTERS

Each year interest in the Iditarod Sled Dog Race grows. According to surveys done with our out of state visitors, the Iditarod fulfills the image and fantasy of Alaska. News media from the world over come to report the "Last Great Race." Because of the coverage, more and more tourists want to visit Iditarod Headquarters and see first hand the operation of the race.

After ten years we have collected invaluable paraphernalia connected with each race. These items are a part of our history, but are perilously close to being lost because we have no place to store them. The impression each visitor or reporter leaves our headquarters with reflects on the Iditarod and our great state.

At present we are located above Teeland's Country Store in Wasilla. As our volumn of traffic increases, not only is it disruptive to Teelands, but our own space is grossly strained. We have no place to store our race records or paraphernalia. Nor do we have the space to accommodate volunteers working on the race and visitors at the same time.

Because of the problems listed above, the Iditarod Sled Dog Race is requesting funding for a permanent headquartes in Wasilla. We want our building to be in the true spirit of Alaskan history and dog mushing, so our decor would be styled on a log cabin -- Roadhouse theme. To complement our building, we need an acre of land that can be landscaped to encourage visitors to stop and enjoy.

In our headquarters we need office space, storage area, conference room, retail sales outlet and a museum. Maximum exposure for our building is a must to ensure us the tourist and drop in trade we

will count on to cover operation and maintence.

Our request is for: a 3350 sq. ft. building at $100 per foot building .

Cost.....$335,000.00

One acre land located on Parks Highway in or about Wasilla.

Cost .....$ 26,000.00 <26.0>

Office equipment, furnishings, display cases, cash register, shelves, hangers, and protective equipment for museum.

Cost.....$ ~~75,000.00~~ 44

Landscaping, artwork, outside tables and benches and plaques.

Cost.....$ ~~18,000.00~~ 17,800 <7.8>

TOTAL REQUEST.....$422,800.00 389.00

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 30, 1984

SUBJECT: Iditarod Appropriation
(HB 142)

TO: Representative Ron Larson

FROM: Linn H. Asper
Legislative Counsel

It has come to my attention that the Department of Commerce and Economic Development (DC & ED) has taken the position that it is not the appropriate department to administer the grant to the Iditarod Trail Committee contained in HB 142. My information is that DC & ED feels that it cannot receive the appropriation because it does not have the power to make grants. However, in its present format HB 142 does not establish a grant program to be operated by the department. Instead it is a grant from the legislature to a named non-municipal grant recipient. Under AS 37.05.316 such grants must be administered by a department. Thus, DC & ED is not being required to make the grant, only to administer it. This administration function is a common one, exercised by DC & ED and other departments all the time.

Another related question is whether this grant might be more appropriately administered by another department, in terms of the subject matter of the grant. I considered this question when I prepared the bill for you and decided that the Iditarod Race was a promotional event more akin to the tourism function of the DC & ED than the resources responsibilities of the Department of Natural Resources, the only other likely candidate for the administration job. Since an amendment to change the administering department would require the bill to go back to the House of Representatives for a title change, and since the DC & ED has the power to administer the grant and seems to be the logical choice to do so, I believe the bill should remain in its present form.

LHA:ojb

HB

142

GREATER WASILLA
CHAMBER OF COMMERCE
DRAWER 1300
WASILLA, ALASKA 99687
(907) 376-2121

FEB 14 1983

February 3, 1983

State Represenative Larson
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear State Representative Larson:

The Greater Wasilla Chamber of Commerce would like to extend our support in establishing a permanent headquarters for the Iditarod Association in the Wasilla area.

This annual event has always created great enthusiasm and involvement not only for the entire State of Alaska, but the many tourists that come each year.

The establishment of a permanent headquarters facility would provide an attractive, functional addition to our community for the benefit of the growing tourism that provides financial support in our valley.

Your help and support of this proposal would also be greatly appreciated.

Sincerely,

Rob Robinson
President

rr/hh

IDITAROD REVISED BUDGET

HB 141 - An Act making a special appropriation to the Department of Commerce & Economic Development for payment as a grant for the Iditarod Trail Committee, Inc., for construction of a permanent Iditarod sled dog race headquarters; and providing for an effective date. - $422,800

Land (26,000)

The Iditarod Trail Commission are optimistic that the land will be donated

Tables, benches, landscaping, artwork, etc. (7,800)

It is expected that many of these will be either donated or worked on by volunteers

Revised appropriation - $389,000

HB 142 - An Act making a special appropriation to the Department of Commerce & Economic Development for payments as a grant for the Iditarod Trail Committee, Inc., for expenses of conducting the 1984 Iditarod sled dog race; and providing for an effective date. - $113,050

Eliminiate need of Maule M-6 (48,000)

Revised appropriation $ 65,050

IDITAROD TRAIL COMMITTEE, INC.

POUCH X

WASILLA, AK. 99687

GRANT PROPOSAL

ITARAD TRAIL COMMITTEE, INC

January 19, 1983

Ronald L. Larson
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Ak. 99811

Dear Mr. Larson:

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will count on to cover operation and maintence.

Our request is for: a 3350 sq. ft. building at $100 per foot building .

Cost.....$335,000.00

One acre land located on Parks Highway in or about Wasilla.

Cost .....$ 26,000.00

Office equipment, furnishings, display cases, cash register, shelves, hangers, and protective equipment for museum.

Cost.....$ 44,000.00

Landscaping, artwork, outside tables and benches and plaques.

Cost.....$ 17,800

TOTAL REQUEST.....$422,800.00

HB

154

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 1, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill repealing the existing law requiring train crews of certain minimum sizes. The existing law requires that passenger and freight trains have crews of no less than five persons, that a light engine without cars have a crew of at least three persons, and that a switch engine have a crew of at least three persons.

The repeal may allow railroads within the state to determine crew size based on economic and operational concerns. However, this repeal does not relieve a railroad of its existing obligation to operate with customary due care and high regard for the safety of its passengers, freight, and employees. The repeal is not intended to make any pronouncement on what is or is not an appropriate subject for collective bargaining.

I urge you to approve this bill.

Sincerely,

Bill Sheffield
Governor

THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 154

Title "An Act relating to train crew size."

Requested by Rules - Committee Date 1/27/83

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Social Services

BRU, Program, or Subprogram(s) Affected Commissioner's Office

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

A. Fiscal Impact.

IV. DATE January 27, 1983 PREPARED BY for Judy Knight Judy Knight

AGENCY Labor

PHONE 465-2700

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

united transportation union

March 15, 1982

To:

This letter should provide you with some information on Senate Bill Number 849, "an act relating to train crews", a bill to which our membership is definitely opposed. I have put this brief together to explain how this bill affects us here in Skagway.

This is a critical issue to us in Skagway, and we would certainly appreciate any assistance which you could give us in the matter. We are at your disposal for further information and dialogue at any time.

Thank you very much.

I remain,

Corrigan L. Gates
Legislative Representative
United Transportation Union
Local 1787

united transportation union

March 15, 1982

U.T.U. Brief on Senate Bill Number AS 23.10.420(a)

Background Information

The White Pass & Yukon Route Railroad, a Canadian-owned corporation with home offices in White Horse, Yukon Territory, is the last operating common carrier three-foot wide narrow gauge railroad in North America. Built at the height of the Klondike Gold Rush in 1898, it runs 110 miles from tidewater at Skagway, Alaska, to Whitehorse in the Yukon Territory. Since 1970, American crews (who used to operate all trains on the railroad) run the 41 miles to Lake Bennett, B.C., the division point, and Canadian crews take the trains the balance of the distance to Whitehorse.

Though "modern" in some respects, such as diesel locomotives and a containerized freight handling system, the WP&YR contends with some of the worst terrain and climate conditions in the world. The Canadian side from Bennett to Whitehorse is flat with only a few grades; the U.S. division is the "trickiest part of the road".

Alaskan crews must drag their trains up 21 miles of 3.9% grade to reach the summit, and then contend with another pass and two short (but equally steep) grades before reaching Bennett. The return to Skagway presents the problem of controlling 60-car trains of lead-zinc ore concentrates on the steepest railroad grade in America.

The railroad is interspaced with high wooden trestles and cliff-like retaining walls which perch the track a thousand feet above the canyon floor for miles. Blizzards have dumped over four hundred inches on the summit of White Pass, and though there are "good" years, the railroad has been blockaded sometimes for weeks on end. The worst storm shut down the road for 21 days.

The geography and weather create more than just management problems; they compound the dangers of railroading to the highest extent. Even on a well-maintained railroad, pursing safe operational standards is critical. Here it is very literally a matter of life and death. Avalanches and rock slides periodically wipe cars over the side, and derailments (which occur very frequently) could mean disaster at many locations. Such a disaster would even be environmental in its scope, since the prospect of tons of lead and zinc dumped into the Skagway River would certainly affect life in the water, and down to the sea.

Train crews have learned to take safety as more than just the title page in the rule book. After all, we're the ones out there in the middle of it. Five-man crews on the WP&YR exist primarily for safety, in spite of management's stand on this bill. Here are a few examples:

1. Ice building up between the wheels and the brake shoes can cause winter brake failures. The Company has refused to upgrade their equipment, and this leaves the crew to deal with problems out on the road.

2. Bridges and trestles on the road are not equipped with walkways. A train which is stretched across a bridge leaves no walking (or climbing) room at the edge. Therefore, a brakeman cannot walk from one end of the train to the other, and a second brakeman is needed to walk the other end in emergencies. This can be critical.

3. In winter months it often takes the combined strength of two men to set a good safe handbrake on a car, and the same force of two men to "knock-down" or remove the brake. On older cars with faulty handbrakes this applies all year, even with brake clubs.

4. The "sophisticated communications systems" (two-way radios) in use are continually in for repair and are prone to failure. The crews do not rely on them because of this safety hazard, and hand signals are regularly used in switching moves.

5. The primary job of the crew while underway is to watch for any hint of trouble on or around the train. The railroad is twisted like a piece of spaghetti with 16 to 24° curves, and there are documented cases of the fireman, riding on the left-hand side of the locomotive, spotting danger which was out of the engineer's line of sight and stopping the train. Similarly, brakemen ride at both ends and watch over the train for hotboxes, loads shifting or breaking loose, broken axles or wheels, downed brake rigging, derailed cars, broken rails, fires, washouts, etc. Thus, the manning positions at the head-end with the engineer and fireman watching the track from the lead unit, a brakeman riding the "rear" or trailing unit watching over the train behind, and a conductor and rear-brakeman overseeing the train ahead of the caboose (and the track behind for signs of dragging brake rigging or derailed equipment) have been established for the safe opera-

tion of the train while underway. Dozens of documented cases exist of crew men at their positions spotting trouble which would have gone unseen by other crew members, and thus saving the Company thousands of dollars in repairs and wreck clean-up operations.

6. Most important to the crew members in the light of safety on the road is the grim fact that besides dealing with faulty locomotives, antiquated equipment, and track and bridge maintenance which barely meets the job at hand, employees have to deal with snowslides and cliffs over which a train's plunge would mean certain injury or death. The spector of a passenger train loaded with 400 tourists going through a rotten trestle, or derailing high above "Dead Horse Gulch", or being hit by a rock slide (on top of the 1900-era wood-roofed parlor cars with their old oil stoves) brings shudders to the men who actually are on board as well as to management. Crew members to deal with such accidents are essential. Even more frightening in the winter season are the snowslides. There has been an increase in winter passenger traffic over the last few years, and thus the crew is faced with the added burden of protecting travelers as well as themselves.

1. White Pass and Yukon Ltd. of Vancouver is owned by Federal Industries, Ltd. of Winnepeg. The Canadian management is on an over-all cost-cutting spree at this time, and are trying to tighten up their operation. Part of this has included the postponement of track repairs--a major rail replacement program was knocked out to save money--and an attitude of "beat it 'til it dies" toward their locomotives, some of which are now 28 years old and in critical need of replacement or complete long-term overhaul. Because traffic is so heavy at this time, the Company can't take their engines out of service much more than stop-gap, repairs on the worst problems. Engine failures or malfunctions are a common occurance on the railroad. It is also worth noting that the average train length in 1969 was 30 cars, operated by five men. Today the same five men have to run trains that can be 100 cars long out of White Pass. This is actually more work for each man involved, with more weight to contend with, more cars to watch (and to walk when checking the train, or in emergencies), and definitely more hazardous.

2. Remarkable but t ue in light of the terrain and operational hazards on the WP&YR is the fact that White Pass does not legally have to comply with Federal laws concerning safety and operation. The reason: White Pass is "narrow gauge" instead of "standard gauge" (4' 8½" wide track), and as such the Company can usually sneak by under requirements and regulations which would close down a standard gauge road "outside". This appears to be an oversight by the Federal Railroad Administration, but is understandable since the little known and obscure White Pass is the last narrow gauge common carrier left in the U.S. Also, it is generally viewed as a Canadian company. The 21 miles within Alaska under jurisdiction of American law, usually slide by unnoticed.

3. Much of the freight equipment, passenger equipment and airbrake equipment is antiquated and of museum vintage. Crews must deal with this as well as other problems, adding to operational hazards.

4. Because of all the previous factors, it is little wonder that the White Pass accident and safety record is attrocious. Summer travel has increased each year, and with it the number of accident reports. Employees must be extra alert at all times to prevent injury or death from faulty equipment, dangerous operational procedures, or management decisions affecting train movement. White Pass enjoys saying that they have "never lost a passenger's life" in their 80-year history. The men who ride the trains can only count the number of dead employees over the years, and knock on wood. The Company is playing Russian Roulette with human lives, and their own odds get worse by reducing the number of men on board a train who are available to deal with the expected--and unexpected--hazards of mountain railroading under the most extreme conditions.

Statement of Position by the United Transportation Union

We of the United Transportation Union, Local 1787 in Skagway, are adamently opposed to Senate Bill 849, a bill which will aid a non-resident Canadian corporation by eliminating Alaskan jobs on U.S. soil. This is by itself a dangerous international precedent, worthy of close attention--particularly in light of the proposed Alcan gasoline project.

Few people even know that there is a railroad in Southeast Alaska. Instead of repealing the present law, we propose a rider should be added that would exempt state owned Railroads.

Lastly, very few individuals are aware of the delicate balance that exists in Skagway between labor and management. We feel that the introduction of this bill is an attempt by the Company to further drain our union treasury attending a battery of hearings in Juneau. The last time we had to testify it involved long hours and much expense--something which the Company can easily afford.

Given this situation, our membership has nothing except the present State law to protect us from the whims of a foreign corporation. Our only defense at present lies in "An Act relating to train crews" as set forth in State law. It would thus seem beyond comprehension for our own lawmakers--our own elected representatives--to vote to repeal the only security which we in Skagway have in these difficult days.

Corrigan L. Gates
Legislative Representative
United Transportation Union
Local 1787
Skagway, Alaska 99840

HB

181

PROPOSED REGULATIONS
BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE EXAMINERS

12 AAC 60.090(a) and (b) are repealed.

12 AAC 60 is amended by adding a new article to read:

ARTICLE 6. GENERAL PROVISIONS

Section
950. Definitions

12 AAC 60.950. DEFINITIONS. In this chapter and AS 08.86:

(1) "accreditation" means:

(A) an accreditated school is one which is accreditated by any regional accrediting agency recognized by the American Association of Collegiate Registrars and Admissions Offices.

(B) an accreditated doctoral program is one which has been approved by the American Psychological Association or which is clearly equivalent to the standard used by the American Psychological Association. The burden of establishing equivalent standards rests with the applicant.

(2) "reasonable cause or excusable neglect" means:

(A) chronic illness;

(B) retirement;

(C) military service; and

(D) hardships as individually determined by the board.

(3) "technical meeting" means a professional meeting incorporating formal written or oral presentations of psychology related research, theory or applied topics.

(4) "appropriate supervision" as used in AS 08.86.180(b)(1) means supervision by a licensed psychologist consistent with accepted professional priorities in psychology and with the supervising licensed being responsible for insuring the extent, kind, and quality of the psychological services performed are consistent with the training and experience of the supervised person.

(5) "professional incompetence" as used in AS 08.86.204(7)(A) means lacking sufficient knowledge,

skills, or professional judgement in that field of practice in which the psychologist or psychological associate concerned engages, to a degree likely to endanger the mental health or well-being of his or her patients. (Eff. / / , Reg.)

Authority: AS 08.86.080

12 AAC 60 is amended by adding a new section to read:

12 AAC 60.185. ETHICS AND STANDARDS. (a) The ethics to be adhered to by licensed psychologists and licensed psychological associates shall be the "Ethical Principles of Psychologists," (1981 revision), of the American Psychological Association.

(b) The standards to be adhered to by licensed psychologists and licensed psychological associates rendering psychological services in the state shall be the "Standards for Providers of Psychological Services," (January 1977 edition), of the American Psychological Association. (Eff. / / , Reg.)

Authority: AS 08.86.080

12 AAC 60 is amended by adding a new article to read:

ARTICLE 6. CONTINUING EDUCATION

Section
250. Statement of purpose of continuing education
260. Hours of continuing education required
270. Computation of continuing education
280. Computation of academic continuing education hours
290. Accepted subjects
300. Approved nonacademic continuing education programs
310. Individual study
320. Instructor or discussion leader
330. Publications and presentations
340. Reinstatement
350. Report of continuing education

12 AAC 60.250. STATEMENT OF PURPOSE OF CONTINUING EDUCATION. The purpose of continuing psychology education is to insure that the renewal of licenses is contingent upon proof of continued competency and assure the consumer of an optimum quality of psychological health care by requiring licensed psychologists and psychological associates to pursue education designed to enhance and advance their professional skills and knowledge. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.260. HOURS OF CONTINUING EDUCATION REQUIRED. (a) An applicant for renewal of a license as a psychologist, or a psychological associate, originally issued before July 1, 1981, shall obtain 40 credit hours of documented continuing education before the June 30, 1985 application for renewal.

(b) Each psychologist or psychological associate seeking renewal of his or her license on or after July 1, 1985, must obtain an average of 20 credit hours per year of

documented continuing education during the previous licensing period. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.270. COMPUTATION OF CONTINUING EDUCATION HOURS. (a) For the purposes of 12 AAC 60.250--12 AAC 60.310, 50 minutes of instruction constitutes one hour.

(b) Credit is given only for full hours of instruction received and not for a fraction of an hour.

(c) Credit is given only for class attendance hours and not for hours devoted to class preparation. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.280. COMPUTATION OF ACADEMIC CONTINUING EDUCATION HOURS. (a) One quarter hour academic credit from a college or university constitutes 10 hours of continuing education.

(b) One semester hour academic credit from a college or university constitutes 15 hours of continuing education. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.290. ACCEPTED SUBJECTS. (a) In order to be accepted by the board, the subject of a continuing education program must contribute directly to the professional competency of a person licensed to practice as a psychologist or a psychological associate and be directly related to the concepts of psychological principles, ethics or practices as defined in AS 08.86.230(2). (Eff / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.300. ACCEPTED NONACADEMIC CONTINUING EDUCATION PROGRAMS. (a) The following programs are accepted by the board if they meet the requirements of 12 AAC 60.290:

(1) professional development programs of the American Psychological Association and its state societies including workshops, seminars, symposia, or a presentation of a technical paper;

(2) college or university short courses not carrying academic credit; and

(3) other professional continuing education programs if information is supplied to the board as follows:

(A) name and address of person or organization sponsoring the course;

(B) instructor's name;

(C) title of course; and

(D) the number of full fifty minute hours of actual instruction; and

(E) the location and dates the course was ~~be~~ conducted. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.310. INDIVIDUAL STUDY. (a) The number of hours of continuing education credit awarded for completion of a formal correspondence program, videotape program, audio-cassette program, or other individual study program which requires registration and provides evidence of satisfactory completion will be determined by the board on an individual basis.

(b) Continuing education credit awarded under this section may not exceed one half of the total continuing education hours required in any licensing renewal period. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.320. INSTRUCTOR OR DISCUSSION LEADER. (a) One hour of continuing education credit is awarded for each hour completed as an instructor or discussion leader of educational programs meeting the requirements of 12 AAC 60.250-.310. Credit is awarded only for the initial course of instruction of the subject matter unless there have been substantially new developments in the subject since the prior presentation.

(b) Credit awarded under (a) of this section may not exceed one-third of the hours in any licensing period. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.330. PUBLICATIONS AND PRESENTATIONS. (a) Twenty (20) credit hours of continuing education will be awarded for each

(1) authorship of a publication in a professional psychology journal, providing the publication relates directly to the concepts of psychological principles, ethics or practices, and is published or accepted for publication during the four year reporting period immediately preceding the license renewal; and

(2) written or oral presentation at a meeting of the American Psychological Association, a technical meeting of a State psychology society, or meeting of a professional psychology-oriented organization, providing the presentation relates directly to the concepts of psychological principles, ethics or practices, and the presentation occurred during the four-year reporting period immediately preceding the license renewal; or

(3) authorship of a professional psychology book or monograph published or accepted for publication during the four year reporting period immediately preceding the license renewal. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.340. REINSTATEMENT. (a) The license of any licensee which is not renewed by reason of failure to comply with the continuing education requirements of 12 AAC 60.250-.380, will be reinstated or restored to full status by submission to the board of proof of the completion of all continuing education credit hours required.

(b) A licensee unable to obtain the required continuing education hours for renewal of his or her license, due to reasonable cause or excusable neglect, must request exemption status in writing to the board accompanied by a statement explaining reasonable cause or excusable neglect. The board will prescribe an alternative method of compliance to the continuing education requirements as deemed appropriate to the individual situation. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.350. REPORT OF CONTINUING EDUCATION. (a) An applicant for renewal of a license to practice psychology shall submit, on a form provided by the department, a sworn statement of the continuing education in which he or she participated or pursued. The statement must indicate:

(1) the sponsoring organization;

(2) the location of the course or correspondent;

(3) the title or description of course or both;

(4) the principal instructor;

(5) the dates of attendance or period of correspondence;

(6) the titles, issues and dates of publications or presentations; and

(7) the number of continuing education hours claimed.

(b) Falsification of any written evidence submitted to the board pursuant to this section shall be deemed to be unprofessional conduct and constitute grounds for licensure reprimand, revocation or suspension. (Eff / / , Reg.)

Authority: AS 08.86.070(a)(6)

STATE OF ALASKA
JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

September 24, 1982

Mr. Harry D. Treager, Director
Division of Occupational Licensing
Department of Commerce and
Economic Development
Pouch D
Juneau, Alaska 99811

Dear Mr. Treager:

In compliance with AS 37 and AS 08 and on behalf of the Board of Psychologist and Psychological Associate Examiner , I am submitting the enclosed Annual Report concerning the board's activities and accomplishments for Fiscal Year 1982.

Should there be any questions concerning this report, please feel free to contact me. Thank you.

Sincerely,

Paul E Turner

Paul E. Turner, Ph.D., Secretary
Board of Psychologist and Psychological
Associate Examiners

DRR/wfs 4/1

Enclosure

NARRATIVE STATEMENT

The board undertook several major projects during FY '82 including (1) Sunset Audit, (2) Continued Education Regulations, (3) Examination Revision, and (4) Enforcement of the Practice Act.

Summary of the activity of the Board of Psychologist and Psychological Associate Examiners for FY '82: The level of board activity during FY '82 has been maintained at a relatively high level of productivity commensurate with the work completed during FY '81.

A substantive portion of the board's time has been spent dealing with issues related to the Sunset review. This process began in the summer of 1981 and continued through the end of May, 1982. The board responded to an audit by the Budget and Audit Committee of the Legislature in writing. The board has testified at legislative hearings regarding the Sunset of the board. Further, the board has written several responses to the Sunset hearings subsequent to the division's opposition to the board and the Governor's veto. Throughout this legislative process, the board has attempted to introduce several statutory changes, although these have been unsupported by the Division of Occupational Licensing.

A great deal of effort has been devoted to drafting continuing education regulations which has been the subject of over a year's effort toward establishing criteria that are equitable, effective, and relevant to Alaskans across the wide range of community settings in which Psychologists and Associates often find themselves. The continuing education regulations have been through one public teleconference hearing and are in a draft that is presently acceptable for a final period of written comment and testimony from the public.

Investigative activities of the board seem to have declined during this past year. Unfortunately, an investigator was present at only one meeting during the past fiscal year. At its March meeting, the chief investigator met with the board to review the current status of cases pending.

Licensing activities seem to have increased during this past year in that nine Psychologists and five Psychological Associates have sat for the two examinations held in October and April during the past fiscal year. As a consequence, eight new Psychologists and three associates have been licensed to practice. The trend toward an increased number of Associates is seen as evidence that master level individuals are being encouraged to enter the field, and secondly, the public is benefiting by a wider spectrum of individuals who are licensed to practice. At the present time, there are 81 active Psychology licenses and 10 Psychological Associate licenses.

The State portion of the examination has been significantly revised. For the April examination, the board eliminated a large portion of the exam which now focuses on law and ethics alone. This has allowed the board to devote a great deal of time to establishing a item pool for this area and to establish criteria on scoring sheets for this examination. Further, this has resulted in a more efficient and accurate means of quickly reporting scores back to individuals who are taking the examination.

The Attorney General's opinion on the conduct and record of board meetings, to assure compliance with AS 44.62.310 and AS 44.62.312, has maintained improved conduct of board meetings and increased documentation of board activity. Further, the division has markedly improved its recordkeeping in the transcription of minutes of board meetings. All aspects of board meetings are presently taped.

Public activity and information has been a major target area for the board during FY '82. Public hearings have been held relative to propagation of continuing education regulations. The board has made continual progress in the provision of information to a variety of groups and individual private parties relative to psychology licensing. Members of the board have provided information to the Alaska Social Workers Association, the Alaska Psychological Association, Alaska School Psychologists Association, Alaska Mental Health Association, Alaska Mental Health Director's Association, and Governor's Advisory Council for Mental Health. All board meetings have been advertised across the State.

Dr. Jim Greenough was appointed to the board during this last fiscal year.

The Licensing Examiner I for the Board of Psychologist and Psychological Associate Examiners was Evelyn Boone. The License Examiner II (supervisor) for the Division of Occupational Licensing was Mrs. Jane English. The Director for the Division of Occupational Licensing for the past fiscal year has been Mr. Harry Treager.

EXAMINATIONS

The board held two examinations during the period of October 8-9, 1981 and April 8-9, 1982. The Licensing Examiner administered the first examination, and the Division of Occupational Licensing arranged for Anchorage personnel to administer the second examination. Three candidates took the exam in October, and three individuals successfully passed the examination. There were ten candidates who took the exam in April and six individuals completed the exam.

The Board of Psychologist and Psychological Associate Examiners had a goal of four meetings, but was only able to meet three times, due to budget constraints.

Date	Location
August, 1981	Sitka
November, 1981	Fairbanks
March, 1982	Juneau

Associated with the volume of work that comes up in the interim between meetings, conference calls are utilized as a means to expedite important board business. Conference calls were held on the following dates:

October 9, 1981
April 1, 1982

STATISTICAL DATA

Licenses Issued	FY '80	FY '81	FY '82
Examination	12	3	7
Endorsement	3	2	0
Psychological Associate (Exam)	3	3	2
Temporary Permits	1	1	2

Expenditures for Fiscal Years '80, '81, '82

TRAVEL

	FY '80	FY '81	FY '82
In-State transportation (Examiner)	$ 960.51	$ 1,352.00	$ 732,00
In-State per diem (Examiner)	509.85	864.35	629.00
In-State transportation (Board)	1,430.00	2,094.85	4,800.00
In-State per diem (Board)	1,020.00	2,064.00	3,570.00
Subtotal - Travel	$3,920.36	$ 6,375.20	$ 9,731.00

CONTRACTUAL SERVICES

Postage & Mailing	$ 22.97	$ 1.75	$ -0-
Long Distance telephone	724.97	532.74	434.91
Photo Processing	137.47	219.70	267.00
Printing & Binding	98.00	--	110.00
Advertising	269.53	677.97	1,079.40
Professional Services	692.50	319.00	725.00
Membership Dues/Fees	169.00	350.00	345.50
Subtotal	$2,114.00	$ 2,101.16	$ 2,961.81

SUPPLIES AND MATERIALS

Office/Library Supplies	$ 91.00	$ --	$ --
GRAND TOTAL	$6,125.36	$ 8,476.36	12,692.81
Monies received for Fiscal Year	$ 765.00	$11,344.75	$ 9,545.00

REVIEW OF PRIOR YEAR OBJECTIVES

Objective 1. The board has revised the scoring sheets and scoring system for the examination, reducing the response time for scoring the examinations, improving objectivity of scoring, and improving the accuracy of the compilation of test scores. In April, 1982, the board developed an items pool for the State examination. This State examination consists of an essay in law and ethics relative to the practices of psychology within the State of Alaska. An expanded item pool has been developed for this examination.

Objective 2: A third draft of continuing education regulations has been completed. A teleconference was held on these regulations in Sitka. No hearings have been scheduld since the last meeting in March as the division has reported that a teleconference network cannot be obtained until the end of the legislative session.

Objective 3: The board has been actively involved in the Sunset audit. The chairperson, Dr. Delys-Baglien, responded to the Office of Budget and Audit's report during the summer of 1981. The Division of Budget and Audit's report was not completed until December of 1981. Hearings were held on March 9 by a joint House and Senate subcommittee. SB 823 was introduced to both the House and Senate and successfully passed despite the division's opposition to the continuation of the board. Three members of the board testified at the March 9 hearing and a written response to the division's opposition to the board was made.

Objective 4: No member of the board was able to attend the regional AASBP meeting at the Western Psychological Association, nor was any member of the board able to attend the National AASBP meeting at the American Psychological Association. Board members received the AASBP newsletter to keep them up to date as to relevant issues for licensing. Board members also received a journal, Professional Practice of Psychology. The Secretary and Chairperson of the board have been actively involved with the division via telephone and correspondence to deal with intermittent board business.

Objective 5: An extensive effort to keep the public informed of board activities and to increase the public's knowledge of the practice of psychology has been made. Board members have responded to individual questions, complaints, and concerns related to the practice of psychology in the State. The board has held a public hearing on continuing education regulations. Individual members of the board have provided information to the public and have attended meetings of the Alaska Social Workers Association, Alaska Mental Health Association, Alaska Mental Health Director's Association, Governor's Advisory Council for Mental Health, Alaska Association for Mental Health, the Alaska Psychological Association, and Alaska School Psychologists Association.

Objective 6: The board had recommended several changes in the licensing statutes during the past year, however, the division and the Governor would not introduce any new legislation for the board. Legislation was introduced in SB 823 to delete specialty licensing, to delete the psychotherapy labels, and to redefine approved program. The Governor vetoed this legislation.

Objective 7: Two examinations were completed during FY '82 with the use of the professional Examination Service and a State developed examination. Seven individuals passed the psychology aspect of this examination and two individuals passed the psychological associate aspect of this examination.

Objective 8: There were 14 psychologist applications reviewed during FY '82 and 4 psychological associate applications reviewed. There has been an increase in the number of applicants for the psychologist and the associate levels.

Objective 9: Because of budget restraints, the board was able to meet only three times during this last fiscal year; meetings were held in Sitka, Fairbanks, and Juneau.

Objective 10: The board has attempted to increase public related input in board activities by meeting across the State in diverse sites. Public input has been solicited through related activities described in Objective 5.

Objective 11: The board has experienced a decrease in investigatory activity as no investigator was present at board meetings until March of 1982. At that time, investigations for the past fiscal year were reviewed. Also at that time, the board passed a resolution requesting an investigator at every meeting in order to maintain a high degree of activity associated with enforcing the practice act.

FY '83 GOALS AND OBJECTIVES

Goals

It is the purpose of the board to ensure the public of quality, psychological care; to admit only qualified individuals in independent and associate psychological practice; to actively enforce a psychology practice act; to promote high standards of professional psychological practice; and to ensure the public of continuing competency of licensed psychologists and associates.

Objective 1. In order to ensure the continuing quality of psychological care to the public, it is in the public interest to support legislation to continue the board.

Objective 2. Complete public comment for the continuing competency regulations and to adopt continuing competency regulations by the end of FY '83.

Objective 3. To increase board knowledge of pertinent issues related to psychology licensing by (a) ensuring that all members receive the journal, Professional Practice of Psychology; (b) all members receive the AASBP Newsletter; and (c) send a representative to the national or regional AASBP meeting. A budget allocation of $1,000 is required for this last objective (c).

Objective 4. To increase the public's awareness of board activities ensure the public's knowledge of the purpose of the board, and to educate the public regarding the practice of psychology. This objective will also include advertising in local and State media as well as having a public input period on each agenda.

Objective 5. Consideration of changes to be introduced to this Legislature including deletion of specialty, licensing deletion of the psychotherapy labels, and redefinition of an improved program.

Objective 6. Conduct two examinations during FY '83, with travel costs for the examination of $300.00, per diem cost for examination of $160.00 for a budget total of approximately $920.00.

Objective 7. Review applications for licensure for psychology and psychological associate practice in an attempt to increase the number of practitioners at the psychologist and associate levels.

Objective 8. Meet four times during FY '82 throughout the State with the estimated travel cost per meeting of $2,040.00 and the estimated per diem per meeting of $960.00. This makes a total cost of $12,000.00 during this next fiscal year for meetings.

Objective 9. Increase board activity in investigatory matters regarding the practice act of psychology.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 181 Date on Bill: 2/09/83
Title: Continuing the existence of the Board of Psychologist and Psych Association Exam.
Sponsor:
Requestor: Commissioner's Office

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

Revenue								

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

3. Assumptions:

No cost is foreseen to the Department of Health and Social Services as a result of this legislation.

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

Prepared By: Thomas R. Branton, Deputy Director Phone: 465-3370
Division: Mental Health and DD Date: 2/17/83

Approved by Commissioner: Date:
Department:

5. Distribution:
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2/8/83

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

HOUSE BILL NO. 181

"An Act relating to regulation of the practice of psychology and continuing the existence of the Board of Psychologist and Psychological Associate Examiners; and providing for an effective date."

Discussion:

The Division of Mental Health and Developmental Disabilities supports the continuation of the Board of Psychologist and Psychological Associate Examiners. We believe a board composed of licensed psychologists is important to insure that persons applying for licenses have the proper qualifications and experience necessary to provide a high quality of service. Also, the board plays an important role in developing standards of service for licensed psychologists and psychological associates.

The utilization of boards such as this is common practice in the area of licensing and overseeing service delivery, especially in the area of health care. For example, the nursing profession, medical doctors, and other fields of health providers have similar boards composed of their peers.

The continuation of this board will help to insure that Alaska's growing public and private mental health system will provide a high quality of service by competent and qualified mental health professionals. The development and enforcement of standards is considered extremely important in an area such as this and should continue in order to insure the safety of the consumers of mental health care.

Recommendation:

The Department of Health and Social Services supports the passage of this bill.

Recommended by: [signature] for

T. R. Cranton
Deputy Director
Division of Mental
Health and Developmental
Disabilities

Date: 2/17/83

Approved by: [signature]

Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

Date: 2/22/83

Carol C. Greenough, Ph.D.
James W. Greenough, Ph.D.
Licensed Psychologists

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Consultation • Clinical Services • Research

COMMENTS ON THE NEED FOR PSYCHOLOGIST LICENSURE

I have prepared the following comments to accompany oral testimony to Committees of both the Alaska State House of Representatives and Senate, on the subject of the need for legislation continuing licensure of psychologists and psychological associates in Alaska. I have been in Alaska since 1964, except for time in the south 48 for graduate school. I have been a practicing psychologist in Alaska for the past nine years. Currently I am Chairman of the Board of Psychologist and Psychological Associate Examiners. I have been a member of the board for the past 18 months.

As a member of the licensing board I am very well acquainted with the fact that licensing must be justified in terms of providing protection to the service consuming public of Alaska. I believe you will agree the following points address that issue very directly.

1. Distinguishing a "Psychologist": A doctoral level psychologist is clearly distinguishable, though the field of counseling contains a wide variety of people offering services. This is true in terms of training, supervised practice, and experience. A licensed Psychologist will have had between four and seven years of postgraduate training, generally including a minimun of 3000 hours of supervised practice, in a training setting. Counselors trained even at the masters degree level generally average between one and two years of training and a few hundred hours of supervision in a training setting. This is major difference. Public protection demands that the distinction be recognized in a manner which will allow prospective clients to choose an adequately trained practitioner

2. Breadth of Training: Doctoral level psychologists have a very broad background of training enabling them to deal with a variety of client presented problems. Because of the years of training described above psychologists generally have time to be trained in many different therapeutic approaches, each of which enhances their ability to help people. Most practicing counselors have time only to learn one or two speciality areas, which they may do very well. The public needs to be able to identify practitioners with a broad training background.

As an example, the training of a doctoral level psychologist will often include supervised training in working with psychotic patients in mental hospitals, working in a mental health center, crisis intervention work, consultation with drug and alcohol treatment programs, schools, and other agencies. A doctoral level psychologist is a well trained generalist first, though s/he may choose to specialize later. This means s/he is equipped to handle almost anyone who may walk through the door, and to know enough to refer appropriately when necessary.

3. Training vs. Work Experience: The argument is sometimes heard that additional years of experience could qualify a less well trained person at the psychologist level. This is not so for several reasons. Training missed initially will never be made up by the addition of years of experience. Only more training is likely to make up for such a deficit, in which case the person will probably earn a doctorate.

There is also a distinct difference between supervised experience in the working world and that obtained in a training setting. Supervision in the working world is often in name only, or little more than that. It is sufficient to ensure that a person works safely. Caseload pressures often prevent sufficient face to face supervision. In addition the supervisors in the work setting may well not be trained supervisors. Supervised experience in a graduate school sponsored training program is geared to provide training rather than to producing work, and the supervisors are generally well trained and enjoy the training setting.

It is difficult to equate supervised experience in a training program vs. in a work setting. The training setting, however, is clearly worth much more.

4. Commonly accepted Definition: Licensure of psychologists at the doctoral level is appropriate because it corresponds most closely to the generally held popular view of what a psychologist is. Though there is some disagreement about the definition, people generally expect that if they go to a licensed psychologist they will find someone trained and experienced as described above. For the state to license people as psychologists at a lesser level would mislead the public. For the state not to license at all would allow proliferation of charlatans and inadequately trained people claiming the title of psychologists, an even more dangerous situation.

5. Non-Restrictive of Other Professionals: Licensing does not prevent unlicensed counselors and o[illegible]rom continuing to provide services to the public. It simply [illegible]ts the use of certain meaningful words, such as "psycho[illegible]", "psychological counseling", "psychological testing", and [illegible] to those who can appropriately use them.

By this restriction the public is allowed to recognize those practioners who meet a commonly accepted definition of what a psychologist is. They are then able to pick practitioners who will be minimally competent to handle a broad range of problems in a professional and safe manner.

Those who are members of a legitimate profession, or who choose to describe what they do in other terms, such as "counseling", will not be prevented from continuing by an appropriate licensing law.

6. Influx of the Poorly Qualified: Without a reasonable licensing law it seems likely that fewer rather than more competent psychologists would come to Alaska. There might well an influx of marginally qualified people who cannot be licensed elsewhere, but this is hardly

advantageous to Alaskan consumers.

7. Loss of Third-Party-Payments: With no licensing, or meaningless low level licensing, insurance and other third party payments for psychological services would be much reduced in this state. Psychologists have fought hard for third party payments which enable consumers to afford psychotherapy services. Loss of this resource would hurt the consumer and the provider.

8. Other States: States which have sunsetted psychologist licensing have quickly reinstated it when faced with the facts described above.

9. In Support of Ethical Behavior: By generally confining licensure to a well trained and fairly easily defined group of providers there is one additional advantage to the state's consumers. A very important part of training of doctoral level psychologists involves the nature and importance of ethical behavior for the protection of the client. Not only do training programs teach ethics, they also screen for unethical behavior and support a set of standards which enforce ethical behavior. While licensing laws can further require ethical behavior it can only be advantageous to be licensing largely from a group already screened and trained to behave ethically in relation to their clients, peers and payors.

Thank you for this opportunity to comment. I would like to emphasize that I am available for further comment or conversation on this issue. I am in Juneau one day of every week, though I live in Sitka, and so would be able to discuss this matter in person, should you desire.

James W. Greenough, Ph.D.

Sectional Analysis of SB109/HB184

Sec 1. Provides for an extension of the Board of Psychologists & Associated Psychological Examiners for 4 years.

Sec 2. Clarifies the powers of the Board. Present statute is written in vague language. Board does not have powers equal with those of other health regulatory boards.
Proposed wording is taken from the Council on State Governments publication on occupational licensing / model practice act and is consistent with language adopted by the legislature for other licensing boards under Title VIII

Sec. 3 Assures that a person seeking licensure by examination or by acceptance of credentials has graduated from an accredited school with a psychology program meeting the requirements set out by the American Psychology Association's Committee on Education & Credentialing.
The applicant would not be required to be a graduate of an APA approved & accredited program but rather simply be a graduate of one which is identical in content & quality to an approved program. This wording allows the Board to accept

as eligible for licensure many more candidates

Some other professional licensing statutes in Alaska do not allow such discretion but require that applicants be graduates from a school that is approved and accredited by that profession's national association's credentialing & education committee.

The Board of Psychologist & Psychological Associate Examiners have chosen this wording because there are only approximately 10 APA approved & accredited programs in psychology in the country & accepting that requirement for eligibility for licensure would seriously restrict the numbers of applicants in Alaska where there is a proven need for qualified mental health practitioners both in Rural & Urban areas.

Please note: Colleges & universities are accredited by the government but specific professional programs (ie medicine dentistry, etc) are accredited/approved by the profession's own education or credentialing committee in order that the minimum competence required to graduate is met or is available to be learned by the students.

In this section the board is being allowed to measure programs against the national

associations standards for acceptance.

Sec. 4 Attempts to alleviate a conflict between professions who practice psychotherapy & to prevent ~~conflicts~~ & prosecution of those in other professions who would otherwise be accused of practicing psychology without a license, namely Social Workers.

Sec. 5. Exclusionary clause exempting members of other professions from the provisions of this Statute; jurisdiction of this Board provided that they do not appropriate the titles & practices restricted by Statute ~~to persons of doctor of~~ to those who are psychologists or psychological associates.

PROPOSED REGULATIONS
BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE EXAMINERS

12 AAC 60.090(a) and (b) are repealed.

12 AAC 60 is amended by adding a new article to read:

ARTICLE 6. GENERAL PROVISIONS

Section
950. Definitions

12 AAC 60.950. DEFINITIONS. In this chapter and AS 08.86:

(1) "accreditation" means:

(A) an accreditated school is one which is accreditated by any regional accrediting agency recognized by the American Association of Collegiate Registrars and Admissions Offices.

(B) an accreditated doctoral program is one which has been approved by the American Psychological Association or which is clearly equivalent to the standard used by the American Psychological Association. The burden of establishing equivalent standards rests with the applicant.

(2) "reasonable cause or excusable neglect" means:

(A) chronic illness;

(B) retirement;

(C) military service; and

(D) hardships as individually determined by the board.

(3) "technical meeting" means a professional meeting incorporating formal written or oral presentations of psychology related research, theory or applied topics.

(4) "appropriate supervision" as used in AS 08.86.180(b)(1) means supervision by a licensed psychologist consistent with accepted professional principles in psychology and with the supervising licensed being responsible for insuring the extent, kind, and quality of the psychological services performed are consistent with the training and experience of the supervised person.

(5) "professional incompetence" as used in AS 08.86.204(7)(A) means lacking sufficient knowledge,

skills, or professional judgement in that field of practice in which the psychologist or psychological associate concerned engages, to a degree likely to endanger the mental health or well-being of his or her patients. (Eff. / / , Reg.)

Authority: AS 08.86.080

12 AAC 60 is amended by adding a new section to read:

12 AAC 60.185. ETHICS AND STANDARDS. (a) The ethics to be adhered to by licensed psychologists and licensed psychological associates shall be the "Ethical Principles of Psychologists," (1981 revision), of the American Psychological Association.

(b) The standards to be adhered to by licensed psychologists and licensed psychological associates rendering psychological services in the state shall be the "Standards for Providers of Psychological Services," (January 1977 edition), of the American Psychological Association. (Eff. / / , Reg.)

Authority: AS 08.86.080

12 AAC 60 is amended by adding a new article to read:

ARTICLE 6. CONTINUING EDUCATION

Section
250. Statement of purpose of continuing education
260. Hours of continuing education required
270. Computation of continuing education
280. Computation of academic continuing education hours
290. Accepted subjects
300. Approved nonacademic continuing education programs
310. Individual study
320. Instructor or discussion leader
330. Publications and presentations
340. Reinstatement
350. Report of continuing education

12 AAC 60.250. STATEMENT OF PURPOSE OF CONTINUING EDUCATION. The purpose of continuing psychology education is to insure that the renewal of licenses is contingent upon proof of continued competency and assure the consumer of an optimum quality of psychological health care by requiring licensed psychologists and psychological associates to pursue education designed to enhance and advance their professional skills and knowledge. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.260. HOURS OF CONTINUING EDUCATION REQUIRED. (a) An applicant for renewal of a license as a psychologist, or a psychological associate, originally issued before July 1, 1981, shall obtain 40 credit hours of documented continuing education before the June 30, 1985 application for renewal.

(b) Each psychologist or psychological associate seeking renewal of his or her license on or after July 1, 1985, must obtain an average of 20 credit hours per year of

documented continuing education during the previous licensing period. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.270. COMPUTATION OF CONTINUING EDUCATION HOURS. (a) For the purposes of 12 AAC 60.250--12 AAC 60.310, 50 minutes of instruction constitutes one hour.

(b) Credit is given only for full hours of instruction received and not for a fraction of an hour.

(c) Credit is given only for class attendance hours and not for hours devoted to class preparation. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.280. COMPUTATION OF ACADEMIC CONTINUING EDUCATION HOURS. (a) One quarter hour academic credit from a college or university constitutes 10 hours of continuing education.

(b) One semester hour academic credit from a college or university constitutes 15 hours of continuing education. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.290. ACCEPTED SUBJECTS. (a) In order to be accepted by the board, the subject of a continuing education program must contribute directly to the professional competency of a person licensed to practice as a psychologist or a psychological associate and be directly related to the concepts of psychological principles, ethics or practices as defined in AS 08.86.230(2). (Eff / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.300. ACCEPTED NONACADEMIC CONTINUING EDUCATION PROGRAMS. (a) The following programs are accepted by the board if they meet the requirements of 12 AAC 60.290:

(1) professional development programs of the American Psychological Association and its state societies including workshops, seminars, symposia, or a presentation of a technical paper;

(2) college or university short courses not carrying academic credit; and

(3) other professional continuing education programs if information is supplied to the board as follows:

(A) name and address of person or organization sponsoring the course;

(B) instructor's name;

(C) title of course; and

(D) the number of full fifty minute hours of actual instruction; and

(E) the location and dates the course was ~~be~~ conducted. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.310. INDIVIDUAL STUDY. (a) The number of hours of continuing education credit awarded for completion of a formal correspondence program, videotape program, audio-cassette program, or other individual study program which requires registration and provides evidence of satisfactory completion will be determined by the board on an individual basis.

(b) Continuing education credit awarded under this section may not exceed one half of the total continuing education hours required in any licensing renewal period. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.320. INSTRUCTOR OR DISCUSSION LEADER. (a) One hour of continuing education credit is awarded for each hour completed as an instructor or discussion leader of educational programs meeting the requirements of 12 AAC 60.250-.310. Credit is awarded only for the initial course of instruction of the subject matter unless there have been substantially new developments in the subject since the prior presentation.

(b) Credit awarded under (a) of this section may not exceed one-third of the hours in any licensing period. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.330. PUBLICATIONS AND PRESENTATIONS. (a) Twenty (20) credit hours of continuing education will be awarded for each

(1) authorship of a publication in a professional psychology journal, providing the publication relates directly to the concepts of psychological principles, ethics or practices, and is published or accepted for publication during the four year reporting period immediately preceding the license renewal; and

(2) written or oral presentation at a meeting of the American Psychological Association, a technical meeting of a State psychology society, or meeting of a professional psychology-oriented organization, providing the presentation relates directly to the concepts of psychological principles, ethics or practices, and the presentation occurred during the four-year reporting period immediately preceding the license renewal; or

(3) authorship of a professional psychology book or monograph published or accepted for publication during the four year reporting period immediately preceding the license renewal. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.340. REINSTATEMENT. (a) The license of any licensee which is not renewed by reason of failure to comply with the continuing education requirements of 12 AAC 60.250-.380, will be reinstated or restored to full status by submission to the board of proof of the completion of all continuing education credit hours required.

(b) A licensee unable to obtain the required continuing education hours for renewal of his or her license, due to reasonable cause or excusable neglect, must request exemption status in writing to the board accompanied by a statement explaining reasonable cause or excusable neglect. The board will prescribe an alternative method of compliance to the continuing education requirements as deemed appropriate to the individual situation. (Eff. / / , Reg.)

Authority: AS 08.86.070(a)(6)

12 AAC 60.350. REPORT OF CONTINUING EDUCATION. (a) An applicant for renewal of a license to practice psychology shall submit, on a form provided by the department, a sworn statement of the continuing education in which he or she participated or pursued. The statement must indicate:

(1) the sponsoring organization;

(2) the location of the course or correspondent;

(3) the title or description of course or both;

(4) the principal instructor;

(5) the dates of attendance or period of correspondence;

(6) the titles, issues and dates of publications or presentations; and

(7) the number of continuing education hours claimed.

(b) Falsification of any written evidence submitted to the board pursuant to this section shall be deemed to be unprofessional conduct and constitute grounds for licensure reprimand, revocation or suspension. (Eff / / , Reg.)

Authority: AS 08.86.070(a)(6)

*Sec. 6. AS 08.86.230(12) is amended to read:

(12) "approved program" means a program which meets the requirements established by the American Psychological Association Education and Credentialing Committee in Psychology for an approved program [.] , or its equivelant as determined by the Board.

*Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

HB

182

LAW OFFICES OF
REESE, RICE AND VOLLAND
A PROFESSIONAL CORPORATION

JOHN REESE
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May 6, 1983

via Express Mail

Ms. Judy G. Knight
Special Assistant to the Commissioner
Department of Labor
State of Alaska
P.O. Box 1149
Juneau, Alaska 99811

Re: CSHB 182

Dear Ms. Knight:

As you know, I currently represent Alaska Alcoholism Rehabilitation Services, the non-profit corporation which owns and operates a long-term residential alcoholism treatment center in Wasilla, Alaska known as Nugen's Ranch. I testified in favor of CSHB 182 before the House Committee on Health, Education and Social Services because Nugen's Ranch, as one of the treatment programs in the state which hopes to implement a work therapy program, will benefit from the legislation. With this letter I hope to clear up a few misconceptions that may have developed as a result of certain comments I made during my testimony.

The residents at Nugen's Ranch are most likely to be individuals who have a life-long history of alcoholism. A good number of these individuals will be skid-row alcoholics and public inebriates who have spent many years on the street drifting from one detoxification facility to another. They have few life management skills and, practically speaking, are unemployable. Their treatment will require institutionalization for as long as two years.

The Ranch hopes to engage these individuals in "work therapy" as part of their treatment. Work therapy is activity of a constructive nature which may be supervised or unsupervised, and which will require the resident to assume certain responsibilities. The work will involve housekeeping chores, agricultural work, and unskilled labor associated with minor renovation and maintenance at the facility.

You indicated a concern on the part of the Department based on the fact that during my testimony before the HESS Committee I referred to residents at the facility performing certain maintenance tasks that might involve electrical or mechanical skills. My comments were only for the purpose of explaining to committee members that residents would regulary perform work that was non-agricultural in nature. I certainly did not intend to give the impression that Nugen's Ranch planned to displace existing employee positions through work therapy, or that the Ranch planned to have residents engage in work such as might be done by an electrician or mechanic and which would require specialized skills and training. I am sure you realize that it would be foolish for the corporation to do so, and I would never recommend such a course of action. The potential liability of the corporation as a result of any negligent work performed by a resident working beyond his skill level is itself a sufficient deterrent that the Ranch would never consider engaging residents in such activity.

To be more specific, the following tasks are those likely to be performed by residents involved in work therapy. I have listed the activities without regard to whether 29 CFR 529 requires the payment of wages for the activity.

1. Personal housekeeping chores (making beds, cleaning rooms);
2. General housekeeping chores (sweeping floors, trash removal, etc.);
3. Kitchen detail (setting and clearing tables, etc.);
4. Feeding livestock (poultry and swine);
5. Cleaning animal pens and sheds;
6. Planting and cultivating vegetable crops;
7. Planting and tending to bedding plants grown in the greenhouse;
8. Assisting in the slaughtering of livestock and the harvesting of crops;
9. Minor maintenance (e.g., painting);
10. Care of the grounds;
11. Snow removal during winter;
12. General labor, such as erecting fences, tearing down sheds, hauling trash, stacking lumber, cutting firewood, etc.

In some cases I anticipate that residents will watch qualified personnel perform regular maintenance tasks which require specific training and skills. In all cases, the "work" performed by the resident would not involve activity requiring a special skill, but nonetheless will allow the resident patient to learn some basic aspects of the skill.

For example, the Ranch might have the need to build a small tool shed adjacent to one of the existing buildings. This is work for which the Ranch would use the services of one of its regular maintenance personnel, or contract with someone to do the construction. This work, however, also would present an excellent opportunity to prepare a work therapy program which involves training in some carpentry skills. Residents could be asked to stack and haul lumber while observing how framing is done and receiving instruction in the proper use of power tools. Similarly, the residents could watch how electrical conduit is laid, learn how to lay shingle on a roof, learn how windows and doors are hung, and how steps and railings are made, etc. Throughout all of this "work therapy" the residents may do nothing more than stack lumber and paint the building. Nonetheless, the experience will have taught them some basic lessons of carpentry and electrical work.

I want to make it clear that the work therapy program designed for the Ranch will not displace any employment positions that are filled from the private sector and which are paid at a rate considerably higher than the prevailing minimum wage. If you examine the grant-in-aid documents for Nugen's Ranch available at the State Office of Alcoholism and Drug Abuse, you will see that the Ranch has, and intends to keep, fully paid and qualified maintenance, kitchen, and night attendant positions. Work therapy is designed for the benefit of the patient; it is not a concept which will result in the displacement of regular employees at the Ranch.

I do not believe it is unreasonable for the Ranch to expect that the quality of "work" they will receive from an individual during the initial stages of treatment is work for which something less than the minimum wage is still fair compensation. I am sure you can appreciate that someone who has been unable to work in five or six years because of

daily intoxication has a productive capacity that is, at best, minimal, even with constant supervision. Although I understand that the Department is concerned because even the most basic entry level positions in the private sector pay at least the minimum wage, I hope that the Department appreciates the fact that residents who will be referred to Nugen's Ranch are individuals who are presently not even counted among the labor force because of their inability to work.

It is the intention of the Ranch to base the wage scale on the disability of the patient worker, as is required by federal regulation. It seems clear to me that the federal regulations concerning patient workers at 29 CFR part 529 contemplate wage scales between 50 percent of the minimum wage and the full minimum wage, or higher, depending on the disabilities of the various clients. I have anticipated that in the process of applying for a certificate under 29 CFR 529 the Ranch would seek approval for a number of classes of wage scales between the minimum permitted under the regulations (50 percent of the minimum wage) and the minimum wage itself. This would enable the Ranch to automatically move a patient worker into a higher paying classification as his treatment progressed. It also seems to me that it is entirely possible in the future for the Ranch to budget itself for certain positions (such as dishwasher or kitchen helper) which would be paid at a prevailing wage rate and which would be filled by patient workers who are no longer under a disability.

The Ranch is not intending, nor does it expect, to pay patient workers less than is required under federal regulations or law. Both the federal regulations and the leading federal court cases in the field make it clear that if a patient worker is not suffering from any disability, he must be paid a wage comparable to the wage paid in the private sector for the equivalent work. I have advised my clients of this fact and they recognize that for any non-disabled patient worker they may be required to pay the patient a wage comparable to that in the private sector. At this time, however, the Ranch does not anticipate treating patients who are not already suffering from a considerable disability.

I hope this letter answers some of your concerns. I hope to be able to work with you and other representatives of the Department in order to ensure that you clearly understand what the Ranch intends to do through the work therapy program, and what is hoped to be accomplished by CSHB 182.

Please call me if you have any questions.

Sincerely,

REESE, RICE AND VOLLAND, P.C.

P. R. Volland

Philip R. Volland

HB

197

Alaska State Legislature

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Senate

Committee on Resources

May 11, 1983

Memo

To: Senate Resources Committee Members

From: Senate Resources Committee Staff

Subject: Hearing on SB 79, "Right to Know" legislation concerning hazardous and toxic substances in the workplace, May 11, 3:00pm , Beltz Room

Following hearings on the bill in Juneau and Fairbanks the Chairman asked staff to meet with concerned interest groups to try to work out problems which were widely acknowledged in the bill as originally drafted. Among these problems identified included:

---coverage of as many as 40,000 substances to be dealt with by employers.

---inclusion of "household" type substances salt, sand, bug spray and others.

---coverage of transportation industry where many break-in-transit handlings but no substance use were involved.

---Requirement of labeling of substance containers, piping systems.

---Reporting requirements to the State Department of Labor potentially involving extensive paperwork for employers and the state.

---Possible duplication and conflicts with federal OSHA regulations to be promulgated in the near future.

However, most agreed that the basic intent of the legislation to communicate the identity, health hazards and proper handling methods for hazardous and toxic substances to employees by employers was desireable.

Beginning in April a staff redraft of the bill was circulated to an ad hoc group of concerned individuals and interest groups. Following comments on this draft a meeting was held in Juneau May 2 and 3 with representatives from the following groups to try to arrive at consensus legislation:

Committee staff, Sen. Josephson's office, Alaska Environmental Lobby, Alaska Employer's Committee, Alaska General Contractors, Sohio, Arco, Alaska Health Project, Alaska District Council of Laborers, Alaska Department of Labor, Alaska Trucking Association.

The group proceeded under the following assumptions and objectives:

---that it was desireable to pu[illegible] legislation this session.

---that federal OSHA regulations would probably be published around July 1 of this year.

---that while federal OSHA regulations would cover several aspects of this legislation most employers in Alaska would not be covered.

---that it was desireable and possible to cover most Alaskan employers in a manner which would not duplicate or conflict with federal OSHA regulations.

---that any legislation pursued this session should represent a basic, simplified employer-to-employee communication system involving a minimum of paperwork or expense.

Provisions of the CS

The group agreed to a draft CS containing the following general provisions:

---The CS tracks the proposed OSHA regulations for the substances covered. Two basic lists of chemicals for which study and exposure limits have been set would be covered plus additional substances which would be covered by OSHA regulation following performance-based testing. The combined lists (large overlap) would cover approximately 600-700 chemical substances to be considered "hazardous" or "toxic" under the bill.

---Employers would be required to post a notice of hazardous and toxic substances in their workplaces with information on health hazards, handling procedures, and other information. Employers would also be required to provide safety training on these substances to new employees and reassignment of employees for substances they would be exposed to.

---The information required to be supplied by employers would be in the same form as required under OSHA regulation. This information would not have to be produced by employers but would come from manufacturers as required by the OSHA regs, would be required on all substances imported into Alaska (to cover middleman wholesalers not covered by federal regs), and would be on file with the state Department of Labor. In fact, information on most, if not all, the substances covered by the bill is currently available.

---No labeling or reporting requirements are included in the CS. Labeling will be required of all manufacturers under OSHA regulations and the reporting requirements were determined not to be critical to the basic communication to employees of substance information.

---Substances while in transit are exempt from the provisions of the bill. Current federal transportation of hazardous substances regulations were determined to be sufficient.

---Household items such as food, drugs, goods used for personal use are exempted as are substances in small quantities not representing a health hazard. Thus, no substances like salt or bug spray off the shelf are included. However, some items like sand (silicates) are on the list when used in concentrations (like sandblasting) which have been shown to represent real health hazards, but not for most common situations.

---Although the technical assistance activities and pre-implementation tasks of the Department of Labor would take effect immediately, employers would not be required to comply before July 1, 1984, to ensure that information is available

Senate Resources Committee
May 11, 1983

DRAFT LETTER OF INTENT, SB 79

The purpose of this legislation is to inform employees of the identity of and the health hazards and proper handling procedures for hazardous and toxic substances in their workplace through a communication and safety education program adopted by employers. While this legislation is designed to cover most employers in the state utilizing substances defined in the bill, it is not the intent to require employers to be responsible for the generation or creation of the information required to be posted or communicated to employees. Rather, the bill is designed under the assumption that federal regulations will be promulgated in the near future by the Occupational Safety and Health Administration (OSHA) which will require manufacturers to develop and distribute information for all the substances covered by the bill. The provision requiring that such information accompany substances imported into the state and the provision requiring the State Department of Labor to keep information on file for all substances covered by the bill are designed to aid employers in readily obtaining the required information.

It is the intent of the Committee that the Department of Labor play an active role in informing employers of the requirements of this bill and aiding them in meeting the requirements. Among the tasks required of and intended that the Department undertake are: the development of a poster outlining the provisions and employee rights under the bill and the printing of sufficient copies for all applicable employers; the compilation of all relevant information on the various substances covered by the bill and formulation of an information retrieval system capable of answering telephone inquiries by employers and employees on various substances and products; the compilation and printing of a list of the various substances identified in the bill as hazardous and toxic for use by employers; the provision of assistance to employers upon request in developing safety education programs; and the surveying of various employers or industries to identify the types of substances used and problems being encountered. In this last task it is intended that such surveys be made in cooperation with business and industry groups or associations.

It is the intent of the Committee that the Department complete the specific tasks identified in section 1 of the bill at least several months in advance of the July 1, 1984 effective date for section 2 of the bill requiring posting and training by employers.

The bill authorizes the Department to identify substances to be covered by the bill. It is the intent of the Committee that this authority be used only on a case-by-case basis pursuant to the Administrative Procedure Act to cover a very few substances which might be of specific concern in the state but for some reason, such as bureaucratic delay, have not yet been identified on the federal level pursuant to OSHA regulation. It is not the intent of the Committee to direct the Department to engage in a major identification, testing or research program which would result in large numbers of additional substances or additional lists of substances beyond those identified in the bill.

HB-14

INACTION ALLOWS PERMIT TO BE PROVIDED
INFORMAL APPEAL - NO EVIDENCE; HEAD
OF AGENCY!

(DISMISAL)
APPEAL PERIOD QUESTION
GEORGE

Sec. 18.60.072. REPORTS TO BE FILED WITH DEPARTMENT. (a) A manufacturer or wholesaler who is subject to the requirements of AS 18.60.051 and 18.60.052, respectively, shall file with the department a report that includes

(1) the information required to be provided to purchasers under AS 18.-60.051 or 18.60.052 for each hazardous or toxic substance specified by the department under (d) of this section;

(2) the quantities of hazardous or toxic substances being handled stored, used or produced; and

(3) other information considered appropriate by the department.

(b) An employer who is subject to the requirements of AS 18.60.071 shall file with the department a report that includes

(1) the chemical names and the CAS numbers of hazardous or toxic substances used in the workplace; and

(2) the safety procedures and equipment actually used in the work-place; and

(3) the information required under (a)(2) and (3) of this section.

(c) A manufacturer, wholesaler, or employer shall promptly report to the department any substantive changes in the information to be provided under (a) or (b) of this section.

(d) The department shall adopt regulations specifying the hazardous or toxic substances to be reported under this section.

Clarifying amendments for consideration.

*Section 1

(12) adopt regulations listing "hasardous substance" (AS 18.60.105(11) and "toxic substance" (AS 18.60.105(12) and excluding from that list

*Sec. 3 page 4 - 18.60.072 (c)

(c) The department shall adopt regulations specifying the specific hazardous or toxic substances to be reported on a substance by substance basis under this section.

*Sec. 3 page 6 - 18.60.105

(11) "hazardous substance" means a chemical that is

(A) listed in the United States Department of Transportation Hazardous Materials Table, 49 C.F.R. 172.101; or

(B) any of the following: ...

(vi) an oxidizer; and

(C) is specifically listed in regualtion adopted by the department under AS 18.60.030(12);

(12) "toxic substance" means a chemical which, upon exposure, may result in the occurance of acute or chronic health effects in employees and is listed in regulation adopted by the department under AS 18.60.030(12);

4/12/83

POSITION PAPER/TESTIMONY/ALASKA EMPLOYERS' COMMITTEE

Bill No.: House Bill 197

Title: "An Act relating to hazardous and toxic substances and providing for an effective date."

Contact: Bill Schneider
276-5354

T. J. Thrasher
276-1149

My name is Bill Schneider and with me today is T. J. Thrasher. We presently serve as Co-Chairmen of the Alaska Employers' Committee (AEC). The Alaska Employers' Committee represents over 5,000 employers, including:

Associated General Contractors, Alaska Trucking Association, Alaska Retail Association, Alaska Seafood Processors, Alaska Loggers Association, Alaska Miners Association, Alaska Support Industry Alliance, Anchorage Laundry and Dry Cleaners Association, Resource Development Council, SOHIO and many individual Alaskan employers.

AEC has directed Ms. Thrasher and myself to be here today and present our Committee views on HB 197. We fully support the goal of this bill, that is, a safe and healthful Alaska workplace.

Unfortunately, this Bill creates many costly hurdles and pitfalls on the path towards worker safety.

More importantly, however, there is a key ingredient missing from this Bill - - common sense.

As someone who has spent over 12 years in the safety profession, I can tell you that the most important tool available in the prevention of accidents, on or off the job, is common sense. Allow me to briefly illustrate the absence of common sense from HB 197.

Most of the goods utilized in Alaska are shipped up from manufacturers in the Lower 48. Several thousand tons of different materials arrive annually by ship, plane and truck.

Under HB 197, over 40,000 of these substances will potentially be classified as toxic or hazardous.

Detailed scientific information must be provided on each of these substances: CAS numbers, chemical names, potential risks, etc.

Our Committee agrees that this information should be provided by the manufacturers as they are the experts on the substances they produce.

But, as we stated before, the manufacturers of almost all of the goods utilized in this state are not here but, rather they are located outside of Alaska and are consequently are not covered by this Bill.

There is an alternative course to follow on this path towards workplace safety. It makes sense and I encourage the Committee to give it serious consideration.

The Federal hazard communication regulations covering toxic and hazardous substances will go into effect this summer, according to Thorne Auchter, Undersecretary of Labor for OSHA.

These regulations will apply to all states and will require manufacturers to provide toxic information on their products.

According to the March 24, 1983 Bureau of National Affairs, Regulatory and Legal Developments, Newsletter the final draft of the federal regulations not only cover the manufacturers but, also the distributors of chemicals.

> "All aspects of the supply chain" must be covered to make the rule effective, the agency (OSHA) said in defense of the new scope, which would apply the same duties to importers as it would to chemical manufacturers, and would require distributors to ship labeled containers and "provide downstream purchasers with access to an appropriate material safety data sheet."

Under HB 197, the Alaska employers would shoulder the burden of providing this information. And in most instances, the employer, lacking the expertise and

staff, would have to go back to the manufacturer to acquire this information. In other words, a costly, duplicative route could easily be avoided by adopting the federal regulations into our State codes.

With this in mind the Alaska Employer's Committee urges you to closely scrutinize the proposed federal regulations and if you believe that adjustments are necessary they can be dealt with after the federal regulations have been adopted. The Alaska Employer's Committee stands ready to assist the Committee in any manner appropriate.

Thank you for your time and I am available for any questions that the Committee might have.

ENVIRONMENTAL LOBBYIST

We strongly support HB 197, an act relating to hazardous and toxic substances in the workplace. Passage of HB 197 is an important first step in managing hazardous materials and protecting workers in Alaska. We urge House L & Commerce to take action on this important subject.

I have some specific comments pertaining to yesterdays testimony as well as some general comments on the Bill.

1. Amendments for consideration: Sec 3 page 4 18.60.072(c). I see a problem with this amendment because the situation could arise where we would have a RTK Bill regulating no substances at all. There must be some assurance that the adoption of the NIOSH, DOT , and ICRA lists of hazardous materials be performed without having to go through all the chemicals on those lists. We would, of cousre exclude those substances excluded under section 1 of HB 197. In addition, there should be some time limit put on the department to adopt the regulations.

2. With regard to Mr. Ames' comments on industry already providing enough health and safety information to workers. I congratulate the pulp industry for their work to protect their employees. Many other industries are also making great strides in this area primarily motivated by profit or humanitarian reasons. Many industries have argued that providing health and safety information to workers has saved them money in workmans compensation costs, and reduced the number absentee workers. This reduces the amount of on the job retraining and rehiring, againing saving time and money. What Mr. Ames failed to say was that HB 197 is designed for industries who do not provid workers with information about the toxic materials in the workplace. ~~Indusries~~ providing this information already would ~~not be burdened by this legislation.~~ There are 84 printdhops and 2 newspapers in Anchorage which all require chemistry to function. The solvents and fixatives used by the workers are ~~not labeled properly~~ only labeled with the statement Do Not Dispose of In Municipal Sewer Systems. If the ~~manufacturer says~~ the materials present problems to sewer systems what do they do to workers?

3. With regard to Mr. Schneiders comments : I think that the Alaska emplyees Ass. needs a work session to discuss this Bill.

His arguement that the fact that manufacturers are outside of the state of Alaska would have some bearing on ~~HB 197 is irrelevant.~~ on the employers ability to obtain MSDS information is irrelevant. The only relevance to his comment is that yes indeed the manufacturers have MSDS.

He further argued that the employer would have to provide MSDS sheet information and implied that the employer would have to perform the research and analysis on the materials they use. No where in HB 197 does it require employers to analyze the chemicals they use. As Mr. Schneider stated manufacturers already compile this information. All the legislation requires is that the employer provide the information that is., obtain MSDS . This proceedure is relatively easy to do, by simply writing or calling the manaufacturer. General Electric will gladly send all their MSDS forms to anyone who requests such information. The NY Dept of Health will also do this a no cost. Our Poison Control Centers located through out the State of Alaska already have much of this information compiled and ready to send out to anyone who requests the information.

4. Both Mr. Schneider and Mr. Ames testified that HB 197 would require to much paper work. The only paper work as I see it is writing a simple form letter requesting MSDS , ~~xeroxing~~ zeroxing it a few times, and sending it to those parties who have MSDS. Once the employer obtains the information , the only other requirement would be to zerox the MSDS sheets again, and post them in a conspicous area in the workplace. One MSDS sheet with all the information about the chemicals is probably a whole lot more cost effective than the many pamphlets Mr, Ames hands out to pulp workers, and it might even reduce the amount of paper he finds in the parking lots.

5. Regarding the New OSHA regulations: I too agree that these regulations should be looked at very carefully. I have had a chance to review munch of the new legislation, and still these regulations are targeted at the manufactureing workplaces disregarding the millions of workers employed in agriculture, construction, transportation, and other service and non-manaufacturing occupations. Read QUOte:

And still the New osha standards are weak in the area of MSDS, the language allows for voluntary compliance on the part of both the manufacturer and the worker employer to obtain these safety sheets. Read quote

Furthermore, decision-makers in Alaska have been stressing the need for reducing federal control over Alaskan activities. ~~Why do we~~ We can have our own RTK law which is better than OSHA and more easily managed. It seems strange that industry is now supporting the Federal RTK legislation when they lobbied heavily against it in the past. As many of us know there was once a Federal RTK law under Ula Bingham and the Carter Administration. Yet this law was one of the first to go under the new Administration . How can we be assurdéd that the FED RTK law will be put into effect? And how can we be certain that future administrations retain it?

6. The HB 197 will should have some requirements for labeling of substances in the woekplace . A color code could be used , or maybe just the most widely used chemicals should be labeled to protect workers

For the past two years, I have been involved professionally with the issue of hazardous and toxic substances. I am presently a member of the State of Alaska Hazardous Waste Advisory Work Group and am Chairman of the Sub-committee on Hazardous Waste to the Environmental Health Advisory Committee of the Anchorage Municipal Health Commission. It has become painfully clear to me that Alaskan work areas are without the proper safety equipment and information to protect workers from exposures to hazardous and toxic substances.

The use of hazardous materials is central to our daily lives if not our existence. Not a day goes by when one does not use a hazardous material or come into contact with items that have been manufactured with one or more of these dangerous substances. Use of hazardous materials can cause severe injury through misuse, lack of proper safety training, and inadequate personal protective equipment. Each year approximately 3000 new chemicals are introduced into the workplace, many of which are used in Alaska.

In examining the current situation of the handling of hazardous and toxic materials in Alaska, several questions emerge. For example, chemicals such as chromic acid, sulphuric acid, and hydrogen peroxide are used in Alaska. Their liquids and vapors are corrosive to human tissue.. What personal protective equipment and safety measures should be taken when using these substances?

Toxic materials, such as 2,4-D, amitrole, bromacil, and picloram are herbicides used by the Alaska Railroad, Matanuska and Chugach Electric, the Military, and even homeowners. The misuse of these substances can cause physiological and biological damage. What is the safe exposure level for workers applying these and other dangerous materials?

Acetone, trichloroethylene, perchloroethane and other solvents and degreasers are utilized by industrial and service facilities such as print shops, dry cleaners, and paint manufacturers that are a necessity to all communities. These substances are highly flammable. What method of fire suppression should be used if one or more of these substances ignites in the workplace?

Answers to these questions would be provided by ~~SB 79~~ HB197 and should be made available to all Alaskan workers. ~~This information should be posted in the workplace, and made known to prospective employees before they are hired.~~ [illegible] not

~~and other service occupations.~~

As Alaska grows and develops its Coal, NG, Asbestos, Timber, Gold, Zinc, Oil Shale, and other resources, I can only wonder how many more hazardous materials will be brought into the state. Perhaps, if the economy is advantageous, we will develop of large scale petrochemical industry and manufacture our own chemicals. I do not have to repeat the well-documented hazards associated with such an industry.

In Alaska, we have the unique challenge and opportunity to avoid the mistakes with which other communities have encountered themselves in the area of hazardous and toxic materials. While most of the nine states which have just recently adopted their own right-to-know laws have done so out of a reaction to increased cancers and deaths in the workplace, Alaska, relatively speaking, does not have these problems yet, and has the chance to grow and prosper and still provide safe work environments.

The challenge, as I see it, is whether we all can admit that ignorance is no longer an adequate excuse for unhealthy workplaces. We all know of the hazards associated with working with hazardous materials. In knowledge lies the power to make the right decisions. In short, we can no longer drive automobiles, paint houses, manufacture clothing, build roads and dams, and grow crops with out using dangerous substances. So long as we continue to use hazardous materials, we must all vigorously insist that workplaces are safe and that the health of the worker is protected.

Mr. Chairman/ We urge House Labor & Commerce to take action on this important subject.

STATE OF ALASKA
FISCAL NOTE

Revision Date April 1 , 1983

I. REQUEST

Bill/Resolution No.: House Bill 197
Title: "Hazardous & Toxic Substances"
Sponsor: Labor and Commerce Committee
Requestor: Labor and Commerce Committee

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		75.0	79.5	84.3	89.4	94.8
200 TRAVEL		12.5	5.3	5.6	5.9	6.3
300 CONTRACTUAL		29.3	31.1	33.0	35.0	37.1
400 COMMODITIES		1.5	1.1	1.2	1.3	1.4
500 EQUIPMENT		12.7				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		131.0	117.0	124.1	131.6	139.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		131.0	117.0	124.1	131.6	139.6
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

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

Not available.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards and Safety Date: April 4, 1983

Approved by Commissioner: Jim Robison Date: April 4, 1983
Department: Labor

LEG:A:21

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

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE
TITLE: "An Act relating to hazardous and toxic substances."
AGENCY AFFECTED: Department of Labor

Under this bill the Department of Labor will be responsible for collecting and disseminating information regarding hazardous chemicals and/or substances at work or storage sites in Alaska.

An Industrial Hygienist position in Anchorage will be required to review and respond to requests about the effects of hazardous chemicals or substances, recommend remedical action if required, and communicate this information to the requestor. In addition, one clerical position will be required to provide support for the hygienist.

In addition to the Personal Services costs associated with the Industrial Hygienist and the clerical position, there will be a need to increase the Department's current contract for laboratory services ($5,000), as well as it's management services and rent allocation ($7,479 and $6,800 respectively). All other costs in Contractual Services are normal operating costs. Additionally, the Industrial Hygienist position will require various scientific measuring and sampling equipment ($7,600), as well as basic office equipment. The Travel budget for FY 1984 includes $7,500 for recruiting and relocation expenses for the hygienist position and $5,000 needed for extensive in-state travel to visit Alaskan work sites.

Assumptions:

1) The Department will collect and disseminate information regarding hazardous chemicals and/or substances to the general public, and as a result will also be making increased work-site inspections.

2) Inflation rate of 6 percent per annum.

3) The equipment costs of $12,700 and $7,500 for travel and moving expenses are one-time items.

4) Effective date of July 1, 1983.

1.	POSITION TITLE			RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
	Industrial Hygienist I			19A	GGU				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12	HB 197			Anchorage				

3.	CONTINUATION LEVEL		ADDITION	XX

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	38,135	
6.	Benefits	6,053	
7.	Supplemental Benefits	2,338	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES 01		49,406
10.	Travel 02		12,500
11.	Contractual 03		18,423
12.	Commodities 04		500
13.	Equipment 05		10,200
14.	Other		
15.	TOTAL COST		91,029

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.	100	General Funds 1004	91,029
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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

JUSTIFICATION

The hygienist will ascertain the effects a chemical/substance will produce, recommend remedical action if required and communicate this information to requestor in understandable terminology. As the populace becomes better informed, there will undoubtably be more requests for this agency to visit work/storage sites to monitor them for potentially hazardous conditions.

Personal services calculations are based on the salary schedule that is currently awaiting approval for FY '84.

Travel funds include $7,500 in relocation and recruiting expense and $5,000 for in-state travel because this position is located in Anchorage and significant routine travel expense is anticipated.

Contractual services costs consist of telephone charges, equipment rent, management services support, space rent, and increased laboratory service charges.

The equipment costs are comprised of various scientific equipment ($7,700), office equipment ($1,500), and protective equipment ($1,000).

13 REQUEST FOR NEW POSITION

01-1136 (7/82) - 13

AGENCY Labor

PROGRAM Workers' Protection

BRU Labor Standards and Safety

COMPONENT Occupational Safety and Health Administration

Revised Date

FY 84

LEG:A:22

1.	POSITION TITLE: Clerk Typist III			RANGE/STEP: 8A	BARG. UNIT: GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER: SB 79	PCN NUMBER:	BRU PRIORITY:	LOCATION: Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL:		ADDITION: XX						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	18,647	
6.	Benefits	2,960	
7.	Supplemental Benefits	1,143	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	25,630
10.	Travel	02	0
11.	Contractual	03	10,856
12.	Commodities	04	1,000
13.	Equipment	05	2,500
14.	Other		
15.	TOTAL COST		39,986

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.	100	General Funds	1004	39,986
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

13 REQUEST FOR NEW POSITION

01-1136 (7/82) - 13

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

COMPONENT Occupational Safety and Health Administration

Revised Date

FY 84

LFG:A:23

"Where Dependability is a Tradition!"

the Alaska Cleaners

TELEPHONE 274-8621 610 WEST FIREWEED LANE ANCHORAGE, ALASKA 99503

March 14, 1983

Walt Furnace, Chairman
House Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: HB 197

Reff: Your letter dated 3/9/83

Dear Mr. Furnace:

A sincere thankyou for your objective reply. I am chagrined over my failure to note 18.60.072(c) which would require that hearings be held prior to inclusion of specific substances. While it still would allow for "bureaucratic" abuse it never the less is a reasonable control that unfortunately is absent from SB 79.

After rereading HB 197, SB 79 and your letter I would concede that your bill is not particularly unreasonable. SB 79 is definitely unreasonable.

I am however still concerned as to the effective implementation of your bill as it would regulate manufacturers located in other States and with the potential for conflicting regulations from other States and given the small size of our market, We as end users might not be able to comply. If I may quote the Federal Register[Vol. 47, No.54, 3/19/82, proposed rules, page 12095]:

> "The potential for conflicting or cumulatively burdensome state and local laws has been acknowledged by a number of industry representatives, particularly those involved in chemical manufacturing. Since most manufactures transport their products across state lines, the proliferation of state and local standards may create a burden on intersate commerce. Furthermore, the differences among these standards result in varying levels of of protection for employees exposed to the same hazards. A single, comprehensive Federal Standard for hazard communication would eliminate this conflict, decrease the cumulative burden of compliance, and ensure basic protection for all employees."

Walt Furnace

Walt, I am also concerned that you might be misinformed somewhat on the Federal Regulations as you state we would not receive any information regarding hazardous substances under the Federal Regulations. If I may quote from the Federal Register [same numbers as before but page 12101 (Department of Labor, 29 CFR Part 19100)] again:

> "Scope of application. The proposed standard applies to employers who have facilities classified in the manufacturing SIC codes 20 through 39, Division D, in the most recent edition of the Standard Industrial Classification Manual; Executive Office of the President-Office of Management and Budget. Employers within these codes who produce chemicals are required to assess their hazards, and TRANSMIT THE INFORMATION to their own employees and TO PURCHASERS OF THEIR PRODUCTS. ALL COVERED EMPLOYERS BOTH MANUFACTURES AND USERS OF CHEMICALS ALIKE, MUST ESTABLISH HAZARD COMMUNICATION PROGRAMS FOR THEIR EMPLOYEES."

From the same page:

> "Although non-manufacturing employers are not covered by the proposal, it is expected that their employees will also benefit from it to a great extent sinces EMPLOYEES IN THE MANUFACTURING SECTORS WILL BE REQUIRED TO SEND THE HAZARD-RELATED INFORMATION DOWNSTREAM TO THEIR CUSTOMERS."

I have included a copy of a letter from the U.S. Deaprtment of Labor to AGC which indicates that they intend to publish the Final Rule about July 1, 1983 (about time also, I would agree).

Again, I thank you for taking some of your valuable time to review my comments.

Sincerely,

Tim R Crawford,
General Manager

U.S. Department of Labor
Occupational Safety and Health Administration
909 First Avenue
Seattle, Washington 98174

Schneider

Reply to the Attention of:

3/4/83 Received

March 1, 1983

Ms. Rena King
Association of General Contractors
134 N. Franklin
Juneau, Alaska 99801

Dear Ms. King:

In response to your current inquiries to my staff about the proposed Federal Hazard Communication Standard; Final Rule, 29 CFR 1910.1200, we have contacted the National Office, OSHA, for guidance. The Final Rule is expected to be published about July 1, 1983, provided there are no unexpected delays or court challenges. None are expected at this time.

The Hazard Communication Standard will require chemical manufacturers and importers to assess the hazards of the chemicals which they produce or import and make this information known. All employers in manufacturing (SIC 20-29) will be required to provide information to their employees about the hazardous chemicals. Distributors will be required to properly label containers of the hazardous chemicals.

The standard is under final review in the National Office. Major changes in text are not expected.

We are pleased to be of assistance.

Sincerely,

John A. Franchi
Assistant Regional Administrator
Office of Technical Support

cc: C. A. Mangold

THE ALLIANCE
P.O. Box 100 / Anchorage, Alaska 99510 / (907) 277-0010

March 15, 1983

Representative Walt Furnace
State Capitol
Pouch V
Juneau, AK 99811

Dear Representative Furnace:

The Alaska Support Industry Alliance offers the following observations on Senate Bill 79, commonly referred to as "right to know" or "toxic and hazardous substances in the workplace" legislation.

- The safety of our employees is a paramount issue with our members.
- Safety standards and procedures are desirable and are good business practices.
- The intent of the bill is laudable.
- The bill is flawed.
- The bill would essentially replicate standards which are to become effective on July 1, 1983, as promulgated by the U.S. Department of Labor, Division of Occupational Safety and Health, entitled "The Federal Hazard Communication Standard."

Members of the Alaska Support Industry Alliance believe that our employees should receive and use systems, procedures and equipment which maximize safety in the workplace and minimize potential risks to life, limb and health. Many of our members instituted such systems and procedures long ago and, more recently, many more have invested substantially in employee safety and health measures. Needless to say, issues attendant to toxic or hazardous substances have been carefully reviewed by industry. Moreover, federal regulations proposed last year will establish national standards requiring chemical manufacturers and importers to assess the hazards of the chemicals which they produce or import and to make such information known to those who might come in contact with such materials. All manufacturers will be required to inform their employees about hazardous chemicals. In addition, distributors will be required to label containers of the materials. We believe that after a full year of review and comment by industry and employee organizations, federal standards will effectively achieve the safety and health objectives which are envisioned within the scope of SB 79.

Should SB 79 be enacted, we would find two levels of government having laws, regulations, procedures and requirements governing hazardous and toxic substances aimed at industry, resulting in duplication, confusion and high costs for both government and industry. The bureaucracy needed by the state to administer the program of the proposed legislation would be very costly to Alaska. If, in the future, these national standards fail to provide significant protection for employees, adjustments can be made to assure such protection. We believe, therefore, that SB 79 should be tabled at this time.

We respectfully submit that enactment of SB 79 at this time is premature and that the bill simply adds confusion to an already complicated condition.

Very cordially yours,

For THE ALASKA SUPPORT INDUSTRY ALLIANCE

Milton Byrd
President

MB/gj

HB

211

STATE OF ALASKA

WALT FURNACE,CHAIRMAN
RICK UEHLING, VICE CHAIRMAN
JOHN COWDERY
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HUGH MALONE
JOHN RINGSTAD
RON WENDTE

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

MEETING SCHEDULE

FOR THE WEEK OF APRIL 11 - APRIL 15

LABOR & COMMERCE

Meets: Behrends Rm 209
M - F 8:45 - 10 am

Monday, April 11

HB 211 An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date.

Tuesday, April 12

** HB 14 An Act relating to processing of permits by state agencies, and to administration of the Alaska coastal management program.

Wednesday, April 13

HB 14 An Act relating to processing of permits by state agencies, and to administration of the Alaska coastal management program.

HB 197 An Act relating to hazardous and toxic substances; and providing for an effective date.

Thursday, April 14

HB 241 An Act relating to the creation of the Alaska Athletic Commission and the regulation of combative sports.
(STATEWIDE TELECONFERENCE FROM 4:00 pm to 6:00 pm)

Friday, April 15

** SSHB 7 An Act relating to motor vehicles; and providing for an effective date.

** Indicates first public hearing of a new bill.

SR 10113

FAIRBANKS SOCIETY OF PROFESSIONAL LAND SURVEYORS

P.O. Box 2522
Fairbanks, Alaska 99701

March 24, 1983

Rep. Niilo Koponen
Pouch V
Juneau, AK 99811

MAR 24 1983

Dear Rep. Koponen:

The Fairbanks Chapter of the Alaska Society of Professional Land Surveyors wants to express strong support for HB 211 in its original form. We also wish to express our strong objection and dismay at the Committee Substitute for HB 211 which eliminates Land Surveyors from this bill.

As a profession, we are classified under AS 48 in the same category as Architects and Enginners. We are registered by the same Board of Occupational Licensing and licenced by State of Alaska. Our Professional Certificates are signed by the "Board of Architects, Engineers, and Land Surveyors." Each Professional Land Surveyor receives a Professional License which must renewed annually by the the State of Alaska.

When a Registered Land Surveyor (RLS) signes and places his professional seal on a survey plat, his reputation and that of the entire profession are being offered as surety that the plat is correct and the land survey legal and complete. When a member of the profession is found guilty of unprofessional work, his license and professional status can be stripped by the State Board of Architects, Engineers, and Land Surveyors.

This attempt by the Committee Substitute to remove Professional Land Surveyors from the bill has the effect of removing one-third of the category which the bill addresses. We strongly urge you and others of the Fairbanks delegation, and members of the appropriate legislative committees, to re-instate Land Surveyors as a part of HB 211. It is a good bill, but the Committee Substitute must be rescinded.

Sincerely yours,

Patrick H Kalen, RLS

Patrick H. Kalen, President
Fairbanks Chapter, ASPLS

Copy: Rep. Bob Bettisworth
Rep. John Ringstad
Rep. Mike Davis
Rep. Mike Miller
Rep. Hugh Malone, RLS
Rep. Furnace, Chair, Labor & Commerce
Speaker Joe Hayes, PE, RLS
Sen. Bettye Fahrenkamp
Sen. Don Bennett

Labor; Commerce

STUTZMANN ENGINEERING ASSOC., INC.
P. O. BOX 1429
FAIRBANKS, ALASKA 99707
907 452-4094

March 23, 1983

MAR 24 1983

John Ringstad
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Sir:

It has just come to my attention that committee revisions to H.B. 211 have the effect of deleting the profession of land surveying from the context of this bill.

As both a professional engineer and a professional land surveyor, I have supported this bill in its original form as introduced February 17, 1983 and strongly urge your support in passing it as such.

The deletion of land surveying and other amendments proposed in committee do a tremendous disservice to the land surveyor's profession, some two thousand strong in this State; also, its exclusion would have a deleterious effect on the quality of land surveys in the future by aiding in the degradation of this highly skilled profession into sub-professional status.

Sub-standard land survey work has already been a major problem in land title work in our State, one of the newest in the Union, and any regulation of land surveying out of professional status can only contribute to more disastrous results.

H.B. 211, as introduced, is a fine and much needed piece of legislation which brings State government procurement practices in line with professional standards in use in other States and by the Federal government.

Again, I urge you to support this bill in <u>original</u> form and resist any modifications thereto.

Very truly yours,

STUTZMANN ENGINEERING ASSOC., INC.

Paul E. Stutzmann

Paul E. Stutzmann

BRO-HB

A

*Section 1. AS 36.98 is amended by adding a new section to read:

Sec. 36.98.041 ARCHITECTS AND ENGINEERS.

(a) It is the policy of the state to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services only on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices notwithstanding the provisions of AS 36.98.040.

(b) This section chapter applies to contracts for architectural and engineering services provided to a state agency unless

FEE

(1) the total amount of the ~~contract~~ does not exceed $25,000;

PROHIBITS ALL FEES

[[[(2) the contract is an employment contract for services to be performed under direct supervision regardless of the existence of an employer-employee relationship and a written justification signed by the person responsible for awarding the contract is filed with the commissioner.]]]

(c) When a state agency proposes to enter into a contract for architectural and engineering services, the agency shall give public

notice soliciting a request for qualifications for the professional services contract by publication at least three times in one or more newspapers in general circulation in the state and, when appropriate, in a newspaper in local circulation where the work is to be performed. The first notice shall be published not less than 30 days before the date on which the agency expects to enter into the contract and each subsequent notice shall be published at intervals of no more than three days thereafter. The notice shall include

(1) a general description of the proposed project for which the agency is seeking professional services; and

(2) the procedure by which a person or firm interested in the professional services contract may submit its response to the agency for consideration for the contract.

(d) In addition to complying with the publication requirements of (c) of this section, when a state agency proposes to enter into a contract for architectural and engineering services it shall

(1) review the register of professional services contractors maintained by the commissioner under AS 36.98.020; and

(2) provide a notice of a request for qualifications for the proposed professional services contract to each prospective contractor who, after review of the register of professional services contractors under (1) of this subsection, the agency finds is qualified for consideration for the contract.

(e) Requests for qualification from at least six persons or firms with the required expertise shall be solicited for contracts equal to or greater than $100,000. Requests for qualification from at least three persons or firms with the required expertise shall be solicited for contracts of less than $100,000 if the expertise required is available. If the expertise required is not available to enable an agency to solicit the number of requests for qualification otherwise required under this subsection, the agency shall solicit requests for qualification

(1) from each person or firm listed on the professional services contractors register maintained under AS 36.98.020 who appears to possess the required expertise;

(2) from each person or firm responding to the public notice given under (a) of this section who appears to possess the required expertise.

(f) The provisions of this section do not apply if

(1) the contracting agency demonstrates that there is a single source of the expertise or knowledge required or that one person or firm can clearly perform the required tasks more satisfactorily because of the person's or firm's prior work; however, this exemption applies only if the head of the state agency has submitted a written request to the commissioner that details the reasons for the exemption and the commissioner or deputy commissioner has authorized in writing the state agency to enter contract negotiations with the single source;

(2) the commissioner makes a written determination that public necessity will not permit delay incident to the procedures otherwise required by this chapter; or

(3) the service is to be provided by another state agency, a federal agency, or a political subdivision of the state.

(g) The agency must provide a description of the work to be performed under the contract and the agency shall conduct discussions regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. The state agency must provide a description of the factors that will be considered when it evaluates the request for qualifications received.

(h) After the responses are submitted, the state agency shall publically evaluate them. The evaluation shall consist of assigning point values to factors considered by the agency in evaluating each proposal. Points shall be awarded for being a qualified Alaska firm..

(i) The state shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the state determines is fair and reasonable to the state. In making such determination, the state shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature of the services. Should the state be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, the state shall undertake negotiations with

the second most qualified firm. Failing accord with the second most qualified firm, the state shall enter negotiations with other contractors, in order of ranking until an agreement is reached. The state may reject all or part of a proposal.

(j) This section does not apply to contracts awarded in an emergency if the person responsible for execution of the contract on behalf of the state certifies in writing that an emergency exists.

(k) In this section "state" includes political subdivisions of the state and agencies of the state and its political subdivisions.

(l) In this section "architectural and engineering services" includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

CONSULTING ENGINEERS
COUNCIL OF ALASKA

2550 Denali Street, 8th Floor
Anchorage, Alaska 99503
907/278-2551

March 16, 1983

Mr. Walt Furnace
Chairman
Labor & Commerce Committee
House of Representatives
State of Alaska
Pouch V
Juneau, AK 99811

Subject: House Bill 211

Mr. Chairman:

I am addressing my comments to you on HB 211 as president of the Consulting Engineers Council of Alaska, representing 32 member firms and approximately 500 employees statewide. Our group is the principal sponsoring body for House Bill 211, referred to by many as the Mini Brooks Bill, along with the support of the state American Institute of Architects, and other professionals. House Bill 211, as introduced, is an act relating to a method of selecting and awarding contracts for Architectural, Engineering and Land Surveying services (i.e., land surveying services related to the design process). The bill was structured utilizing the general procedures outlined in the A.B.A. (American Bar Association) Model Procurement Code.

At this time twenty-one states have adopted laws calling for the selection of Architect/Engineers based on qualifications, and another twenty either prohibit or exempt architect engineers from general bidding requirements. The remaining states, with the exception of Maryland, leave the selection procedure up to methods developed by the various agencies within the state, the predominance of which make selection by qualifications. One state, Maryland, has adopted bidding, which makes price a basis for selection. That procedure has not proved to be overwhelmingly satisfactory. (See article written by R. Charles Avara, Maryland House of Delegates). In Maryland the process actually has proven to result in higher project costs by as much as 30%, with consistent project delays being notable.

Architectual and engineering services should only be obtained through a selection process that ascertains the qualifications and capabilities of interested A/E's to design public works

projects. Fair and reasonable fees should be established by negotiation after selection and discussion of scope of work. It is not in the best interest of the public and in some cases public safety, to obtain these services by price proposals or competitive bidding.

The procurement of professional services providied by members of the learned professions has traditionally been considered apart from technicians and other trades people who are often loosely grouped for other purposes. A learned profession is one requiring specialized knowledge and long academic preparation prior to employment in the particular professional field. To practice as an individual, one must be licensed through written examination reviewed by peers (Board of Registration) and must have a minimum background of experience under the direction of qualified practitioners. Consequently, members of these professions exercise judgements and make decisions only after thorough assessment, analysis, calculation, research and investigation of the problem. Architects and Engineers are learned professionals whose role is that of the problem solver for public works projects.

The public is the loser when price competition becomes the determinant in the selection process. The quality and quantity of services required to satisfy functional needs of a project or agency cannot be precisely defined. A contracting authority, purchasing agent, or even an individual owner cannot, without prior discussions of the intended scope of work with an experienced architect or engineer, establish in detail the effort that the professional must expend to achieve the required results. Competitive bidding for professional services does not provide consumer safeguards. Rather it encourages poor use of public funds, since the importance of "value received" is subjugated to "money spent". For your reference, attached (to the documents from which I am speaking that have been placed in your hands), are copies of the ABA Model Procurement Code, the Federal selection law known as the Brooks Act, and a copy of an article written for American City & County Magazine by R. Charles Avara who represented Baltimore City in the Maryland General Assembly, and other material.

I would like to share with you a few points made by Mr. Avara in his article as they represent a parallel view of the problems of professional selection and highlight the many considerations of why selection of architects and engineers by qualifications is the only rational method to appropriately serve the public interest.

> "What the public agency client is buying are the design ideas of the engineer and architect - and each design team will give the client a different facility. The difference is measureable against the experience and innovation of the individual competitors; in short, their qualifications."
>
> "Inherant in A/E services and not generally for other types of services, is the extent to which quality can affect the ultimate efficiency, effectiveness and economy of the facility or structure. Consider the cost of the design portion of a project compared to the overall project cost; a report by the U.S. General Accounting Office states that 'design costs represent a very small proportion, probably less than 1% of the costs that will be incurred over the life of a building. Decisions made during the expenditure of this, less-than-one-percent, determine and freeze nearly all costs that follow.'... A/E services are unique and we cannot expect them to conform to bidding specifications which serve so well for the procurement of other goods and most services."

The A/E is expected to be a member of the agency's team, to assess alternatives, to design a facility or structure to satisfy the agency's need at the lowest project cost, oversee the construction in many cases and assist the agency in prosecuting claims that may arise out of the construction project. The relationship is different from the ordinary buyer/seller relationship. In many respects, the A/E acts as the agency agent and in many cases he has a great value in the ability to protect the agency's interests.

In order to fairly assess a competitive bid, public agency officials must be certain that all design professional firms are pricing the same project. In the case of A/E services,

this is difficult, if not impossible to assure. The work scope simply cannot be accurately defined to that extent prior to engagement of an engineering firm.

To quote further from Mr. Avara,

> "It is incumbent upon us (and here he uses the term Public Officials, as that is what he is) to understand and recognize the nature of the services we are seeking in design professionals. Engineering is a learned profession. Whether it is practiced by an individual or a team of individuals, creative talents are applied to solving a problem."

In combination with the agency staff, the A/E group assigned to a project analyzes a myriad of alternatives and addresses the problems of safety, permanence, beauty, maintenance, life-cycle costs, energy-saving features and other factors.

Price is most definitely a factor in the competitive negotiation process. By the time the number one ranked firm reaches the negotiation table with the representative agency, that process has now allowed both the agency and the selected firm an opportunity to collectively define (and refine) the scope of the project requirements being requested by the agency. At the end of this process, the selected firm has examined all these requirements and has been able to identify the effort and the compensation necessary to meet those needs. If, however, the fee suggested by the firm is not in line with the agency's budget, the next step is to evaluate the cause and the significance of the differences. Often the A/E firm will suggest alternatives and approaches which will effectively accomodate the agency's budget estimate. By the same token, it gives the A/E firm an opportunity to discuss with the agency and point out why the agency's best interest is <u>not</u> to reduce the design effort. If however, the agency cannot reach satisfaction with the first-ranked firm, then it has the opportunity to discontinue negotiations with the highest-ranked firm if they believe that the fee proposal is not fair and reasonable. Negotiation can then be undertaken with the second-ranked firm, and then of course the third-ranked firm if that is necessary. These methods provide steps that ultimately will provide a fee that is fair and reasonable for the defined services.

Many of the benefits of A/E services must be measured against final construction, maintenance and operating costs of the facility or structure. Costs that are not clearly determined until after the A/E services have been completed. Injecting price in an initial selection may lower the A/E fee and time spent, but it will also most likely lower the quality of the final product, since price competition can inhibit the ability of the A/E to provide full cost saving services due to inadequate compensation for innovative and thorough work. It may even cause more talented A/E firms not to offer their services, thus lowering the overall quality of the services available to the agency. Thus, stated again, the public is not well served.

We believe the process of competitive selection for Architect/ Engineer firms in the State of Alaska makes even more sense than the same considerations in any of the other 49 states. As you are all aware, our state has more unique and diverse needs than any of the other 49. Alaska has many varied climatological zones and sensitive environmental factors that must be considered during the design of any project. The environmental problems are further complicated by the problems of code and regulation compliance, budget constraints, committee hearings, committee review, agency reviews, maintenance considerations, operational costs, maintenance complexities, and in many of the bush areas--a lack of qualified maintenance personnel. In order for these problems to be met effectively, the only rational method from which to make a selection of an A/E firm is by addressing the qualifications of the responding firms and selecting the highest ranked firm on the basis of those qualifications. Only then, based on the quality and experience of the selected A/E firm, can the project design objective be effectively met and the public resources most effectively protected.

We believe House Bill 211 provides for those measures and protection, insuring that the public need, through the use of competitive selection, will be most successfully met. I urge your positive consideration of House Bill 211.

Respectfully Submitted,

Walter E. Steige, P.E.
C.E.C.A. President

WES/rw

SUBSTITUTE HOUSE BILL NO. 176

State of Washington
47th Legislature
1981 Regular Session

by Committee on State Government (originally sponsored by Representatives Nelson (G), King (R), McGinnis, Greengo, Ehlers, Erickson, Walk, Addison, Hine)

Read first time March 10, 1981, and passed to Rules for second reading.
April 16, 1981: Passed as amended by the Senate.

AN ACT Relating to public contracts; adding a new chapter to Title 39 RCW; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. The legislature hereby establishes a state policy, to the extent provided in this chapter, that governmental agencies publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "State agency" means any department, agency, commission, bureau, office, or any other entity or authority of the state government.

(2) "Local agency" means any city and any town, county, special district, municipal corporation, agency, port district or authority, or political subdivision of any type, or any other entity or authority of local government in corporate form or otherwise.

(3) "Special district" means a local unit of government other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, and including but not limited to, water districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, sewer districts, transportation

IN THE LEGISLATURE
of the
STATE OF WASHINGTON

CERTIFICATION OF ENROLLED ENACTMENT

SUBSTITUTE HOUSE BILL NO. 176

CHAPTER NO.

Passed the House March 24, 1981
Yeas 96 Nays 0

Passed the Senate April 14, 1981
as amended
Yeas 31 Nays 18

4-16-81

The House concurred in the Senate amendment and passed the bill as amended by the Senate.

Yeas 83 Nays 13

CERTIFICATION

I, Vun T. Chierhi, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is enrolled Substitute House Bill No. 176 as passed by the House of Representatives and the Senate on the dates hereon set forth.

Vun T. Chierhi Chief Clerk

cts, and metropolitan municipal corporations organized chapter 35.58 RCW.

(4) "Agency" means both state and local agencies and l districts as defined in subsection (1), (2), and (3) of ection.

(5) "Architectural and engineering services" or ssional services" means professional services rendered by rson, other than as an employee of the agency, contracting form activities within the scope of the general definition fessional practice in chapters 18.08, 18.43, or 18.96 RCW.

(6) "Person" means any individual, organization, group, ation, partnership, firm, joint venture, corporation, or mbination thereof.

(7) "Consultant" means any person providing professional es who is not an employee of the agency for which the es are provided.

(8) "Application" means a completed statement of fications together with a request to be considered for the of one or more contracts for professional services.

NEW SECTION. Sec. 3. Each agency shall publish in e that agency's requirement for professional services. nnouncement shall state concisely the general scope and of the project or work for which the services are ed and the address of a representative of the agency who provide further details. An agency may comply with this n by: (1) Publishing an announcement on each occasion professional services provided by a consultant are required e agency; or (2) announcing generally to the public its ted requirements for any category or type of professional ces.

NEW SECTION. Sec. 4. In the procurement of tectural and engineering services, the agency shall rage firms engaged in the lawful practice of their ssion to submit annually a statement of qualifications and rmance data. The agency shall evaluate current statements

of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, based upon criteria established by the agency, the firm deemed to be the most highly qualified to provide the services required for the proposed project. Such agency procedures and guidelines shall include a plan to insure that minority and women-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The level of participation by minority and women-owned firms shall be consistent with their general availability within the professional communities involved.

NEW SECTION. Sec. 5. (1) The agency shall negotiate a contract with the most qualified firm for architectural and engineering services at a price which the agency determines is fair and reasonable to the agency. In making its determination, the agency shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the agency shall select other firms in accordance with section 4 of this act and continue in accordance with this section until an agreement is reached or the process is terminated.

NEW SECTION. Sec. 6. (1) This chapter need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.

(2) Nothing in this chapter shall relieve the

contracting authority from complying with applicable law limiting emergency expenditures.

NEW SECTION. Sec. 7. Nothing in this chapter shall affect the validity or effect of any contract in existence on the effective date of this 1981 act.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 9. This act shall take effect on January 1, 1982.

NEW SECTION. Sec. 10. Sections 1 through 8 of this act shall constitute a new chapter in Title 39 RCW.

Passed the House April 16, 1981.

William L. Belk
Speaker of the House.

Passed the Senate April 14, 1981.

John A. Cherberg
President of the Senate.

AELC
ARCHITECTS & ENGINEERS
LEGISLATIVE COUNCIL
P.O. BOX 12248 • SEATTLE, WA 98112
(206) 324-4444

SB 2303 and HB 1214:
ARCHITECTS & ENGINEERS PROFESSIONAL SERVICES PROCUREMENT

Architectural and Engineering Services should only be obtained through a selection process that ascertains the qualification and capability to design public works projects. Fair and reasonable fees should be established by negotiation after selection and discussion of scope of work. It is not in the best interest of the public to obtain these services by priced proposals or competitive bidding.

THE PROCUREMENT OF PROFESSIONAL SERVICES provided by members of the learned professions has traditionally been considered apart from technicians and tradespeople who are often loosely grouped under professions to define a vocation for the purpose of business taxes or licenses.

A LEARNED PROFESSION is one requiring specialized knowledge and long and intensive academic preparation prior to employment in the particular professional field. To practice as an individual one must be licensed through written examination, reviewed by peers and must have a minimum background of experience under the direction of qualified practitioners. Consequently, members of these professions exercise judgments and make decisions only after thorough assessment, analysis, calculation, research and investigation of the problem. Architects and engineers are learned professionals whose role is that of the problem-solver for public works projects.

THE SELECTION OF PROFESSIONALS HISTORICALLY has been conducted through a process based upon qualifications whether they be Doctors, Lawyers, Architects or Engineers; however, an insidious ingredient entered the procurement of A & E's--kick backs, payoffs, finder's fees and so on. This reached the ultimate when exposure of such activities in the State of Maryland implicated Vice President Agnew. The practice was recognized as widespread along the eastern seaboard, into the large metropolitan areas of the midwest and even surfaced in the City of Seattle with eventual indictment and conviction of its City Engineer in 1978. In a sense it was the "buying-a-job technique." Who cannot but remember, oft-quoted remarks not too many years ago, that any problem with the Government could be resolved by paying the Judge. Several well-meaning public entities, particularly the State of Maryland, have attempted to resolve the problem through competitive bidding. This practice has proved ill-advised because it eliminated

an adequate determination of qualifications and has resulted in project delays of several years. Total project costs increased 25 to 30% or nearly four times the total professional fee. Yes, they did save on the professional fee--but who was the loser?

THE PUBLIC IS THE LOSER WHEN PRICE COMPETITION IS THE DETERMINANT IN A SELECTION PROCESS. For one thing, the quality and quantity of services requred to satisfy functional needs of the project or agency cannot be precisely defined. A contracting authority, a corporation purchasing agent or an individual owner cannot, without prior discussions of the scope of work with an experienced architect or engineer, establish in detail the number of man-months of effort that the professional must expend to achieve the required results. A price submitted prior to having such discussions cannot be an adequate measure of value.

COMPETITIVE BIDDING FOR PROFESSIONAL SERVICES DOES NOT PROVIDE CONSUMER SAFEGUARDS; rather it encourages poor use of public funds since the importance of "value received" is subjugated to "money spent." There is still the problem of specifying the quality and intent of services to be rendered.

Many of the principal U.S. Federal Agencies, the World Bank, various Washington State Departments, major Washington Cities and Counties and other agencies have learned to use the professional negotiation approach. In this method, three or more architectural or engineering firms are ranked on the basis of qualifications that have been reviewed in written form and by oral interviews. Negotiations are commenced with the firm receiving the highest ranking and is consummated when complete understanding of the scope of services is achieved and an equitable fee is agreed upon. Should it become impossible to consummate satisfactory negotiations with the first choice, negotiations would commence with the second choice in the same manner and if that proves unsuccessful, the same process is conducted with #3 and so on. This method was enacted into law for all Federal civilian agency projects under the sponsorship of Rep. Brooks of Texas and is known nationally as the "Brooks Act" for the selection of architects and engineers. Considerable credit for passage through the Senate is accorded to both Senators Magnuson and Jackson. The Department of Defense had adopted and used these same procedures prior to the Brooks Act and continue to do so.

THE LEGISLATION INTRODUCED IN THIS SESSION of our State Legislature as SB 2303 and HB 1214 is patterned to a large extent upon the "Brooks Act" except that more latitude is provided to assist smaller political entities. Announcements of design service needs may be made on an annual basis or for each project, the selection method can vary with each agency as long as:

(1) Selection is based upon qualifications to provide the services, and

(2) Fair and reasonable fees are established through negotiation.

It is through this approach that the opportunity for collusion and misuse of public funds is reduced. The legislation presented contains punitive measures for consultants and public officials, should discovery occur, regarding bribery or contingent fees as a means to obtain the commission.

GREATER OPPORTUNITY FOR SELECTION IS PROVIDED TO THE SMALLER PROFESSIONAL FIRMS AND MINORITY FIRMS since all capital expenditure programs and rules for selection will be published. Qualifications and capability to perform the services will be the only basis of selection.

THE PUBLIC DESERVES THE BEST THAT THE PROFESSIONS HAVE TO OFFER AT FAIR AND REASONABLE FEES. SB 2303 and HB 1214 AFFORDS THE GREATEST ASSURANCE FOR THIS POTENTIAL.

ATTACHMENT 1

AMERICAN INSTITUTE OF ARCHITECTS
McCleary Mansion, Suite 6
111 - 21st Avenue S.W.
Olympia, WA 98501

The Model Procurement Code for State and Local Governments

Note: Excepts related to A & E consulting services only.

FEBRUARY 1979

The suggested statutory provisions and Code Commentary contained in this draft were approved by the American Bar Association on February 13, 1979. This material should not be considered as legislative history of any statute or regulation which may become law in any jurisdiction.

 ABA

Part E—Architect-Engineer Services

§5-501 Architect-Engineer Services.

(1) *Applicability.* Architect-engineer services shall be procured as provided in this Section except as authorized by Section 3-204 (Small Purchases), Section 3-205 (Sole Source Procurement), and Section 3-206 (Emergency Procurements).

(2) *Policy.* It is the policy of this [State] to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(3) *Architect-Engineer Selection Committee.* In the procurement of architectural and engineering services, the Chief Procurement Officer or the head of a Purchasing Agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. [The Chief Procurement Officer or the head of a Purchasing Agency, the Procurement Officer, and [the State Architect]] shall comprise the Architect-Engineer Selection Committee for each architect-engineer services contract over [$_____]. The Selection Committee for architect-engineer services contracts under this amount shall be established in accordance with regulations promulgated by the Policy Office. The Selection Committee shall evaluate current statements of qualifications and performance data on file with the [State], together with those that may be submitted by other firms regarding the proposed contract. The Selection Committee shall conduct discussions with no less than three firms regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and published by the Selection Committee, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(4) *Negotiation.* The Procurement Officer shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the Procurement Officer determines in writing to be fair and reasonable to the [State]. In making this decision, the Procurement Officer shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Procurement Officer be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the Procurement Officer determines to be fair and reasonable to the [State], negotiations with that firm shall be formally terminated. The Procurement Officer shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Procurement Officer shall formally terminate negotiations. The Procurement Officer shall then undertake negotiations with the third most qualified firm. Should the Procurement Officer be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the Procurement Officer shall select additional firms in order of their competence and qualifications, and the Procurement Officer shall continue negotiations in accordance with this Section until an agreement is reached.

COMMENTARY:

(1) This Section applies to procurement of all services within the scope of architecture, professional engineering, or registered land surveying as defined by the laws of the State whether or not construction is involved.

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following order
merits of offer

(2) The principal reasons supporting this selection procedure for architect-engineer services are the lack of a definitive scope of work for such services at the time the selection is made and the importance of selecting the best qualified firm. In general, the architect-engineer is engaged to represent the [State's] interests and is, therefore, in a different relationship with the [State] from that normally existing in a buyer-seller situation. For these reasons, the qualifications, competence, and availability of the three most qualified architect-engineer firms is considered inititally, and price negotiated later.

(3) It is considered more desirable to make the qualification selection first and then to discuss the price because both parties need to review in detail what is involved in the work (for example, estimates of man-hours, personnel costs, and alternatives that the architect-engineer should consider in depth). Once parameters have been fully discussed and understood and the architect-engineer proposes a fee for the work, the recommended procedure requires the [State] to make its own evaluation and judgment as to the reasonableness of the fee.

(4) If the fee is fair and reasonable, award is made without consideration of proposals and fees of other competing firms. If the fee cannot be negotiated to the satisfaction of the [State], negotiations with other qualified firms are initiated. Thus price clearly is an important factor in the award of the architect-engineer contract under this procedure. The principal difference between the recommended procedure for architect-engineer selection and the procedures used in most other competitive source selections is the point at which price is considered.

(5) If an enacting jurisdiction desires to use a different selection process, then it may consider the following language:

> **"The Procurement Officer shall negotiate with the highest qualified firms for a contract for architectural and engineering services at compensation which the Procurement Officer determines in writing to be fair and reasonable to the [State]. In making such determination, the Procurement Officer shall take into account, in the following order of importance, the professional competence of offerors, the technical merits of offers, and the price for which the services are to be rendered."**

FEDERAL SELECTION LAW
(Brooks Act)

PUBLIC LAW 92-582; 92ND CONGRESS, H. R. 12807; OCTOBER 27, 1972

AN ACT

To amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled That the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended by adding at the end thereof the following new title:[1]

"TITLE IX—SELECTION OF ARCHITECTS AND ENGINEERS

"*Definitions*

"Sec. 901. As used in this title—

"(1) The term 'firm' means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

"(2) The term 'agency head' means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

"(3) The term 'architectural and engineering services' includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.[2]

"*Policy*

"Sec. 902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

Announcement

"*Requests for data on architectural and engineering services*

"Sec. 903. In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

Evaluation

"*Negotiation of contracts for architectural and engineering services*

"Sec. 904. (a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

"(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

"(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached."[3]

Approved October 27, 1972.

Negotiation

Award

1 Architects and engineers, Federal selection policy, establishment: 63 Stat. 377; 82 Stat. 1104

2 86 Stat. 1278

3 86 Stat. 1279

LEGISLATIVE HISTORY

HOUSE REPORT No. 92-1188 (Comm. on Government Operations).

SENATE REPORT No. 92-1219 (Comm. on Government Operations).

CONGRESSIONAL RECORD, Vol. 118 (1972): July 26, considered and passed House. Oct. 11, considered and passed Senate.

Note: States may appear in more than one category. Prohibition of or exemption from competitive bidding requirements for procurement in general may be provided in general statutes for A/E services. A specific procedure for selection of A/E services may be spelled out in another law.

States which prohibit competitive bidding for A/E services in Law:

Tennessee

Texas

States which exempt A/E services from general bidding requirements:

California
District of Columbia
Hawaii
Illinois
Kentucky
Mississippi-by attorney general's ruling
New Jersey
New York-by state comptroller's opinion
Ohio
Oklahoma
Pennsylvania
Wyoming

States calling for selection based on qualification: (with procedure requiring ranking of firms, negotiation on scope of project and fee with the top firm. If no contract can be reached, negotiations are terminated and taken up with the second ranked firm. Same procedure required for third ranked firm (and lower ranked firms if required by law) if no agreement can be reached with the second.

California	(1973)	Minnesota	(1975)
Connecticut	(1979)	Nebraska	(1978)
Colorado	(1979)	New Hampshire	(1973)
Delaware	(1976)	New York State	(1980)
Florida	(1973)	Oklahoma	(1974)
Kansas As and Es	(1977)	Pennsylvania-building construction offices	(1975)
Kentucky	(1978)	South Carolina	(1981)
Louisiana	(1975)	Texas	(1971)
Maine	(1979)	Utah	(1980)
Massachusetts	(1975)	Virginia	(1980)
		Washington	(1981)

States prohibiting competitive bidding under registration law rules, regulations, standards of conduct: (Source: NCARB study revised June 13, 1975. Whether rules are promulgated for architectural board alone, joint board or occupational board is noted).

Arkansas - A
Connecticut - A
Florida - A
Hawaii - A/PE/S
Idaho - Occup. Licensing
Kentucky - A
Louisiana - Occup. Standards
Montana - A
North Carolina - A
North Dakota - A
Oklahoma - A
South Carolina - A
South Dakota - A/E
Tennessee - A/E
Vermont - A
Wisconsin - A/E
Pennsylvania - A/E/LS

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

R. CHARLES AVARA
37TH DISTRICT
BALTIMORE CITY
COMMITTEES:
VICE-CHAIRMAN, APPROPRIATIONS
CHAIRMAN, JOINT SUB-COMMITTEE
CAPITAL PROJECTS

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August 19, 1982

Mr. John P. O'Connor
Engineering Editor
American City & County Magazine

Dear Mr. O'Connor:

As discussed with a representative of the American Consulting Engineers Council, I am enclosing another view of the Maryland Professional Procurement System. This was prompted by the latest Zemansky article of May 1982, entitled Separate Myth from Fact.

By way of background, I represent Baltimore City in the Maryland General Assembly, assigned to the Capital Projects Committee for sixteen (16) years, twelve (12) years as chairman. I have served for the past six (6) years in dual capacity as Vice Chairman Appropriations Committee.

Sincerely,

R. C. Avara

R. Charles Avara

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

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AMERICAN CITY & COUNTY MAGAZINE

Article on A/E Procurement Procedures

As a public elected official I must be concerned with the wise expenditure of taxpayer money, best use of government personnel, and assurance that we develop the best and most cost effective capital works projects. All of these objectives are realized in the procurement of engineering and architectural services, when that procurement process is one which ensures that firms are selected first on the basis of their qualifications..

Yet, the debate continues over the best means of procuring A/E services. Maryland, which I serve as an elected State representative, is the only state in the country which requires A/Es competing for public jobs to submit priced proposals. Because of that requirement I have been long involved in discussions with public procurement officials, private sector engineers and architects and other legislators on this issue. We have made some progress toward educating other officials and the public that what appears to be the simplest solution may not always be the best.

The State of Maryland adopted a bidding requirement subsequent to the procurement scandals that ultimately resulted in the resignation of Spiro T. Agnew as Vice President of the United States. While reforms were clearly needed

- more -

in the State selection process, many legislators still do not believe that bidding is a defense against corruption. The widespread announcement of public project and openness now associated with the Maryland system could just as easily be a vital part of a negotiated procedure.

Competitive negotiations were adopted by all federal agencies, including the military, with the passage of the P.L. 92-582 in 1972. Twenty-nine states also have statutes which recognize the value of A/E selection based on competence with competitive negotiation for a fair and reasonable fee. Of these, twenty have enacted a law detailing a qualifications selection procedure similar to the federal system and nineteen have exempted or prohibited A/Es from bidding. (Ten states have enacted both.) Maryland stands alone with a bidding procedure.

Competitive negotiation requires that firms first submit their qualifications to perform work on a project, after which three or more are ranked and negotiations take place with the number one ranked firm. At that negotiation stage a fair and reasonable price is established. If the agency and the firm cannot agree on the price, negotiations are ended with the first and undertaken with the second firm. If a design contract price cannot be agreed to by the client and the second ranked design professional, negotiations are ended and undertaken with the third ranked firm.

What the public agency client is buying is the design ideas of the engineer and architect -- and each design team will give the client a <u>different</u> facility. The difference is measurable against the experience and innovation of the individual competitors -- in short, their qualifications.

Maryland's bidding requirement has not served the best interests of the

State. In fact, a recent survey among consulting engineering firms showed that 90 percent of Maryland's engineering firms do not seek work from the State and that more than 80 percent who sought State work before no longer do so.

The slim chances of success do not justify the costly ($2,300 to $15,000) preparation of proposals and two out of three projects result in no profit, or more usually a financial loss according to the study. While this may be of little personal concern to the public, or even to the public agency client, it is of crucial importance to those small private sector firms whose staff is paid and whose doors stay open -- or close -- according to a reasonable income.

Disturbing also were comments by firms responding to the survey, who said they believe that competitive price bidding encourages them to submit proposals that are void of innovation and to cut corners by meeting minimal standards in an effort to keep fees low. The creativity of our small design firms is an important resource to be fostered in an encouraging competitive climate -- not a marketplace which fosters perfunctory and shop worn design approaches.

These findings recently were corroborated in two extensive independent studies of A/E services procurement. The American Bar Association's Public contract Law Section for the Office of Federal Procurement Policy reaffirmed the findings of the three-year study that resulted in the ABA Model Procurement Code for State and local governments.

The National Academy of Sciences Committee on Procurement Policy concluded after a year of study, which included the Maryland system, that "in the Committee's opinion no problems of major importance were found and certainly no problems that would justify a significant modification of the (competitive negotiation) law".

Inherent in A/E services, and not generally for other types of services, is the extent to which quality can affect the ultimate efficiency, effectiveness and economy of a facility or structure.

Consider the cost of the design portion of a project, compared to the overall project cost. A report by the U.S. General Accounting Office states that "design costs represent a very small proportion, probably less than one percent, of the costs that will be incurred over the life of a building. Decisions made during the expenditure of this less-than-one-percent determine and freeze nearly all costs that follow".

A/E services are unique and we cannot expect them to conform to bidding specifications which serve so well for the procurement of other goods and most services. The A/E is expected to be a member of the State's team, to assess alternatives, design a facility or structure to satisfy the State's need at the lowest project cost, oversee the construction and assist the State in prosecuting claims that may arise out of the construction project. The relationship is different from the ordinary buyer/seller relationship. In many respects the A/E acts as the State or city's agent, and they have great value in their ability to protect the State's interest.

In order to fairly assess a competitive bid, public agency officials must be certain that all design professional firms are pricing the same project. In the case of engineering services this is difficult, if not impossible to assure. The work scope simply cannot be accurately defined to that extent prior to engagement of an engineering firm.

The Maryland experience proves this point graphically. Studies have shown

huge variations, some over 400%, between the high and low bidder on the same project. For example, price proposals on 125 A/E projects by the Department of General Services over the past five years resulted in 0-25% variations between the high and low bidder on 15 projects; 26-50% variations on 29 projects; 50-100% variations on 47 projects; 101-200% variations on 30 projects; and 201-400% variations on 4 projects.

It is incumbent upon us as public officials to understand and recognize the nature of the services we are seeking in design professionals. Engineering is a learned profession. Whether it is practiced by an individual or a team of individuals, creative talents are applied to solving a problem. How can we expect bids on the execution of an idea that is still being conceived, such as bridging a river to handle 25,000 cars per day? Should there be a culvert, timber pilings, concrete pilings, no pilings? Should there be two lanes or four lanes, a sidewalk to allow fishing or a bike travelway or both? Public works staffs, working in consultation with various public groups and in concert with private practice engineers, are able to analyze a myraid of alternatives and suggest approaches that address the problems of safety, permanence, beauty, maintenance and a host of other factors.

The traditional selection process permits this essential professional relationship between the client and the engineer or architect. The largest single misconception I hear from colleagues is that price is not a factor when the competitive negotiation process is utilized. It most definitely is. By the time procurement officials or selection boards arrive at the negotiating table with the number one ranked firm both have a grasp of the project scope and the budget which the city, county or state, has determined to be within reason. At the same time, the firm has examined

its approach to meeting the requirements of the job and the compensation necessary to do so effectively. If the fee suggested by the firm is not in line with the agency's budget, the next step is to evaluate the cause and significance of the disparity.

Often the firms will suggest alternatives in approaches which will more effectively accommodate the agency budget estimate. But if the firm feels it is not in the agency's best interest to reduce the design effort, it will explain its rationale leaving the consideration of the alternative up to the public works staff or selection board.

Further, since the procedure also calls for selecting at least three qualified competitors, the firm with whom the agency first negotiates knows the agency can walk away if the fee proposal is not fair and reasonable. Additionally the agency can and should require the selected A/E to submit a cost breakdown of its proposed fee, and audit the fee proposal against the agency's established cost principals. These steps provide a means for negotiating a fee that is fair and reasonable for the defined services. In contracting for A/E services this should be the primary objective -- not the lowest price.

One of the many people who have encouraged a change in the Maryland system of procurement of A/E services is O. S. Hiestand, a Maryland attorney and former general counsel to the federal government commission on federal procurement as well as a member of the American Bar Association Coordinating Committee to develop a Model Procurement Code. That ABA Code did recommend selection procedure based on a qualifications method for design professional services. Mr. Hiestand has made many persuasive arguments in favor of reforming the Maryland system, and one

in particular is important to note.

He says, "A public procurement policy is most effective -- both in quality and cost -- when it utilizes the competitive forces of an existing marketplace. This enables the State to achieve the maximum competition and provides a yardstick to measure its costs. Adopting artificial market conditions reduces competition and the ability to make an objective assessment of reasonable costs. Public procurement of A/E services is probably less than 5 percent of the total A/E services market. If 95 percent of A/E procurement does not utilize price in the initial selection, requiring priced proposals in public A/E procurement is clearly out of step with the normal marketplace for A/E services."

Most of the benefits of A/E services have to be measured against final construction, maintenance, and operating costs of a facility or structure. Costs that are not clearly determined until after the A/E services have been completed. Injecting price in an initial selection may lower the A/E fee sometimes, but it will also most likely lower the quality of the final product. Such price competition can inhibit the ability of the A/E to provide full cost saving services due to inadequate compensation for innovative and thorough work. It may even cause more talented A/E firms not to offer their services -- thus lowering the overall quality of A/E services available to the State or other public sectors.

Price competition has its place in public procurement, and when acquiring goods and commercial services is a fair method for assuring that the state buys what it wants at the lowest costs. However, price competition should not be injected, or relied upon, when it can adversely affect selection in situations where quality should be the controlling consideration initially. In the initial selection of an

A/E project, quality should be the primary consideration for the taxpaying public. When that criterion is met, the state's interests are best served by utilizing the best qualified firm (for the type and complexity of the services needed) if the amount of compensation is fair and reasonable. This is sound public policy and one which I am working to see implemented in Maryland.

###

Sec. 36.98.010. APPLICATION OF CHAPTER.
This chapter applies to contracts for professional services provided to a state agency unless

(1) the total amount of the contract does not exceed $25,000;

(2) the contract is an employment contract for services to be performed under direct supervision regardless of the existence of an employer-employee relationship and a written justification signed by the person responsible for awarding the contract is filed with the commissioner;

(3) the contract is awarded based on competitive bids obtained under the procedure provided in AS 37.05.230. HISTORY (Sec. 5 ch 144 SLA 1982)

Sec. 36.98.020. PROFESSIONAL SERVICES CONTRACTORS REGISTER.

(a) The commissioner shall establish and maintain a professional services contractors register.

(b) A person or firm that desires to provide professional services to a state agency may submit to the commissioner a statement of qualifications and performance data, and any other information that the commissioner, by regulation, may require.

(c) The commissioner may at any time require the person or firm to revise the statement of qualifications and performance data or any other information submitted by the person or firm if the commissioner believes that the credentials or record of experience of the person have materially changed since the last filing by the person or firm. HISTORY (Sec. 5 ch 144 SLA 1982)

Sec. 36.98.030. SOLICITATION OF PROPOSALS.

(a) When a state agency proposes to enter into a contract for professional services, the agency shall give public notice soliciting proposals for the professional services contract by publication at least three times in one or more newspapers in general circulation in the state and, when appropriate, in a newspaper in local circulation where the work is to be performed. The first notice shall be published not less than 30 days before the date on which the agency expects to enter into the contract and each subsequent notice shall be published at intervals of no more than three days thereafter. The notice shall include

(1) a general description of the proposed project for which the agency is seeking professional services; and

(2) the procedure by which a person or firm interested in the professional services contract may make its proposal to the agency for consideration for the contract.

(b) In addition to complying with the publication requirements of (a) of this section, when a state agency proposes to enter into a contract for professional services it shall

(1) review the register of professional services contractors maintained by the commissioner under AS 36.98.020; and

(2) provide a request for proposals for the proposed professional services contract to each prospective contractor who, after review of the register of professional services contractors under (1) of this subsection, the agency finds is qualified for consideration for the contract.

(c) A request for proposals must be extended to a sufficient number of prospective providers of the required services to assure that public interest in competition is adequately served. Proposals from at least six persons or firms with the required expertise shall be solicited for contracts equal to or greater than $100,000. Proposals from at least three persons or firms with the required expertise shall be solicited for contracts of less than $100,000 if the expertise required is available. If the expertise required is not available to enable an agency to solicit the number of proposals otherwise required under this subsection, the agency shall solicit proposals

(1) from each person or firm listed on the professional services contractors register maintained under AS 36.98.020 who appears to possess the required expertise;

(2) from each person or firm responding to the public notice given under (a) of this section who appears to possess the required expertise.

(d) The provisions of this section do not apply if

(1) the contracting agency demonstrates that there is a single source of the expertise or knowledge required or that one person or firm can clearly perform the required tasks more satisfactorily because of the person's or firm's prior work; however, this exemption applies only if the head of the state agency has submitted a written request to the commissioner that details the reasons for the exemption and the commissioner or deputy commissioner has authorized in writing the state agency to enter contract negotiations with the single source;

(2) the commissioner makes a written determination that public necessity will not permit delay incident to the procedures otherwise required by this chapter; or

(3) the service is to be provided by another state agency, a federal agency, or a political subdivision of the state.

(e) A request for proposals must contain a description of the work to be performed under the contract and the terms under which the work is to be performed. A request for proposals must contain that information necessary for a prospective contractor to submit a response or contain references to any information that cannot reasonably be included with the request. The request for proposals must provide a description of the factors that will be considered by the state agency when it evaluates the proposals received.

(f) Nothing in this section limits the authority of an agency to use additional means that it may consider appropriate to notify prospective contractors that it proposes to enter into a contract for professional services.

HISTORY (Sec. 5 ch 144 SLA 1982)

Sec. 36.98.035. STANDARD OVERHEAD RATE.

(a) If a state agency has established a standard overhead rate applicable to contracts for services from the state agency, the standard overhead rate shall be included in a proposal for a contract submitted under AS 36.98.030(a).

(b) As used in this section, "standard overhead rate" means a charge established for services from a state agency that is designed to compensate the state agency for administration and support services incidentally provided with the professional services. (AS 36.98.030(g), (h); sec. 5 ch 144 SLA 1982)

Sec. 36.98.040. EVALUATION OF PROPOSALS AND AWARD OF CONTRACT.

(a) After the responses are submitted, the state agency shall evaluate them. The evaluation shall consist of assigning point values to factors considered by the agency in evaluating each proposal. Each proposal received must be evaluated using the same factors as those set out in the request for proposal.

(b) The contract shall be executed by the contractor and the project director for the contracting agency and be approved by the head of the contracting agency or the designee of the head of the contracting agency. If a contract is made by a board or commission, execution of the contract on behalf of the board or commission shall be authorized by the board or commission.

(c) a contract subject to this chapter shall be submitted to the commissioner for review and approval and, if approved, is effective from the date of the approval. A state agency must clearly provide in the request for proposal that the state is not obligated to perform under the contract until the approval required by this subsection is granted.

(d) A contract award under this chapter shall contain:

(1) the amount of the contract stated on its first page;

(2) the date for the work to begin;

(3) the date by which the work must be completed;

(4) a description of the services to be performed under the contract; and

(5) a certificate by the project director for the contracting agency, the head of the contracting agency, or his designee that sufficient funds are available in an appropriation to be encumbered for the amount of the contract.

HISTORY (Sec. 5 ch 144 SLA 1982)

Sec. 36.98.045. REVIEW AND APPROVAL BY DEPARTMENT OF LAW.

If a contract contains terms that are not provided in a state standard form contract or if the standard terms are deleted or modified by other terms that are not standard, the contract must be reviewed by the Department of Law and approved as to form. The review and approval required by this section must be completed before approval of the award of the contract by the commissioner under AS 36.98.040(c).

HISTORY (AS 36.98.040(e); sec. 5 ch 144 SLA 1982)

Sec. 36.98.050. CONTRACT ADMINISTRATION.

(a) When a state agency has entered into a professional services contract, that agency is responsible for the diligent administration and monitoring of the performance of the provisions of the contract.

(b) When a professional services contract is completed, the contracting state agency shall evaluate the performance of the contractor under the contract and shall report on and evaluate the use of the final product of the contract. A copy of the report and evaluation prepared under this subsection shall be transmitted to the commissioner and shall be retained by the commissioner for as long as the commissioner is required to maintain copies of completed contracts.

HISTORY (Sec. 5 ch 144 SLA 1982)

Sec. 36.98.060. FILING OF PROPOSAL AND CONTRACT.

A copy of each contract and the response to the request for proposal upon which the contract was awarded must be filed with both the

commissioner and the contracting state agency and is open for public inspection. The request for proposal and the name and address of each person who submitted a response to it must also accompany the filed copies.
HISTORY (Sec. 5 ch 144 SLA 1982)

Sec. 36.98.070. REGULATIONS GOVERNING CONTRACT PROCEDURES.
The commissioner shall, by regulation adopted in accordance with the Administrative Procedure Act (AS 44.62), establish the manner and form by which state professional services contracts shall be prepared and processed, including, but not limited to, a review process for persons aggrieved under this chapter.
HISTORY (Sec. 5 ch 144 SLA 1982)

Sec. 36.98.080. DEFINITIONS.
In this chapter
(1) "commissioner" means the commissioner of administration; except that for contracts entered into by the Department of Transportation and Public Facilities, "commissioner" means the commissioner of transportation and public facilities;
(2) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character and that
(A) include analysis, evaluation, prediction, planning, or recommendation; and
(B) result in the production of a report or the completion of a task;
(3) "public necessity" means an urgent public need that could not have been anticipated or foreseen; the term also includes emergency situations when work is necessary to protect life or property;
(4) "request for proposals" means a written solicitation for contract proposals by prospective contractors that sets out the nature of the services to be performed or product to be secured with sufficient information for a qualified prospective contractor to prepare a contract proposal for consideration and evaluation by the state agency;
(5) "state agency" means a department, institution, board, commission, division, authority, or other administrative unit of the executive branch of state government, and the University of Alaska.
HISTORY (Sec. 5 ch 144 SLA 1982)

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, PROFESSIONAL ENGINEERS, AND LAND SURVEYORS, Defendant.	Civil No. A82-423 CIV Filed: 10/12/82 MOTION TO STAY PROCEEDINGS

The defendant Alaska Board of Registration for Architects, Professional Engineers, and Land Surveyors ("the Board") hereby moves that all proceedings in this case be stayed temporarily in order to permit a legislative resolution of the controversy involved herein, making litigation of this case unnecessary. To this end, the Board moves that proceedings be stayed until May 31, 1983, or

until such earlier time as the current session of the Alaska legislature enacts or rejects legislation that would insulate the conduct challenged herein from antitrust attack.

The grounds upon which this Motion is based, as set out in more detail in the attached Memorandum of Points and Authorities, are as follows:

The new Attorney General of the State of Alaska has determined that the most efficient way to resolve this dispute is through enactment of state legislation that would definitively establish a "state action" defense to the complaint herein, pursuant to the principles of Parker v. Brown, 317 U.S. 341 (1943), and subsequent cases. Accordingly, such legislation will be introduced in the state legislature, on behalf of the Board, in the very near future.

Should legislation conclusively establishing a state-action defense be enacted, litigation of this matter will be unnecessary. Thus, the order requested by the Board would avoid potentially unnecessary expenditure of resources by the parties and the Court. Nor would proceedings be unreasonably delayed in the event that the legislature does not enact the proposed legislation, since (a) the stay is for a limited period of time, and (b) the Board is prepared

to litigate the case on an expedited basis should the proposed legislation not be enacted.

Respectfully submitted,

DATED:
January 28, 1983

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND SURVEYORS, Defendant.	Civil No. A82-423 CIV Filed: 10/12/82 ANSWER OF DEFENDANT ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS

For answer to the complaint filed by the United States, defendant Alaska Board of Registration for Architects, Engineers, and Land Surveyors ("the Board") responds as follows:

I. JURISDICTION AND VENUE

1. Answering paragraph 1 of the complaint, the Board admits that the complaint is filed under 15 U.S.C. § 4.

Except as expressly admitted, the Board denies each and every allegation of that paragraph.

2. Answering paragraph 2 of the complaint, the Board admits the allegations of that paragraph.

II. DEFENDANT

3. Answering paragraph 3 of the complaint, the Board admits the allegations of that paragraph.

III. CO-CONSPIRATORS

4. Answering paragraph 4 of the complaint, the Board denies the allegations of that paragraph.

IV. TRADE AND COMMERCE

5. Answering paragraph 5 of the complaint, the Board admits the allegations of the first three sentences of that paragraph, except that it denies that there are approximately 2100 architects, professional engineers, and land surveyors licensed to practice in Alaska. The Board is informed and believes that there are approximately 3200 architects, professional engineers, and land surveyors licensed to practice in Alaska. The Board lacks knowledge or information sufficient to form a belief as to the

allegations of the last sentence of paragraph 5 of the complaint, and on that basis denies those allegations.

6. Answering paragraph 6 of the complaint, the Board admits the allegations of that paragraph.

7. Answering paragraph 7 of the complaint, the Board admits the allegations of that paragraph.

8. Answering paragraph 8 of the complaint, the Board admits the allegations of that paragraph.

9. Answering paragraph 9 of the complaint, the Board admits the allegations of the first two sentences and denies the remainder of that paragraph.

10. Answering paragraph 10 of the complaint, the Board admits the allegations of that paragraph.

11. Answering paragraph 11 of the complaint, the Board admits the allegations of that paragraph.

12. Answering paragraph 12 of the complaint, the Board admits the allegations of that paragraph.

13. Answering paragraph 13 of the complaint, the Board admits the allegations of that paragraph.

14. Answering paragraph 14 of the complaint, the Board admits the allegations of that paragraph.

15. Answering paragraph 15 of the complaint, the Board admits that the activities of the Board's certificate of registration holders are within the flow of interstate commerce and have a substantial effect on interstate commerce and that the activities of the Board have a substantial effect on interstate commerce. Except as expressly admitted, the Board denies the allegations of that paragraph.

V. VIOLATION ALLEGED

16. Answering paragraph 16 of the complaint, the Board denies the allegations of that paragraph.

17. Answering paragraph 17 of the complaint, the Board denies the allegations of that paragraph.

18. Answering paragraph 18 of the complaint, the Board denies the allegations of that paragraph.

VI. EFFECTS

19. Answering paragraph 19 of the complaint, the Board denies the allegations of that paragraph.

FIRST DEFENSE

The complaint fails to state a claim against the Board upon which relief can be granted.

SECOND DEFENSE

The complaint is barred by the "state action" doctrine of Parker v. Brown, 317 U.S. 341 (1943), and subsequent cases.

THIRD DEFENSE

The complaint is barred because the Board, as a governmental agency of the State of Alaska, may not be sued under the Sherman Act.

FOURTH DEFENSE

The complaint is barred by the Tenth Amendment to the United States Constitution and by the doctrine of National League of Cities v. Usery, 426 U.S. 833 (1976).

DISPOSITION

WHEREFORE, the Board prays for judgment as follows:

1. That the complaint be dismissed;

2. That the relief sought by the complaint be denied; and

3. That the Court grant the Board such relief as the Court shall deem just and proper.

Respectfully submitted,

Dated: November 22, 1982

Robert H. Loeffler
Alan K. Palmer
MORRISON & FOERSTER
1920 N Street, N.W.
Washington, D.C. 20036
(202) 887-1500

Wilson L. Condon
Attorney General

By: _____
Mark E. Ashburn
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Counsel for Defendant
Alaska Board of Registration
for Architects, Engineers,
and Land Surveyors

Of Counsel:
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MINUTES OF THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS & LAND SURVEY

THE HONORABLE JAMES A. VON DER HEYDT CASE NO. A82-423 Civ

Deputy Clerk		Reporter	
____	Jim Meyers	____	Dolores Runner
xx	Colleen Cannon	____	Janis Roller
____	Ida Romack	____	____
____	____		

APPEARANCES: PLAINTIFF:

DEFENDANT:

PROCEEDINGS: MINUTE ORDER FROM CHAMBERS:

Oral argument on defendant's motion to stay proceedings is denied in order to expedite the business of the court. See Local Rule 5(c)(1). Defendant's motion to stay proceedings (Docket #10) is granted. All proceedings in this case are stayed until May 31, 1983, or until such earlier time as the current session of the Alaska Legislature enacts or rejects legislation that would insulate the conduct challenged from anti-trust attack.

Plaintiff's motions to compel discovery (Docket #12) and for status conference (Docket #13) are denied without prejudice.

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cc: U. S. Attorney

Mark E. Ashburn &
Louise E. Ma

FILED
MAR 03 1983
PM

DATED February 24, 1983 INITIALS: _____
Deputy Clerk

NORMAN C. GORSUCH
ATTORNEY GENERAL

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Assistant Attorney General
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Attorney for Defendants

Telephone: 907-465-3600

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND LAND SURVEYORS, Defendants.	)	Civil No. A82-423 CIV.
	)	SUBSTITUTION OF COUNSEL

PLEASE TAKE NOTICE that under General Rule 3(F)(3) of the Rules of the U.S. District Court for the District of Alaska, Peter B. Froehlich, Assistant Attorney General, Department of Law, Pouch K, Capitol Building, Juneau, Alaska, 99811, phone: (907) 465-3600, hereby enters his substitution for Alan K. Palmer and Robert H. Loeffler of Morrison & Foerster as counsel of record in the above-captioned matter on behalf of defendant, Alaska Board of Registration for Architects, Engineers and Land

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ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
POUCH K, JUNEAU, ALASKA 99811
PHONE 465-3600

Surveyors.

Copies of all notices, motions and pleadings should be sent to the address referenced.

DATED: February 18, 1983 at Juneau, Alaska.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Peter B. Froehlich
Assistant Attorney General

ORDER

It is so ordered.

DATED: _____.

_____
James A. von der Heydt
Chief U.S. District Judge

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
POUCH K, JUNEAU, ALASKA 99811
PHONE 465-3600

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January 1983, copies of (1) the Motion to Stay Proceedings of defendant Alaska Board of Registration for Architects, Professional Engineers, and Land Surveyors, (2) defendant's Memcrandum of Points and Authorities in support thereof, and (3) defendant's proposed order were mailed, postage prepaid, to counsel of record listed on the attached service list.

Alan K. Palmer

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Counsel for Defendant
Alaska Board of Registration
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SERVICE LIST

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, PROFESSIONAL ENGINEERS, AND LAND SURVEYORS, Defendant.	Civil No. A 82-423 CIV. ORDER DENYING DEFENDANT'S MOTION TO STAY PROCEEDINGS

Upon consideration of Defendant's Motion to Stay Proceedings and Plaintiff's Memorandum In Opposition thereto, it is ORDERED:

That Defendant's Motion is DENIED.

Dated this _____ day of _____, 1983.

_____
James A. von der Heyat
Chief United States District Judge

CERTIFICATE OF SERVICE

I, Mark R. Davis, attorney for Plaintiff United States of America, hereby certify that a copy of the attached Plaintiff's Memorandum In Opposition To Defendant's Motion To Stay Proceedings has been served this 14th day of February, 1983 by hand upon Robert H. Loeffler, Esquire, attorney for Defendant, 1919 M Street, N.W. Washington, D.C. 20036.

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS, Defendant.	Civil No. A82-423 CIV PLAINTIFF'S MOTION FOR ORAL ARGUMENT ON DEFENDANT'S MOTION TO STAY PROCEEDINGS AND PLAINTIFF'S MOTION FOR A STATUS CONFERENCE

Pursuant to Local Rule 5(C)(1) of the District of Alaska, Plaintiff United States of America moves for oral argument on Defendant's Motion to Stay Proceedings. Plaintiff United States further moves for a status conference pursuant to Local Rule 9(b) of the District of Alaska. Plaintiff would suggest that, in order to minimize travel expense for out-of-state counsel, this conference be

held the day before or on the date oral argument is considered on Defendant's Motion to Stay Proceedings and Plaintiff's Motion For Order Compelling Discovery.

Respectfully submitted,

Dated: February 14, 1983

Edward D. Eliasberg, Jr.
EDWARD D. ELIASBERG, JR.

Mark R. Davis
MARK R. DAVIS

Carolyn L. Davis
CAROLYN L. DAVIS

Attorneys, United States
Department of Justice
10th & Pennsylvania Ave, NW
Washington, D.C. 20530
Telephone: (202) 633-2582

CERTIFICATE OF SERVICE

I, Carolyn L. Davis, attorney for Plaintiff United States of America, hereby certify that a copy of the attached Plaintiff's Motion For Oral Argument on Defendant's Motion to Stay Proceedings and Plaintiff's Motion for a Status Conference has been served this 14th day of February, 1983, by hand upon Robert H. Loeffler, Esquire, attorney for Defendant, 1920 N Street, NW, Washington, D.C. 20036.

Carolyn L. Davis

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS, Defendant.	Civil No. A82-423 CIV. PLAINTIFF'S MOTION FOR ORDER COMPELLING DISCOVERY

Pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, Plaintiff United States of America moves for an order compelling Defendant to answer Plaintiff's Interrogatories and to respond to Plaintiff's Document Request

within 15 days of the date of the Court's order.

The grounds upon which this motion is based are set forth in the attached Memorandum In Support.

Respectfully submitted,

Dated: February 14, 1983

EDWARD D. ELIASBERG, JR.

MARK R. DAVIS

CAROLYN L. DAVIS

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS, Defendant.	Civil No. A82-423 CIV MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER COMPELLING DISCOVERY UNDER RULE 37(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Defendant, in spite of the fact that it has been given two extentions of time do so, has defaulted on its agreement to respond to the plaintiff's discovery. Consequently, the plaintiff, United States of America, brings this motion.

STATEMENT OF FACTS

Plaintiff United States of America filed its complaint in this matter on October 12, 1982, after extensive discussions with Defendant aimed at resolving the dispute without litigation. The Complaint alleges a per se violation of

Section 1 of the Sherman Act based on the Defendant's adoption of a complete ban against its members or licensees offering competitive bids. The United States alleges that this prohibition on price competition restrains trade.

After service of the Complaint, the United States was contacted by representatives of then Alaska Attorney General William Condon. The Government was informed that the Alaska Attorney General had decided not to defend defendant Alaska Board of Registration for Architects, Engineers, and Land Surveyors (hereinafter cited as "Board"), but would authorize the Board to retain outside counsel. To accommodate this change in representation, the United States consented to a twenty day extension of time to answer the Complaint.

Defendant's Answer was filed on November 22, 1982 after new counsel was retained. On November 24, 1982 counsel for Plaintiff and Defendant met to discuss whether the case could be handled on a stipulated record or an expedited basis and advised the Court they would seek to exchange stipulations for the purpose of limiting the facts in dispute. Each promised to exchange initial proposed stipulations of fact by December 17, 1982. The United States further informed Defendant that it intended to file discovery requests under Rules 33 and 34 of the Federal Rules of Civil Procedure.

The Government served a Document Request and sixteen Interrogatories on Defendant on December 13, 1982. As agreed upon between counsel, the United States filed its proposed Stipulations of Fact on December 17, 1982.

In response, Defendant did not file any proposed stipulations of fact on Plaintiff, nor did the Board offer any comment on the Government's proposed stipulations. On January 6, 1983, however, the Defendant contacted Plaintiff to request an extension of time to answer discovery which was due January 13. The United States agreed to extend the time to answer discovery to January 31, 1983 because of a change in administration in the State of Alaska government.

Despite this extension and several conversations with counsel aimed at securing a response to discovery as required under Local Rule 5 of the District of Alaska, Defendant has failed completely to answer or respond to the government's limited discovery requests. Defendant's position is that its reasons for refusing to answer discovery are set forth in its Memorandum of Points and Authorities In Support of Defendant's Motion To Stay Proceedings (hereinafter cited as "Defendant's Memorandum In Support"). See Attachment A, Affidavit of Mark R. Davis.

ARGUMENT

The United States of America, plaintiff in this action, brings this motion to compel the defendant to respond to plaintiff's interrogatories and request for documents. Plaintiff's discovery was served on December 13, 1982. Defendant was given an extension of time to respond and is now in default on its obligation to respond on January 30, 1983.

Permitting for the delay in making such response would be inequitable and will seriously impair trial preparation in this case. The discovery plaintiff has sought for two months is relevant to the issues in this lawsuit. Plaintiff seeks access to the minutes of the Board and to documents in its possession relating to the Board's competitive bidding ban, its enforcement and its impact. Plaintiff's interrogatories seek Defendant's basic contentions with respect to its competitive bidding ban.

Defendant does not even claim that it would be burdensome for it to respond to these requests which it has had for two months. See Defendant's Memorandum In Support at 5-7. And on the other hand, it will greatly slow trial preparation if plaintiff is denied them. Access to these documents will enable Plaintiff to narrow the issues between the parties and prepare for prompt disposition of the case.

It would, we submit, be particularly inequitable not to force Defendant to respond to discovery where, as here, Plaintiff has made substantial efforts to move the case forward, has already granted Defendant two extensions of time and where Defendant has already failed to meet two commitments - to furnish proposed stipulations on December 17, 1982 and to respond to discovery on January 30, 1983.

Rule 37(a) of the Federal Rules Of Civil Procedure is designed to permit courts to compel answers to discovery when one party has failed to respond, filed incomplete answers, or

been evasive. See Rickles, Inc. v. Frances Denney Corp., 508 F. Supp. 4 (D. Mass. 1980). Use of a Rule 37 motion is particularly appropriate where, as defendant claims is the case in this matter (Defendant's Memorandum In Support at 5), the "litigation is not especially complex as a factual matter." See Bates v. Firestone Tire & Rubber Co., 83 F.R.D. 535 (D.S.C. 1979).

Rule 37, therefore, provides a court with a flexible tool for compelling discovery in order to avoid unjustifiable delays. The Rule becomes applicable once one party has failed to respond to discovery. See Bates supra at 539 citing to 9 C. Wright & A. Miller, Federal Practice and Procedure § 2284 (1971) ("Any failure to disclose, regardless of the reasons for it, brings the sanctions of Rule 37 into play. . . ."). If a defendant simply refuses to answer discovery, a plaintiff is forced to bring a motion to compel discovery. See Marquis v. Chrysler Corp., 577 F.2d 624, 641 (9th Cir. 1978) ("[T]he defendants' conduct regarding discovery in this case has required the plaintiff to bring motions to compel discovery that would otherwise have been unnecessary.") Under Rule 37 an unexplained or unjustified failure to respond to discovery can also be grounds for the imposition of sanctions, even absent a motion to compel. See Barker v. Bledsoe, 85 F.R.D. 545, 548 (W.D. Okla. 1979) ("All sanctions defined in Rule 37(b) are available for total failure to answer interrogatories, even

absent a motion to compel."); and Sigliano v. Mendoza, 642 F.2d 309, 310 (9th Cir. 1981)° ("Dismissal is a proper sanction under Rule 37(d) for a serious or total failure to respond to discovery even without a prior order.")

In this case, the Defendant has totally failed to respond to the Plaintiff's limited discovery requests, despite two extensions of time designed to accomodate Defendant. There are no indications in the record or information known to the United States which would indicate Defendant was was unable to answer discovery within the allotted time. While a defendant's reasons for not complying with discovery can be relevant, see Bates, supra, no explanation has been given which would excuse this Defendant's lack of regard for discovery. Indeed, Defendant has indicated by implication in its Memorandum that it has sought, without permission of this Court or the Government, to delay discovery until its Motion To Stay is considered. The Defendant quite simply does not have this option. Its Motion To Stay Proceedings is independent of and has no bearing on its obligation to respond to discovery.

Defendant has also not made a persuasive case that answering discovery would be burdensome. In Defendant's own words "this litigation is not especially complex as a factual matter." See Defendant's Memorandum In Support at 5. Defendant has indicated that it can answer discovery on 15 days notice. Id. at 6, n.3. Furthermore, the Government has indicated its willingness to relieve some of the burden of

discovery by proposing stipulations designed to narrow issues of factual dispute. Defendant, despite its agreement to do so, (See Letter to Court of January 31, 1983) has failed to respond or to propose its own. If the facts can be simply stated, answering limited discovery should not be a substantial burden and is certainly not the type of debilitating burden that would permit a party to avoid the clear dictates of Rule 37.

The Defendant in its Memorandum in Support pleads that it is in a difficult position since it does not wish to be "in violation of its obligations under the Federal Rules. . . ." See Defendant's Memorandum In Support at 6. The fallacy in Defendant's position is that its filing a Motion to Stay did not relieve of its duty to respond to discovery requests. As discussed in our opposition to Defendant's Motion to Stay, Defendant has not raised any basis to allow it to continue its illegal conduct by further delaying this litigation. In any event, Defendant, having not even requested from the Court an extension of time to respond and having demonstrated no hardship or burden in the government's discovery request it is entirely appropriate to grant the Government's motion to compel.

Nor is this a situation where the Government is not affected by Defendant's failure to answer. Both the Plaintiff and Defendant agree that the case should not be factually complex. If and when Defendant answers the Plaintiff's discovery requests, the United States believes it will be able to promptly file a motion for summary judgment and at the

conference in November 1982 Defendant's counsel indicated that they contemplated making a similar motion. Thus, if the Defendant actually wanted to expedite this matter, it could have answered discovery and then both sides could have filed cross motions for summary judgment. This possibility was discussed between counsel for both sides on November 24, 1982. The Government in this case has attempted to negotiate a stipulated record; the Defendant has failed to keep its commitments. Hence under Rule 37, the Government believes it should be granted a Motion To Compel Discovery since Defendant has offered no cognizable excuse for its total failure to respond.

No change in counsel for Defendant justifies its failure to respond to discovery despite adequate time to do so. Indeed, the Government has been continually sensitive to Defendant's desire at one time to change counsel in this matter by granting two extensions of time. Yet after two delays, Defendant's primary counsel remains the same and that counsel without any basis or consent for its actions decided unilaterally not to

respond to Rule 33 and Rule 34 discovery requests. As a result, the Government respectfully requests this Court enter a Motion To Compel Discovery under Rule 37.

Respectfully submitted,

Dated: February 14, 1983

Edward D. Eliasberg, Jr.
EDWARD D. ELIASBERG, JR.

Mark R. Davis
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Carolyn L. Davis
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Attorneys for the Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS, Defendants.	)	Civil No. A82-423 CIV.

AFFIDAVIT OF MARK R. DAVIS

District of Columbia)
) ss.
City of Washington)

MARK R. DAVIS, being duly sworn, deposes and says:

1. I am an attorney for the Government in the above-captioned action and have been assigned to this matter since the Complaint was filed October 12, 1982. I make this

affidavit in support of Plaintiff's Motion for an Order Compelling Discovery Under Rule 37(a) of the Federal Rules of Civil Procedure.

2. On February 8, 1983, pursuant to Local Rule 5 of the District of Alaska, I called by telephone Alan K. Palmer, Esquire, attorney for the Defendant in the above-captioned matter, to ascertain Defendant's position with regard to answering discovery before preparing the Government's Motion Compelling Discovery Under Rule 37(a) of the Federal Rules of Civil Procedure.

3. Mr. Palmer informed me that the Defendant's position with regard to answering Plaintiff's discovery was set out in Defendant's Memorandum of Points and Authorities In Support of Defendant's Motion to Stay Proceedings.

Mark R. Davis

MARK R. DAVIS

Sworn to before me this 14th day of February, 1983.

Maria B Wilson

Notary Public

My commission expires July 31, 1984.

CERTIFICATE OF SERVICE

I, Mark R. Davis, attorney for Plaintiff United States of America, hereby certify that a copy of the attached Plaintiff's Motion For Order Compelling Discovery has been served this 14th day of February, 1983 by hand upon Robert E. Loeffler, Esquire, attorney for Defendant, 1920 N Street, N.W. Washington, D.C. 20036

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS, Defendant.	)	Civil No. A 82-423-CIV STIPULATION OF FACTS

Come now, the United States of America and the Alaska Board of Registration for Architects, Engineers, and Land Surveyors ("Board"), and for the purpose of this action only and without admitting the relevancy, admissibility, or materiality of any matter contained herein, agree and stipulate, by and through their respective undersigned counsel of record, to the accuracy of the following facts:

A. Jurisdiction and Venue

1. The complaint in this case was filed and these proceedings were instituted under Section 4 of the Sherman Act, as amended (15 U.S.C. § 4), in order to prevent and restrain an alleged continuing violation by the Board of Section 1 of said Act (15 U.S.C. § 1).

2. The Board maintains its principal office in Juneau, Alaska and transacts business and is found within the District of Alaska.

3. The Court has jurisdiction over this action pursuant to 15 U.S.C. § 4.

4. The Court has jurisdiction over the parties to this action and venue is proper.

B. Authenticity of Documents

5. Attached to this Stipulation as Exhibit 1, and by this reference incorporated herein, is a true and authentic copy of a pamphlet issued by the Board which contain the Alaska statutes on architects, engineers, and land surveyors (AS § 08.48.011 et seq.), centralized licensing (AS § 08.01.010 et seq.), and the termination, contunation and reestablishment of regulatory boards (AS § 08.03.010 et seq.). This pamphlet also contains the Professional and Vocational Regulations of the Board (12 AAC 36.010 et seq.), including the Board's Rules of Professional Conduct (12 AAC 36.200 et seq.).

6. Attached to this Stipulation as Exhibit 2, and by this reference incorporated herein, is a true and authentic copy of

the Directory of Architects, Engineers and Land Surveyors of the Board valid for the period ending December 31, 1977.

C. Creation, Composition and Functions of the Board

7. The Board was created and organized and exists under the laws of the State of Alaska AS § 08.48.011 et seq. That statute, AS § 08.48. 011 et seq., is the only act of the Legislature of the State of Alaska which establishes the powers or duties of the Board or from which the Board derives its authority. The Board is the sole professional engineering, architecture, and land surveying licensing authority in the State of Alaska.

8. The Board consists entirely of practitioners. As required by Alaska Statute § 08.48.011(b), five members are practicing professional engineers, three members are architects and one is a land surveyor. Each member of the Board must have been a resident of Alaska for three consecutive years preceeding his or her appointment and must be registered and have a minimum of five years of professional practice in his or here respective field (Alaska Statute § 08.98.031). All Board members may, and do, maintain their private practices while serving on the Board.

9. One function of the Board is the administration of written examinations and supervision of the qualification, certification and registration of professional engineers, architects, and land surveyors located in Alaska and other states of practice within the State of Alaska. Upon payment

of a fee, the Board annually issues certificates of registration to all properly certified or registered professioal engineers, architects and land surveyors. Revenues from this fee may be used only to cover the expenses of the Board. Currently, there are approximately 3200 professional engineers, architects, and land surveyors holding Board certificates of registration to practic professional engineering, architects, and land surveyors holding Board certificates of registration to practice professional engineering, architecture, or land surveying in Alaska. More then one-half of these certificate of registration holders are residents of states other than Alaska.

10. It is unlawful in Alaska for individuals to represent that they are profesional engineers, architects, or land surveyors unless they have been properly certified by and registered with the Board, and hold a Board certificate of registration to practice professional engineering, architecture, or land surveying. The Board will not grant a temporary registration under any circumstances. Nor will the Board recognize or grant professional registration by eminence.

11. Another function of the Board is to regulate certain aspects of the practice of professional engineering, architecture, and land surveying in the State of Alaska relating to, among other things, misconduct by its registrants. In

promulgating in adopting the regulations challenged by the plaintiff herein the Board acted pursuant to its understanding of its duties as set forth in AS § 08.48.101 and 08.48.111.

12. Board rules are distributed to all certificate of registration holders. Board rules are binding on every certificate of registration holder.

D. Trade and Commerce

13. Most Board certificate of registration holders are engaged in the practice of professional engineering architecture or land surveying and render such services to individuals, corporations, governmental entities and other business entities located in Alaska and other states for a fee or salary. The professional engineering, architectural, and land surveying services provided by Board certificate or registration holders involve and affect individuals, corporations, governmental entities and other business entities located in Alaska and other states. Board certificate of registration holders design and supervise the construction of buildings, roads, bridges, dams, industrial plants and other structures located throughtout the United States. Many Board certificate of registration holders located outside the State of Alaska perform professional engineering and architectural services within Alaska.

14. In the course of rendering professional engineering, architectural, and land surveying services, Board certificate of registration holders often travel from the state of their principal place of business to other states and make

substantial use of interstate mail and wire services in the transport of contracts, plans, reports, plats, drawings and other communications throughout the United States.

15. The activities of Board and Board certificate of registration holders affect and are within the flow of interstate commerce.

E. Rule 36.230(b)

16. The Board has adopted and promulgated Rule 36.230(b) of Title 12 of the Alaska Administrative Code ("Rule 36.230(b)").

17. Rule 36.230(b) provides:

> Each architect, engineer or land surveyor shall seek professional employment on the basis of qualifications and competence for proper accomplishement of the work. He may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding.

F. Legislative Authority For Rule 36.230(b)

18. The Board adopted and promulgated Rule 36.230(b) pursuant to Alaska Statutes §§ 08.48.101 and 08.48.111.

19. Alaska Statute § 08.48.101(a)(5), the pertinent portion of the first of these statutes, provides:

> The board may adopt regulations to carry out the purpose of this chapter, including but not limited to publishing a code of ethics or professional conduct for those persons regulated by this chapter, including corporations under sec 241 of this Chapter.

20. Alaska Statute § 08.48.111, the second of these statutes, provides:

> The board may suspend, refuse to renew, or revoke the certificate of or reprimand a registrant or corporation who is found guilty of (1) fraud or deceit in obtaining a certificate; (2) gross negligence, incompetence, or misconduct in the practice of architecture, engineering, or land surveying; or (3) a violation of this chapter, a regulation adopted under it, or the code of ethics or professional conduct as adopted by the board. The code of ethics or professional conduct shall be made known in writing to every registrant and applicant for registration under this chapter, and shall be published with the roster provided for in AS 08.48.081. This publication constitutes due notice to all registrants. The board may revise and amend its code and, upon doing so, shall immediately notify each registrant in writing of the revisions or amendments. The board may, upon petition of the registrant or corporation, reissue a certificate if a majority of the members of the board vote in favor of the reissuance.

21. Alaska Statutes §§ 08.48.101 (a)(5) and 08.48.111 are the sole authority upon which the Board relies to have adopted or promulgated Rule 36.230(b) or a code of ethics or professional conduct.

22. Except for Rule 36.230(b), it would not be a violation of any State of Alaska law, statute, order, legislative or executive resolution, or legislature, executive or administrative rule, regulation or policy for a purchaser of architectural, engineering or land surveying services to seek competitive bid or for an architect, professional engineer or land surveyor to provide such bids.

G. History of the Rule

23. In either 1968 or 1969, the Board first adopted the ban on competitive bidding. At that time, the Board decided to adopt a code of ethics which was derived by combining the then existing codes of ethics of the American Society of Civil Engineers ("ASCE") and the American Institute of Architects ("AIA"), both of which contained competitive bidding bans. This competitive bidding ban, current Rule 36.230(b), was repromulgated without change by the Board on May 23, 1974 and September 30, 1978. Both the ASCE and the AIA eliminated their competitive bidding bans in 1972 pursuant to consent decrees settling antitrust civil actions brought against them by the United States.

24. There was no mention made of or consideration given to the competitive bidding ban at public hearings held in 1978 about the Board's regulations, including the Board's code of ethics.

25. There was no mention made of or consideration given to the competitive bidding ban during the Alaska state legislature sunset review of the Board held in 1980.

26. In 1980, the Office of the Alaska Attorney General recommended to the Board that they repeal Rule 36.230(b). The Board at its December 1980 meeting rejected this recommendation by a 4-3 vote.

27. In May 1982, the Office of the Alaska Attorney General recommended to the Board that they repeal Rule 36.230(b) on an emergency basis. The members of the Board unanimously rejected this recommendation at their May 1-7, 1982 meeting. A true and accurate copy of the May 13, 1982 letter of Assistant Alaska Attorney General Peter B. Froehlich recounting these events is attached as Exhibit 3 and by this reference incorporated herein.

28. The Board conducted a public hearing on June 10, 1982, concerning the repeal of Rule 36.230(b). A true and accurate transcript of that hearing is attached to this Stipulation as Exhibit 4 and by this reference incorporated herein.

29. At the June 10, 1982 hearing, the consensus of the providers was that Rule 36.230 (b) should be retained. The following Board certificate of registration holders spoke against and urged the rejection of the proposed repeal of the competitive bidding ban: (1) Jan Hansen, P.E., (2) Don Dent, P.E., (3) Ron Mitchell, P.L.S., (5) Charles Torkko, P.E., representing the Consulting Engineer Council of Alaska, (7) Roy Peratrovich, P.E., (7) Richard Treoger, R.L.S., (8) Ken Cannon, architect, representing the Alaska Chapter of the American Institute of Architects, (9) Daniel Dougherty, P.E., (10) Herman Kaiser, R.L.S., (11) Gary Bock, P.E., (12) Nelson Franklin, P.E., representing the Anchorage Chapter of the

Alaska Society of Professional Engineers, (14) George Schwadetier, P.E. and P.L.S., (15) Mr. Partch, architect, and (16) Dale Nelson, representing the Anchorage Branch of the American Society of Civil Engineers.

30. On August 5, 1982 the Board held another hearing concerning the repeal of this competitive bidding ban. A true and accurate copy of the transcript of this hearing and written comments received in response to the July 2, 1982 public notice of this hearing is attached to this Stipulation as Exhibit 5 and by this reference incorporated herein.

31. At the August 5, 1982 hearing, the consensus of providers was again that Rule 36.230(b) should be retained. The following Board certificate of registration holders spoke against and urged the rejection of the proposed repeal of the competitive bidding ban: (1) Don Dent, P.E., (2) Charles Torkko, P.E., representing the Consulting Engineers Council of Alaska, (3) Vernon Ackin, P.E., (4) John Burdick, P.E., (5) Rupert Tart, representing the American Society of Civil Engineers, (6) Nelson M. Franklin, representing the Anchorage Chapter of the Alaska Society of Professional Engineers, (7) Doug Ackley, Architect, (8) Robert Minch, Architect, (9) William P. Hamm, representing the Alaska Chapter of Professional Engineers in Private Practice, and (10) Harley Hightower, representing the Alaska Chapter of the American Institute of Architects.

32. On September 9-10, 1982, the Board, contrary to the advice of the Office of the Alaska Attorney General, voted unanimously to retain Rule 36.230(b).

33. In retaining and enforcing this rule, the Board has the support of the various engineering associations and societies in Alaska.

H. Impact and Enforcement of the Rule

34. No person can practice architecture, engineering or land surveying in Alaska unless registered or certified by the Board (Alaska Statute § 08.48.281).

35. The Board can revoke, suspend or refuse to renew the registration of an architect, professional engineer or land surveyor if that person is found guilty of violating the Board's code of ethics, including the competitive bidding ban. (Alaska Statute § 08.48.111)

36. The Board has caused its Rules of Professional Conduct to be made known in writing to every registrant and applicant for registration and has caused them to be published with the roster of registrants, which the Board publishes annually, mails to registrants and state, borough, and city officials, and distributes or sells to the public.

37. The Boards' position is that failure to comply with the terms of the Code of Ethics, including Rule 36.230(b), might subject the professional engineer, architect, or land surveyor to disciplinary action.

38. The Board has continually and actively enforced Rule 36.230(b) and plans to continue enforcement of the Rule.

39. Board certificate of registration holders compete with each other in the offering of architectural, engineering and land surveying services. Present and past Board members

are competitors among themselves in the providing of architectural, professional engineering and land surveying services, and they compete with the other Board certicate of registration holders in providing those services.

40. Most Board certificate of registration holders have abided by Rule 36.230(b)..

41. In February or March, 1982, the City of Sitka put out a request for bids for professional services on an addition to the city library which would be built with state money.

42. About a week and a half after the requests were sent out, the Board, at the behest of several practitioners, contacted Sitka by conference telephone call and informed the City Administrator, Fermin "Rocky" Guitierrez, that Sitka would be making architects and engineers "outlaws" by asking them to bid on the project. Board members participating in the conference call also told Guitierrez that they would notify certificate of registration holders that participation in the library addition project or any other Sitka projects would be in violation of the Board's rule.

43. About the same time as the Board conference telephone call, Charles E. Torkko, president of the Consulting Engineers Council of Alaska ("CECA"), on behalf of that organization wrote Mr. Guitierrez on February 8, 1982 requesting reconsideration of pricing procedures used by Sitka for the procurement of professional enginecring services for a water resource study. A true and accurate copy of Mr. Torkko's February 8, 1982 letter is attached as Exhibit 6 and by this reference incorporated herein.

44. On February 18, 1982, Mr. Guitierrez wrote a reply to Mr. Torkko's February 8, 1982 letter. In his reply, Mr. Guitierrez assured Mr. Torkko that "fee alone is not the determining factor in our procurement of engineering services." A true and accurate copy of Mr. Guitierrez's February 18, 1982 letter is attached as Exhibit 7 and by this reference incorporated herein.

45. In October, 1982, Board member Wallace Wellenstein phoned the Anchorage Public School Board and informed them that a proposal that Board certificate of registration holders submit price bids on designated design projects would violate the Engineering Board's ban on competitive bidding.

46. Shortly thereafter, Harley Hightower, president of the Alaska Chapter of the American Institute of Architects ("AIA"), made an appearance before the School Board on behalf of the AIA and indicated that the proposed regulation of the Board violated the Engineering Board ban on competitive bidding. A copy of the transcript of the appearance and a submission made at that time are attached are Exhibits 8 and 9 respectively and by this reference incorporated herein.

47. Practitioners have on occasion used the existence of Rule 36.230(b) to discourage the solicitation of competitive bids for projects.

48. Certificate of registration holders, practitioners, and architectural, professional engineering and land surveying societies have encouraged and supported the adoption and retention of Rule 36.230(b).

49. Absent an order of Court, the Board will not repeal Rule 36.230(b).

I. Consequences of the Rule

50. There would be a substantial increase in the amount of competitive bidding taking place in Alaska if Rule 36.230(b) were eliminated.

51. This substantial increase in the amount of competitive bidding taking place in Alaska would allow customers to utilize and compare prices, price bids and proposed designs much more readily and effectively when selecting engineering services than is presently the case under Rule 36.230(b).

52. Rule 36.230(b) increases the cost to purchasers of gathering price, quality and design information and dampens price, quality and design competition.

53. Most states no longer have bans on competitive bidding. There is no data indicating that these states have experienced increases in fraud and harm to the public health and safety.

J. Other Activities of the Board

54. The Board has adopted licensing requirements, in part, to insure the professional competence of all licensees.

55. The Board has adopted licensing requirements and examination standards to insure that all licensees have adequate knowledge of what construction, design and other architectual and professional engineering problems can arise from Alaska's cold climate.

56. The Board has adopted ethical and licensing requirements other than Rule 36.230(b) to prevent fraud in the offering of professional services.

57. The Board holds public hearings and solicits input of certificate of registration holders before changing or adopting any rule.

58. The Board continuously monitors and keeps informed of the impact and effectiveness of its rules.

59. Architects, professional engineers and land surveyors regularly contact the Board about conditions in the profession and about the effect of or need for Board rules.

Dated:

Respectfully submitted,

FOR THE PLAINTIFF:

_____
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_____
MARK R. DAVIS

_____
CAROLYN L. DAVIS

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, PROFESSIONAL, ENGINEERS, AND LAND SURVEYORS, Defendant.	Civil No. A82-423 CIV Filed: 10/12/82 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO STAY PROCEEDINGS

I. INTRODUCTION AND SUMMARY

As the Court has previously been informed by letter, shortly after taking office the new Attorney General of the State of Alaska undertook a review of the status of the present case.[1/] As a result of that review, the

1/ Letter to the Court from Robert H. Loeffler and Alan K. Palmer, January 11, 1983.

Attorney General and the defendant Alaska Board of Registration for Architects, Professional Engineers, and Land Surveyors have determined to seek a legislative resolution of the issues raised by the complaint.

Legislation is being prepared which, on behalf of the defendant Board, will be introduced in the very near future for enactment during the current session of the state legislature. The legislation will be designed specifically to approve and implement the provisions of the "competitive bidding" rule challenged in the complaint herein. Enactment of such legislation would conclusively immunize the Board's actions from antitrust liability by virtue of the "state action" doctrine and the principles established pursuant to that doctrine by California Retail Liquor Dealers Association v. Mid-Cal Aluminum, Inc., 445 U.S. 97 (1980), and would thus resolve the controversy between the parties and make continuation of this case pointless.

Accordingly, in order to conserve the resources of the parties and the Court, the Board asked the Department of Justice to join in a request that the Court stay proceedings so as to permit the current session of the legislature to act upon the proposed legislation. The Department refused this request, however, so that the Board now has filed the present Motion.

The limited stay of proceedings that the Board seeks would not unduly prejudice the interests of the Department and would provide an opportunity to resolve the current dispute without the burdens attending discovery and trial. If the current session of the legislature does not enact the proposed legislation, the Board would be prepared to have the case tried on an expedited basis.

II. BACKGROUND: THE STATE-ACTION DEFENSE

The complaint filed by the Department of Justice in this case challenges as unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, a rule enacted by the defendant Board -- Rule 36.230(b) -- which prohibits competitive bidding by architects, engineers, and surveyors. One of the key issues in the case is whether the regulation is immune from antitrust attack by virtue of the "state action" doctrine established by Parker v. Brown, 317 U.S. 341 (1943), and subsequent cases.

In the Mid-Cal Aluminum decision, supra, the Supreme Court set out the basic requirements for a state-action defense to be successfully invoked:

> "[There are] two standards for antitrust immunity under Parker v. Brown. First, the challenged restraint must be 'one clearly articulated and affirmatively expressed as state policy': second, the policy must be 'actively supervised' by the State itself."

445 U.S. at 105, quoting from City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 410 (1978) (opinion of Justice Brennan).

The Board's position is that inasmuch as it has authoritatively acted for the State in the fashion specified by the Court in Mid-Cal, the standards quoted above have been satisfied and Rule 36.230(b) is exempt from antitrust scrutiny.[2/] The Department of Justice, by contrast, believes action by the Board is insufficient to satisfy the standards of Mid-Cal; according to the Department, those standards can be met only if the state legislature specifically authorizes or establishes a noncompetitive regime.

III. THE STATE ATTORNEY GENERAL'S PROPOSAL

In reviewing this matter, the new Attorney General of the State of Alaska has concluded that the most straightforward and efficient way of resolving the controversy between the Board and the Department would be for the state legislature to enact legislation specifically meeting the Mid-Cal requirements. Although the Board continues to believe that such legislation is by no means necessary to satisfy Mid-Cal, it agrees that such legislation would conclusively resolve the controversy, since even under the Department's view of Parker and Mid-Cal it would definitively establish a valid state-action defense and thus would eliminate any conceivable basis for the current suit. Accordingly, in the interests of expediting resolution of the controversy and eliminating the need for prolonged

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2/ The Board also asserts several other defenses to the complaint.

litigation, legislation of the sort described above will be introduced on behalf of the Board in the very near future.

IV. BASIS FOR THE BOARD'S MOTION TO SUSPEND PROCEEDINGS

Compared to most antitrust cases, this litigation is not especially complex as a factual matter. Stipulations of fact could be utilized to provide at least most of the record upon which the legal issues involved would be decided.

Nonetheless, substantial time and effort by both parties, and by the Court, would be required to litigate the matter. Agreeing on a complete set of stipulations of fact would not be a simple matter, and some discovery inevitably would be sought. The Department of Justice has in fact already served on the Board a set of interrogatories and a request for production of documents, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure; responses to those discovery requests are currently due on January 31, 1983.

In an effort to avoid potentially unnecessary discovery and other pre-trial preparation that similarly may prove unnecessary, the Board asked the Department of Justice to join in requesting that the Court order proceedings stayed pending the outcome of the legislative effort described above. The Board informed the Department that the outcome

of that effort almost certainly would be known by May or June, since sessions of the state legislature historically have ended no later than that time of year. The Department replied, however, that it would not agree to such a stay and that it intended to move for an order requiring compliance with its currently outstanding discovery requests.

The Board is thus in a difficult position. It does not want to be in violation of its obligations under the Federal Rules, yet it believes that a limited stay of proceedings of the sort outlined above makes great sense and offers the best route to an efficient resolution of the case. Accordingly, the Board has moved for an order directing that proceedings herein be suspended until May 31, 1933, for purposes of pursuing a legislative resolution of this matter. The proposed order submitted by the Board also provides that proceedings may be resumed at an earlier date if the current session of the Alaska legislature enacts or rejects the proposed legislation or ends before May 31.

If its proposed legislative solution is unsuccessful, the Board is fully prepared to pursue this litigation -- and to respond to all discovery requests -- under an expedited schedule. 3/ In this way the interest of the Department

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3/ Should the Court deny the Board's Motion, the Board will undertake to respond to the Department's outstanding discovery requests by whatever date the Court may direct (the Board suggests fifteen days after the Court's order), and will of course otherwise cooperate in moving the litigation forward.

in avoiding unnecessarily lengthy proceedings can be satisfied. Given this willingness, the Board believes that there is no purpose to be served in engaging in the not insubstantial burden of discovery and pretrial preparation at the very time that efforts are being made to resolve the controversy in a way that would make this case totally unnecessary.

V. CONCLUSION

For these reasons, the defendant Board respectfully requests that the Court grant the Board's Motion to Stay Proceedings.

Respectfully submitted,

Alan K Palmer

DATED:
January 28, 1983

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, PROFESSIONAL ENGINEERS, AND LAND SURVEYORS, Defendant.	Civil No. A82-423 CIV Filed: 10/12/82 ORDER

For good cause shown:

1. It is hereby ORDERED that all proceedings in this action shall be stayed until May 31, 1983.

2. It is further ORDERED that either party may at any time prior to May 31, 1983, move for lifting of this stay and for resumption of proceedings herein on the grounds that (a) the current session of the Alaska legislature has ended, or (b) the Alaska legislature has enacted or rejected legislation approving and implementing the provisions of Rule 36.230(b) of the defendant Board of Registration for Architects, Professional Engineers, and Land Surveyors.

Dated this _____ day of _____, 1983.

_____
United States District Judge

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UNITED STATES DISTRICT COUPT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS, Defendants.	Civil No. A 82-423-CIV MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO DEFENDANT'S MOTION TO STAY

I

INTRODUCTION

This memorandum is filed in opposition to the motion of defendant Alaska Board of Registration for Architects, Engineers, and Land Surveyors ("Board") dated January 28, 1983 to stay all proceedings in this case.

Three months after this case was filed and shortly before its discovery commitments were due, defendant, a state licensing board consisting entirely of practitioners, has made a last minute request to stay all proceedings in this case. According to defendant, the purpose of this stay is to permit the Alaska Legislature to consider legislation not yet even introduced, which defendant alleges would "make continuation of this case pointless." Defendant's Memorandum In Support of Motion at 2). Defendant fails to cite any legal authority or establish any factual predicate for its proposed stay. Defendant has failed to discharge its heavy burden of showing that (1) going forward with the litigation would impose on it clear hardship or inequity, and (2) this hardship or inequity outweighs any damage the stay may cause others. Defendant, who has already received two extensions of time in this case and is in default on its discovery obligations, has failed to demonstrate any cognizable hardship or inequity in complying with the Government's discovery requests or fulfilling its undertaking to seek to shorten discovery by stipulation. The requested stay will harm the public interest by prolonging the defendant's manifestly illegal conduct and depriving consumers of the benefits of competition. Furthermore, a stay should not be granted on the basis of mere speculation that legislation may someday be enacted. This is especially true here in view of the fact that the Alaska Legislature recently rejected considerably narrower legislation than that the defendant apparently will now seek.

The Court should therefore deny defendant's motion and enter the Government's proposed order attached to this memorandum.

II

BACKGROUND

This case was filed on October 12, 1982 to prevent and restrain the continuing violation by defendant Board of Section 1 of the Sherman Act, 15 U.S.C. § 1. In particular, the Complaint seeks to enjoin the Board, which consists entirely of competing, private practitioners, from continuing to engage in a conspiracy, the substantial terms of which "have been and are that the defendant promulgate, adopt, publish and distribute a provision in its Rules of Professional Conduct, Rule 36.230(b), prohibiting certificate of registration holders and other architects, professional engineers and land surveyors practicing in Alaska from knowingly soliciting or submitting proposals for professional services on the basis of competitive bidding." (Complaint ¶ 17). The Complaint also alleges that "various other persons not made defendants herein have participated as co-conspirators with the defendant in the violation hereinafter alleged, and have peformed acts and have made statements in furtherance thereof." (Complaint ¶4).

The defendant Board and its constituent professions in Alaska have long been on notice of the issues raised in this lawsuit. Nearly five years ago, in the landmark case of National Society of Professional Engineers v. United States, 435

U.S. 679 (1978), the United States Supreme Court held that a substantially identical competitive bidding ban applying to the engineering profession was illegal per se under the antitrust laws. The Supreme Court stated that "[N]o elaborate industry analysis is required to demonstrate the anticompetitive character of such an agreement . . . . On its face, this agreement restrains trade within the meaning of §1 of the Sherman Act." 435 U.S. at 692-93.

That state licensing boards as well as trade associations were subject to this rule was made clear one month later in United States v. Texas State Board of Public Accountancy, 464 F. Supp. 400 (W.D. Tex. 1978), modf'd of aff'd, 592 F.2d 919 (5th Cir. 1979), cert. denied, 444 U.S. 925 (1979). In that case, the court held that a Texas general enabling statute (strikingly similar to two relied on here by the Board in issuing its price ban, Rule, A.S. §§08.48.101 and 111) was insufficient legislative authority under the state action doctrine to shield a per se illegal competitive bidding ban from the reach of Sherman Act. The court stated that

> In the instant case Rule 14 [the competitive bidding ban] is not mandated by any state regulation or action. Section 5 of the Accountancy Act is cast in permissive, not mandatory, language and, furthermore, only allows adoption of Rules appropriate for maintenance of high standards of integrity in the Accountancy profession. Nowhere in the Act does the State as sovereign mandate the anticompetitive conduct required by Rule 14, nor is such policy dictated by the

> State. Additionally, it cannot be said that Section 5 of the Act in any way concerns or contemplates "the kind of action complained of" here.

464 F. Supp. at 404.

The clear holding in Professional Engineers that competitive bidding bans are per se illegal under the Sherman Act has been widely discussed and understood throughout the engineering and other professions. Numerous professional organizations and state licensing boards have taken steps to repeal their bans on competitive bidding. 1/ In contrast, the Alaskan Board has on several occasions resisted attempts to bring it into compliance with the mandate of Professional Engineers. In December 1980, for example, defendant Board voted to retain Rule 36.230(b), its ban on competitive bidding, despite the recommendation of the Alaska Attorney General that it be repealed. During this same period, as part of its effort Department of Justice commenced an antitrust investigation which led to this litigation. The Department made extensive efforts to contact professional licensing boards to determine whether they still enforced bans on competitive bidding, to dispose of this matter without recourse to suit. Beginning in April 1982 and continuing thereafter, attorneys from the Department

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1/ E.g., United States v. American Institute of Architects, 1972 Trade Cas. ¶73,981 (D.D.C. 1972) (consent decree). United States v. American Society of Civil Engineers, 1972 Trade Cas. ¶73,950 (S.D.N.Y. 1972) (consent decree); and United States v. American Institute of Certified Public Accountants, 1972 Trade Cas. ¶74,007 (D.D.C. 1972) (consent decree). In May 1982, the West Virginia Board of Accountancy eliminated, among other things, a ban on competitive bidding after being advised the Government would otherwise sue (See attachment 1).

contacted the Attorney General of Alaska or the Board on numerous occasions to discuss the Rule. The Alaska Attorney General again asked the Board to repeal the Rule, but after hearings in June and August the Board voted to retain it in September 1982.

In late September, the Assistant Attorney General in charge of the Antitrust Division authorized filing this lawsuit. Pursuant to the policy of the Attorney General, the Department on September 23, 1983 telephonically contacted the Governor, Attorney General of Alaska and the Board to put all on notice of the Department's intent to sue and to afford all affected parties a final opportunity to amend the Rule without the need of litigation. Since no response was forthcoming, this suit was filed two weeks later.

Since the suit was filed, the defendant has caused several significant delays in this litigation. Because the then Attorney General of Alaska initially took the position that he would decline to represent the Board, the Government in October agreed to defendant's request for a 20-day extension of time to permit it to seek new counsel. In November, the day after the Answer was filed, counsel for the parties met in Washington, D.C. to discuss how to proceed with this case. In order to expedite the case, the parties agreed, among other things, to exchange proposed stipulations on December 17, 1982 and so advised the court. The plaintiff on December 13 served Interrogatories and a Request for the Production of Documents upon defendant and on December 17 served its agreed-upon first draft of stipulations. Defendant, however,

failed to serve its stipulations on December 17. Plaintiff's counsel was told by defendant's Washington, D.C. counsel that the holiday season and scheduling problems were causing delays in preparing stipulations; later the Government was advised that the new Attorney General of Alaska was considering a change of counsel. To date, defendant has failed to respond to the Governments proposed stipulations or fulfill its agreement to propose its own. On January 6, 1983, the Board requested a 30-day extension on defendant's discovery response due on January 13. The Government agreed to a shorter extension - to January 31.

Consistent with Local Rule 5 of the District of Alaska, Plainiff's counsel continued to discuss with defendant's counsel whether answers to discovery would be forthcoming. As late as January 19, 1983, counsel for the defendant represented that they intended to respond to plaintiff's discovery requests by the January 31 due date. On January 25, however, defense counsel reversed its position and instead requested a continuance of the case and a stay of all discovery for four or five months so that the Alaska Legislature could consider enactment of legislation which, according to defense counsel, might affect the outcome of this case. Other than to say that such legislation could, conceivably, moot this case, defendant has failed to furnish additional information about this legislation, provide the Government with a draft or outline of any proposed legislation or comment on the probability as to whether it will be introduced or enacted. Defendant has moved for a stay notwithstanding the

fact that in the 1981-82 session the Alaska Legislature refused to enact legislation, introduced with practitioner support, which would have precluded state, borough, and municipal procurement officers from using competitive bidding for the purchase of architectural and engineering services. This so-called "Little Brooks Act" provision of House Bill No. 156 was of considerably narrower scope than the legislation for which defendant now apparently hopes because it would prohibit only competitive bidding in the public sector.

On January 28, 1983 defendant filed a Motion to Stay Proceedings which, in effect, stated that answering discovery would be fruitless since this Court might grant the requested stay. As a result, on January 31, defendant failed to produce the documentary discovery or interrogatory answers it was obligated to provide first on January 13 and then by agreement on January 31. Defendant never furnished the draft stipulations due on December 17, 1982.

III

ARGUMENT

Defendant bears the burden of showing that its proposed five month stay of discovery and all other proceedings is justified and will not harm the interests represented by Government. As the United States Supreme Court stated in Landis v. North American, Co., 299 U.S. 248 (1936), "the suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair

possibility that the stay for which he prays will work damage to someone else," 299 U.S. at 255. Indeed, in Landis the Supreme Court made clear that "the burden of making out the justice and wisdom of a departure from the beaten track lay heavily on petitioners, suppliants for relief . . ." 299 U.S. at 256 (emphasis supplied).

Given these standards, the courts generally disfavor stays which tend to needlessly depart "from the beaten track" and delay the normal course of justice. Landis, supra, at 254-55; Filtrol Corp. v. Kelleher, 467 F.2d 242, 244-45 (9th Cir. 1972), cert. denied, 409 U.S. 1110 (1973), citing CMAX, Inc. v. Hall, 300 F.2d 265 (9th Cir. 1962). See also, McDonnell v. Tabah, 297 F.2d 731 (2d Cir. 1961); Druckman v. Forsyth Furniture Lines, 22 F.2d 59 (4th Cir. 1927); 9 F. Moore & E. Koeber, Cyclopedia of Federal Procedure §§ 28.01-28.12 (3d ed. 1967). Consequently, a defendant applying for a stay has a heavy burden of showing the stay is justified since, as Judge Flannery held in Ellsberg v. Mitchell, 353 F. Supp. 515, 517 (D.D.C. 1973), a plaintiff has the right to prosecute his cause of action without delay. See also, Dellinger v. Mitchell, 442 F.2d 782 (D.C. Cir. 1971). This principle is particularly true in a case such as this where the Government is suing in the public interest to enforce well-defined and consistently applied federal law.

Defendant has not met this heavy burden. Indeed, defendant has not even shown that a stay of discovery and other proceedings "makes great sense and offers the best route to an efficient resolution of the case." (Defendant's Memorandum In Support at 6). A five month delay in a case dealing with per se illegality where discovery has already started, which, according to defendant (Memorandum In Support at 3) "is not especially complex as a factual matter," and where discovery will be necessary regardless of legislative action is hardly "efficient". Nor does it make "great sense" to permit a state board comprised of practitioners to maintain and enforce a price ban for their own benefit at the expense of the Alaskan economy. Rather, the facts indicate that granting the proposed stay would be inequitable, harmful to the public, and a needless waste of time. The efficient way to handle this case is to get on with it, to answer discovery, and to submit motions for summary judgment.

A. Defendant Has Not Shown Clear Hardship or Inequity In Being Required To Go Forward

Defendant has not met the heavy burden it bears under Landis of showing hardship or inequity in going forward with this case. Indeed, its moving papers are totally devoid of any showing of hardship or inequity in responding to the Government's discovery requests. This failure in and of itself requires denial of defendant's motion, putting aside for the moment the fact that, as discussed below, any colorable claim

of hardship by defendant would be outweighed by the significant harm to the public caused by continuing the competitive bidding ban.

That proceeding with this litigation would not give rise to any cognizable hardship or inequity is evidenced by the fact that, until this motion was filed, the parties were proceeding with a mutually agreed upon discovery schedule which would have brought this case to resolution within the very five month period for which defendant now seeks a stay. The parties had notified the Court of this schedule and plaintiff had undertaken to serve discovery requests and proposed stipulations. That defendant suddenly decided, on the eve of its deadline for complying with discovery requests, that going forward with this case was a "potentially unnecessary expenditure of resources" (Motion at 2) suggests that the proposed stay was not so much needed to prevent "hardship" or "inequity" as to delay some embarrassing discovery.

Weighing the effects of the stay on the government's important law enforcement interests in prosecuting this case, there can be no dispute that the stay would disrupt and protract pretrial proceedings already under way, would put off motions for summary judgment and would preclude any settlement discussions. Plaintiff has already made considerable effort to serve reasonable discovery requests and defendant concedes that it could respond to that discovery on 15 days' notice. (Memorandum In Support at 6, n.3). Given that the main

discovery can be completed in a short time, it cannot impose such burden on defendant to go forward with discovery responses it was originally obligated to provide by mid-January.

On the other hand, if defendant is permitted to withhold its discovery responses and, as happened in the past, it does not obtain the complete legislative relief it hopes for, the progress of this case will have been seriously slowed and plaintiff's efforts to expedite trial preparation inappropriately frustrated. Thus, the only risk of "hardship" or "inequity" attendant to defendant's motion occurs if the stay is granted.

Finally, it is clear that in any weighing of the equities in this matter, defendant has failed to sustain its burden under Landis. Indeed, inconvenience to defendant resulting from going forward with this case is of defendant's own making. Defendant has had over four years to seek the legislation it is now proposing, and yet, despite clear notice, did not do so. Moreover, defendant can hardly claim surprise at the institution of this litigation, having at least three times since the Supreme Court's decision in Professional Engineers disregarded the advice of the Attorney General of Alaska to repeal its competitive bidding ban. Finally, having already caused two lengthy delays in this case and appearing in default on its discovery obligations, 2/ defendant can

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2/ See Plaintiff's Motion For Order Compelling Discovery, filed February 14, 1983.

hardly be said to suffer "inequity if ordered to proceed in this case." Landis, 299 U.S. at 255-56.

B. The Proposed Stay Would Harm The Public

Even if the Court found some hardship or inequity to defendant in having to go forward with this litigation, defendant clearly has not sustained its heavy burden given the demonstrable harm the public would suffer from the proposed stay.

The Supreme Court in Professional Engineers held that bans like Alaska's are illegal per se under §1 of the Sherman Act because they inevitably cause serious economic harm. 3/ They severely inhibit the way architects, professional engineers, and land surveyors would otherwise compete. They prevent consumers from receiving and practitioners from giving competitive bids. They inevitably raise prices, add to inflation, and misallocate resources.

Such restrictions are illegal per se because they transgress the fundamental national policy of free competition which Professional Engineers reconfirmed is embodied in the Sherman Act:

> The Sherman Act reflects a legislative judgment that ultimately competition will not only produce lower prices, but also better goods and services. "The heart of our national economic policy long has been faith in the value of competition." Standard Oil Co. v. FTC, 340 U.S. 231, 248. The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain -- quality, service, safety, and durability -- and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers. Even

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3/ The Supreme Court confirmed in Catalano, Inc. v. Target Sales, Inc., 446 U.S. 643, 647 (1980), that competitive bidding bans are per se illegal.

assuming occasional exceptions to the presumed consequences of competition, the statutory policy precludes inquiry into the question whether competition is good or bad. 435 U.S. at 695.

As Justice Blackmun cogently stated in his concurring opinion in Professional Engineers:

> As petitioner concedes, § 11 (c) [the competitive bidding ban] forbids any simultaneous consultation between a client and several engineers, even where the client provides complete information to each about the scope and nature of the desired project before requesting price information. To secure a price estimate on a project, the client must purport to engage a single engineer, and so long as that engagement continues no other member of the Society is permitted to discuss the project with the client in order to provide comparative price information. Though § 11 (c) does not fix prices directly, and though the customer retains the option of rejecting a particular engineer's offer and beginning negotiations all over again with another engineer, the forced process of sequential search inevitably increases the cost of gathering price information, and hence will dampen price competition, without any calibrated role to play in preventing uninformed bids. 435 U.S. at 699-700 (emphasis added; citation omitted).

Despite this clear precedent, defendant has continued to actively monitor compliance with its ban on competitive bidding. As recently as October 1982, shortly after the filing of the Complaint, Wallace Wellenstein, a member of defendant board, approached the Anchorage School Board on behalf of defendant and indicated that procurement regulations the School Board was considering enacting would violate defendant's competitive bidding ban. In March 1982, several members of defendant contacted the Administrator of the City of Sitka and

told him that Sitka, by requesting bids on an addition to the city library, was in violation of defendant's rules and was making "outlaws" of defendant's certificate of registration holders. These two incidents indicate that the Board intends to continue to enforce compliance with the Rule. Nothing in defendant's moving papers suggest anything to the contrary.

Furthermore, even if defendant did not actively enforce the Rule during the stay, the continued presence of the Rule alone would effectively deter competitive bidding and hence persist in depriving the people in Alaska of the benefits of competition. For example, practitioners frequently cite defendant's ban to discourage purchasers who ask for competitive bids. Subsequent to the filing of the Complaint, Harley Hightower, representing the Alaska Chapter of the American Institute of Architects, urged the Anchorage School Board not to adopt regulations which would have authorized the use of competitive bidding in the procurement of architectural and engineering service in part because "presently the state law prohibits architects and engineers from bidding so we would be in violation of laws even though this law has been challenged . . . ." (See Attachment 2).

Hence, if the stay is granted the defendant's Rule will continue to harm the public for at least another five months, perhaps longer, despite the Supreme Courts' ruling nearly five years ago that the practice was illegal per se under the Sherman Act. In sum, the Government respectfully submits that with

regard to this proposed stay, as was the case in Landis, "[r]elief so drastic and unusual overpasses the limits of any reasonable need, at least upon the showing made when the motion was submitted." 299 U.S. at 257. A proceeding at equity should not become an instrument for private gain by those practitioners who seek by their motion to extend the life of the price bidding ban.

C. A Stay Based On Such Uncertain Circumstance Is Inappropriate And Would Needlessly Delay The Case

Without discussing the content or likelihood of passage of legislation, defendant forecasts events which will purportedly obviate the need for the Government's requested relief. At a minimum, the following sequence of events would have to occur under defendant's scenario: (1) Someone will sometime in the future introduce legislation in the Alaska Legislature which will require the Board to promulgate a rule identical to its present ban on competitive bidding; (2) that legislation will be enacted promptly and without any significant amendment or revision; (3) the Governor of Alaska will sign such a bill; and (4) on the basis of that legislation this Court, after an appropriate hearing, will then conclude that California Retail Liquor Dealers Assn. v. Mid-Cal Aluminum, Inc., 445 U.S. 97 (1980), is controlling and that this case is moot. 4/

4/ Midcal provides that there are "two standards for antitrust immunity under Parker v. Brown. First, the challenged restraint must be 'one clearly articulated and affirmatively expressed as state policy'; second, the policy must be 'actively supervised' by the State itself.'" 445 U.S. at 105 (citation omitted).

This is too uncertain and speculative a basis for staying this litigation.

The fact that the Board has been on notice of the antitrust deficiencies in its competitive bidding ban for over four years and that the Legislature has already refused to enact an even less restrictive statute than the one the Board now seeks makes defendant's hoped for legislative bailout all the more speculature. The argument that such legislation would pass is predicated on the assumption that, contary to the experience of the last legislative session, the legislature will vote to eliminate the possibility for public and private purchasers to reduce the costs they pay for architectural, engineering, and land surveying services through competitive bidding. 5/

5/ The tenuousness of that assumption is also evidenced by the testimony of Charles Torkko, President of the Consulting Engineer Council of Alaska and one of the major proponents of the "Little Brooks Act" provision at the last legislative session, concerning the proposed repeal of the Rule:

> [O]ne of the difficulties that we faced [in getting the Little Brooks Act enacted] was State administrative pressure on the legislature that demanded from the Governor's Office an alternative to the final procedure for sequential negotiations with the topped rank firm. If those failed, they demanded that there would be an option for concurrent negotiations with the three top firms. We felt that this was in violation of the concept and the regulations and the intent of the efforts that we have been working for the State of Alaska and could not support that."

In sum, in these circumstance it is inappropriate to stay litigation on the mere possibility that controversial legislation will someday be enacted; moreover, given the recent experience in the legislature it is clear that there is no substantial likelihood that defendant's hoped for legislation will be passed.

Even if legislation completely forbidding competitive bidding by all engineers, surveyors and architects is enacted, it is not at all clear that this suit will be automatically mooted. At the very least plaintiff would be entitled to ascertain through discovery whether the defendant's conduct is allegedly illegal activity has indeed been "immunized". Thus it seems that the only certain result of granting a stay would be to delay this litigation.

IV.

CONCLUSION

Defendant has not met its burden of showing that the proposed stay is justified. Indeed, there is no good reason to stay proceedings and plaintiff's discovery. Defendant's motion should therefore be denied.

Dated: February 14, 1983

Respectfully submitted,

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FILED

OCT. 12 1982

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By.....

UNITED STATES OF AMERICA, Plaintiff, v. ALASKA BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS, Defendant.	Civil No. Filed: 15 U.S.C. §1 (Antitrust Violation Alleged) 15 U.S.C. §4 (Equitable Relief Sought)

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendant and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed under Section 4 of the Sherman Act, as amended (15 U.S.C. §4), in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 1 of said Act (15 U.S.C. §1).

2. The defendant, Alaska Board of Registration for Architects, Engineers, and Land Surveyors (hereinafter referred to as the "Board"), maintains its principal office, transacts business and is found within the District of Alaska.

II

DEFENDANT

3. The Board is made the defendant herein. The Board is comprised of practicing architects, professional engineers, and land surveyors and is organized and exists under Section 3 of

Chapter 179 of the 1972 Session Laws of Alaska, as amended (Alaska Statutes § 08.48.011 et seq.). The Board maintains its principal office in Juneau, Alaska.

III

CO-CONSPIRATORS

4. Various other persons not made defendants herein have participated as co-conspirators with the defendant in the violation hereinafter alleged, and have performed acts and have made statements in furtherance thereof.

IV

TRADE AND COMMERCE

3200

5. There are approximately 2100 architects, professional engineers and land surveyors, more than one-half of whom are residents of states other than Alaska, licensed to practice in Alaska. These persons provide architectural, professional engineering or land surveying services to individuals, private businesses and governmental entities in Alaska. These services include the design, study and supervision of the construction of buildings, roads, bridges, dams, industrial plants and other structures. Over $17 million dollars are spent annually by Alaska residents and governmental entities for such services.

6. The Board is the sole licensing authority for the practice of architecture, professional engineering and land surveying in the State of Alaska. The Board administers written examinations and otherwise supervises the qualification, certification and registration for practice within the State of Alaska of resident and nonresident architects, professional engineers, land surveyors and corporations offering architectural, professional engineering or land surveying services. Upon payment of a fee, the

Board annually issues certificates of registration to all properly certified or registered architects, professional engineers, and land surveyors.

7. It is unlawful in Alaska for individuals to practice or offer to practice the profession of architecture, professional engineering or land surveying, or to represent that they are architects, professional engineers or land surveyors unless they have been properly certified or registered by the Board and hold a current Board certificate of registration to practice architecture, professional engineering or land surveying in Alaska.

8. The Board consists of nine members appointed to six-year terms by the Governor of Alaska. Three of the Board members must be architects, one must be a land surveyor, two must be civil engineers, one must be a mining engineer, and two must be engineers from other branches of the engineering profession. Board members must have been residents of Alaska for at least three consecutive years before their appointments. Board members must hold Board certificates of registration and have a minimum of five years of professional practice in their respective fields. While serving their membership terms, Board members may, and do, continue to engage in the practice of architecture, professional engineering or land surveying in Alaska. Board members are compensated on a per diem basis when attending to the work of the Board. In addition, Board members are entitled to receive travel expenses incurred in carrying out their duties.

9. Pursuant to the terms of Section 3 of Chapter 179 of the 1972 Session Laws of Alaska, as amended, the Board may promulgate and amend a code of ethics or professional conduct for architects, professional engineers, and land surveyors.

Under Alaska law, the Board, except in emergencies, must hold a public hearing or proceeding before promulgating or amending its code of ethics or professional conduct. The laws of Alaska are silent as to the form or content of any such code of ethics or professional conduct and neither direct, require, nor mandate restrictions upon, or the regulation of, price competition in the offering of architectural, professional engineering, or land surveying services. Nor has any policy of restricting or regulating price competition in the offering of architectural, professional engineering or land surveying services been established or dictated by the State of Alaska.

10. In 1974, the Board adopted "Rules of Professional Conduct" intended to regulate the practice of architecture, professional engineering and land surveying in Alaska. Among the Board's rules is Rule 36.230(b), which provides that an architect, professional engineer or land surveyor may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding. This rule is still in effect. In December, 1980, the Board rejected a proposal to repeal Rule 36.230(b). In May, 1982, the Board refused to repeal Rule 36.230(b) on an emergency basis. In September, 1982, the Board voted to retain Rule 36.230(b).

11. Section 3 of Chapter 179 of the 1972 Session Laws of Alaska, as amended, provides that the Rules of Professional Conduct of the Board shall be made known in writing to every registrant and applicant for registration and shall be published with the roster of registrants, which the Board must annually publish, mail to registrants and state, borough, and city officials and distribute or sell to the public. Board Rule 36.240(b) provides that an architect, professional engineer or land surveyor having knowledge or reason to believe that another person or corporation may be in violation of any

of the Rules of Professional Conduct shall present that information to the Board in writing and shall cooperate with the Board in furnishing such further information or assistance as may be required.

12. The Board is authorized by Section 3 of Chapter 179 of the 1972 Session Laws of Alaska, as amended, to take disciplinary action against any Board certificate of registration holder who violates any of the Rules of Professional Conduct. Such disciplinary action may include the reprimand of a registrant or corporation or the suspension, refusal to renew, or revocation of the offender's certificate of registration.

13. The architectural, professional engineering and land surveying services provided by the Board certificate of registration holders involve and affect individuals, corporations and other business entities throughout the United States. These services facilitate, direct and shape the conduct of interstate business and contribute directly to the flow of persons, money, goods and services into and out of the State of Alaska.

14. In the course of rendering architectural, professional engineering and land surveying services, Board certificate of registration holders located in Alaska often travel to states other than Alaska and make substantial use of interstate mail and wire services in the transport of funds, documents, plans, reports, plats, drawings and other communications throughout the United States. In addition, many certificate of registration holders located outside Alaska perform architectural, professional engineering and land surveying services within Alaska.

15. The activities of the Board and its certificate of registration holders, as described herein, are within the flow

of interstate commerce and have a substantial effect upon interstate commerce.

V

VIOLATION ALLEGED

16. Beginning at least as early as 1974, and continuing up to and including the date of the filing of this complaint, the defendant and co-conspirators have been engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act. Said violation is continuing and will continue unless the relief hereinafter prayed for is granted.

17. The substantial terms of said agreement, understanding and concert of action have been and are that the defendant promulgate, adopt, publish and distribute a provision in its Rules of Professional Conduct, Rule 36.230(b), prohibiting certificate of registration holders and other architects, professional engineers and land surveyors practicing in Alaska from knowingly soliciting or submitting proposals for professional services on the basis of competitive bidding.

18. For the purpose of effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators have done those things which, as hereinbefore alleged, they agreed and conspired to do.

VI

EFFECTS

19. The aforesaid combination and conspiracy has had the following effects, among others:

(a) Competition in the sale of architectural, professional engineering and land surveying services has been suppressed and eliminated;

(b) Consumers of architectural, professional engineering, and land surveying services have been deprived of the benefits of free and open competition in the sale of such services; and

(c) Architects, professional engineers, and land surveyors have been restrained in their ability to make their services readily and fully available to customers requiring such services.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendant and co-conspirators have engaged in an unlawful combination and conspiracy in restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act.

2. That the defendant, its members and all other persons acting or claiming to act on its behalf be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination and conspiracy or from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having similar purposes or effects, and from adopting, ratifying or following any practice, plan, program or device having similar purposes or effects.

3. That the defendant, its members and all persons acting or claiming to act on its behalf be enjoined and restrained from promulgating, publishing, distributing or otherwise

suggesting, and from adhering or agreeing to adhere to, any rule prohibiting competitive bidding by Board certificate of registration holders.

4. That the defendant be required to cancel Rule 36.230(b) of its Rules of Professional Conduct and every other resolution or statement of policy which has as its purpose or effect the suppression or elimination of competitive bidding by Board certificate of registration holders.

5. That the defendant be required to notify all Board certificate of registration holders, the general public, and all Alaska city, borough, and state officials that it has cancelled and rescinded Rule 36.230(b) of its Rules of Professional Conduct and every other resolution or statement of policy which has as its purpose or effect the suppression or elimination of competitive bidding by Board certificate of registration holders.

6. That the plaintiff have such other and further relief as the Court may deem just and proper.

7. That the plaintiff recover the costs of this suit.

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UNITED STATES ATTORNEY
District of Alaska

Dated: October 7, 1982

CENTURY ENGINEERING, INC. CONSULTING ENGINEERS • PLANNERS

RECEIVED 3-22-83

March 17, 1983

Representative Mike Szymanski
Pouch V
Juneau, Alaska 99811

Dear Mike:

John and I have read over House Bill No. 211 concerning architectural and engineering services. The procedures outlined sound pretty much like the way things have been handled lately, at least as far as our recent experience is concerned.

I would think something in the bill giving guildlines as to how "fair and reasonable prices" are determined might be helpful. Most national professional organizations, such as the National Society of Professional Engineers or American Institute of Architects have booklets to help owners determine fee ranges for project types.

On page 2 of the bill, line 23 makes reference to "bids". A bid is usually a monetary figure and would then seem to conflict with other portions of the bill. Possibly "offers of or proposals for" would be more suitable language.

Thanks for allowing me the time to comment on this legislation which affects an area of direct impact on my profession..

Sincerely,

CENTURY ENGINEERING, INC.

Robert J. Peters, P.E.
Project Engineer

RJP/css

500 "L" STREET, SUITE 200 | ANCHORAGE, ALASKA 99501 | (907) 277-0584/276-1248 | TELEX 26-364

HB

220

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Gordon J. Zerbetz, Chairman
Marvin R. Weatherly
Carolyn S. Guess
Susan M. Knowles

In the Matter of the Reasonableness and Propriety of the Interfund Charges Borne by the MUNICIPALITY OF ANCHORAGE Telephone, Electric, Water and Sewer Utilities	U-76-26 ORDER NO. 2

ORDER APPROVING INTERFUND METHODOLOGY

On May 3, 1976, the MUNICIPALITY OF ANCHORAGE d/b/a MUNICIPAL LIGHT & POWER DEPARTMENT (ML&P), ANCHORAGE TELEPHONE UTILITY (ATU) and the ANCHORAGE WATER UTILITY (AWU) was advised of the information to be provided with the Commission at a public hearing on June 1, 1976, for the purpose of determining the justness and reasonableness of the interfund charges paid to various departments within the Municipality by the above named utilities. The burden of proof that the interfund charges paid by ATU, ML&P and AWU were based on reasonable methodology and accurate allocation factors under the affiliated interest transactions as stated in AS 42.05.511(c) was to be borne by the Municipality.

JURISDICTION

The Municipality asserted, prior to the examination of the interfund charges, its belief that the affiliated interest section of the statute, AS 42.05.511(c), did not specifically affect the Municipality whose departments

provide services to the utilities. It was argued that no profit is to be earned by the Municipality through the interfund charges; there is no majority shareholder as in a private corporation; and the interfund charges must be approved through the budgetary process by the appropriate legislative body. The staff of the Commission contended that the Municipality does fall under the provisions of the statute by providing services to and receiving payment from each of the subject utilities and that the Municipality should bear the burden of proof that these charges are just and reasonable. The Commission concurs with the staff's position.

GENERAL BACKGROUND

The government entity which provided services to the above named utilities in 1974, 1975 and for the first nine months of 1976 is conceptually a different entity than is in existence today and on which the proposed 1976 budget of the Municipality is based. For the purpose of this proceeding the test year under consideration was 1975. The charges to the utilities in that year, by the providing departments of the Municipality, were used to ascertain the reasonableness and accuracy of the allocations of interfund charges. These charges were budgeted in 1974 for 1975 under the existing City of Anchorage government. The test year 1975 was used because of the permanent rate requests by ATU, ML&P and AWU pending before this Commission. For the most part, their request is based on this test year. In addition, the fact that the unified government, known today as the Municipality of Anchorage, has been in existence a relatively

short time, the workload of various departments has changed substantially, and the new government is in effect in a transitory state, make an examination of the budgeted 1976 interfund charges inappropriate at this time.

The testimony of the Municipality strongly recommended that a re-evaluation of the methodology of determining interfund charges and of the appropriateness of the existing allocation factors was of paramount importance for the 1977 fiscal budget of the Municipality. Every department should be analyzed as a result of the unification of the former City of Anchorage and the Greater Anchorage Area Borough now known as the Municipality of Anchorage. Various functions and responsibilities within some departments of the new Municipality have undergone major changes. These changes have affected the kinds of services provided as well as the methods used for allocating costs for services to any or all of the utilities.

The need for a study which would thoroughly review each department within the Municipality and examine the interfund procedure has been addressed by Arthur Young and Company in the course of a data processing study.

In light of unification, examination of services which might better be performed outside the Municipality through the contracting procedure should be made. There appear to be three possible courses of action for the utilities regarding the purchase of services from within the Municipality. One, the interfund charges could continue to be handled in the same manner as previously done by the City. This would require that the methodology and allocation

factors be updated in terms of a unified government. Two, the utilities could provide some or all of the services to themselves that are now being provided by the Municipality. Three, there could be services that should be contracted outside the Municipality. In addition, the subject of the appropriateness of interfund charges for the sewer utility should be addressed. If the refuse service provided by the former City of Anchorage comes under the jurisdiction of this Commission, interfund charges to that utility must also be examined.

For the purpose of this hearing the Municipality defined interfund as a charge by one department within the municipal government (whether the former City of Anchorage or the present Municipality of Anchorage) to another department within the government for services performed. The Municipality submitted Exhibits 1 and 2 which provided the budgeted and actual amount of interfund charges to ATU, ML&P, AWU and the general government unit (which includes those departments receiving monies from the general fund) and the total amount of all budgeted and actual interfund charges for the years 1974 and 1975. Exhibit 3 provided the budgeted interfund charges for the year 1976. The Uniform System of Accounts has been used since 1973 for the preparation of the 1974, 1975 and 1976 budget.

The budgetary process includes input from the supervisory personnel within each department, the review of the City Budget Officer (now the Chief of Management Services for the Municipality in the Office of Budget and Management), any refinement or change to be made by the

Office of the City Manager (now by the Office of the Mayor) and submission to the City Council (now the Municipal Assembly) for its approval. The implementation of methodology and allocation factors regarding interfund charges are based on the approved budget document for the appropriate fiscal year.

It should be noted that the interfund charges were a subject of audit by the external auditor hired by the governmental body. The appropriateness of ATU's interfund charges was also reviewed by RCA Alaska Communications, Inc., in its determination of the separation and distribution of toll revenues. In addition, the State performed auditing functions for particular grant money that the Municipal government receives.

During the hearing there was testimony that in some instances charges are made to each of the utilities by a department not listed on Exhibits 1 through 3. For example, a service provided a utility by the Department of Public Works at the request of the utility is paid for by a transfer of equity in the cash pool. A reimbursable work order form, Exhibit 29, illustates the procedure to be utilized in this regard. Bills for services provided by the utilities to other departments within the government are also paid by a transfer of equity in the cash pool.

In Order No. 1 the Commission required the Municipality to provide a copy of any written instructions to the appropriate person within each department calculating the interfund charges. Exhibit 27, Interfund Criteria Information, was provided as well as Exhibit 28, a copy of the 1975

annual budget which explained the "charges to others" within each department. The individual computing the budgeted and actual interfund charges and the methodology and allocation factors for those charges were provided in Exhibits 4 through 25 as required by Order No. 1. Also included in these exhibits were comparable charges, where available, and time sheets and other recordkeeping data, when used.

The Commission commends the Municipality on the thoroughness of its prefiled testimony and the presentations made by the witnesses during the hearing and will discuss each department providing services to any or all of the subject utilities in 1975. For the purpose of this discussion reference will be made to the titles of individuals and the governmental unit based on the former City of Anchorage. Where appropriate, reference will be made to the existing municipal government. It is the intention of the Commission that this discussion may be beneficial to those individuals who will review and study the interfunded services and charges in the new unified government.

The transfer of interfund charges is done monthly on the basis of the actual costs to the providing department. Any end of the year adjustments either upward or downward are made in accordance with the allocation factors outlined within each department. Reference has been made to final charges in some of the exhibits for the 1975 test year. Generally speaking, these refer to charges incurred by departments as a result of unification and these charges were not interfunded to the utilities.

MAYOR AND CITY COUNCIL

The method for calculating the budgeted interfund charges from the Mayor and City Council to each of the subject utilities was developed by the City Budget Officer in 1972. His judgment based on observation of work sessions and City Council meetings was used to apportion the [illegible] workload of the Mayor and City Council into the following categories:

Agenda relating items	50%
Personnel functions	20%
Maintenance and operations budget	15%
Capital improvement program	15%

Within these categories of workload the City Budget Officer established the allocation factors for each utility on an annual basis.

The City Budget Officer analyzed the final agendas of 8 City Council meetings in different months of 1974 to establish the percentage of agenda items relating to each utility. The charges to each utility for the workload of Mayor and City Council relating to personnel functions were expressed as a percentage of the projected authorized positions for each utility in relation to the total authorized positions for the City. The charges for the maintenance and operations budget and for the capital improvement program were expressed as a percentage of each utility's budget in relation to the entire maintenance and operation budget and capital improvement program for the City. These percentages were weighted and applied to the actual 1975 expense of this department by the Controller Division.

In addition, each utility was charged $600 as its cost for the expenses of its advisory board. These

lay boards met monthly, and their members were paid a small stipend. The determination of these charges was made by taking the total amount of monies expended to the City boards and commissions and dividing it by 20. (There were 20 advisory boards.)

This department has undergone substantial change as a result of unification, and Exhibit 3 illustrates the separation of the Assembly from the Mayor/Manager Department for interfund purposes. The appropriateness of the workload categories and the accompanying allocation factors for each utility should be examined for the 1977 budget year.

CITY MANAGER

The calculation of interfund charges for services provided by this department to the utilities was the responsibility of the City Budget Officer. The allocation of workload was made to the identical categories as those in the Mayor and City Council Department. The percentage of time allocated to those categories varied slightly. The reason for this was that the personnel within this department were asked for their evaluation of time spent on work relating to these categories. The judgment of the City Budget Officer who had spent five months as Assistant City Manager, in addition to his observations of work sessions and City Council meetings, was also a criterion.

Within each category, (agenda related activities, personnel functions, maintenance and operation budget, and capital improvement program) the percentage of workload for each utility was calculated in the same manner as for the Mayor and City Council. The actual expense to each utility was calculated by the Controller Division who applied the

weighted percentage to the actual expense of the City Manager's Office less the dollars attributable for one administrative assistant and secretary whose specialized tasks had provided no service to the utility.

In 1975 the expense of this department included the functions of Labor Relations Specialist, Equal Employment Officer and Public Information Officer. It should be noted in the budgeted interfund charges for fiscal year 1976 that some of these functions have been removed from this department and the City Manager is combined with the Mayor. An evaluation for the 1977 budgeted interfund charges will be necessary for this department.

The City Budget Officer gave testimony that a time study had been attempted for this department but was not successful because the personnel did not accurately or adequately fill out the time sheets. Time cards were also proposed at one time for the Mayor and City Council but this idea was rejected.

INTERNAL AUDIT

The calculation of interfund charges from this department was the responsbility of the Internal Auditor working with the City Budget Officer. The actual interfund charge to the utilities was calculated by multiplying the actual auditor hours spent on each utility by the predetermined cost per hour. The hourly charge was based on the salaries and overhead of the department as outlined in Exhibit 6a. Testimony was received that the hourly rates charged by this department are readjusted as personnel changes and pay increases for Municipal employees take

effect. Exhibits showing that substantially higher costs would be incurred if these services were purchased outside the Municipality were provided. The Internal Auditor, who calculates the actual charges of this department, has an on-going workload and is able to estimate with accuracy his charges to others for budgetary purposes. He also works with staff of various departments to help determine his costs based on their needs.

COMMUNITY PROMOTION

The calculation of interfund charges from this department were performed by the Public Information Officer and the City Budget Officer on the basis of two costs: one, the cost of membership to the City in the Alaska Municipal League and the Alaska Chamber of Commerce and, two, the space distribution in the 1974 annual report.

The determination of each utility's cost for the Municipal League and Chamber memberships was allocated on the ratio of the number of employees per utility to the total number of City employees. The allocation for space in the annual report was expressed as a percentage of each utility's space in relationship to the entire cost of the annual report.

Testimony was given that through an inadvertent error the cost of the membership fees was not interfunded for the 1975 test year. It is the intention, however, of the Municipality to allocate the expense of these memberships in the future. In addition, the Municipality has decided to discontinue the publication of the annual report after 1975.

CITY CLERK ADMINISTRATION

The calculation of these interfund charges was the responsibility of the City Clerk working with the City Budget Officer. The services provided by the City Clerk to the subject utilities in this docket are the costs incurred by the Clerk's Office in providing services to the utility advisory boards and commissions. These services include recording secretaries, transcribing minutes, overhead, mailing, etc. The actual charge, calculated by the Controller Division, was based on 1/20 of the total cost of providing services to all of the City boards and commissions. There was testimony that in the future these charges will not be interfunded but will be services provided internally by each utility.

CITY CLERK - RECORDS RETENTION

The calculation of these interfund charges was the responsibility of the City Clerk working with the City Budget Officer using their previous experiences in providing the service of microfilming records of various departments. The actual charges were for the services received, and the cost was determined on an hourly charge based on salaries and overhead. The form for a participating department to request microfilming was provided as Exhibit 32. Time sheets were kept by the personnel in this department for the calculation of the actual cost. When budgeting for this service, a utility would consult with the City Clerk, Records Retention personnel to determine, based on the requested work, what the projected costs would be. It is noted that for the test year 1975 there were no charges to AWU and very minimal charges to ATU and ML&P.

CITY ATTORNEY

The calculation of these charges was the responsibility of the City Attorney working with the City Budget Officer and the actual charges were calculated by the Office of the City Attorney. A retainer was charged to each utility and the Port as its portion of the maintenance of the City Attorney's files, referer ce library and overhead. It should be noted that there was no retainer allocated to the general government departments. The attorney time was allocated at $60 a billable hour, for the year 1975; each attorney kept a record of his workload attributable to the utilities. Testimony was given that at the present time and for the test year 1975, there was no form for the attorneys to fill out, and in some instances time keeping was noted on desk calendars and in other inappropriate ways. Various expenses associated with litigation were allocated to the appropriate utility. The City Budget Officer stated in the event of a monetary award by the Courts in favor of a utility those monies were directly apportioned to that utility.

If a utility would contract with an attorney outside the City Attorney's staff, the cost associated in this matter would be billed directly to the utility.

PROPERTY MANAGEMENT

The calculation of interfund charges by this department was done by the Property Management Officer working with the City Budget Officer. This division is the Office of Record for all real property including rights-of-way, buildings and any non-movable equipment that is Municipal property.

A retainer was charged to each utility and the general government unit which covered the salary, benefits and space allocated to the Records Clerk. The volume of records kept for each utility and general government unit was a factor taken into consideration in determining the retainer. The retainer was instituted by the City Attorney in 1974, when Property Management came under his supervision. It is now separate and the reasonableness of the retainer should be re-evaluated.

The actual interfund charge was the budgeted retainer plus the actual charge of $17.50 an hour for appraising and right-of-way land acquisition. The hourly cost was based on an analysis by the Internal Auditor of the salary and overhead in this department. The Property Management Officer and the Controller Division calculated the actual charges.

The Municipality provided through Exhibit 11a comparable hourly costs of independent appraisers. The charge by the property management division to each utility was significantly less than the cost charged by an independent appraiser.

ADMINISTRATIVE SERVICES, ADMINISTRATION

The calculation of these charges was the responsibility of the City Budget Officer in consultation with the Assistant City Manager, Administrative Services, the Staff Accountant, and the Financial Management Systems Accountant. The charges to the utilities were expressed as a percentage of the total workload of the above mentioned personnel. Their workload was analyzed by the City Budget Officer

utilizing his best estimate and expertise based on the time these individuals spent on utility matters in four areas: current operating budget; existing capital improvement program; projected bond sales; use of the computerized accounting system. The actual charge, calculated by the Controller Division, was determined by applying the weighted percentages to the actual 1975 expense of this department. The actual charges for 1975 were less than the budgeted amount. The reason given was that vacancy factors were greater than budgeted, so the interfund charges were adjusted backwards on the basis of the calculated weighted percentages. The personnel of this department review their work load annually with the City Budget Officer to determine the percentage of time spent on utility matters.

This department is the Office of Management and Budget for the 1976 budget year.

CONTROLLER

The calculation of the interfund charges of this department, which was the general accounting arm of the City, was the responsibility of the Controller and staff working with the City Budget Officer.

Three categories of costs are analyzed to determine the percentage of time spent on utility matters. The first category, regular charges, (accountants' time in the general accounts payable category), allocated its costs for the 1975 test year based on desk audit time studies performed over a one month period. The Controller selected the time period and both daily and hourly time studies were

performed. Exhibit 13a was provided, which was the desk audit time sheets for November 1974. The employees were responsible for interpretation of workload and filling out time sheets.

The second category was the payroll system. The allocation factors for each utility were arrived at by determining, through desk audit time studies for a month and an analysis of payroll transactions for each utility, the workload for each utility expressed as a percentage of the total workload of this division.

The third category was the financial management system (FMS), and these costs were allocated on the basis of desk audit time studies over the same monthly period along with an analysis of the FMS transactions for each utility. This included computer machine time that the Controller used for each utility in addition to those charges allocated directly by the data processing department through the interfund process. The weighted average of the allocation percentages in each of the three categories, regular charges, payroll systems, and FMS was applied to the actual 1975 controller expense, and calculated by this department.

TREASURY

The calculation of the interfund charges of this department was the responsibility of the Treasurer and staff working with the City Budget Officer.

The Treasury was responsible for the receipt and custody of all funds for the City, including utility monies. The Treasurer, supervisor of this department, was responsible for the investment of all funds including utility bond

funds and handles all street and water assessments. Exhibit 30 was provided to show the monthly reports made by the Treasurer indicating the status of all cash and investments of the Municipality.

There are three sections under the Treasury Department: Receipts and Custody, Parking Violations and Assessments. The Treasurer made the determination that half of the administrative expense of this department be allocated as overhead equally to these three sections. This allocation became a part of the costs of service provided by each section.

Charges to each of the subject utilities for services rendered by the Receipts and Custody Section were based on a one week time study in 1974 in which the individuals working in this section performed a physical count of transactions handled. A sample of the time sheet was not available because of the relocation of this department and the disposal of these records. The actual expense to each utility was expressed as a percentage of the total cost of processing all transactions by this section.

Parking Violations did not affect any of the subject utilities.

The allocation of the Assessment section interfund expense was also based on a one week time study in 1974 of those individuals working in the section based on the number of hours spent on each assessment problem. It should be noted that the only utility requiring these services is AWU. The actual interfund expense of the Assessment Division was

expressed as a percentage of AWU's cost in relation to the entire cost of this section.

The remaining half of all interfund expenses of the Treasury Department was allocated to each utility and the general government unit based on their average equity in the investment accounts during the two months prior to the 1975 budget preparation. This was expressed as a percentage of the total equity investment of the City and applied by the Controller Division to the actual costs of this department.

For the 1977 budget, the sewer utility will have substantial impact on this department. Also, testimony was received that many different funds will be handled by this department as a result of unification. The methodology used to determine interfund charges for this department needs re-evaluation in light of unification.

PRINT SHOP

The calculation of the interfund charges for this department was the responsibility of the utility managers working with the City Budget Officer, and actual charges were computed by the Print Shop Supervisor in accordance with the Print Shop Prices provided as Exhibit 15a. These prices were based on salaries and overhead.

It should be noted that there was over a 400% increase in the budgeted and actual amounts interfunded in this category for ATU and AWU in 1975. Testimony was given that the probable reason for this was that ATU ordered a series of new forms, having used up forms that had been purchased from an outside supplier. As a result the initial cost was con-

siderably greater than a normal year's usage. A price sheet from Ken Wray's Print Shop substantiated the fact that the Print Shop prices are anywhere from one-third to over 100% less than the same service offered by a private business.

COURIER AND MAIL

The calculation of the interfund charges of this department was the responsibility of the City Budget Officer and actual charges were computed by the Mail Room Clerk and the Controller Division.

The allocation factor used to determine the amounts budgeted to each utility was based on an analysis of the current courier schedule (1974). The number of courier stops which served each utility was expressed as a percentage of the total amount of stops. This percentage became each utility's allocation of the actual costs of this department.

It should be noted that for 1975 ATU received no service from this section because the demands of this utility became sufficient to justify hiring its own employee to provide this service. Testimony was given that the minimum amount of times the courier serves ML&P and AWU was four times daily.

The mailroom charges were the result of joint utility mailings (not customer billing) and were minimal. Each utility has its own postage machine so these charges are no longer interfunded.

INSURANCE AND CLAIMS (RISK MANAGEMENT)

The calculation of the interfund charges for this department was the responsibility of the Insurance/Claims

Officer working with the City Budget Officer. The allocation of these charges was based on two categories: claims activity and insurance activity.

The actual cost of processing claims filed against the City was calculated on a cost per claim basis and charged to the appropriate utility. A quarterly report was made indicating the number of claims filed against each utility and the general government unit, the total expense of processing those claims and the calculation of charges to each utility. Exhibit 17a detailed the 1975 claims against each of the subject utilities and provided work sheets used to determine the cost of each claim based on this department's overhead to process these claims. It was emphasized that this charge is only to process claims and does not reflect payment to any third party.

The cost of providing insurance coverage to the various utilities during 1975 was allocated by weighing the type of insurance and coverage for each utility. Testimony was given regarding the diversified needs and numerous kinds of insurance needed by the utilities and the general government unit. It is apparent that this is an extremely complex subject. The judgment and experience of the Insurance/Claims Officer (Risk Manager) was the basis for the percentage of interfund charges allocated to each utility for insurance activity. The actual amount interfunded to ATU in this division doubled for the year 1975. The reason for this substantial increase was the requirements by OSHA to establish a safety program which heretofor was in the Personnel Department. The costs of this Safety Section were interfunded on the basis of the number of authorized positions

within the utility and general government unit and the percentage applied to the actual expense of this Section.

The Municipality has undertaken a self insurance program in some areas which is not reflected in the 1975 test year. There may be a decrease in expense related to insurance coverage but this will be offset by an increase in the expense of the claims activity. It will be necessary to re-examine the interfund charges in this division because of this new undertaking.

PERSONNEL

The calculation of the interfund charges by this department was determined by the Personnel Director and staff working with the City Budget Officer.

The allocation factors established for 1975 budget purposes were determined by a two-step process. The cost for employee/labor relations, records, and safety training was allocated based on each utilities percentage of the total employees in the City at the time the budget was prepared. The Safety Section was transferred to Risk Management thereby reducing the actual cost of this service.

The recruitment and classification costs of this division were allocated on the total number of classified employees in each utility expressed as a percentage of the total number of City classified employees at the time the budget was prepared. The actual expense to each utility, computed by the Controller Department, was determined by applying the weighted average of these two percentages to the actual 1975 expense of this department.

DATA PROCESSING

The calculation of the interfund charges by this department was prepared by the Data Processing Manager and

staff working with the City Budget Officer. The actual charges were computed by the Data Processing Manager and staff.

The Data Processing Department was responsible for computer time and the personnel to analyze, program, key-punch, if necessary, and maintain the computer programs. Testimony was given that there is presently no unused computer time; the machine is running beyond capacity and is working 24 hours a day, seven days a week. The Municipality is also utilizing mini-computers during the current year (1976) and is considering the purchase of a larger computer. No attempt had been made by the City, prior to unification, nor the present Municipality to contract for these services. The 1975 budgeted expenses were calculated by the computer on the basis of man months and projected cost estimates to accomplish the workload each utility requested. The actual expense was based on computer time utilized during 1975 and was calculated by a special built-in program designed for that purpose. The employees of this department kept time sheets (Exhibit 31) tracking their workload and assessing the proper utility. The hourly rates charged by this department for various data processing personnel were provided in Exhibit 19B.

Testimony was given on the plans for merging the computer systems of the former City and Borough and a possible purchase of computers as opposed to present leases. January 1977 is the target date for an integration of the two accounting systems, and this will dictate a re-evaluation of the charges for this department's services.

increase

companies had increased 88% from 1970 to 1974 or nine times the rate of increase of the natural gas industry. Based on the uncontroverted evidence presented by AGAS, the Commission will allow use of a year-end rate base.

Staff testified that AGAS is currently in the process of developing continuing property records (CPRs). At the present time property records are maintained on a ledger card system. AS 42.05.461 requires utilities with annual revenues over $100,000 to utilize CPRs for plant records. It will be incumbent on AGAS to achieve compliance with this statutory obligation within the timetable prescribed by the Commission.

There was general agreement among the parties regarding the reasonableness and propriety of all components of plant in service as proposed, with the exception of property purchased from the affiliate, 3000 Spenard Corporation. At issue was the determination of the appropriate value to be assigned to that property in the rate base. AGAS has included the land in rate base at the sales price paid to 3000 Spenard Corporation, which was based on an independent appraisal performed in May 1974. The staff proposed a valuation equivalent to the original cost to 3000 Spenard Corporation with the possible capitalization of certain costs for not more than two accounting periods at the discretion of the Commission. Staff opposed the inclusion of intercompany profits in the rate base and cited a 1945 Supreme Court case as principal support for its position. The burden of proof in this issue clearly resides with AGAS, pursuant to AS 42.05.511(c) which provides:

> "(c) In a rate proceeding the utility involved has the burden of proving that any written or un-

> written contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost to the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the service or property with its own personnel and capital."

Additionally, AGAS has directed the Commission to the first part of AS 42.05.411(b) for guidance:

> "(b) In determining the value for rate making purposes of public utility property used and useful in rendering service to the public, the commission shall be guided by acquisition cost or, if lower, the original cost of the property to the person first devoting it to public service,..."

The properties under consideration are situated in Kenai, Eagle River, and Anchorage. The Anchorage property is comprised of three parcels on International Airport Road designated as the Operations Center. Rental payments on the former Operations Center on Spenard Road are also tangentially relevant due to the timing of the transition from the old to the new location. The dates and amounts of the purchases and sales by 3000 Spenard Corporation and the intervening rentals by AGAS are summarized on Appendix 1.

The principal business activity of 3000 Spenard Corporation, the Alaskan subsidiary of Baldwin Properties, Inc., a subsidiary of AKI, is property investment and disposition. The company is represented in Alaska by Vice President Richard Barnes, who is also an officer and employee of AGAS and APC. Mr. Barnes testified that he spends between one to two percent of his time on 3000 Spenard Corporation responsibilities. The company's current portfolio of investments is an office building in New Orleans

and 25 parcels contiguous to AGAS' office building. The only property previously owned by 3000 Spenard Corporation and not sold to AGAS was a 22 acre parcel on Kodiak. This property was sold to a company which was concurrently acquiring the assets of a former subsidiary of AKI, Burgess.

AGAS originally leased all the properties it purchased from 3000 Spenard Corporation with the exception of Parcel C on International Airport Road. A representative lease agreement (Exhibit 47), dated January 1, 1969, between the parties provided for a 15% return on the appraised valuation with re-appraisals at 5 year increments during the 16 year term of the lease. The Chief Appraiser, State of Alaska, Division of Lands, a witness for intervenors AkPIRG and Jager testified that based on his studies of the private market, the market rate for leases on bare ground with appraisals at five year increments was currently 8% and was in the 6-8% range in 1969. There was testimony that in late 1973, the decision was made by AGAS, pursuant to an unwritten option or right of first refusal, to purchase the subject properties from 3000 Spenard Corporation. As a result, there was an informal agreement between the parties for conservative rent escalation without re-appraisals for 1974 and for termination of the leases at December 31, 1974, by mutual consent. In February 1974, 3000 Spenard Corporation purchased Parcel C on International Airport Road. The appraisals on which the sales prices were based were completed in May 1974. Approximately 33% of the Eagle River parcel was sold by 3000 Spenard Corporation to the State of Alaska in October 1974, for $48,000. The sale of the properties to AGAS was consummated in December 1974, timed to

coincide with the availability of financing. Rents paid on acquired properties were eliminated from the test year. The land, site improvements, and transportation building at International Airport Road were included in the rate base. However, since the remaining buildings at that site were completed after the end of the test year and were not incorporated in rate base, AGAS retained the expenses associated with the Spenard Road Operations Center in its operating expenses as a representative substitute for the new Operations Center. AGAS argued that this approach was conservative and thereby fair. The transition was completed in May of 1976. It is the opinion of the Commission that the treatment proposed by the utility is not unreasonable.

Section 511(c) of AS 42.05 establishes certain tests for evaluating the reasonableness and propriety of affiliated interest transactions. Property leases and sales such as those under discussion must be necessary and consistent with the public interest. Payments made therefore must be based, in part, on the cost to the affiliated interest of furnishing the property and, in part, on the cost the utility would have incurred if it had furnished the property with its own capital.

AGAS argued that the cost to 3000 Spenard Corporation of furnishing the properties was equivalent to the price it would have received for the parcels from another party at the time of the transaction, which, in turn, was equivalent to the cost AGAS would have incurred if it had purchased identical or similar properties from a third party at that time. This definition of cost is not in conformance with standard accounting nomenclature and would appear

to circumvent the intent of AS 42.05.511(c) to prohibit excessive intercompany profits. Affiliated interest transactions require the highest scrutiny by this Commission. The interpretation proposed by AGAS would preclude such a review. While the utility may argue that AGAS would have paid as much or more for similar purchases from non-affiliates, the fact remains that the sales between affiliated interests offer to the common parent immediate benefits, including favorable capital gains tax treatment of 3000 Spenard Corporation's profits, which mandate circumspection.

A review of the land activities and portfolio of 3000 Spenard Corporation in Alaska would indicate that the company has functioned historically as a land agent for AGAS. At least one parcel was rented to AGAS at the same time as its purchase, and one parcel was purchased after AGAS had apparently committed itself to re-purchase the land. The Commission is not inclined to substitute its judgment for that of management, but it is appropriate to question whether or not investments were incurred prudently by a utility in exercising its responsibility to serve the public. The timing and amounts of the land purchases certainly raise doubts. The staff has argued that intercompany profits should be prohibited regardless of an assessment of the degree to which an affiliated transaction was conducted at arms length. It has cited Colorado Interstate Gas Co. v. Federal Power Commission, 334 U.S. 581, 65 S. Ct. 829, 89 L. Ed 1206 (1945), to support its position.

It is the determination of the Commission based on the evidence presented on the record that the properties purchased from 3000 Spenard Corporation should be included

in rate base at the original cost to 3000 Spenard Corporation. An allowance will be added to the base amount, where applicable, for capitalization of the return, at the rate established by this Order, which would have been earned on properties purchased in advance of being placed in service for a reasonable period of time not to exceed two accounting periods. The resulting valuations are detailed on Appendix 1.

The original cost of plant in service is reduced by the year-end accumulated depreciation. The staff has proposed an adjustment to the asset life of the headquarters building from 20 to 33 years to conform with the depreciation rate utilized by AGAS for other structures and with Internal Revenue Service (IRS). AGAS has argued that it is inappropriate to make isolated changes in depreciation rates without a complete depreciation study, which is scheduled to be performed in the next year or so. However, if the Commission approved the adjustment proposed by staff, it would be equally appropriate to reduce the life expectancy of communications equipment from 33 to 12 years as proposed by AGAS. The staff concurred with this recommendation. The Commission cannot overlook the obvious inequities in the depreciation schedule as filed in the permanent rate request. The Commission does not agree with AGAS' assertion regarding itemized review and modification of the depreciation schedule and will endorse both depreciation adjustments.

Another component of rate base proposed by AGAS is a gas plant acquisition adjustment, less accumulated reserve for amortization. Prior to 1967, the stock of APC was owned 50.41% by AKI and 49.59% by Union-Marathon (U-M). AKI had Class A voting stock; U-M had Class B non-voting stock,

THE STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Gordon J. Zerbetz, Chairman
Marvin R. Weatherly
Carolyn S. Guess
Susan M. Knowles
Stuart C. Hall

In the Matter of the Filing of a Tariff Revision, Designated as TA 12-89, by KENAI UTILITY SERVICE CORPORATION for Permanent and Interim Rate Relief and a New Rate Design Schedule

U-79-32

ORDER NO. 4

ORDER ACCEPTING STIPULATION

The Commission will accept the Stipulation dated September 5, 1979 executed by Kenai Utility Service Corporation and the Staff of the Commission, but subjects its acceptance of this Stipulation to the following express conditions:

(1) Kenai Utility Service Corporation shall file on or before October 22, 1979 amended tariff sheets reflecting the rates and rate design approved by acceptance of this Stipulation;

(2) Kenai Utility Service Corporation shall refund or credit the accounts of those customers that have been charged a rate on an interim basis that is in excess of those approved by this Stipulation;

(3) Kenai Service Corporation shall file with its 1979 annual report the time record form to be used by the President of the utility, Mr. J.M. Covington, to accurately reflect the percentage of his time and his expenses attributable to utility business;

(4) Kenai Utility Service Corporation shall file the time

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record of Mr. Covington for the calendar year 1980 with its 1980 annual report to the Commission;

(5) Kenai Utility Service Corporation shall demonstrate to the Commission by year-end 1980 that its continuing property records exist in a form satisfactory to the Commission.

IT IS SO ORDERED.

DATED AND EFFECTIVE at Anchorage, Alaska this 26th day of September, 1979.

ALASKA PUBLIC UTILITIES COMMISSION

Gordon J. Zerbetz, Chairman

Carolyn S. Guess, Commissioner

Stuart C. Hall, Commissioner

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(S E A L)

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Carolyn S. Guess, Chairman
Marvin R. Weatherly
Susan M. Knowles
Stuart C. Hall
Diana E. Snowden

In the Matter of the Filing of Tariff Revisions by PELICAN UTILITY COMPANY for Fuel Cost Rate Adjustments at Sand Point, Alaska	U-81-89 ORDER NO. 10

ORDER GRANTING PERMANENT APPROVAL OF NEW FUEL SURCHARGE AND ESTABLISHING THE CALCULATION FOR FUTURE SURCHARGE FILINGS

BY THE COMMISSION:

On December 2, 1981, in Order No. 1 of this proceeding, the Commission suspended permanent approval of three fuel surcharge filings, designated as TA20-230, TA21-230, and TA23-230, filed by PELICAN UTILITY COMPANY (Pelco) for its Sand Point service area. In that Order the Commission raised questions about Pelco's fuel purchase arrangement with an affiliated interest, Pelican Distributing Company (PDC), and the methods used in the three filings to calculate kilowatt-hour (KWH) sales.

On the former matter, the Commission noted that in AS 42.05.511(c) it is clear that a utility has the burden of proving that a purchase arrangement with an affiliated interest is necessary and consistent with the public interest. On the latter matter, the Commission's concern centered on Pelco's subtracting five percent of its generation as a line loss to arrive at KWH sales. (A reduction in KWH sales causes an increase in the surcharge, and vice versa.) The Commission directed Pelco to reduce the billed surcharges to eliminate the effect of the five percent

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reduction to KWH sales and to refund to its customers the excess revenues collected. In addition, the Commission approved, on an interim basis, surcharges recalculated without the five percent reduction to KWH sales.

Subsequently, in Orders Nos. 3, 4, 5, and 8 in this proceeding, the Commission granted interim refundable approval to five other surcharges. In each of the latter, Pelco had calculated the surcharge without making a five percent reduction to its KWH sales. Order No. 6 noted that the Commission Staff (Staff) and Pelco had agreed that the five percent reduction should not be made to KWH sales. Thus, the remaining issue was the reasonableness of Pelco's fuel purchase agreement.

On December 28, 1981, Pelco filed an analysis to justify its fuel purchase arrangement with PDC. The analysis calculated an annual expense to Pelco of $75,520 if the utility were to install and maintain its own tanks and fueling facilities. The utility's analysis was based on annual operating expenses associated with the purchase of fuel tanks, including a 15.7 percent rate of return on the additional rate base, five-year depreciation lives for the tanks, and a $1,200 annual maintenance expense thereon.

The Staff analyzed this filing and noted that the calculations and estimates provided were not supported but appeared reasonable with the exception of the depreciation lives of the tanks. Pelco estimated an annual depreciation expense of $23,400 based on an original cost of the tanks of $117,000. Staff noted that the shortest life to be used for storage tanks would be 20 years, which would mean an approximate $17,000 reduction to the annual depreciation expense. In addition, Staff noted that the rate of return calculation of 15.7 percent was greater than the 14.4 percent return recently approved for Pelco in Docket U-81-54.

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This difference in return amounted to an approximate $2,300 difference in revenue, but Staff believed the difference was immaterial if the revenue requirement for the storage tanks was adjusted for the depreciation expense reduction caused by the change in the service lives of the storage tanks. Staff maintained that the $17,000 depreciation adjustment, based on the longer life, was the only appropriate reduction to the revenue requirement calculated by Pelco.

Staff, therefore, calculated that the revenue requirement on the tank and fueling facility would be approximately $58,250 ($75,520 - $17,000). After review of the present difference between the price PDC pays for its fuel and the price PDC charges Pelco, Staff concluded that the utility had provided *prima facie* evidence that there would be no significant difference between (a) a total revenue requirement for Pelco including costs of fuel purchased from PDC and (b) a total revenue requirement including the utility's costs of installing and maintaining its own tanks and fueling facilities.

However, Staff did believe that a serious potential problem existed concerning the price of fuel to be used in future FCRA filings. In particular, the method by which PDC calculates the dock price and Pelco's revenue requirement on the tank facility cannot be reconciled in determining a reasonable cost justification for future rate proceedings.

Pelco is billed by PDC at a variable rate above the Chevron price billed to PDC. The PDC price to Pelco (the dock price) is 25 percent above the Chevron price to PDC less 15¢ per gallon. However, the gallons consumed vary from period to period. For example in a recent surcharge filing, TA35-230, Pelco showed an annual fuel consumption of 465,454 gallons. In the test year (1980) used to calculate the revenue requirement in U-81-54, the yearly fuel consumption was 516,049 gallons. Thus, the actual

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annual expense to Pelco associated with its purchase of fuel from PDC varies. The expense increases with both increases in consumption and increases in the per-gallon price of fuel.

In effect, what is happening is that there is a fixed cost (Pelco: $75,520; Staff: $58,250) associated with installation of the fuel tanks, but PDC's revenue is based on a variable reimbursement (the product of 25 percent of the Chevron price less 15¢ per gallon multiplied by the gallons sold). The yearly expense associated with Pelco's installation and maintenance of the tanks will not change significantly from year to year, but the revenue received by PDC may change significantly based on the price and amount of fuel purchased by Pelco. The annualized reimbursement to PDC on the basis of the recent surcharge filing, TA35-230, is $52,131. This amount is based on a dock price of 11.2¢ per gallon above the Chevron price (11.2¢ per gallon price differential times annual fuel consumption of 465,454 gallons equals $52,131).

Staff advised the Commission of three alternative solutions for dealing with this problem. The first alternative would be for PDC to charge (interfund) Pelco a flat yearly expense associated with the tanks and charge Pelco the same fuel price per gallon that PDC pays Chevron. This solution would necessitate an adjusted revenue requirement and a change in the base price of fuel for surcharge calculations.

A second alternative would be for Pelco to install the tanks and purchase fuel directly from Chevron. As in the alternative above, an adjusted revenue requirement would have to be calculated.

A third alternative proposed by Staff would be to allow PDC to continue to use the present method of determining its price to Pelco, and Pelco would be required either to install the tank

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farm or to interfund an annual expense in its next revenue requirement application presented to the Commission. Under the fuel price to Pelco from PDC which is reflected in TA35-230, the utility appears to be paying PDC less than it would cost Pelco to install and maintain its own fuel tanks. Staff recommended that if this alternative were adopted, a ceiling of 12.5¢ per gallon should be placed on the differential between PDC's price to Pelco and the Chevron price to PDC. The 12.5¢ per gallon figure was calculated by dividing the cost of installing and maintaining the fuel tanks by the annual fuel consumption reflected in TA35-230 ($58,250 divided by 465,454 gallons equals 12.5¢ per gallon). This ceiling would protect the consumer if the price of fuel were to increase. Under this alternative, Pelco would not have to recalculate the base price of fuel and would be allowed to continue its present surcharge computation until PDC's price to Pelco exceeded the Chevron price by more than 12.5¢ per gallon. If the price charged Pelco by PDC exceeded the Chevron price by more than 12.5¢ per gallon, Pelco would calculate the current fuel cost as the Chevron price plus 12.5¢ per gallon.

Staff expressed its belief that the third alternative was the most practical solution. Pelican's customers would be protected by the 12.5¢ ceiling discussed above, and in the next permanent rate proceeding the utility would have the option to adopt an interfund or to install and maintain its own fuel tanks.

The Commission concurs with Staff's analysis and believes that Pelco's present method of calculating fuel surcharges should be used unless the price charged Pelco by PDC exceeds the Chevron price by more than 12.5¢ per gallon. In that case, the maximum current price used in the surcharge calculation will be the Chevron price per gallon plus 12.5¢ per gallon. In its next permanent rate relief request Pelco either should file its revenue requirement with the tank farm included in rate base or determine

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an appropriate yearly interfund between PDC and Pelco to reflect the fuel storage service provided by PDC.

THE COMMISSION FURTHER FINDS AND CONCLUDES:

1. The fuel surcharges previously approved on an interim basis in this proceeding should be allowed on a permanent basis.

2. Pelco should be allowed to continue its present method of calculating the current cost of fuel in surcharge filings unless PDC's price to Pelco (the dock price) exceeds the Chevron price by more than 12.5¢ per gallon. Then Pelco should calculate the current cost as the Chevron price per gallon plus 12.5¢ per gallon.

3. In conjunction with its next rate filing, Pelco either should install the tank farm and include it in Pelco's rate base or should interfund an appropriate annual expense associated with use of the PDC tank farm.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The fuel surcharges previously approved on an interim, refundable basis in this proceeding for the Sand Point Division of Pelican Utility Company are approved on a permanent basis.

2. Pelican Utility Company shall continue to calculate its fuel cost rate adjustment surcharges for its Sand Point Division in the same manner as previously calculated unless the dock price exceeds the Chevron price to Pelican Distributing Company by 12.5¢ per gallon. If the price to Pelican Utility Company exceeds the 12.5¢ per gallon limit, the allowed price shall be the Chevron price plus 12.5¢ per gallon.

3. In its next permanent rate relief request, Pelican Utility Company - Sand Point Division either shall install the tank farm and include it in rate base or charge an appropriate

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annual interfund expense from Pelican Distributing Company to Pelican Utility Company - Sand Point Division for use of these fuel storage facilities.

DATED AND EFFECTIVE at Anchorage, Alaska this 26th day of October, 1982.

BY DIRECTION OF THE COMMISSION
(Commissioner Susan M. Knowles, not participating)

(S E A L)

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for permanent rate increase

increased by $83,124 to $9,430,369 to reflect the increase in purchased power costs to $.016705 per KWH. (Exhibit 13).

Staff reviewed the utility's expenses and adjustments and found them reasonable and proper with one exception, deregulation expense. MEA accumulated the total cost of $36,600 for the deregulation election in two subaccounts, labor costs of $15,982 and other expenses of $20,618. Staff maintained that the labor cost component represented a normal recurring expense which should be expensed in the current period. Staff amortized the remaining costs over a two-year period with the net result of increasing MEA's pro forma operating expenses by $17,141 to $9,447,510 including the additional increment of wholesale power costs per Exhibit 13 with which Staff concurred. The utility did not object to Staff's treatment of deregulation expense.

MVCAC suggested three specific adjustments to MEA's operating expenses. First, the intervenor stated that the utility's contributions to Susitna Power Now, which totalled $1,000 during 1980, should be disallowed under AS 42.05.381. This section of the Commission's governing statute provides in pertinent part that:

> No rate may include an allowance for costs of political contributions, or public relations except for reasonable amounts spent for
>
> (1) energy conservation efforts;
>
> (2) public information designed to promote more efficient use of the utility's facilities or services or to protect the physical plant of the utility;
>
> (3) informing shareholders and members of a cooperative of meetings of the utility and encouraging attendance; or
>
> (4) emergency situations to the extent and under the circumstances authorized by the commission for good cause shown.

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Second, MVCAC argued that deregulation expenses should be reduced by $5,305 (Exhibit 3) for advertising expenses which it also believed were in violation of AS 42.05.381. The consumer group further recommended that no future deregulation elections "be funded without a petition of 20% of the membership prior to any future expenditures by MEA." (T-7, p. 2).

Third, MVCAC averred that the savings experienced by MEA for reductions in its premiums for property and liability insurance should be passed on to the ratepayers as a reduction in operating expenses. The cost of property insurance coverage was reduced by $2,745 per Exhibit 2 and of liability insurance coverage by $81 ($75,217 minus $74,980 times 29 percent).

The Commission concurs with Staff's recommendation that the labor component of the deregulation election costs be fully expensed in the test year, since it is an ongoing obligation of the utility.

The Commission also believes that expenses for advertising MEA's position in the deregulation election in 1980 -- both in newspapers and on the radio -- should be disallowed. An examination of the text of advertising placed by MEA Board and management in the newspapers circulating in the MEA service area during the course of the election reveals numerous false statements and errors of both fact and law. (Exhibit 3). For example, one appearing in the Chugiak-Eagle River Star on September 18, 1980, stated that even if economically deregulated, MEA still would "be fully regulated by REA" and that the "REA will regulate rate adjustments." That statement is false and misleading. As MEA's management is aware, the REA does not pass on the reasonableness and propriety of the rates MEA or any other electric cooperatives charge for electric energy. As the utility's "banker", REA's sole interest is whether the revenue MEA earns from its rates is sufficient to pay back the loans

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made to MEA for construction projects and expansion of its services. Another ad asserted, without listing any examples, that the Commission was "less sensitive to local economic conditions than the MEA Board" and that APUC regulation did not permit MEA "to carry out the stated preference of its members regarding rate adjustments, that of smaller incremental rate changes." That, too, is false. The MEA Board determines when that utility's rate filings are made. Obviously the less frequently rate increases are requested, the larger the percentage increment is apt to be. Moreover, the MEA General Manager admitted under cross-examination that he ordered the MEA drafting department to "reconfigure" the standard artwork of the caricature symbol (an animated electric plug) supplied by the National Rural Electric Cooperative Association (NRECA) to member cooperatives for the deregulation election campaign in the election. Thus, in the display advertisements in question, the caricature appears swinging a baseball bat at alleged "unnecessary regulation" (Valley Sun, Eagle River Sun, Frontiersman, Chugiak-Eagle River Star); using a pair of shears to, presumably, eliminate "red tape" (Valley Sun, September 16, 1980); painfully straining to obtain release from an animal trap (Chugiak-Eagle River Star, September 4, 1980); and removing a ball and chain (Valley Sun, Eagle River Sun, Frontiersman, Chugiak-Eagle River Star, Anchorage Times, Anchorage Daily News). In short, the Commission believes that the misleading text of the so-called "Pro" and "Con" arguments that appeared in the display advertisements, as well as the doctored caricature, unfairly weighted the advertising campaign in favor of the MEA Board's position on deregulation. The entire MEA-sponsored campaign lacked the fairness and balance surely contemplated by the Legislature under AS 42.05.712.

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For the foregoing reasons the Commission will allow the expenses essential to the mechanics of conducting the election, e.g., ballot printing, mailing and tabulation, but believes the expenses of $5,305 associated with MEA's advertising campaign should be rejected. The balance of $15,312 in other deregulation expenses will be amortized over two years in equal annual installments. The two-year period appears reasonable inasmuch as AS 42.05.712 allows a utility to conduct deregulation elections at two-year intervals.

MVCAC has suggested that a petition of 20 percent of the membership be required prior to the cooperative expending funds on any future deregulation election. The Commission believes this recommendation would posit an unreasonable impediment to operation of the law governing deregulation elections. In particular, the Commission notes that the numerical threshold proposed for spending funds is higher than that established under AS 42.05.712(b) for a quorum or deciding vote in the election. While it cannot adopt MVCAC Recommendation No. 5, the Commission will continue to monitor the amount and scope of deregulation expenses to assure their reasonableness and propriety.

MVCAC's argument to disallow the utility's contributions to Susitna Power Now is rejected without prejudice to its resubmission. There is virtually no evidence on the record with respect to the appropriateness of this expenditure, and it would be improper to base a decision solely on general awareness of the environmental and economic debate surrounding the Susitna hydroelectric project. The Commission also recognizes that this issue affects other utilities and therefore, believes that it should be considered with the benefit of a fully-developed record.

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DISSENT OF SUSAN M. KNOWLES, COMMISSIONER

I dissent from the decision of the majority with respect to the disallowance of $5,305 for advertising expenses associated with the deregulation election.

The issue of the reasonableness and propriety of the amount and amortization period for deregulation expense is an issue of first impression before the Commission. It is also a matter of some sensitivity in that the Commission must perform its oversight responsibility without inhibiting, or appearing to inhibit, the deregulation option allowed by the Legislature in AS 42.05.712.

It is apparent that MEA incurred substantial expenses in the course of publicizing and administering its first deregulation election. In addition, legitimate questions have been raised with respect to the objectivity of the copy used for advertising the deregulation issue and the election. Nonetheless, disallowance of all or a portion of this expense involves a subjective assessment which I find difficult to justify considering both the record and possible infringement of rights under AS 42.05.712.

Given the facts and circumstances in the instant case, I would allow the full depreciation expense but extend the amortization period to three years to recognize both the extraordinary costs associated with this initial election and the questionable reasonableness of some expenditures.

Susan M. Knowles
by cog

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submit progress reports on a quarterly schedule, or sooner if substantive developments occur with respect to the gas supply contract negotiations. Further, once negotiated, the contracts themselves should be submitted to the Commission for approval.

3. Continuing Property Records System. Upon review of this utility's prior rate proceeding, the Commission finds that ENSTAR has not complied with the directive in U-75-95(7) in which the Commission ordered the utility to institute a continuing property records (CPR) system, as required by AS 42.05.461, on or before September 30, 1976. Despite the failure of ENSTAR to comply with the Commission's prior order, the Commission perceives that the utility now intends to proceed in good faith. Accordingly, the Commission accepts as reasonable the utility's estimate of one year to complete its new CPR system. ENSTAR will be required to institute the CPR system not later than October 31, 1983. Staff will then be required to review the CPR system to assure its compliance with the statute and to report the results of that review to the Commission.

4. Management Fees Paid to Parent Corporation. The Commission finds that ENSTAR has not fully met its burden of proof that the intercompany management fees paid to its parent corporation are just and reasonable. However, the Commission believes that the amount actually paid during the test year is not unreasonable when compared to the figures approved in the last permanent rate case wherein a more exhaustive audit was conducted by Staff to verify this expenditure. For this reason, the $611,000 in intercompany management charges will be accepted for purposes of this proceeding, but the acceptance will be conditional upon the requirement that ENSTAR submit by April 29, 1983, a new, more auditable contract for Commission approval. The Staff should then file a report with the Commission providing its criticisms or suggestions for changes in the contract formula.

5. Advertising Expenses. Upon review of the timony and evidence on the record, the Commission finds that the expenses associated with ENSTAR's sponsorship of public television programming are clearly and appropriately categorized under the Commission's regulations as "good will advertising." While this aspect of ENSTAR's advertising is reflective of a laudable civic commitment, nonetheless it also reflects the utility's desire to enhance its public image. Furthermore, this expenditure does not into one of the allowable public relations expense categories described in AS 42.05.381(a). Accordingly, $30,296 in advertising expenses should be disallowed for ratemaking purposes as expressly provided under AS 42.05.381(a) and 3 AAC 50.500.

6. Lobbying Expenses. Although the Commission recognizes that there may be instances in which a utility perceives that certain congressional or State legislation is not in its best interest, the Commission's interpretation of AS 42.05.381(a), particularly in conjunction with 3 AAC 50.500(a)-(c), its consideration of the weight of regulatory precedent, and its limited intent as expressed in U-78-4(33), collectively dictate that $18,000 in lobbying expenses incurred during test year operations should be disallowed. In addition to any legal restrictions, the Commission observes that when a utility claims direct benefits to its ratepayers as a result of lobbying efforts, the utility is presuming to determine without the prior knowledge or consent of its ratepayers what pending legislation is or is not beneficial to them. Alternatively, even if the Commission were to determine the appropriateness of a given lobbying effort on a case-by-case basis, the Commission, in attempting to rule on the question of "clear showing of demonstrable benefits to ratepayers," would be required to offer judgments on such issues as: Is the Legislature (or Congress) acting wisely in changing existing laws? What type of proposed legislation should be defeated? Should a utility be

reimbursed for meritorious but unsuccessful lobbying efforts? How should legislation beneficial to one utility's ratepayers but detrimental to others be treated?, etc. In sum, even if the Commission were to artfully circumvent the statute (AS 42.05.381(a)) and disregard its own regulations (3 AAC 50.500), the fact that the Commission would be required to render such subjective and judgmental decisions with respect to direct ratepayer benefits effectively relegates political lobbying in this and all future proceedings as the proper expense of a utility's stockholders.

7. Rate Case Expenses. The Commission will allow ENSTAR an upward adjustment in rate case expenses to $61,598, amortized over three years, on the basis of estimates found reasonable during the hearing, subject to the submission of documentation to fully support all actual expenses at the end of both this phase and the rate design phase of the proceeding. Additionally, the Commission will allow the utility the option of requesting a further adjustment if documented rate case expenses for the rate design phase of this proceeding exceed the utility's projections.

8. Treatment of $3.2 Million Line of Credit. Historically, the Commission has not permitted short-term debt to be treated as a component of a utility's debt capital structure. Because ENSTAR has not offered any justification for changing this policy, the Commission believes that the $3,200,000 line of credit should be deleted from the cost of capital computation.

9. Consolidated Federal Income Taxes. The Commission reaffirms the policy previously articulated in U-75-95(16) and U-78-4(33) that the benefits which result from the filing of a consolidated federal income tax return must be shared equitably with the utility and its ratepayers. For the purpose of establishing the federal income tax allowance in cost of service, the

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Please deliver to Ken Johnson
House Labor & Commerce
Committee

Fiscal Note Analysis SSHB 220

Assumptions:

1. This bill could create significant new jurisdiction for the Alaska Public Utilities Commission.

2. The new jurisdiction is in an area of regulation for which the Commission has little or no expertise and will have to develop that expertise through the addition of staff and the training of that staff. It is assumed that the term distributing added to AS 42.05.720(4)(c) does not include retail sales.

3. Legal analysis suggests application of this legislation will create legal challenges.

4. Fiscal counter-effect of the deregulation of refuse utilities will be negligible when compared to the other jurisdictions which will be created as a result of passage of this bill.

Program Summary:

A. Historical background and comparison of SSHB 220 with last session's HB 365.

   1. During the last legislative session HB 365 was introduced by Representative Koponen which specifically addressed the regulation of oil refineries. The Commission fiscal note concerning that bill stated that in order to accept this jurisdiction, the Commission would incur additional expenditures in operating categories 100 - 500. In addition, the Commission contacted the National Association of Regulatory Utility Commissioners and discovered that no other state commission regulates oil refineries as a utility.

   2. The broadness of SSHB 220, expands jurisdiction far beyond the regulation of oil refineries. Based on legal analysis, the Commission anticipates that this bill, if passed and made law, could result in much litigation concerning the scope and constitutionality of the expanded jurisdiction.

B. EXPENDITURE REQUIREMENTS

   As in the fiscal note regarding HB 365, this bill would require that the Commission be provided with additional state expenditures. These requirements, and how they differ from last year's fiscal note related to HB 365 are listed below.

100 - Personal Services

Minimum needs have been addressed. Positions required are:

Technical: 1 Utility Engineer IV
1 Utility Financial Analyst III

Support: 1 Consumer Protection Information Officer II
1 Utility Tariff Analyst II
1 Administrative Support Technician II

(There is no change in requirements above the level in the fiscal note accompanying HB 365.)

200 - Travel

Funds will be required for training travel and regulatory travel. Travel for FY 1985 is higher based on a one-time need for extensive training in order for the Commission to regulate the new jurisdictions.

300 - Contractual

Additional contractual funding will be needed to provide three items:

a. Funding for legal counsel to handle the litigation associated with the new APUC jurisdictions. As stated above, if passed, it is anticipated there will be much litigation concerning the constitutionality and scope of jurisdiction.

b. APUC staff does not have any experience or expertise in regulation of the additional jurisdictions. Therefore, it will be necessary to provide substantial training to the two technical positions created to handle the new jurisdiction. Existing staff and Commission members will also need some training in these areas in order to reach proper conclusions and decisions in the regulatory process.

c. Some computer software must be provided in order to put the additional jurisdictions into the APUC data base.

400 - Commodities

There will be a requirement for additional commodities for the new positions which will be established as a part of the new workload.

500 - Equipment

In addition to the equipment associated with the new employees, the Alaska Public Utilities Commission wishes to go

on record to stress the importance of the passage of its capital budget request for an expanded computer system within the APUC. (Copy is attached).

In last year's fiscal note re HB 365 the Commission had asked for additional funding to enhance its existing computer system. Since that time the situation has changed dramatically. Based on present and projected usage, the Commission and the Department of Administration Division of Data Processing, have recommended that the present system be replaced by a larger one. Those projections did not include the addition of such a broadly based jurisdiction as possible in this bill.

600 - LAND AND STRUCTURES

The Alaska Public Utilities Commission is already short of space in its present location. Additional personnel will require additional space.

	FY 84 (Assumption: program begins FY 85)	FY 85	FY 86	FY 87	FY 88	FY 89
100						
SAL & BENEFITS		Note: Figures for FY 85..FY89 do not include merit increases or any negotiated salary inc				
CP OFFICER,R 17A		$43,242.00	$43,242.00	$43,242.00	$43,242.00	$43,242.00
CE IV, R 21C		$60,041.00	$60,041.00	$60,041.00	$60,041.00	$60,041.00
UFA III, R 21A		$56,741.00	$56,741.00	$56,741.00	$56,741.00	$56,741.00
UTA II, R 17A		$43,242.00	$43,242.00	$43,242.00	$43,242.00	$43,242.00
AST II, R 8A		$25,548.00	$25,548.00	$25,548.00	$25,548.00	$25,548.00
		$228,815.00	$228,815.00	$228,815.00	$228,815.00	$228,815.00
200						
TRAVEL-TRNG		$5,000.00	$0.00	$0.00	$0.00	$0.00
TRAVEL - OTHER		$15,000.00 *	$5,300.00 *	$5,618.00 *	$5,955.08 *	$6,312.39
		$10,000.00	$5,300.00	$5,618.00	$5,955.08	$6,312.39
300						
LEGAL COUNSEL		$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00
Add'l SOFTWARE		$5,000.00	$0.00	$0.00	$0.00	$0.00
1st YR TRAINING		$25,000.00	$0.00	$0.00	$0.00	$0.00
		$80,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00
400						
5 POS times $400 *=6% inflation fac		$2,000.00 *	$2,120.00 *	$2,247.20 *	$2,382.03 *	$2,524.95
500						
5 POS times $1200		$6,000.00	$0.00	$0.00	$0.00	$0.00
3 POS times $1000		$2,000.00	$0.00	$0.00	$0.00	$0.00
		$8,000.00	$0.00	$0.00	$0.00	$0.00
600						
add'l office 4P010125 SQ.FT.EA 1SP6083 SQ.FT.EA EQ 583 SQ.FT TIMES $2.00 TIMES 12 MONTHS		$13,992.00	$13,992.00	$13,992.00	$13,992.00	$13,992.00
GRAND TOTAL		$342,807.00	$300,227.00	$300,672.20	$301,144.11	$301,644.34

1.	POSITION TITLE (CONSUMER PROTECTION & INFORMATION OFFICER)			RANGE/STEP 17A	DARG. UNIT G	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER (NEW)	BRU PRIORITY 1	LOCATION Anchorage	ELECTION DISTRICT 7	LEG.		
3.	CONTINUATION LEVEL	ADDITION								

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	33084	
6.	Benefits	5402	
7.	Supplemental Benefits	2028	
8.	Fixed Benefits	2728	
9.	TOTAL PERSONAL SERVICES 01		43242
10.	Travel 02		0
11.	Contractual 03		0
12.	Commodities 04		400
13.	Equipment 05		2025
14.	Other Office Space 125SQFT (P01) x 12 mo		3000
15.	TOTAL COST @$2.00 sq.ft.		48667

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	48667
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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

JUSTIFICATION

The additional level of public contact which would result from this additional regulatory workload would require the addition of another Information Officer position. This level would provide an interim between the Consumer Protection Officer II lead position and the Consumer Protection entry level.

As with other sections, there is no further room for expansion of duties without an increase in personnel. In addition, there is no existing office space to house additional personnel.

13 REQUEST FOR NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION

PROGRAM CONSUMER PROTECTION

BRU ALASKA PUBLIC UTILITIES COMMISSION

COMPONENT

Revised Date :

FY 85

01 1156 (7/82) - 13

1.	POSITION TITLE: Utility Engineer IV			RANGE/STEP: 21c	BARG. UNIT: G	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER:	PCN NUMBER: NEW	BRU PRIORITY:	LOCATION: Anchorage	ELECTION DISTRICT: 7	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	46560	
6.	Benefits	8203	
7.	Supplemental Benefits	2550	
8.	Fixed Benefits	2728	
9.	TOTAL PERSONAL SERVICES	01	60041
10.	Travel	02	2500
11.	Contractual	03	10000
12.	Commodities	04	400
13.	Equipment	05	2025
14.	Other Office space 125 sq ft (PCN) x 12 mo @$2.00 sq.ft.		3000
15.	TOTAL COST		77966

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	77966
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

Engineer would be involved in reviewing engineering requirements associated with refinery regulatory activities.

Current engineering staff is not able to absorb any more functions. It is already working at capacity level.

Because regulatory activity concerning refineries, etc. does not exist within this Commission nor any others, it will require much training in order for the Engineer to be able to review engineering requirements associated with these activities.

Office space will be required because existing space is at maximum usage levels already.

13 REQUEST FOR NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION

PROGRAM CONSUMER PROTECTION

BRU ALASKA PUBLIC UTILITIES COMMISSION

COMPONENT

Revised Date

FY 85

01-1136(7/82)-13

1.	POSITION TITLE: Utility Financial Analyst III			RANGE/STEP: 21A	BARG. UNIT: G	FORM 12 PACE/LINE	COV.	APPROV. / DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER: NEW	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT: 7	LEG.
3.	CONTINUATION LEVEL		ADDITION					

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	43560	
6.	Benefits	8203	
7.	Supplemental Benefits	2028	
8.	Fixed Benefits	2728	
9.	TOTAL PERSONAL SERVICES	01	56743
10.	Travel	02	2500
11.	Contractual	03	10000
12.	Commodities	04	400
13.	Equipment	05	2025
14.	Other Office space 125sq ft (P01) x 12 mo		3000
15.	TOTAL COST @2.00 sq ft		74666

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	74666
19.		I-A Receipts	1005	
20.		Program Receipts	1029	
21.		Other		

FOR OMB USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

This position would provide audit of refinery records and all other regulatory activity associated with the scope of SSHB 220.

Current financial staff is not able to absorb any more functions and has, in the past, had to absorb a vacancy factor to help alleviate personnel services shortages resulting from budget cutbacks. Even if all positions were filled, workload is such that any additional activities cannot be handled by existing staff.

Because regulatory activity concerning refineries, etc. does not exist within this Commission nor any others, it will require much training in order for the Analyst to be able to provide the auditing background necessary for this activity.

Office space is not available for additional personnel and all new positions require that the Commission acquire more space.

13 REQUEST FOR NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION

PROGRAM CONSUMER PROTECTION

BRU ALASKA PUBLIC UTILITIES COMMISSION

COMPONENT

Revised Date

FY 85

01-1136 17/83

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Utility Tariff Analyst II				17A	G				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12		NEW		Anchorage	7			
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	33084	
6.	Benefits	5402	
7.	Supplemental Benefits	2028	
8.	Fixed Benefits	2728	
9.	TOTAL PERSONAL SERVICES	01	43242
10.	Travel	02	0
11.	Contractual	03	0
12.	Commodities	04	400
13.	Equipment	05	2025
14.	Other Office space 125sqft (P01) X 12 mo		3000
15.	TOTAL COST x $2.00 sq.ft.		48667

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	48667
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

The addition of another full-time tariff analyst would be required to handle the tariff rate filings which would be a result of this additional regulatory function.

Tariff section is already functioning at capacity and is not able to absorb any further regulatory workload without the addition of another position at this level. In addition, there is no existing office space to house this position.

13 REQUEST FOR NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION

PROGRAM CONSUMER PROTECTION

BRU ALASKA PUBLIC UTILITIES COMMISSION

COMPONENT

Revised Date

FY 85

81-11647-DJI-13

1.	POSITION TITLE: ADMINISTRATIVE SUPPORT TECHNICIAN II			RANGE/STEP: 8a	BARG. UNIT: G	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER: NEW	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT: 7	LEG.		
3.	CONTINUATION LEVEL		ITION						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	18636	
6.	Benefits	3043	
7.	Supplemental Benefits	1142	
8.	Fixed Benefits	2728	
9.	TOTAL PERSONAL SERVICES 01		25549
10.	Travel 02		0
11.	Contractual 03		0
12.	Commodities 04		400
13.	Equipment 05		1200
14.	Other Office Space 83 sq.ft(SP6)x 12mo		1992
15.	TOTAL COST @$2.00		29141

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	29141
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The administrative support level is already at over-capacity level and the operating budget for FY 1985 has requested the addition of administrative support personnel to provide adequate coverage for existing regulatory activity. The addition of any new regulatory activity necessitates the need for administrative support for that new activity.

Because of the shortage of usable office space, any new positions require additional office space.

13 REQUEST FOR NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION

PROGRAM CONSUMER PROTECTION

BRU ALASKA PUBLIC UTILITIES COMMISSION

COMPONENT

Page 5 of 5

Revised Date

FY 85

TITLE	LOCATION	PROJECT CLASSIFICATION	ELECTION DISTRICT	START DATE	COMPLETE DATE
Alaska Public Utilities Commission Information Processing System	Anchorage	02-490-04=01	99	9/1/84	6/30/85

PRIOR 1 OF 2

	GENERAL FUNDS	FEDERAL FUNDS	G.O. BONDS	OTHER	POSITIONS PFT	POSITIONS PT/SEA.	AGENCY REQUEST FY 85 TOTAL	GOVERNOR
REQUESTED FUNDING:								
SITE ACQUISITION								
PLANNING AND DESIGN								
CONSTRUCTION AND EQUIPMENT	345.4						345.4	
PREVIOUS APPROPRIATIONS (NON-ADD)								
OPERATING COSTS:								
FIRST YEAR OPERATING COSTS	33.0							
FULL ANNUAL OPERATING COSTS	56.1							

PROJECT DESCRIPTION AND JUSTIFICATION:

The Alaska Public Utilities Commission has established several objectives which speak to improved case management techniques and provide for sustained Commission participation in specialized, highly technical regulatory issues such as national telecommunications policy development, local and regional power requirements and continuing as a reliable source of utility related information in response to public and governmental inquiries. In all of these instances, the availability of a properly configured information processing system is essential.

The APUC has an urgent need to expand its information processing system. Following implementation of its initial electronic data processing capability, the APUC uses its existing system in practically every aspect of its operations: for engineering and financial analysis, for job scheduling and control, for drafting letters, orders, testimony and reports, and for numerous administrative controls. At this time, the small processor serving twelve terminals is at capacity or is frequently overloaded which greatly impairs the productivity and quality of work product of the agency's employees.

The agency's background in mechanizing its operations and details of its future plans are contained in the APUC's 1983 computer plan dated October 4, 1983. Copies of this plan have already been sent under separate cover to the Deputy Commissioner of Administration for Information Systems and the Office of Management and Budget (a copy is also attached to this capital budget request). The plan proposes to replace the existing Digital Equipment

CP-1 CAPITAL PROJECT DESCRIPTION
FY 85

AGENCY Alaska Public Utilities Commission

CATEGORY Public Protection

PROGRAM Consumer Protection

PROJECT TITLE Information Processing System

Page 1 of 2
Revised Date

FY85

RECEIVED
OCT 17 1983

000025

BUDGET REVIEW

Project Description and Justification Continued:

Corporation PDP 11/24 minicomputer in FY85 with one having far greater capacity and to expand the number of terminals. This will give most employees, including Commissioners, ready access to numerous data bases giving the status of utility operations and those of the agency itself, to specialized computational facilities for utility regulation, and to electronic drafting of documents. In addition, a large capacity computer is essential for the proper auditing of utilities, most of which maintain their financial and operations records in extensive computer files.

The plan also includes addition of graphics capabilities to the basic system in FY86. This should aid in the presentation of complex utility data to the public. Also in FY86, the Commission plans to begin computer integration of a proposed micrographics system. Filming and computer indexing of its documents onto microfiche will greatly reduce the effort needed to maintain over one million documents in order and ready for reference. In later years funds are requested for new or updated software, for a high volume automatic microfiche-to-paper printer and for automatic microfiche storage and retrieval equipment which will integrate hard copy information with the APUC central data base.

CP-1 ADDITIONAL EXPLANATION FORM

AGENCY Alaska Public Utilities Commission

CATEGORY Public Protection

PROGRAM Consumer Protection

TITLE Information Processing System

Revised Date

FY85

TITLE: Alaska Public Utilities Commission Information Processing System

PRIORITY 1 OF 2

OPERATING	TOTAL PREVIOUS APPROPRIATIONS	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES							
200 - 800 LINE ITEMS			33.0	56.1	50.0	50.0	50.0
TOTAL			33.0	56.1	50.0	50.0	50.0
1002 FEDERAL RECEIPTS							
1004 GENERAL FUNDS			*33.0	*56.1	*50.0	*50.0	*50.0
OTHER FUNDS							
FULL-TIME POSITIONS							
CAPITAL TOTAL							
1002 FEDERAL RECEIPTS							
1004 GENERAL FUNDS			345.4	154.8	23.4	91.0	80.0
OTHER FUNDS							
REVENUE							

EXPLAIN PREVIOUS APPROPRIATIONS (GIVE SECTION, CHAPTER, SLA) AND ASSUMPTIONS FOR COST, FUNDING SOURCE, POSITION AND REVENUE ESTIMATES:

Operating funds in FY85 through FY89 include an estimate for hardware and software maintenance agreements along with a projection for professional data processing consulting services necessary to allow program conversions, maintenance and new program development. FY85's estimate is scaled down to reflect the initial acquisition and installation timeframe during which these costs will not be incurred. Estimates for FY87 and beyond are reduced to reflect completion of program conversions and a stabilization of expenses related to system maintenance and ongoing new program development.

*O & M expenses projected through FY89 very closely approximate current funding requirements for data processing support costs and do not represent a net increase in general fund obligation.

CP-2 CAPITAL PROJECT COSTS
FY 85

AGENCY: Alaska Public Utilities Commission

CATEGORY: Public Protection

PROGRAM: Consumer Protection

PROJECT TITLE: Information Processing System

Page 1 of 2

Revised Date 11/4/83

FY85

RECEIVED
NOV 29 1983

000027 BUDGET REVIEW

Appropriation and Assumptions for Cost, Funding Source, Position and Revenue Estimates Continued:

Capital expenditures in FY85 provide for a substantial portion of new hardware and software acquisition and installation. FY86 expenditures include further development of APUC order indexing capabilities and implementation of the integrated micrographics system. These items along with estimates of capital expenditures in FY87 and beyond are explained more completely in the attached APUC 1983 computer plan.

CP-2 ADDITIONAL EXPLANATION FORM

AGENCY Alaska Public Utilities Commission

CATEGORY Public Protection

PROGRAM Consumer Protection

TITLE Information Processing System

Page 2 of 2

Revised Date

FY85

000028

standards for a utility. (Eff. 10/15/82. Reg. 84)
Authority: AS 42.05.141(a)(3)
AS 42.05.151(a)
AS 42.05.711(d)

3 AAC 50.200. INDIVIDUAL ELECTRIC METERS. (a) Except as provided in (b) of this section, an electric utility shall install an individual meter to measure the energy consumption attributable to each residential and commercial unit in a multiple-occupancy building and each mobile home unit in a mobile home park if construction of the building or mobile home park was begun after December 31, 1982.

(b) Individual meters are not required

(1) for transient multiple-occupancy buildings and transient mobile home parks, including, but not limited to, hotels, motels, dormitories, rooming houses, hospitals, nursing homes, and mobile home parks for travel trailers;

(2) for commercial unit space which is subject to alteration with changes in tenants as evidenced by temporary construction or non-load-bearing walls or floors separating the commercial unit spaces;

(3) where alternative renewable energy resources are used in connection with central heating, ventilating, and air conditioning systems; and

(4) in common building areas such as hallways, elevators, reception areas, water pumping facilities, and electric hookups for motor vehicles.

(c) For the purpose of this section, construction begins when the footings are poured. (Eff. 10/15/82. Reg. 84)
Authority: AS 42.05.141(a)(3)
AS 42.05.151(a)
AS 42.05.291(c)

3 AAC 50.300. INFORMATION TO ELECTRIC CONSUMERS. (a) An electric utility shall provide to each new electric consumer, coincident with the application for service, a clear and concise explanation of any rate schedule in its currently effective tariff which applies to that consumer.

(b) Not later than 30 days after the filing of a tariff advice letter in which a change in a rate schedule is requested, an electric utility shall transmit to its affected consumers a clear and concise explanation of the proposed change. This provision does not apply to rate adjustments resulting from an automatic fuel-cost rate adjustment clause.

(c) At least once each year, an electric utility shall transmit to each of its electric consumers an informative summary of any rate schedule in its currently effective tariff which applies to those consumers.

(d) On request of an electric consumer, an electric utility shall transmit a clear and concise statement of the consumer's actual energy consumption and, if billed separately, power consumption for any billing period during the previous 12 months unless the information is not reasonably ascertainable by the utility. (Eff. 10/15/82. Reg. 84)
Authority: AS 42.05.141(a)(3)
AS 42.05.151(a)
AS 42.05.411(a)

3 AAC 50.400. Reserved

3 AAC 50.500. ADVERTISING. (a) In addition to the restrictions imposed under AS 42.05.381(a), neither an electric utility nor a gas utility may recover through rates any direct or indirect expenditure by the utility for promotional, political, or goodwill advertising.

(b) The commission will determine on a case-by-case basis whether the forms of advertising listed in (c)(3) of this section, as well as advertising not readily categorized as promotional, political, or goodwill, and any other form of advertising not covered by this section will be included in utility operating expenses for rate-making purposes.

(c) In this section

(1) "advertising" means the commercial use by a utility of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to the utility's customers;

(2) "goodwill advertising" means advertising directed toward improving or enhancing the public image of a utility or its employees;

(3) "goodwill advertising," "political advertising," and "promotional advertising" do not include

(A) advertising which informs an electric or gas consumer about methods which conserve electric energy or gas or which reduce peak demand for electric energy or gas;

(B) advertising required by law or regulation, including advertising required under Part I, Title II of the National Energy Conservation Policy Act (42 USC § 8201 et seq.);

(C) advertising regarding service interruptions, safety measures, or emergency conditions;

(D) advertising concerning employment opportunities with a utility;

(E) advertising which promotes the use of energy-efficient appliances, equipment, or services;

(F) an explanation or justification of existing or proposed rate schedules or a notice of hearings concerning these rate schedules; and

(G) communications with members of a utility cooperative about the activities or internal affairs of the cooperative or which encourage or promote the participation of the members in the process of governing the cooperative;

(4) "political advertising" means advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to a controversial issue of public importance; and

(5) "promotional advertising" means advertising for the purpose of encouraging a person to select or use the service or additional service of a utility, or the selection or installation of an appliance or equipment designed to use the utility's service, except as provided in (3)(E) of this subsection. (Eff. 10/15/82, Reg. 84)

Authority: AS 42.05.141(a)(3)
AS 42.05.151(a)
AS 42.05.381

3 AAC 50.600. DEFINITIONS. Unless the context indicates otherwise, in 3 AAC 50.100 – 3 AAC 50.600

(1) "building" means a single erected structure, roofed and enclosed within exterior walls, built for permanent use, framed of component structural parts and unified in its entirety both physically and in operation for residential or commercial occupancy;

(2) "commercial unit" means that portion of a building or premises which is normally used for commercial purposes;

(3) "electric consumer" means a person or a public or private entity to which electric energy is sold, other than for purposes of resale, by a regulated public utility;

(4) "gas consumer" means a person or a public or private entity to which natural gas is sold, other than for purposes of resale by a public utility;

(5) "mobile home park" means a parcel of land which is used for the accommodation of occupied mobile homes;

(6) "multiple-occupancy building" means a building which is designed to house more than one residential or commercial unit;

(7) "rate" means

(A) a price, rate, charge, or classification made, demanded, observed, or received with respect to the sale of utility services to a utility consumer;

(B) a rule, regulation, condition, or practice respecting a rate, charge, or classification; and

(C) a contract pertaining to the sale of utility services to a utility consumer;

(8) "rate schedule" means the designation of the rates which an electric utility charges for electric energy; and

(9) "residential unit" means one or more rooms for use by one or more persons as a housekeeping unit which provides living,

January 31, 1984

To: John

From: Ken

RE: SSHB 220, RELATING TO PUBLIC UTILITIES

WHAT THE BILL DOES.

This bill attempts to do several different deeds all i. one fell swoop. First the bill calls for restriction on rates charged by public utilities. Such utilities can not include in its charge to customers the cost for political contributions, lobbying, public relations, advertising, and consulting fees. some of this is redundant since it' covered under current statute. Section 2 of this bill also deals with rate setting. It seems to me that in this section, a utility that has part or all of its administrative function outside the state, would be heavily penalized by this bill.

In Section 3 of the bill, one particular item that sticks out is the exemption of cable television firms from regulation by the Alaska Public Utilities Commission. It would be like deregulation. The merits of this section are questionable. The heavyweights in the cable t-v business are obviously against it since it would open areas for more competition. The other side of this issue is philosophical if you ask "should cable t-v be considered a utility ?". Perhaps deregulation would not be a bad idea if it were done in a different bill.

The other aim of the bill is to place oil refiners under APUC regulation.

STATE OF ALASKA
FISCAL NOTE

Revision Date 1983

I. REQUEST

Bill/Resolution No.: HB 220
Title: Restricting cost items..public utility rates
Sponsor: Lindauer
Requestor: Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
Program Category Affected: Protection
BRU, Program of Subprogram(s) Affected: Public Utilities Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Carolyn Guess, Commissioner Phone: 276-6222
Division: Alaska Public Utilities Commission Date:

Approved by Commissioner: Richard A. Lyon Date: 4/27/83
Department: Commerce & Economic Development

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

3/8/83

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

April 6, 1983

Representative Walt Furnace, Chairman
House Labor and Commerce
Pouch V
Juneau, Alaska 99811

Dear Representative Furnace:

In response to your letter of March 28, 1983, concerning House Bill 220 I am enclosing relevant portions of our existing statute, AS 42.05.381(a) and AS 42.05.511(c) and a portion of our regulations 3 AAC 50.500 which is applicable to electric and gas utilities. The latter is the result of federal legislation which mandated specific consideration of the subject of advertising expenses of electric and gas utilities only.

I found it difficult to articulate in writing the deliberation process that the Commission undertakes when the costs enumerated in items 1 through 7, AS 42.05.381(a), are at issue before the Commission. Therefore you will also find portions of Commission orders in eight proceedings over the past six years where the subjects have been discussed. I have underlined the references to the sections of the statute and regs which are enclosed and believe that the Commission's review and assessment speak for themselves and support our initial position that the proposed legislation is redundant and unnecessary in part, and could result in higher rates to consumers through the foreclosure of the evaluation of the reasonableness of a specific component of a rate.

If there is additional information the Commission can provide, please do not hesitate to contact me at 263-2132.

Sincerely,

ALASKA PUBLIC UTILITIES COMMISSION

Carolyn S. Guess

Carolyn S. Guess
Chairman

dkd

Enclosures

cc: C. Wallen

C8-H6LH

MEMORANDUM State of Alaska

TO: Catherine Wallen
Legislative Liasion
Department of Commerce

DATE: March 15, 1983

FILE NO:

TELEPHONE NO:

FROM: Carolyn S. Guess, Chairman
Alaska Public Utilities Commission

SUBJECT: House Bill 220
Senate Bill 140

Because there apparently are not Bill Analysis Forms available to us in Anchorage I am sending our comments on the proposed legislation in memo form. You may transfer our comments to the appropriate form and sign my name with your initials.

House Bill 220. There is no fiscal impact to the APUC.

Comments: House Bill 220 is redundant in part, unnecessary and could result in higher utility rates.

Section 1(a)(1)-(4) is addressed in 42.05.381(a). The Commission believes the exceptions found in 42.05.381(a)(1)-(4) are reasonable and is not aware of any reason to eliminate them.

Section 1(a)(5), a prohibition of consulting or management fees paid to the owner of a utility could affect a number of small utilities, i.e., Tanana Power Co., and Mukluk Telephone Co. where the owners are the salaried management of the utility.

In regard to Section 1(a)(6), AS 42.05.511(c) provides:

> In a rate proceeding the utility involved has the burden of proving that any written or unwritten contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost of the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the service or property with its own personnel and capital. (§ 6 ch 113 SLA 1970)

Therefore, the Commission believes this section of the proposed legislation is redundant and unnecessary.

In regard to Section 1(a)(7), the Commission does not understand what purpose this proposed section would serve and further believes it would create problems and possibly higher rates for utilities such as the Anchorage Municipal electric, telephone, water and sewer utilities which receives services from the Municipality of Anchorage i.e., data processing, legal services, etc.; privately owned utilities such as College Utilities (sewer and water) in Fairbanks. Juneau Douglas Telephone Company and Glacier State Telephone Company serving Kenai, Homer, Kodiak and North Pole could also be adversely affected.

In summary, the Commission does not believe that the public interest would be better served by the enactment of this legislation.

Senate Bill 140.

It would appear if the role of the APUC is limited to an oversight review of the regulations to be promulgated, there is no fiscal impact on the APUC.

Comments: The Commission is supportive of legislation that would result in lower utitlity rates for Alaskan utility consumers. The Commission observes that this legislation would only benefit consumers of electric utility cooperatives and regional electrical authorities. There are other kinds of utilities that have as much, if not more, need for the availability of low interest loans, specifically telephone, sewer, and water utilities. The Commission would recommend that consideration be given to broadening the kinds of utilities eligible to borrow long or short term monies from the State.

csg/dkd

MEMORANDUM State of Alaska

TO: Catherine Wallen
Legislative Liasion
Department of Commerce

DATE: March 15, 1983

FILE NO:

TELEPHONE NO:

FROM: Carolyn S. Guess, Chairman
Alaska Public Utilities Commission

SUBJECT: House Bill 220
Senate Bill 140

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House Bill 220. There is no fiscal impact to the APUC.

Comments: House Bill 220 is redundant in part, unnecessary and could result in higher utility rates.

Section 1(a)(1)-(4) is addressed in 42.05.381(a). The Commission believes the exceptions found in 42.05.381(a)(1)-(4) are reasonable and is not aware of any reason to eliminate them.

Section 1(a)(5), a prohibition of consulting or management fees paid to the owner of a utility could affect a number of small utilities, i.e., Tanlna Power Co., and Mukluk Telephone Co. where the owners are the salaried management of the utility.

In regard to Section 1(a)(6), AS 42.05.511(c) provides:

> In a rate proceeding the utility involved has the burden of proving that any written or unwritten contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost of the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the service or property with its own personnel and capital. (§ 6 ch 113 SLA 1970)

Therefore, the Commission believes this section of the proposed legislation is redundant and unnecessary.

In regard to Section 1(a)(7), the Commission does not understand what purpose this proposed section would serve and further believes it would create problems and possibly higher rates for utilities such as the Anchorage Municipal electric, telephone, water and sewer utilities which receives services from the Municipality of Anchorage i.e., data processing, legal services, etc.; privately owned utilities such as College Utilities (sewer and water) in Fairbanks. Juneau Douglas Telephone Company and Glacier State Telephone Company serving Kenai, Homer, Kodiak and North Pole could also be adversely affected.

In summary, the Commission does not believe that the public interest would be better served by the enactment of this legislation.

Senate Bill 140.

It would appear if the role of the APUC is limited to an oversight review of the regulations to be promulgated, there is no fiscal impact on the APUC.

Comments: The Commission is supportive of legislation that would result in lower utitlity rates for Alaskan utility consumers. The Commission observes that this legislation would only benefit consumers of electric utility cooperatives and regional electrical authorities. There are other kinds of utilities that have as much, if not more, need for the availability of low interest loans, specifically telephone, sewer, and water utilities. The Commission would recommend that consideration be given to broadening the kinds of utilities eligible to borrow long or short term monies from the State.

csg/dkd

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 23, 1984

SUBJECT: Sectional Analysis of SS HB 220

TO: House Labor and Commerce Committee

FROM: Linn H. Asper
Legislative Counsel

You have asked for a sectional analysis of SSHB 220, relating to public utilities, including a comparison of the original bill with the sponsor substitute.

In the sponsor substitute:

* Section 1 adds to the list of public utility costs that may not be included as elements of utility rate-setting. The current list of excluded costs is increased to take in all public relations, lobbying, advertising, certain fees paid, and certain products and services purchased from the owner or affiliate of a public utility.

* Section 2 adds two new subsections to AS 42.05.381, regarding utility rate-setting. The new subsection (e) excludes certain cost items related to return on capital from consideration in rate-setting for public utilities that are operated for profit. The new subsection (f) considers revenues and profits from businesses operated in the state that are owned by a utility or its affiliates, in establishing rates for services provided by the utilities.

* Section 3 limits the on-site inspection jurisdiction of the APUC to areas within the state.

* Section 4 amends the definition of "public utility" or "utility" to exclude cable television operators and waste material collection and disposal businesses from the jurisdiction of the APUC, and to include all refiners and distributors of petroleum in the state.

* Section 5 repeals a reference to waste collection and disposal businesses, because such businesses are removed from APCU jurisdiction by *Sec. 4.

* Section 6 sets a July 1, 1984 effective date.

A comparison to SSHB 220 to HB 220 is as follow:

In section 1 of SSHB 220 several changes have been made to the proposed amendment to AS 42.05.381(a). The subsection is the same in both versions through paragraph (4). Paragraph (5) of the sponsor substitute is less restrictive on fees incurred by utilities than is the original bill, and provides a more complex formula for determining those fees that are and are not allowable for purposes of rate setting by the APUC. Paragraph (6) of the substitute makes a technical change to the original bill. Paragraph (7) of the substitute is less restrictive for purposes of rate-setting, on allowable costs of services incurred by a utility.

Sections 2-6 of the sponsor substitute contain new material not found in the original bill.

LHA:ojb
J2/058

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

Alaska State Legislature

House of Representatives

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

March 15, 1983

MEMORANDUM

TO: House Labor and Commerce Committee

FROM: Representative John Lindauer J.L.

RE: House Bill #220: "An Act restricting cost items that may be allowed in public utility rates."

House bill #220 insures that the rates charged by a public utility will not be excessive in order to cover unnessesary costs or to provide funds to be siphoned off by out-of-state owners in excess of the legal rate of return. Specifically, consumers of public utility services would not be required to pay for the utilities' political contributions, lobbying efforts, advertising campaigns, public relations, consulting or management fees paid to the owner of the utility, or for excessively priced products and services.

This bill will reduce the utility rates of almost every person, business, and government in Alaska.

Alaska Telephone Association
201 E. 56th Avenue / Suite 320
Anchorage, Alaska 99502
(907) 563-4000

J. Clifton Eller
President

Gordon Parker
Executive Director

January 25, 1984

Hon. John Cowdery, Chairman
House Committee on Labor & Commerce
Pouch V
Juneau, Alaska 99811

ATTN: Ken Johnson

Dear Mr. Cowdery:

At the request of your staff and some members of your committee, I am writing in regards to HB220, "An Act Relating to Public Utilities." ATA opposes this legislation for the reasons outlined in the item by item analysis which follows.

(AS 42.05.381) Section 1. (a) (3) & (4): Current statutes place severe restrictions on advertising and public relations by regulated utilities. The language here is redundant.

(5): If the intent here is to reduce costs and the ultimate effect on the ratepayer, the actual result could be the opposite. At least four companies providing service in Alaska rely heavily on support, management and administrative services through parent companies located Outside. The net effect is that costs are lower due to avoidance of service duplication and lower costs Outside.

Additionally, a number of companies utilize consultants Outside. While we have some very qualified consultants in state, the language here would appear to preclude the companies from calling on the talents of some of the nation's leading talents.

(6) & (7): The apparent purpose of this language is already accomplished in AS42.05.511(c). The statute requires that a company purchasing products or services from an affiliate or subsidiary demonstrate to the APUC that the product or service can't be obtained elsewhere at a lower cost and that the purchase is based on the cost of the item to the affiliate or subsidiary. Current statutes do allow inclusion of a rate of return for the selling entity, a necessity if that entity is to remain in business.

Section 2. (a): The language here appears to exclude debt from the rate of return calculation. Rate of return has always been calculated on the total investment. A company must be allowed to recover interest costs through rate of return in order to finance construction.

(1): This language apparently refers to a double leverage situation in which a stockholder borrows money from the utility to buy more stock. No regulatory body would allow such an arrangement to be included in ratemaking.

(2): This language would appear to penalize a company for establishing affiliates. The federal government is now urging companies to form affiliates to provide new technology (i.e., cable television) and requiring affiliates for some traditional services (i.e., provision of terminal equipment). If this section is enacted, it simply means that an entity which may be the best provider of a service can't provide the service.

(3): This appears to duplicate (2) though specifying unregulated affiliates or subsidiaries. Again, for some services (i.e., terminal equipment) companies are now required by the FCC to establish unregulated subsidiaries, or at the least maintain separate accounts to guarantee no cross subsidy. An investment by a regulated company in a non-regulated subsidiary can not now be included in ratemaking. This is specified by the FCC and in AS42.05.481.

(4): There are clear constitutional questions involved in this requirement favoring Alaska banks. A company has the duty to its stockholders to place its funds in the financial institution offering the best return and treatment.

(5): It is normal business practice for a parent company to pledge its full faith and credit to guarantee loans to a subsidiary. In the case of a regulated company which must pay a loan on which a subsidiary has defaulted, such loss would not be allowed for ratemaking purposes. AS42.05.441 states that, in the case of a parent company operating more than one utility or unregulated subsidiary, a separation of property must be made among the different entities for ratemaking purposes.

(f): Both federal and state law (AS42.05.481) is clear that cross subsidy (i.e., subsidizing a non-regulated subsidiary through regulated rates) is not allowed. This language appears to require a reverse subsidy flowing from an unregulated subsidiary to a regulated parent. We believe there is a constitutional question to this requirement.

The second part of paragraph (f) does not take into account that a subsidiary may be losing money. We suggest that if it is fair to consider the revenues and profits of an unregulated subsidiary for ratemaking purposes, then it should also be fair to consider the costs and losses of the unregulated subsidiary.

I hope this information is helpful to the Committee. I am available to the Committee for questions.

Sincerely,

Gordon Parker

GP/jv

BILL SHEFFIELD, GOVERNOR

STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

January 24, 1984

Representative John Cowdery, Chairman
Labor and Commerce Committee
State House of Representatives
Juneau, Alaska 99811

Attention: Ken Johnson

Dear Representative Cowdery:

For the reasons stated in the Commission's memorandum of March 15, 1983, regarding HB 220 and the attached analysis of SSHB 220 by Mark Figura, the Alaska Public Utilities Commission opposes the enactment of SSHB 220 because it is redundant, confiscatory, ambiguous, inconsistent, will require an expenditure of dollars that is unnecessary and legislation that is likely to create a multitude of litigation opportunities. The Commission concludes that based upon its initial and subsequent analysis, the proposed modifications to AS 42.05.381 contemplated in SSHB 220 are not in the public interest.

Sincerely,

Carolyn S. Guess

Carolyn S. Guess
Chairman

Hearing: January 26, 1984
8:15 a.m.

Enclosure

1

Carolyn S. Guess, Chairman
Alaska Public Utilities Commission

January 20, 1984

276-3550

Norman C. Gorsuch
Attorney General

SSHB 220

By:
Mark L. Figura
Assistant Attorney General
Commercial Section-Anchorage

You asked me to comment upon sections 2 - 5 of the sponsor substitute for House Bill No. 220 introduced January 10, 1984, and referred to the Labor & Commerce and Finance committees. Section 1 of the bill is similar to last years version, upon which the Commission has already commented.

Section 2 of the bill is ambiguous, and it is difficult to determine the drafter's intent. This will of course pose serious interpretation problems should the bill be passed and will no doubt lead to extensive litigation concerning the meaning of the legislation. My guess is that the drafter intended the following meaning for his proposed AS 42.05.381(e). The Commission is to determine the equity of the utility in the usual way, but reduce the equity figure if the sum of the utility's paid-in capital and retained earnings less the values of the five numbered paragraphs of proposed section 381(e), is less than the utility equity.

Paragraph 1 includes the purchase price of a utility which has changed ownership in the past. (However, paragraph 1 could well mean only the cash used for such a purpose, or what is commonly known as an "acquisition adjustment," the amount of the purchase price in excess of the seller's net book.) Paragraph 2 includes loans made by the utility to affiliated interests. Paragraph 3 includes equity held in (or perhaps the purchase price of) an unregulated company. Paragraph 4 includes deposits in financial institutions located outside the state of Alaska, and paragraph 5 includes assets used to secure loans to affiliated interests.

The obvious legal problem with the entire proposed section 381(e) is that it would result in confiscatory rates whenever it would have any effect. Rates are generally established by the Commission at the minimal level which will enable the utility to attract capital and continue to provide adequate service. To the extent that those rates would be decreased by proposed section 381(e), the decrease would be confiscatory.

Form 1

There are also a number of lesser problems with the proposed section. Proposed section 381(e)(1) is apparently aimed at limiting the amounts that a utility may earn on plant purchased from another utility. AS 42.05.441(b) already deals with this problem, in a much more satisfactory way. Proposed section 381(e)(3) penalizes a utility for investing money in an unregulated company. The result of enacting such a provision would be to encourage companies to inflate the plant (and therefore the rate base) of the regulated utility.

Section 2 of the bill would also create a new section 381(f). I interpret proposed section 381(f) as requiring the Commission to decrease the revenue requirement of certain utilities by 15% of their gross in-state nonutility revenues. To the extent that any utility allowed proposed section 381(f) to apply, the application of this section would plainly be confiscatory. In addition, the passage of proposed section 381(f) would provide a strong disincentive to certain utilities and their affiliates to invest within the state of Alaska. Given the option of starting a business (such as a telephone equipment business) in Alaska or some other state, very few companies would choose Alaska if they be subject to a 15% tax on gross revenues on any Alaskan sales.

Section 3 of the bill would add a new section AS 42.05.655 providing that the on-site inspection jurisdiction of the Commission is limited to Alaska. The enactment of proposed section 655 would be inconsistent with AS 42.05.491, which specifically states that under certain circumstances utilities may keep records outside the state, if they agree to pay the actual expenses incurred by Commission personnel in making the out-of-state examination. Proposed section 655 would also allow utilities to avoid Commission oversight of affiliated interest transactions, merely by carrying on those transactions outside the boundaries of Alaska.

Section 4 of the bill proposes three changes in the definitions applicable in AS 42.05. The bill would delete both cable television service and waste disposal service from the services subject to public utility regulation. In addition, the bill proposes to delete the language added by ch. 36 SLA 1971 to AS 42.05.720(4)(e). The 1971 legislation limited the jurisdiction of the Commission over small petroleum fuel dealers. The purpose of the 1971 legislation was set out in the act as follows:

> It is the finding of the legislature that it is necessary to avoid unnecessary regulatory procedures over petroleum dealers delivering to

trailer courts and apartment buildings having local pipe distribution systems for heating fuel, and whose owners or residents have a choice of suppliers.

Apparently the intent of the bill is to reestablish Commission jurisdiction over small petroleum dealers serving trailer courts and apartment buildings. Absent complaints from these consumers, the legislation appears unnecessary.

Section 5 of the bill would repeal AS 42.05.711(i), consistent with the elimination of waste disposal from the definition of public utilities. Since the bill also eliminates cable television service, AS 42.05.711(k) should also be repealed.

MLF:cai

standards for a utility. (Eff. 10/15/82, Reg. 84)
Authority: AS 42.05.141(a)(3)
AS 42.05.151(a)
AS 42.05.711(d)

3 AAC 50.200. INDIVIDUAL ELECTRIC METERS. (a) Except as provided in (b) of this section, an electric utility shall install an individual meter to measure the energy consumption attributable to each residential and commercial unit in a multiple-occupancy building and each mobile home unit in a mobile home park if construction of the building or mobile home park was begun after December 31, 1982.

(b) Individual meters are not required

(1) for transient multiple-occupancy buildings and transient mobile home parks, including, but not limited to, hotels, motels, dormitories, rooming houses, hospitals, nursing homes, and mobile home parks for travel trailers;

(2) for commercial unit space which is subject to alteration with changes in tenants as evidenced by temporary construction or non-load-bearing walls or floors separating the commercial unit spaces;

(3) where alternative renewable energy resources are used in connection with central heating, ventilating, and air conditioning systems; and

(4) in common building areas such as hallways, elevators, reception areas, water pumping facilities, and electric hookups for motor vehicles.

(c) For the purpose of this section, construction begins when the footings are poured. (Eff. 10/15/82, Reg. 84)
Authority: AS 42.05.141(a)(3)
AS 42.05.151(a)
AS 42.05.291(c)

3 AAC 50.300. INFORMATION TO ELECTRIC CONSUMERS. (a) An electric utility shall provide to each new electric consumer, coincident with the application for service, a clear and concise explanation of any rate schedule in its currently effective tariff which applies to that consumer.

(b) Not later than 30 days after the filing of a tariff advice letter in which a change in a rate schedule is requested, an electric utility shall transmit to its affected consumers a clear and concise explanation of the proposed change. This provision does not apply to rate adjustments resulting from an automatic fuel-cost rate adjustment clause.

(c) At least once each year, an electric utility shall transmit to each of its electric consumers an informative summary of any rate schedule in its currently effective tariff which applies to those consumers.

(d) On request of an electric consumer, an electric utility shall transmit a clear and concise statement of the consumer's actual energy consumption and, if billed separately, power consumption for any billing period during the previous 12 months unless the information is not reasonably ascertainable by the utility. (Eff. 10/15/82, Reg. 84)
Authority: AS 42.05.141(a)(3)
AS 42.05.151(a)
AS 42.05.411(a)

3 AAC 50.400. Reserved

3 AAC 50.500. ADVERTISING. (a) In addition to the restrictions imposed under AS 42.05.381(a), neither an electric utility nor a gas utility may recover through rates any direct or indirect expenditure by the utility for promotional, political, or goodwill advertising.

(b) The commission will determine on a case-by-case basis whether the forms of advertising listed in (c)(3) of this section, as well as advertising not readily categorized as promotional, political, or goodwill, and any other form of advertising not covered by this section will be included in utility operating expenses for rate-making purposes.

(c) In this section

(1) "advertising" means the commercial use by a utility of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to the utility's customers;

(2) "goodwill advertising" means advertising directed toward improving or enhancing the public image of a utility or its employees;

(3) "goodwill advertising," "political advertising," and "promotional advertising" do not include

(A) advertising which informs an electric or gas consumer about methods which conserve electric energy or gas or which reduce peak demand for electric energy or gas;

(B) advertising required by law or regulation, including advertising required under Part I, Title II of the National Energy Conservation Policy Act (42 USC § 8201 et seq.);

(C) advertising regarding service interruptions, safety measures, or emergency conditions;

(D) advertising concerning employment opportunities with a utility;

(E) advertising which promotes the use of energy-efficient appliances, equipment, or services;

(F) an explanation or justification of existing or proposed rate schedules or a notice of hearings concerning these rate schedules; and

(G) communications with members of a utility cooperative about the activities or internal affairs of the cooperative or which encourage or promote the participation of the members in the process of governing the cooperative;

(4) "political advertising" means advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to a controversial issue of public importance; and

(5) "promotional advertising" means advertising for the purpose of encouraging a person to select or use the service or additional service of a utility, or the selection or installation of an appliance or equipment designed to use the utility's service, except as provided in (3)(E) of this subsection. (Eff. 10/15/82, Reg. 84)

Authority: AS 42.05.141(a)(3)
AS 42.05.151(a)
AS 42.05.381

3 AAC 50.600. DEFINITIONS. Unless the context indicates otherwise, in 3 AAC 50.100 – 3 AAC 50.600

(1) "building" means a single erected structure, roofed and enclosed within exterior walls, built for permanent use, framed of component structural parts and unified in its entirety both physically and in operation for residential or commercial occupancy;

(2) "commercial unit" means that portion of a building or premises which is normally used for commercial purposes;

(3) "electric consumer" means a person or a public or private entity to which electric energy is sold, other than for purposes of resale, by a regulated public utility;

(4) "gas consumer" means a person or a public or private entity to which natural gas is sold, other than for purposes of resale by a public utility;

(5) "mobile home park" means a parcel of land which is used for the accommodation of occupied mobile homes;

(6) "multiple-occupancy building" means a building which is designed to house more than one residential or commercial unit;

(7) "rate" means

(A) a price, rate, charge, or classification made, demanded, observed, or received with respect to the sale of utility services to a utility consumer;

(B) a rule, regulation, condition, or practice respecting a rate, charge, or classification; and

(C) a contract pertaining to the sale of utility services to a utility consumer;

(8) "rate schedule" means the designation of the rates which an electric utility charges for electric energy; and

(9) "residential unit" means one or more rooms for use by one or more persons as a housekeeping unit which provides living,

HB 223

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.055, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050 — AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.
Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.
Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.
Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4
Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.
Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 20, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date: 8/21/78

/s/ William E. Spear
Deputy Commissioner
Department of Labor

Pub: Aug. 30, 31, Sept. 1, 1978

ENCLOSURE # 1

NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050 - AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.

Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P. O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/2/78

Wm. Spear.

William E. Spear
Deputy Commissioner
Department of Labor

To be published August 30, 31 and September 1, 1978.

TO: Petroleum Equipment Suppliers Association

FROM: Ely, Guess & Rudd

DATE: April 5, 1983

RE: Constitutionality of Legislation Retroactively Extinguishing Claims for Overtime Compensation and Liquidated Damages

BACKGROUND

Prior to December 8, 1978, flexible work week (FWW) plans for paying employees were recognized as permitted under Alaska's law. Opinion of Attorney General, February 10, 1978. Essentially an FWW plan guarantees to an employee a minimum weekly wage, regardless of the number of hours actually worked, even during periods when an employee is on "R&R". The plans are typically used in resource development and service industries where there is a considerable amount of standby time at remote locations and the number of hours of work available from week to week vary greatly. FWW plans have long been recognized as an acceptable method of payment in compliance with the Federal Wage and Hour Act and are widely used in other states. 29 CFR 778.114.

On December 8, 1978, the Department of Labor adopted 8 AAC 15.100(d)(2) and (3). This regulation prohibited use of FWW plans by Alaska employers. The proposed regulation was not

given widespread publicity among the industries affected, other than by a legally-required publication of a notice in a newspaper which made no mention of the regulation's purpose of prohibiting FWW plans. As a result, there was no reported industry participation at a public hearing. Neither was there widespread dissemination of the regulation by the Department of Labor prior to or immediately after its effective date.

In October of 1979 the first of a number of employers was named as a defendant in a suit filed by a former employee for overtime compensation and liquidated damages. The employer (Dresser Industries) defended on constitutional grounds, and the matter was appealed to the Alaska Supreme Court. In September, 1981, the Alaska Supreme Court upheld the power of the Department of Labor to promulgate the regulation. Dresser Industries v. Alaska Department of Labor, 633 P.2d 998 (Alaska 1981). The defendant petitioned the United States Supreme Court for certiorari, but the Court refused to consider the case.

In December, 1981, a class action was filed by another employee against Dresser seeking back wages and liquidated damages on behalf of all Dresser employees. The complaint alleges damages in an amount exceeding $15 million. At least four other companies have since been sued. The aggregate of

damages alleged in two of the five pending cases total over $35,000,000. All of these cases are in the preliminary stages. No trial dates have been set, and none of these lawsuits have resulted in a judgment against any of the defendant companies.

In addition to potential liability for overtime compensation, Alaska law provides for mandatory liquidated damages which would double any compensation award. The Alaska Supreme Court has held that such damages must be paid by an employer who has failed to pay overtime compensation as provided by the statute, despite any showing of good faith on the part of the employer. AAI, Inc. v. Mussara, 602 P.2d 1240 (Alaska 1979).

HB 223 was introduced on February 23, 1983. Its purposes, as originally drafted, were:

1. To extinguish liability of employers for using FWW plans, which had been prohibited by 8 AAC 15.100(d)(1) and (3), during the period beginning on December 8, 1978, and ending on the effective date of HB 223;

2. To prohibit use of FWW plans in the future;

3. To create a good faith defense against payment of liquidated damages by an employer who inadvertently fails to pay overtime compensation in accord with the statute.

We have been asked to determine whether legislation which extinguishes existing claims against employers, based on use of FWW plans in violation of a Department of Labor regulation, is constitutional. We have concluded that the Legislature can constitutionally extinguish such claims, if it finds that the adverse economic impact on an industry important to the state economy outweighs the interests of employees who may recover damages.

DISCUSSION

A. Possible Bases for Challenging Legislation.

Employees whose claims are extinguished could challenge the constitutionality of the legislation under the Contract Clause (U.S. CONST. art. I, § 10), which provides that "no State shall . . . pass any . . . Law impairing the Obligations of Contracts", the equivalent provision of the Alaska Constitution (AK. CONST. art. I, § 15), or under the Due Process Clause contained in both the Federal and State

Constitutions (U.S. CONST. amends. V, XIV and AK CONST. art. I, § 7).[1/] Since under both the Contract Clause and the Due Process Clause a means-end test of rationality is employed, it has been stated that analysis under both clauses is substantially the same. Allied Structural Steel Company v. Spannaus, 439 U.S. 234, 263 n.9 (1978) (Brennan, J., dissenting); Veix v. Sixth Ward Building and Loan Association, 310 U.S. 32, 41 (1940); Northwestern National Life Insurance Company v. Tahoe Regional Planning Agency, 632 F.2d 104, 106 (9th Cir. 1980).

> Therefore we apply the test of reasonableness to the retroactive aspect of [the legislation]. This test is determinative of all arguments of the plaintiffs, since we perceive no need for separate analysis of

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1/ In a letter dated March 2, 1983, to Representative Walt Furnace, Mr. Thomas A. Sofo of the Legislative Counsel indicated that the bill might constitute local or special legislation contrary to Article II, § 19 of the Alaska Constitution, as well as possibly violating the equal protection clauses of the United States and Alaska Constitutions. The Alaska Supreme Court has established the standard that legislation which bears a "fair and substantial relationship" to legitimate purposes does not contravene the prohibition on local or special state acts, "despite any incidental local or private advantages." State v. Lewis, 559 P.2d 630, 643, cert. denied, 432 U.S. 901 (1977). The court has also declared the test for an equal protection challenge of a non-suspect class to be substantially the same as for a local law challenge. Id. at 643. Since the test for measuring legislation under the Due Process and Contract Clauses (discussed at length below) is a "reasonableness" test, legislation which passes muster under these two clauses should also pass the local legislation and equal protection tests.

> their various contentions under the impairment-of-contracts clause and under the due process clause of the United States Constitution and cognate State constitutional provisions.

American Manufacturers Mutual Insurance Co. v. Commissioner of Insurance, 372 N.E.2d 520, 525 (Mass. 1978).

Thus, they will not be dealt with separately.

Courts generally disfavor retroactive interpretation of statutes. Jones Enterprises, Inc. v. Atlas Service Corp, 442 F2d 1136, 1138 (9th Cir. 1971). However, the Legislature may enact retroactive legislation if it expressly declares its intention to do so. AS 01.10.090. As the author of a leading and often-cited law review put it:

> Perhaps the most fundamental reason why retroactive legislation is suspect stems from the principal that a person should be able to plan his conduct with reasonable certainty of the legal consequences.

Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harv. L. Rev. 692 (1960). In fact, the objections to retroactive statutes are not absent from prospective legislation, and retroactivity might actually further the goals which normally make retroactive legislation suspect.

> A retroactive statute, by remedying an unexpected judicial decision, may actually effectuate the intentions of the parties. And it is arguable that in

many instances legislation passed with a knowledge of the transactions to which it will apply can be more responsive to the needs of a particular situation. Id. at 693.

Little or no weight is attached to the fact that litigation may be pending at the time of the enactment of retroactive legislation, and it may be applied at any time up to a final and unreviewable judgment. Chase Securities Corp. v. Donaldson, 325 U.S. 304, 316 (1945); Chapman v. Farr, 132 Cal.Rptr. 606, 608 (Cal.App. 1982).2/

B. The Test Against Which the Legislation Would be Measured.

The courts consider and balance a great variety of factors in measuring the constitutionality of retroactive legislation. Legislation which is found to be reasonable after balancing various considerations will be upheld as constitutional. "Indeed from an analysis of the cases it becomes apparent that it is impossible to reduce the potentially infinite variety of situations in which the problem

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2/ Indeed, in a case where the public interest in preventing evictions was particularly compelling, the Supreme Court held that the Emergency Price Control Act could constitutionally be applied to a right which had been reduced to judgment prior to the enactment of the Legislation. Fleming v. Rhodes, 331 U.S. 100, 107 (1947).

of retroactivity can arise to a single common denominator." Hochman, supra at 727. The following test to determine reasonableness has been drawn from the decisions by the author of the above-cited leading article:

> [I]t is submitted that the constitutionality of such a statute is determined by three major factors, each of which must be weighed in any particular case. These factors are: the nature and strength of the public interest served by the statute, the extent to which the statute modifies or abrogates the asserted pre-enactment right, and the nature of the right which the statute alters. Hochman, supra, at 696.3/

The California Supreme Court, also citing the Hochman article, has outlined the factors it takes into consideration when analyzing retroactive legislation.

> In determining whether a retroactive law contravenes the due process clause, we consider such factors as the significance of the state interest served by the law, the importance of the retroactive application of the law to the effectuation of that interest, the extent of reliance upon the former law, the legitimacy of that reliance, the extent of actions taken on the basis of that reliance, and the extent to which the retroactive application of the new law would disrupt those actions.

In re Marriage of Bouquet 546 P.2d 1371, 1376 (Cal. 1976).

3/ The Supreme Judicial Court of Massachusetts has recently set out and applied the three-pronged approach suggested by the Hochman article. American Manufacturers Mutual Life Insurance v. Commissioner of Insurance, 372 N.E. 2d 520, 526 (Mass. 1978). The court stated that "[t]his articles is a comprehensive treatment of retroactive statutes and the 'reasonableness' analysis, and has been cited with approval." Ibid.

We will group and analyze the factors under the headings of two categories, based on Hochman's distillation of his three-pronged test:

> [T]he two major factors to be weighed in determining the validity of a retroactive statute are the strength of the public interest it serves and the unfairness created by its retroactive operation, . . . Hochman, supra at 727.

By considering the strength of the public interest and the unfairness created by its retroactive application, a framework is created for evaluating the constitutionality of retroactive legislation.[4/]

4/ Some courts have determined the constitutionality of retroactive statutes on the basis of whether a "vested right" is affected. In an early Alaska case, Bidwell v. Scheele, 355 P.2d 584, (Alaska 1960), the court found a defense based on the failure of plaintiff to pay certain sums into court, as required by a statute, not to be a "vested right." It held that the defense could be taken away by the Legislature through repeal of the statute requiring payment into court by a plaintiff. Id. at 587. The court did not attempt a definitive definition of "vested right." As modern cases recognize, "[i]t was customary at one time to use the word "vested" to describe rights that a court had determined could not be impaired retroactively. When the word is so defined, the statement that vested rights are immune to retroactive legislation becomes a tautology, not a proposition." In re Marriage of Bouquet, supra at 1376. Even if a court were to cling to the vested right terminology, "[v]ested rights, of course, may be impaired 'with due process of law' under many circumstances. The state's inherent sovereign power includes the so called 'police power' right to interfere with vested property rights whenever reasonably necessary to the protection of the health, safety, morals, and general well being of the people . . . . Ibid.

1. The Strength of the Public Interest Served by the Legislation.

It initially falls on the legislature to balance competing interests in an effort to broadly promote the interest of the state. Legislation typically "adjusts the rights of private groups in an attempt to achieve a balance which best serves the 'public purpose', and many such statutes have been upheld against claims that their retroactive operation was a denial of due process". Hochman, supra at 698.

Courts traditionally show great deference to a legislature's judgment as to the reasons and need for legislative action, particularly in the economic and social areas.

> . . .the state also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end 'has the result of modifying or abrogating contracts already in effect.' [Citations omitted] Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. * * * This principle of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decisions of this Court. Moreover, the 'economic interests of the state may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts.' [Citation omitted] The State has the "sovereign right * * * to protect the * * * general welfare of the people * * * Once we are in this domain of the

> reserve power of a State we must respect the 'wide discretion on the part of the legislature in determining what is and what is not necessary.'" [Citation omitted]

City of El Paso v. Simmons, 379 U.S. 497, 508 (1965).

In upholding legislation which increased mine operators' duty to provide compensation for illnessess suffered by miners (even if a former miner terminated his employment in the industry before the Act was passed), the Court stated that retroactive laws, like prospective legislation, "adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Usery v. Turner Elkhorn Mining Company, 428 U.S. 1, 15 (1976). To like effect, the U.S. Supreme Court held in United States Trust Company of New York v. New Jersey, 431 U.S. 1, 22 (1977), "the States must possess broad powers to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed as a result."[5/]

5/ The Court, holding that a state's impairment of its own obligations had to be measured by a different standard than impairment of private contracts, struck down New Jersey legislation which impaired contractual obligations in bonds issued by the State. "When a State impairs the obligations of its own contract, the reserved powers doctrine has a different basis . . . . complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake." U.S. Trust Co. of New York v. New Jersey, supra at 23.

Given the judicial deference to the legislature in economic and social matters, and the presumption of constitutionality, retroactive legislation has been found to serve a legitimate public interest and upheld in a variety of situations.

In City of El Paso v. Simmons, supra, the United States Supreme Court held that a Texas statute limiting defaulting purchasers to a 5-year period for reinstating rights to recover land sold by the State did not unconstitutionally violate the Contract Clause. Prior to the enactment of this legislation a defaulting purchaser could reinstate his right to recover land forfeited to the State at any time upon written request and payment of delinquent interest. Id. at 488. Simmons, who had lost all right to land he could have reclaimed absent the latter legislation, argued that the statute violated the Contract Clause. Id. at 505. The United States Supreme Court upheld the legislation.

The Court looked to the state interest in passing the legislation to justify its application. It found that clouds on titles which arose because of the broader right of reinstatement under prior law made administering the land a more difficult and unstable task. Id. at 513. "The Contract

Clause of the Constitution does not render Texas powerless to take effective and necessary measures to deal with the above." Ibid.

In the leading case of Home Building and Loan Association v. Blaisdell, 290 U.S. 398, 444 (1934), a Minnesota mortgage moritorium law enacted to provide relief to homeowners threatened with foreclosure was upheld against Contract Clause and Due Process clause attack. "The economic interests of the state may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts." Id. at 437. Veix v. Sixth Ward Building and Loan Association, 310 U.S. 32 (1940) upheld New Jersey legislation limiting the ability of subscribers to withdraw subscriptions from building and loan associations. The Court stated that, "[c]ertainly the protection of building and loan associations against the catastrophe of excessive withdrawal is, today, within legislative power". Id. at 41.6/

6/ These two cases arose during the Depression. However, emergency economic conditions are not a prerequisite for legislative action. City of El Paso v. Simmons, supra at 515. The Seventh Circuit has found that, "[A]llied Structural Steel Co. confirms the prior precedents holding that retroactive liability can properly be imposed to remove problems which fall short of an emergency". Nachman Corp. v. Pension Benefit Guaranty Corp., 592 F.2d 947, 961 (7th Cir. 1979).

In American Manufacturers Mutual Insurance Company v. Commissioner of Insurance, supra at 529, Massachusetts' highest court upheld retroactive legislation requiring the rewriting of insurance contracts, at reduced rates, previously entered into between insurance companies and policyholders. As to the public interest, the court stated:

> The burden is on the plaintiffs to make factual showings that the statute is irrational in its operation, and it has been our frequently stated rule that such a statute will not be set aside as a denial of due process "if any state of facts reasonably may be conceived to justify it." [Citation omitted]

Id. at 526.

These cases indicate the importance courts place on the state interest when evaluating the constitutionality of the legislation. "The immediacy and severity of the conditions which the legislature has attempted to rectify are clearly relevant in determine the reasonableness, and hence the validity of retroactive aspects of a legislative program." Hochman, supra at 697. The clearer the public purpose served and the greater the necessity for the legislation, the more likely a court is to sustain its application. However, the existence of a state interest does not provide the state with unfettered power. Even though a valid interest is found for retroactively affecting contract rights, courts will consider the nature of the right affected to determine if application of

the legislation to the party asserting the particular claim would be so unfair as to make it unconstitutional.

2. The Fairness of Retroactive Application of The Legislation to a Particular Right.

Hochman's second category[7] deals with the equity of retroactive application in any given situation. Since giving effect to the reasonable desires of contracting parties has always been considered a valid legislative goal, the element of reliance is crucial when considering Hochman's second main category.

> . . . the factor most often appearing in these cases is the extent to which the parties have laid reasonable reliance on the law existing at the time of the conduct whose legal consequences the retroactive statute would alter. The importance of this element is apparent when one considers that in very general terms the two major factors to be weighed in determining the validity of the retroactive statute are the strength of the public interest it serves and the unfairness created by its retroactive operation and the reliance of the parties on preexisting law is perhaps the most accurate gauge of the latter. Hochman, supra at 727.

See also, State ex. rel. Cannon v. Moran, 321 N.W. 2d 550, 561 (Wis. Ct. App. 1982).

7/ Hochman has, in effect, distilled his three-pronged test into two categories. See Hochman, supra, at 727.

Some courts have focused almost exclusively on the reliance element.

> The proper test of the constitutionality of retroactive legislation is whether a party has changed position in reliance upon the previous law or whether the retroactive law defeats the reasonable expectations of the parties, not whether the law abrogates a 'vested right,' which is merely a conclusory label. 2 C. Sands, supra at § 41.05; Hochman, supra at 696. Curative laws, such as RCW 26.32.916, which implement the original intentions of affected parties are constitutional because there is no injustice in retroactively depriving a person of a right that was created contrary to his expections at the time which the right arose. [Citation omitted]

Application of Santore, 623 P.2d 702, 706 (Wash. App. 1981).

Where there has been no reliance on the prior existing law there is little risk of injustice.[8/] "For example, an act which has the affect of implementing the original intentions of the parties affected has generally been held constitutional since there is little injustice in

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8/ In State Workmen's Compensation Board v. Delaney, 615 P.2d 5 (Alaska 1980), our Supreme Court upheld application of an increased rate for disability benefits, which had been put into effect after the claimant's injury but prior to its rating. The Superior Court found that application of the increased rates would unconstitutionally impair the insurance contract between the employer and its insurance carrier. Id. at 7. The Supreme Court reversed, finding no 'unfairness inherent' in its conclusion, because the employer "had no reasonable expectation that the benefit rates in effect at the time of the injury would remain constant." Id. at 8.

retroactively depriving a person of a right, however valuable, which was created contrary to his bona fide expectations at the time he entered the transaction from which the right arose." Hochman, supra at 720. The following cases illustrate the power the Legislature has to validate contracts, which were illegal under prior law, in order to give affect to the bona fide expectations of the parties.

In McNair v. Knott, 302 U.S. 369 (1937), security pledges which were illegal when made were retroactively validated. A bank had given security to protect certain funds deposited in the bank. State law provided that banks could not give security for private deposits. Congress enacted legislation making such pledges legal, thus retroactively making enforceable agreements which originally were illegal. Id. at 370.

The receiver for a bank, attempting to avoid the effect of a pledge made before enactment of the validating law, maintained that illegal contracts could not be validated by changing the law which was in effect when the agreement was made. Id. at 372. The Supreme Court disagreed and upheld the constitutionality of the act, finding nothing inequitable in requiring persons to perform their agreements as originally intended.

> There is nothing novel or extraordinary in the passage of laws by the federal government and the states ratifying, confirming, validating, or curing defective contracts. Such statutes usually designated as "remedial", "curative", or "enabling" merely remove legal obstacles and permit parties to carry out their contracts according to their own desires and intentions. Such statutes have validated transactions that were previously illegal relating to mortgages, deeds, bonds, and other contracts. Placing the stamp of legality on a contract voluntarily and fairly entered into by parties for their mutual advantage takes nothing away from either of them. Id. at 372 (emphasis added).

In the recent case of Chapman v. Farr, supra, the court upheld retroactive application of California law changing the basis for finding a loan usurious. A real estate broker had loaned money at usurious rates. Id. at 607. Three months after a judgment was entered by a trial court against the broker, the applicable law was amended to exclude loans made by real estate brokers. Ibid. The appellate court overturned, finding that retroactive application of the later law was constitutional. Application of the statute resulted in the parties to the loan (illegal at the time it was made) receiving what they had bargained for.

The constitutionality of a Minnesota statute retroactively validating the power of attorney of a woman who under then-existing law was precluded from entering into a real property transaction was upheld in Randall v. Kreiger, 90 U.S. 137 (1875). Enforcing the legislation was deemed equitable in that this gave affect to the parties' attempt, illegal at the time of transfer, to make a valid conveyance.

There are of course cases where it has been determined that retroactive application of a statute would be inequitable under the circumstances. In Allied Structural Steel Co. v. Spannaus, supra, the Court struck down Minnesota legislation which retroactively increased employer liability under company pension plans.

Plaintiff employer had established a pension plan under which employees were entitled to a pension upon meeting certain requirements. In April 1974, in reaction to a single company's pension plan termination, Minnesota enacted the Private Pension Benefits Protection Act. Id. at 248. In the summer of that year plaintiff began closing its Minnesota office. In August the state notified the company that it owed a pension funding charge of $185,000 under the provisions of the Act. The employer brought an action challenging the constitutionality of the Act, claiming that it impaired the employer's contractual obligations to its employees under the pension plan. After a three-judge court upheld the constitutional validity of the statute as applied to the employer, Fleck v. Spannaus, 449 F. Supp. 644 (D. Minn. 1977), an appeal was taken to the United States Supreme Court.

The Court overturned the lower court, finding the Act inadequate under both of Hochman's categories. The Court looked to Minnesota's interest in enacting the legislation.

"[T]here is no showing in the record before us that this severe disruption of contractual expectations was necessary to meet an important general social problem." Id. at 247. In discussing the unfairness of application of the legislation increasing employer liability, the Court stated, "the company thus had no reason to anticipate that its employees pension rights could become vested except in accordance with the terms of the plan. It relied heavily, and reasonably, on the legitimate contractual expectation in calculating its annual contributions to the pension fund". Id. at 245. The Court thus found the Act to be unconstitutional.9/

9/ The decision in Allied Steel has been distinguished by the Court in Nachman Corp. v. Pension Benefit Guaranty Corp., 446 U.S. 359 (1980). The Court in Nachman upheld the Employee Retirement Income Security Act (ERISA) against an employer's constitutional challenge. The Court engaged in an extensive review of the legislative history of the act, including extensive quotations of the remarks made by sponsors of the legislation. Id. at 375 et. seq. As to the public interest, the Court quoted from the Seventh Circuit decision, 592 F.2d 947 at 963:

> The record supporting the enactment of ERISA, wholly unlike that present in Allied Structural Steel, demonstrates that "the presumption favoring 'legislative judgment as to the necessity and reasonableness of a particular measure'" must be allowed to govern here [Citations omitted] 446 U.S. at 367.

The Seventh Circuit had also found that "the nature of the reliance interests in this case can be distinguished in several respects." 592 F.2d at 961. The different outcomes in Allied Steel and Nachman point out the importance which the Court places on the facts in any particular case.

The importance of the reliance element can be seen in the refusal to apply legislation in Allied Steel, which would have resulted in the parties not receiving what they expected when they entered into a transaction. This stands in sharp contrast to the cases, discussed in this section, upholding retroactive legislation which gave the parties exactly what they expected to receive at the time they entered into a transaction.

As the author of a law review article dealing with retroactivity stated:

> The writer believes that a principle, simple in statement though somewhat difficult in application, does exist. If the retroactive statute defeats claims based on the reasonable expectations of the parties at the time the legal transaction occurred, the statute constitutes an unconstitutional deprivation of property without due process. On the other hand, if the statute merely carries out those reasonable expectations it is valid.

Brown, Vested Rights and the Portal-to-Portal Act, 46 Mich. L. Rev. 723, 746 (1948).

The cases discussed in this section support the proposition that a court is more likely to uphold application of retroactive legislation defeating a right where the party claiming that right had not relied upon it at the time he entered into the affected transaction.[10/]

10/ Alternatively, courts have consistently held that a legislature possesses wide power to abrogate rights based on statutes and rights to penalties or forfeitures. See infra discussion at pp. 23-25.

C. Portal-to-Portal and Overtime-on-Overtime Cases.

A series of cases in the late 1940's are particularly relevant in that they arose under similar factual circumstances and indicate how courts balance the factors considered above.

The Portal-to-Portal Act of 1947, 29 U.S.C.A. § 251 et. seq., abrogated employees' rights to compensation and liquidated damages. Literally hundreds of "portal-to-portal" cases arose from congressional destruction of billions of dollars in employee claims. Every federal circuit court of appeals upheld the power of Congress to retroactively abrogate employees' claims to overtime compensation and liquidated damages. See, e.g., Moss v. Hawaiian Dredging Co., 187 F.2d 442, 445 (9th Cir. 1951).

Prior to 1947 workers were generally not paid for activities which were considered incidental to the actual work hours of the employee. These activities included walking to work on employer's premises, changing into work clothes, etc. The United States Supreme Court in Anderson v. Mt. Clemens Pottery Company, 328 U.S. 680 (1947), interpreted the Fair Labor Standards Act as requiring payment, including time and a half for overtime, for these incidental activities, creating a potential liability to employers in the billions of dollars. Seese v. Bethleham Steel Co., 168 F.2d 58, 59 (4th Cir. 1948).

Congress responded with the Portal-to-Portal Act of 1947, 29 U.S.C.A. § 251 et. seq., which provided that no employer would be subject to liability for failure to pay wages for "portal-to-portal" activities, unless there was an express contract provision providing for such payment or it was the custom at the establishment where the employee worked that wages be paid for these activities. Ibid.

Employees attacked as unconstitutional the retroactive application of the act abrogating their claims. Based on a review of the legislative history of the act, courts determined that prevention of a serious adverse impact on industry justified congressional action. Seese v. Bethlehem Steel Co., supra at 60; Annot. 3 ALR 2d. 1097 (1949). Balanced against this was the nature of the employees' rights. Employees' claims did not rest on substantial equity in that payment to them would essentially amount to "windfalls". These windfalls would have consisted of payment for work the employees did not expect to be compensated for when performed. Id. at 65. It was held not to be inequitable to deprive employees of compensation they had not expected to receive at the time they performed the work. Ibid.

An alternative ground for upholding the legislation was the recognition of a legislature power to take away that

which existed because of prior legislation. As stated by the trial court in Seese:

> The plaintiffs' major premise is that they obtained vested rights under the Fair Labor Standards Act. But this requires analysis. The contention is that the plaintiffs when employed by the defendant entered into a contract, the terms of which were governed by the Fair Labor Standards Act. It is of course true in general that contracts when made by individuals are subject to existing valid legislation and the latter is said to be read into the contract. It is, however, important to distinguish between that part of the contract of employment which was the personal and actual agreement of the parties and that part which was superimposed by the statute. In the instant case it is apparent that the purely personal portions of the contract have been performed as there is no averment to the contrary. The alleged unperformed part, that is for the portal-to-portal activities, were not a part of the personal contract but imposed only by the Fair Labor Standards Act as construed by the Supreme Court. It seems necessarily to follow that the extra compensation now claimed is of purely statutory origin.

Seese v. Bethlehem Steel Co., 74 F. Supp. 412, 418 (D. Md. 1947).

In affirming the trial court's decision, the Fourth Circuit stated:

> What was taken away was the right to recover on claims of purely statutory origin, claims given by statute not as compensation for labor performed but as a means of regulating wages and hours in interstate commerce. [Citations omitted] Even where the contract clause is a limitation upon legislative power, it is universally held that such a claim may be taken away by the legislature without violation of constitutional right. Since the legislature may repeal its own act, it may take away that which has no existence save by virtue of that act. [Citations omitted]

Seese v. Bethlehem Steel Co., 168 F.2d at 64.

The Circuit Court distinguished early cases which had not permitted retroactive legislation to affect certain rights, i.e., Steamship Company v Joliffe, 2 Wall 450 (1865); Ettor v. City of Tacoma, 228 U.S. 148 (1912); Coombes v. Getz, 285 U.S. 434 (1932) and Duke Power Company v. South Carolina Tax Commissioner, 81 F.2d 513 (4th Cir. 1936):

> They were concerned with vested property rights based on agreements and not on mere statutory provisions without contract or agreement to support them. It is argued that the provisions of the statute must be read into the contract of employment and that the right to recover compensation in accordance with its terms accrues upon the rendering of services. As stated above, however, the true situation with respect to claims affected by the portal-to-portal act is that the act validates the real contract between the parties and merely takes away a statutory remedy given by the prior act. Even if the provisions of the Fair Labor Standards Act be read into contracts of employment, so also must be read the constitutional power of Congress to change that Act. Id. at 64 (emphasis supplied).

Also extinguished were claims for double damages pursuant to 29 U.S.C.A. § 216(b). Rogers Cartage Co. v. Reynolds, 166 F.2d 317, 321 (6th Cir. 1948). Legislative power to extinguish claims for double damages is indisputable.

> The courts have been particularly uniform in reaching this conclusion where the right of action is in the nature of a claim by an individual for the recovery of a statutory fine, penalty, or forfeiture.

National Carloading Corp. v. Phoenix-El Paso Express, 176 S.W.2d 564, 569 (Texas 1944).

"[T]he other kind of right which the Court has held may be freely altered or removed up to the time it is finally enforced is one arising from a statute which gives to a person or body other than the legislating authority the right to receive a penalty imposed by the statute." Hochman, supra at 725.

In a case arising in the Ninth Circuit the retroactive extinguishment of all rights to overtime pay and liquidated damages was upheld to defeat lawsuits filed against employers prior to the retroactive enactment. Moss v. Hawaiian Dredging Company, supra. This case is particularly instructive as it is factually quite similar to the situation presented to this Legislature.

Workers employed in longshoring and stevadoring in the San Francisco Bay area had a contract which provided for the payment of time and a half for all work performed on Saturdays, Sundays, holidays and those hours on weekdays not between 8 a.m. and 5 p.m. Because of the special nature of compensation for these employees, employers did not pay time and a half for hours worked after the first 40 hours of a week. Id. at 443. This was done despite the opinion of a federal Wage and Hour Administrator that the employees were entitled to such overtime compensation. Id. at 445.

In 1948 a United States Supreme Court decision, Bay Ridge Co. v Aaron, 334 U.S. 446 (1948), confirmed the Administrator's opinion that the employees were entitled to time and a half for hours worked in excess of the first 40 hours. Congress then enacted Public Law 393, popularly known as the Overtime-on-Overtime Act. The Act provided that the previous manner of payment to those employees, which had been illegal, satisfied the applicable federal labor law, thereby validating the employment contracts, and retroactively extinguished employer liability for overtime claims and liquidated damages which were clearly due the employees absent the retroactive legislation. Id. at 444.

In Moss v. Hawaiian Dredging Co., supra, the Ninth Circuit Court of Appeals upheld the constitutionality of the Act in the face of the employees' constitutional challenge. The court, after considering the facts discussed above, found that the employees' right to additional overtime, which had arisen pursuant to the law in effect at the time of the performance of the work, had to yield when the legislature subsequently chose to retroactively extinguish that right. Id. at 447. Although there was no "emergency" justifying retroactive application of the Act, the court deferred to the legislative judgment concerning the economic necessity of enacting the bill. The court believed that the public interest

in avoiding an adverse economic effect upon an important industry outweighed the right of employers to additional statutory compensation.

> . . . the character and quality of such rights are such that they must yield to the sovereign power to regulate commerce by legislation such as that of the Portal-to-Portal Act. Id. at 447.11/

The Overtime-on-Overtime and Portal-to-Portal cases show how courts analyzed application of retroactive congressional legislation to employees' claims to overtime compensation and liquidated damages, balanced the interests discussed above, and concluded that the legislation in each case was constitutional.

11/ The decision of a court should be the same when a state legislature acts pursuant to the state's police power. "And the Portal-to-Portal Act in amending the substantive right created is of the same constitutional nature exercised in the judgment of Congress as the proper policy for the Nation in matters affecting the employer/employee relationship in interstate commerce; and is kindred to the exercise of the police power of the States which, of course, may and often does affect previously existing personal rights." Seese v. Bethlehem Steel Co., 74 F. Supp at 419 (emphasis supplied). See also, Darr v. Mutual Life Insurance Co., 72 F. Supp. 752, 754 (S.D. N.Y. 1947); Hodel v. Virginia Surface Mining and Reclamation Association, 452 U.S. 264, 101 S. Ct. 2352 (1981), quoting United States v. Darby, 312 U.S. 100, 116, "the authority of the federal government over interstate commerce does not differ in extent or character from that retained by the states over intrastate commerce." Id. at 2368.

CONCLUSION

In summary, the constitutionality of retroactive legislation depends upon a balancing of interests. The public interest in enacting the legislation must be weighed against the equity of applying the statute in any given case. Hochman, supra at 727.[12/]

Based upon a review of cases it is our opinion that the Legislature may retroactively extinguish employees' claims for overtime compenseation and liquidated damages, if it makes certain findings based on the facts and existing testimony available to it.

First, the Legislature could determine that payment by employers of pending and potential claims of employees for overtime and damages would pose adverse economic consequences on an industry important to the state's economy, and to the state itself. City of El Paso v. Simmons, supra; Seese v. Bethlehem Steel Co., supra.

12/In undertaking such an analysis a court determines the strength of the public interest by reviewing the legislative record. Usery v. Turner Elkhorn, supra at 4; Home Building and Loan Association v. Blaisdell, supra at 420.

Second, it could find that from December 8, 1978 to the present, employees and employers voluntarily entered into employment contracts by which employees would be compensated under FWW plans, both unaware of the Department of Labor regulation because there was no widespread publicity directed at informing employers and employees of the drastic change in the law; and employees expected to be paid pursuant to the terms of their agreement and not on some other bases. McNair v. Knott, supra; Moss v. Hawaiian Dredging Co., supra.

If the Legislature reasonably makes such findings, the Legislature can act to validate the employment agreements, which arguably were illegal when entered into, in order to carry out the reasonable expectations of the contracting parties. Assuming the existence and validity of the findings recited above, it is our opinion that there is a substantial probability that the legislation would withstand a challenge under the Contract Clause and Due Process Clause of the United Stated and Alaska Constitutions.

regarding cancellation of the contract on two weeks' notice. The argument based on Davis's claim that he was the band's leader can be disposed of summarily: no evidence has been produced from which it can be inferred that this statement induced Johnson to enter into the contract. *See Restatement (Second) of Contracts* § 309 (Tent. Draft No. 11, 1976). The second argument, based on Davis's alleged promise that the band's engagement could be cancelled on two weeks' notice, must fail for the same reason. Even granting that failure to warn a party of his possible misapprehension of a contract term may constitute a misrepresentation,[8] we are unable to conclude that Johnson may have been passively misled in that fashion. She fails to assert any assumption on her part that the written agreement embodied the purported oral promise. No evidence was presented from which it can be inferred either that she failed to read the contract or, having read it, failed to understand its terms. Her affidavit indicates neither that she in any way misapprehended the content of the written agreement nor that she was induced to sign it by any deception, active or passive, on Davis's part. Absent any evidence that Johnson was induced to enter into the contract on the basis of a misrepresentation as to the terms it contained, the district court was correct in granting summary judgment in favor of the band on this ground.

We agree with the district court's conclusion that Johnson's evidence, even interpreted in the light most favorable to her, was insufficient to support her defenses to enforcement of the written contract. That court's entry of summary judgment in favor of the band members must therefore be AFFIRMED.

8. Restatement (Second) of Contracts § 301 (Tent. Draft No. 11, 1976) defines a misrepresentation as "an assertion that is not in accord with existing facts." Section 303 provides that:

> A person's non-disclosure of a fact known to him is equivalent to an assertion that the fact does not exist only if
>
> . . . . .
>
> (b) he knows that disclosures of the fact would correct a mistake of the other party as to a basic assumption on which that party made the contract and if non-disclosure of the fact amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing, or
>
> (c) he knows that disclosure of the fact would correct a mistake of the other party as to the contents or effect of a writing, evidencing or embodying an agreement in whole or in part . . . .

This section is clarified in Comment e as follows:

> *Known mistake as to a writing.* One party cannot hold the other to a writing if he knew that the other was mistaken as to its contents or as to its legal effect. He is expected to correct such mistakes of the other party and his failure to do so is equivalent to a misrepresentation which may be grounds either for avoidance under § 306 or for reformation under § 308 . . . . The failure of a party to use care in reading the writing so as to discover the mistake may not preclude such relief (§ 314). In the case of standardized agreements, these rules supplement that of § 237(d), which applies, regardless of actual knowledge, if there is reason to believe that the other party would not manifest assent if he knew that the writing contained a particular term. Like the rule stated in Clause (b), that stated in Clause (c) requires actual knowledge and is limited to non-disclosure by a party to the transaction.

DRESSER INDUSTRIES, INC., Appellant,

v.

ALASKA DEPARTMENT OF LABOR, Appellee.

No. 5625.

Supreme Court of Alaska.

Sept. 18, 1981.

Employer appealed from entry of summary judgment by the Superior Court, Third Judicial District, Anchorage, Seaborn J. Buckalew, Jr., J., upholding validity of

regulation promulgated by Department of Labor which prohibited flexible work week. The Supreme Court, Rabinowitz, C. J., held that: (1) Director of Wage and Hour Division of Department of Labor was authorized to promulgate regulation, and (2) regulation did not exceed power delegated by legislature and was reasonable and not arbitrary method of furthering policies of wage and hour statutes requiring increased overtime compensation and promoting spreading of employment.

Affirmed.

1. States ⇐9

Text of Alaska Statehood Act makes it clear that federal legislative enactments were to be carried over unless overruled by State Constitution or state legislature, but Act did not automatically incorporate and maintain federal case law, or administrative law, unless and until changed by legislature. Alaska Statehood Act, § 8(d), 48 U.S.C.A. prec. § 21.

2. Labor Relations ⇐1101

Section of Wage and Hour Act which manifests intent to safeguard existing minimum wage and overtime standards is expression of general public policy and not specific prohibition of change. AS 23.10.050.

3. Labor Relations ⇐1101

Although section of Wage and Hour Act governing definitions directs courts to apply federal regulatory definitions "where applicable," such definitions are "applicable" only when Director of Wage and Hour Division and Commissioner of Labor have refrained from defining terms of state regulations, pursuant to their discretionary authority under sections of statute governing scope of administrative regulations and adoption of federal regulations. AS 23.10.085(b), 23.10.095, 23.10.145.

4. Labor Relations ⇐1101
States ⇐9

Alaska Statehood Act did not automatically incorporate federal case law or administrative law unless and until changed by legislature, provision of Wage and Hour Act which manifests intent to safeguard existing minimum wage and overtime standards is not prohibition of change, and direction to court to apply federal regulatory definitions "where applicable" means that such definitions are applicable only when Director of Wage and Hour Division and Commissioner of Labor have refrained from defining terms of state regulations; thus, Director was authorized to promulgate regulation which prohibited flexible work week. Alaska Statehood Act, § 8(d), 48 U.S.C.A. prec. § 21; AS 23.10.050, 23.10.085(b), 23.10.095, 23.10.145.

5. Stipulations ⇐3

Stipulations as to law are not binding upon court.

6. Labor Relations ⇐1425

Sections of Wage and Hour Act governing scope of administrative regulation and adoption of federal regulations constitute delegation of authority from legislature to agency to formulate policies, leaving to agency discretion issue of whether federal definitions of regular rate of pay and other terms can be applied consistently with Wage and Hour Act; thus, standard of review in determination of validity of regulation prohibiting flexible work week was whether regulation was reasonable and not arbitrary. AS 23.10.085, 23.10.095.

7. Labor Relations ⇐1439

While under standard hourly wage salary, as worker's overtime hours increase, average hourly wage increases, under flexible work week, as worker's overtime hours increase, average hourly wage decreases in contravention of policies requiring increased overtime compensation and promoting spreading of employment; thus, regulation of Department of Labor which defined "regular rate of pay" so as to exclude use of flexible work week was consistent with, and reasonably necessary to carry out purposes of statute governing wages and hours, did not exceed power delegated by legislature, and was reasonable and nonarbitrary method of furthering statute's policy. AS 23.10.050 et seq.

John K. Norman and Wev W. Shea, Hartig, Rhodes, Norman & Mahoney, Anchor-

age, and A. J. Harper II and Jeffrey S. Kuhn, Fulbright & Jaworski, Houston, Tex., for appellant.

Elizabeth Page Kennedy, Asst. Atty. Gen., Anchorage, and Wilson L. Condon, Atty. Gen., Juneau, for appellee.

Before RABINOWITZ, C. J., and CONNOR, BURKE, MATTHEWS and COMPTON, JJ.

OPINION

RABINOWITZ, Chief Justice.

This is an appeal from a summary judgment granted by the superior court. Its sole issue is the validity of 8 AAC 15.100(d)(3),[1] a regulation promulgated by the Department of Labor which prohibits the "flexible work week" (FWW), purportedly under the authority of the Alaska Wage and Hour Act. The superior court concluded

1. This regulation reads:

> (d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:
>
> . . . . .
>
> (3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a workweek.

The federal regulation referred to, 29 C.F.R. 778.114, reads as follows:

> § 778.114 *Fixed salary for fluctuating hours.*
>
> (a) An employee employed on a salary basis may have hours of work which fluctuate from week to week and the salary may be paid him pursuant to an understanding with his employer that he will receive such fixed amount as straight time pay for whatever hours he is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period, such a salary arrangement is permitted by the Act if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours he works is greatest, and if he receives extra compensation, in addition to such salary, for all overtime hours worked at a rate not less than one-half his regular rate of pay. Since the salary in such a situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime hours at one-half such rate in addition to the salary satisfies the overtime pay requirement because such hours have already been compensated at the straight time regular rate, under the salary arrangement.
>
> (b) The application of the principles above stated may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose overtime work is never in excess of 50 hours in a workweek, and whose salary of $250 a week is paid with the understanding that it constitutes his compensation, except for overtime premiums, for whatever hours are worked in the workweek. If during the course of 4 weeks this employee works 40, 44, 50, and 48 hours, his regular hourly rate of pay in each of these weeks is approximately $6.25, $5.68, $5, and $5.21, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due. For the first week the employee is entitled to be paid $250; for the second week $261.36 ($250 plus 4 hours at $2.84, or 40 hours at $5.68 plus 4 hours at $8.52); for the third week $275 ($250 plus 10 hours at $2.50, or 40 hours at $5 plus 10 hours at $7.50); for the fourth week approximately $270.88 ($250 plus 8 hours at $2.61 or 40 hours at $5.21 plus 8 hours at $7.82).
>
> (c) The 'fluctuating workweek' method of overtime payment may not be used unless the salary is sufficiently large to assure that no workweek will be worked in which the employee's average hourly earnings from the salary fall below the minimum hourly wage rate applicable under the Act, and unless the employee clearly understands that the salary covers whatever hours the job may demand in a particular workweek and the employer pays the salary even though the workweek is one in which the full schedule of hours is not worked. Typically, such salaries are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole. Where all the legal prerequisites for use of the 'fluctuating workweek' method of overtime payment are present, the Act, in requiring that 'not less than' the prescribed premium of 50 percent for overtime hours worked be paid, does not prohibit paying more. On the other hand, where all the facts indicate that an employee is being paid for his over-

ed the regulation was valid, and Dresser Industries (Dresser) has appealed. We affirm.

The case was presented to the superior court on the basis of the parties' "Stipulations of facts, issues, and procedure," providing in part:

1. Dresser Industries, Inc. is doing business in the State of Alaska and is subject to the jurisdiction of this court.

2. The person on whose behalf the action has been instituted is Clyde Woody (herein claimant), who has assigned his rights to the Department of Labor pursuant to AS 23.05.220.

3. The Department of Labor is the proper party plaintiff to bring this suit under AS 23.05.230 and suit has been timely and properly instituted.

4. The court has jurisdiction of the subject matter and the parties.

5. This action arises under the provisions of the Alaska Wage and Hour law (AS 23.10.050 *et seq.*) and the regulations of the Department of Labor promulgated thereunder (8 AAC 15.100).

6. The interpretative regulation at issue was properly promulgated in accordance with the Alaska Administrative Procedure Act (AS 44.62).

7. Claimant is due the sum of $3,956.76 if the position of plaintiff is sustained and is not due any monies if the position of defendant is sustained.

8. This case is ripe for adjudication on the stipulated facts and issues and the parties agree this stipulation shall constitute cross-motions for summary judgment.

9. The predicates which served as the Administrator's basis in adopting the challenged regulation were:

(A) The 'fluctuating work week' is not applicable under the Alaska Act because,

(1) AS 23.05.160 requires an employee to be told of his 'rate of pay' at the time of hire and of any changes therein before payday; and

(2) AS 23.10.060 requires that employers have to pay overtime for hours worked over eight (8) hours per day, even if less than forty (40) hours per week are worked, and this is to the employer's detriment.

Dresser presented two arguments in support of its contention that 8 AAC 15.100(d)(3) is invalid. It asserted, first, that the definition of "regular rate of pay" in the federal regulations, which countenances use of the FWW, *see* note 1 *supra*, is binding upon the State Wage and Hour Division under two statutory provisions: section 8(d) of the Statehood Act[2] and the Alaska Wage and Hour Act itself, specifically AS 23.10.050[3] and AS 23.10.145.[4] Second, Dresser

time hours at a rate no greater than that which he receives for nonovertime hours, compliance with the Act cannot be rested on any application of the fluctuating workweek overtime formula.

2. The entire text of section 8(d) of the Statehood Act reads:

(d) Upon admission of the State of Alaska into the Union as herein provided, all of the Territorial laws then in force in the Territory of Alaska shall be and continue in full force and effect throughout said State except as modified or changed by this Act, or by the constitution of the State, or as thereafter modified or changed by the legislature of the State. All of the laws of the United States shall have the same force and effect within said State as elsewhere within the United States. As used in this paragraph, the term 'Territorial laws' includes (in addition to laws enacted by the Territorial Legislature of Alaska) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Alaska prior to the admission of the State of Alaska into the Union, and the term 'laws of the United States' includes all laws or parts thereof enacted by the Congress that (1) apply to or within Alaska at the time of the admission of the State of Alaska into the Union, (2) are not 'Territorial laws' as defined in this paragraph, and (3) are not in conflict with any other provisions of this Act.

Alaska Statehood Act, P.L. 85-508, § 8(d).

3. AS 23.10.050 reads, in relevant part: "It is the public policy of the state to . . . (2) safeguard existing minimum wage and overtime compensation standards . . ."

4. AS 23.10.145 reads:

Definitions. Terms used in §§ 50-150 of this chapter shall be defined, where applica-

argued that even if the State Wage and Hour Division was authorized to promulgate 28 AAC 15.100(d)(3), the regulation is inconsistent with the state Wage and Hour Act and unreasonable and arbitrary, and thus cannot withstand judicial review.

A. *Carry-over of federal law.*

It is undisputed that the FWW is sanctioned under federal wage and hour law. *See Overnight Motor Transport Co., Inc. v. Missel*, 316 U.S. 572, 62 S.Ct. 1216, 86 L.Ed. 1682 (1942). Early federal regulations specifically endorsed its use, under the provisions defining "regular rate of pay." 29 C.F.R. 778.3 (1950).

Dresser asserts that this federal definition of "regular rate of pay" carried over into state law because no change in that definition was made by the state legislature. Pointing to the section of the Statehood Act which continued in full force and effect all Territorial laws except as modified or changed by the Statehood Act itself, by the state constitution, or by the legislature of the new state, Dresser argues that coverage, meaning, and interpretation of the Alaska Act should parallel that of the Fair Labor Standards Act absent a clear legislative directive to the contrary. Dresser's position seems to be that although the state can choose to diverge from federal law in this area, it should only be able to do so by virtue of legislative enactment, and that in this action the burden is on the state to show that statutory provisions passed by the state legislature mandated issuance of the regulation at issue. Otherwise, Dresser contends, the state agency could not, merely by issuing regulations, overrule the treatment of the FWW under federal/Territorial law, carried over into state law by the Statehood Act.

[1] We do not find this argument persuasive. We think that the text of section 8(d) of the Statehood Act made it clear that federal legislative enactments were to be carried over unless overruled by the state constitution or the state legislature.[5] We do not interpret it as having automatically incorporated and maintained federal case law or, as Dresser argues, administrative law, unless and until changed by the legislature. This court has not held itself bound by federal judicial rulings entered prior to the date of statehood, regardless of whether or not the state legislature has acted in a given area.[6] We think it would be equally awkward to hold state agencies bound by federal regulations extant as of statehood. Such a result would unduly restrict state agencies and inordinately burden the legislature.

[2] Nor are we convinced that the terms of the Alaska Wage and Hour Act evince an intent to bind the State Wage and Hour Division to federal regulatory definitions. It is true that AS 23.10.050 manifests an intent to safeguard "existing" minimum wage and overtime standards, but we cannot give this the strained reading of having petrified wage and hour law as of the time of its enactment. That provision is an ex-

be, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it.

5. The language of section 8(d), *see* note 2 *supra*, indicates that its primary concern was with "laws enacted by Congress."

6. *See, e. g., Howarth v. Pfeifer*, 443 P.2d 39, 44 (Alaska 1968) ("What may be considered a just disposition of a dispute at one stage of history may not be the same at another stage, considering changing social, economic, and other conditions of society.... Thus, we hold under the principles we have discussed in this opinion that one may now maintain an action for negligent misrepresentation, even though that may not have been the case under the common law in years gone by."). *In re Mackay*, 416 P.2d 823, 837 (Alaska 1964) ("We do not agree with the respondent's contention that there should be read into section 8(d) of the Alaska Statehood Act an intent to limit the powers of the Supreme Court of Alaska.... Congress cannot limit this court's power to discipline Alaskan lawyers either directly or by continuing in force the provision of a territorial statute claimed by the respondent to have that effect."). *Cf. Surina v. Buckalew*, 629 P.2d 969 (Alaska 1981) (prosecutor's non-statutorily based promise of immunity in return for testimony is binding under Alaska Constitution regardless of federal rule).

pression of general policy, not a specific prohibition of change.

[3] Dresser's next argument is based upon AS 23.10.145, which indicates that "[t]erms used in [the Alaska Wage and Hour Act] shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it." On its face, this provision presents a strong indication that the federal definition of "regular rate of pay" is binding on the State Wage and Hours Division. However, two other statutory provisions undercut this position. AS 23.10.085(b) provides that the state regulations to be issued by the Wage and Hour Division "may . . . define terms used in [the Alaska Wage and Hour Act]";[7] and AS 23.10.095 provides that the state Commissioner of Labor "may adopt regulations and interpretations which are made by the administrator of the Wage and Hour Division of the federal Department of Labor and which are not inconsistent with [the Alaska Wage and Hour Act]."[8]

We must interpret the statutory scheme as a whole and in such a way that separate provisions do not conflict.[9] Here, we agree with the state's argument that AS 23.10.145 directs the courts to apply federal regulatory definitions "where applicable," and that such definitions are "applicable" only when the state director of the Wage and Hour Division and the Commissioner of Labor have refrained from defining terms in the state regulations, pursuant to their discretionary authority under AS 23.10.085 and 23.10.095.[10] We reject Dresser's contention that AS 23.10.145 is a mandatory directive to both courts and agencies, to be overruled only by the legislature. Such an interpretation would substantially nullify AS 23.10.085 and 23.10.095.

[4] For the above reasons, we conclude that the Director was authorized to promulgate 8 AAC 15.100(d)(3).

7. AS 23.10.085 reads:

Scope of administrative regulations. (a) The director may issue, amend or rescind such administrative regulations not inconsistent with the purposes and provisions of §§ 50-150 of this chapter which are necessary for the administration of §§ 50-150 of this chapter.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in §§ 50-150 of this chapter, and the restriction or prohibition of industrial homework or of the other acts or practices which the director finds appropriate to carry out the purpose of §§ 50-150 of this chapter, or to prevent the circumvention or evasion of §§ 50-150 of this chapter.

(c) The regulations may permit deductions by an employer from the minimum wage applicable under §§ 50-150 of this chapter to his employees for the reasonable cost, as determined by the director on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee.

8. As 23.10.095 reads:

Adoption of federal regulations. The commissioner may adopt regulations and interpretations which are made by the administrator of the Wage and Hour Division of the federal Department of Labor and which are not inconsistent with §§ 50-150 of this chapter.

9. *See In re Estate of Hutchinson*, 577 P.2d 1074, 1075 (Alaska 1978); *State v. City of Anchorage*, 513 P.2d 1104, 1110 (Alaska 1973).

10. This interpretation is consistent with our ruling in *McGinnis v. Stevens*, 543 P.2d 1221, 1238-39 (Alaska 1975), where we held that a prison inmate was not entitled to the minimum wage for institutional jobs. We relied partially on AS 23.10.065:

> AS 23.10.065 is based on the federal Fair Labor Standards Act of 1938 and the terms used in the Alaska statute are defined in the same way as in the federal act. A prisoner is not an 'employee' of the state under the federal act, and therefore is not so by virtue of AS 23.10.065. Moreover, even were we to regard the inmates here as employees, state employees are excluded, by virtue of AS 23.10.055(5), from the operation of the statute. Finally, the legislative history indicates that Congress did not intend the Fair Labor Standards Act to cover prisoners, and we find no indication that the state statute was not meant to have parallel 'non-coverage.' We simply cannot say that the distinction between prisoners in institutions and free citizens on the labor market is suspect.

Id. (footnotes omitted). *McGinnis* did not involve a state regulation explicitly rejecting the FLSA rule on prisoners, however, so our application of the federal definition there was in accordance with our present holding.

B. *Validity of 8 AAC 15.100(d)(3).*

The parties have attempted to stipulate to two matters affecting the scope of this court's review: (1) that 8 AAC 15.100(d)(3) is an interpretative regulation, and thus subject to review under the independent judgment standard; and (2) that the sole statutory provisions which form the basis for the regulation are AS 23.05.160 and AS 23.10.060.

[5] Although the parties' efforts toward simplifying the issues in a case are always appreciated, stipulations as to the law are not binding upon the court. "Counsel ... may agree as to the facts, but they cannot control this court by stipulation as to the sole or any question of law to be determined under them." *San Francisco Lumber Co. v. Bibb*, 139 Cal. 325, 73 P. 864, 865 (1903).[11] This rule regarding stipulations of law is particularly appropriate where, as here, the case involves a matter of public policy. *See generally* Annot., 92 A.L.R. 663, 666 (1934). We think these considerations require us to look beyond the parties' stipulation in our analysis of the applicable law.

[6] We conclude that the regulation here is "quasi-legislative". In *Kelly v. Zamarello*, 486 P.2d 906, 909–11 (Alaska 1971) (footnotes omitted), we distinguished between quasi-legislative and interpretative rule-making:

> Professor Davis characterizes the difference in judicial attitude toward certain administrative rules as a distinction between 'legislative regulations' and 'interpretative regulations.' He has defined 'legislative rule' as 'the product of an exercise of legislative power by an administrative agency, pursuant to a grant of legislative power by the legislative body.' 'Interpretative rules,' he states, 'are rules which do not rest upon a legislative grant of power (whether explicit or inexplicit) to the agency to make law.' The distinction is not always easy to draw, since as Davis points out, 'Interpretative rules sometimes rest upon statutory authority to issue them. • • •'
>
> ....
>
> [T]he distinction between legislative and interpretative rule-making is a helpful one when reviewing regulations adopted by state administrative agencies. We hold, therefore, that when a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, we should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute.
>
> ....
>
> Thus, where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, we will review the regulation in the following manner: First, we will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, we will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment.

We think it clear that AS 23.10.085 and 23.10.095[12] constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and

11. *See also Anchorage v. Geber*, 592 P.2d 1187, 1191-92 & 1192 n.8 (Alaska 1979), where we overruled as "ill advised" that portion of *Layland v. State*, 535 P.2d 1043 (Alaska 1975) suggesting that parties' concessions regarding interpretations of law are binding upon the courts.

12. *See* notes 7 and 8 *supra*.

other terms can be applied consistently with Alaska's Wage and Hour Act. Thus, we hold that the "reasonable and not arbitrary" test is applicable.

[7] The parties stipulated to the specific statutory provisions upon which the state relies to justify the regulation. These are AS 23.05.160,[13] which requires that an employee be informed of his rate of pay at the time of hiring and of any change in that rate on the payday prior to the change, and AS 23.10.060,[14] which requires the one and one-half overtime rate not only for hours worked over forty per week, but also for hours worked over eight per day.

Dresser argues that 8 AAC 15.100(d)(3) furthers neither of these statutory provisions; and indeed, our assessment of the parties' arguments indicates that the regulation is related only tenuously, if at all, to these provisions. However, the state's brief argues that the regulation is grounded in policy considerations beyond those contained in the two statutes. Although Dresser argues that this disregard of the stipulation is improper, we have concluded for the reasons noted above that the stipulation is not binding upon this court. In another case in which the parties had attempted to stipulate to the purpose of a legislative enactment, the New York Court of Appeals noted:

> We are not bound by stipulations in respect of the purpose of legislation. Laws are not to be declared invalid upon the consent of parties. We must determine their purpose and tendency for ourselves.

E. Fougera & Co., Inc. v. City of New York, 224 N.E. 269, 120 N.E. 642, 643 (1918).

The public policy underlying the Alaska statutory scheme is given as follows in AS 23.10.050:

> *Public Policy.* It is the public policy of the state to
>
> (1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency and general well-being, and
>
> (2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency and general well-being of workers against the unfair competition of wage and hour standards which do not provide adequate standards of living.

On the basis of these policy pronouncements, the state argues that the basic concern of the legislature was protection of the worker's well-being against unfair wage and hour standards, and that this concern is of particular importance in Alaska, where the cost of living is higher than in other states. The state also argues that prohibiting the FWW would be to the worker's advantage, and cites the present case as an illustration: claimant Woody would be entitled to $3,956.76 if the regulation were upheld.

More specifically, the state argues that as the number of hours worked in a particular week increases, the "regular rate of pay" decreases; as the "regular rate" decreases, the resultant "overtime rate" decreases; and thus the effect of allowing the FWW is counter-productive to the stated purposes of the Act. The state insists, further, that the FWW makes it financially advantageous

13. As 23.05.160 reads:

> *Notice of wage payments.* An employer shall notify his employee in writing at the time of hiring of the day and place of payment, and the rate of pay, and of any change with respect to these items on the pay day before the time of change. An employer may give this notice by posting a statement of the facts, and keeping it posted conspicuously at or near the place of work where the statement can be seen by each employee as he comes or goes to his place of work.

14. The applicable portion of AS 23.10.060 reads:

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

for an employer to hire an employee to work long overtime hours rather than to hire more workers, contrary to one purpose of the overtime provision, which was to force employers to spread employment by hiring more persons.[15]

We are persuaded that the state's position is correct. Under a standard hourly wage salary, as a worker's overtime hours increase, the average hourly wage increases. Under the FWW, as a worker's overtime hours increase, the average hourly wage decreases. This contravenes the policies of requiring increased overtime compensation and promoting the spreading of employment.

Thus, we must conclude that the regulation's definition of "regular rate of pay" so as to exclude use of the FWW is consistent with, and reasonably necessary to carry out, the purposes of the relevant statutory provisions. The regulation does not exceed the power delegated by the legislature. Further, 8 AAC 15.100(d)(3) is a reasonable and non-arbitrary method of furthering the statute's policies.[16]

Dresser raises several collateral arguments concerning the regulation's prohibition of the "Belo" pay plan, *see Walling v. A.H. Belo Corp.*, 316 U.S. 624, 62 S.Ct. 1223, 86 L.Ed. 1716 (1942); 29 U.S.C.A. § 207(f), and the permissibility of piece-work and commission pay plans. The validity of these provisions is not before us, and we perceive no inconsistency so blatant as to render the prohibition of the FWW unreasonable or arbitrary.

The judgment of the superior court is AFFIRMED.

15. The United States Supreme Court has repeatedly emphasized this point. In *Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446, 460, 68 S.Ct. 1186, 1194, 92 L.Ed. 1502, 1514 (1948), the Court said, "The purpose was to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through inducing employers to shorten hours because of the pressure of extra cost."

16. The parties have not addressed, and we express no opinion concerning, the question whether there may be any conflict between 8 AAC 15.100(d)(3) and AS 23.10.060(17) and (18), enacted in ch. 31, § 1, SLA 1980.

David LEUCH, Appellant,

v.

STATE of Alaska, Appellee.

No. 5255.

Supreme Court of Alaska.

Sept. 25, 1981.

Defendant was convicted, pursuant to guilty pleas, before the Superior Court, Fourth Judicial District, Fairbanks, James R. Blair, J., of two counts of grand larceny, and he appealed sentence. The Supreme Court, Rabinowitz, C. J., held that: (1) where an offense is against only property, involving no physical threats or violence, where it is the offender's first felony conviction, and where there is no background of unsuccessful paroles or probations which would indicate that probation is unsuitable to protect the public, to deter the offender, and to further his rehabilitative process, probation, coupled with restitution, is the appropriate sentence unless other factors militate against it, and (2) concurrent sentences of eight years with four suspended was excessive and upon remand defendant should receive concurrent sentences which, including any period of suspension and probation, did not exceed five years in total length.

Sentence reversed and remanded.

Matthews, J., dissented and filed opinion in which Burke, J., joined.

1. Criminal Law ⇐986.2(1)

Absent a conviction, an indictment is absolutely no evidence of guilty conduct.

TESTIMONY

My name is John Martin, I am the Alaska area manager for Dresser Atlas, a division of Dresser Industries. I have previously testified on HB 223. I am therefore furnishing you with my earlier testimony and a copy of Register 68 and will keep my present testimony as short as possible.

Recently several newspaper articles have surfaced concerning HB 223. It appears opponents of the bill strongly suggest that somehow employees have been misled and/or cheated on wage remuneration. Nowhere has there been mention of the substantial additional compensation paid to employees by my company, and others, in addition to basic wages under the FWW plan; for example, Alaska Allowance or C.O.L.A., Isolated Location Allowance, and the fact that employees working under the FWW plan were paid for off-work weeks. This additional compensation made up for any deficits compared to straight time and half overtime. The bottom line concerning wages is that the employees were paid well. For example, in 1981 our average operator made $60,678, and a senior operator averaged $67,829. The new system does not increase total wage compensation.

Most of the companies involved with this problem are oil and gas service companies. Many people perceive these service companies as being on the same level as oil companies. This is a far cry from reality. Our businesses are extremely competitive and totally dependent on oil companies for our livelihoods.

Being successful in the service company business, as the name suggests, means offering high quality, expedient service. You not only need highly refined technical equipment but more importantly, good people in your employment. As most businessmen know, dedicated employees are the primary key to being successful in the supply and demand service market place. I have been with Dresser Atlas for 15 years and during that time I have always observed and practiced this rudimentary business philosophy. The success of this philosophy is indicated by the fact that my firm, in Alaska, has had and remains to have, the lowest turnover of hourly workers in all of our company's North American operations. This was true when the company paid its employees under a FWW plan.

To maintain this position we know we must continue to employ the finest people the industry has to offer. If we felt we had ever misled or not paid our employees fairly we would not be here, because we would have corrected the problem. We are here because D.O.L. adopted a regulation without telling the industry in advance, and because several employees saw this as an opportunity to collect a great deal of money, in addition to their original fair compensation.

There has been a lot of discussion as to why companies did not change pay plans when the wage and hour administration banned the FWW. It is simple! The industry did not know it was banned until Dresser had been sued by the D.O.L. on behalf of Mr. Clyde Woody.

It was determined to test the validity of the regulation. When the Supreme Court finally determined, after several years, that the regulation was valid, the companies changed their long time industry

accepted method of paying hourly workers. It was not until each company changed pay plans that they were issued class action law suits.

As a matter of good business practice it was only prudent to test the validity of the Woody case in proving whether the D.O.L. could actually promulgate such a powerful regulation. A regulation that changed the industry's accepted way of doing business that was used in all of the United States and approved by the Federal Fair Labor and Standards Act. It appeared that such a dramatic change concering something as important as a person's wages, should be the responsibility of the state's legislature.

If this bill fails, it means many past and present employees will receive overtime compensation, which is required to be doubled by law above what was planned and expected by employer and employee.

On the negative side, it will mean catastrophic financial jeopardy for the individual companies and subsequent costs to the state and public consumers. Money paid to several hundred claimants and their law firm will not be available for industry expansion, and this is what produces jobs.

If a study had pointed out why the FWW should be banned and a dialogue had taken place between D.O.L. and industry concerning this regulation, none of us would be troubled with this problem. Mr. Wilson said yesterday that D.O.L. had begun thinking about prohibiting FWW plans long before the regulation was adopted. I would respectfully ask: Why didn't he inform affected employers that this was being considered, and ask for their comments? Mr.

Wilson also said that he had no idea what the impact would be on employers. He could have discoverd this by asking companies with FWW plans. Why didn't he do this?

As an example, I think the current legislative bill dealing with the "Right to Know" of employees concerning hazardous or toxic materials is a sterling example of how proposed changes in the law should be publicized within our state. No matter what the outcome of this legislation, government, business and the public are cognizant of the proposed changes, and therefore will have the chance to come forward and support or oppose them.

Yesterday, after listening to Mr. Wilson's testimony, several items surfaced which I feel need to be addressed. He stated that in 1977 the D.O.L. had a pending claim against Dresser. It was withdrawn due to then-Attorney General Avrum Gross' opinion on the Dowell case. Dresser knew nothing of this claim, and if we had it would have drawn our attention to the Department's plans. But we were never informed by D.O.L. of such a claim. Communication between government and business was definitely lacking.

Second, Mr. Wilson testified that typically the D.O.L. keeps lists of interested parties and sends notices and proposed regulations to them. He said that if the Committee checked Register 68, it would find a list of names of those to whom notice of the proposed regulation would have been sent. Mr. Wilson also said that he did not remember how many people attended the three hearings. Yesterday we visited the Lt. Governor's office where the records are kept for safekeeping, and obtained a copy of the complete record filed in Register 68, involving adoption of this regulation. I would like to have this a part of the record. In addition, I am

providing a copy of a letter from Commissioner Robison to Chairman Bussell with certain attachments. Our review indicates an affidavit by Mr. Wilson indicating that he held one hearing in Anchorage on September 15, 1978. There is no similar affidavit referring to other hearings, and the hearing notice refers to only one hearing in Anchorage. Commissioner Robison, in item No. 4, says that the hearing notes indicate that no one appeared to testify. A copy of the empty roster was found in Register 68. Nobody appeared because nobody was aware that the D.O.L. proposed to ban FWW!

Mr. Wilson also stated that a hearing was held in spring of 1983 on some proposed D.O.L. regulations and no one showed up. He stated that he subsequently read the proposed regulations and did not like them himself, and since there was no testimony from interested parties, he did not promulgate the regulations. This is not consistent with his or the department's action in 1978. Why were the 1978 regulations not tabled and/or the affected companies notified as was done in 1983? A lack of consistency is apparent.

Mr. Wilson also stated that out of courtesy he personally wrote letters to Dowell in Kenai, Dresser Atlas in Kenai and hand delivered a letter to Otis in Anchorage informing them of the promulgated regulations. Dresser Atlas, for one, did not receive any such letter, as Mr. Burdick, the Kenai manager testified at the earlier hearing. Mr. Burdick is well known for his ability to be aware of explicit details concerning his business. I know from 6 years' experience managing Mr. Burdick that if the Kenai district had received a letter from Mr. Wilson, Dresser Atlas would have known about it. It is also curious that Dresser in Anchorage

was not notified, since we have maintained Central Management there for 15 years.

It is interesting too that Dowell and Otis's records do not reflect notification, although they were allegedly notified. Any notice to Dowell and Otis would have been unnecessary anyway, since they had previously changed to a different pay plan. But I question why Schlumberger and others using FWW plans were not notified. It is widely known for example, that Schlumberger was the largest and major user of the FWW system in Alaska, and thus would be substantially affected. Notice of the adoption of the regulation, while it would have been useful, would have been no substitute for giving the industry fair notice of the regulation before it was adopted. That's when we needed to know, not after the fact.

I cannot help but question whether proper communication from start to finish of this regulation actually took place.

I strongly urge this committee to pass this bill on to the House floor for a full body vote. A positive vote will do much to encourage an improved long term working relationship between business and our state agenices. At the same time, no matter how we feel about how it was done, the D.O.L. will have accomplished their objective of having the FWW banned from Alaska.

At a time of declining state revenues the state should be looking for avenues to encourage and work with businesses so that together we may foster long term jobs and subsequent benefits for residents of the State of Alaska. Passage of HB 223 will do much to promote this positive work atmosphere.

I would like to thank the Labor and Commerce Committee for this opportunity to testify. I will do my best to answer your questions.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM May 16, 1983

SUBJECT: Constitutionality of CSHB 223 (Judiciary)

TO: Representative John Cowdery

FROM: Thomas A. Sofo /TAS
Legislative Counsel

You have asked this office for an opinion on the constitutionality of HB 223. That bill in the form in which it was originally introduced prohibited certain methods for payment of overtime while excusing employers from the payment of liquidated damages for good faith violations of overtime payment provisions as well as other employer omissions under AS 23.10. The recent committee substitute, CSHB 223 (Judiciary), differs mainly in its omission of adding the prohibition for certain methods of payment of overtime to the statutes themselves. The committee substitute seems content to refer to the regulations, 8 AAC 15.100(d)(1) and (3), which from December 9, 1978 to the present have prohibited those same methods for the payment of overtime. It is not clear that the committee substitute intends to annul those regulations, a fact which will be discussed later in this memo, but both bills raise a potential constitutional problem in their attempts to retroactively excuse certain employers from liability for their noncompliance with the regulations.

This opinion is based on the assumption that the regulations concerning the payment of overtime were duly adopted. AS 23.10.060, the Alaska statute concerning the payment for overtime states that its provisions are to be considered included in all contracts of employment. The most serious constitutional challenge to either version of HB 223 is that the retroactive application of that bill violates the constitutional prohibition against the impairment of contracts. That prohibition is found in both the United States and the Alaska Constitutions. Article I, section 15 of the Alaska Constitution provides in relevant part:

> No law impairing the obligation of contracts, . . . shall be passed.

While the federal constitutional provision found in Article I, section 10 provides in relevant part:

> No state shall . . . pass any bill of attainder, ex post facto law or law impairing the obligation of contracts, . . .

It is important to note that the constitutional prohibitions against impairing the obligation of contracts apply only to state action. Article I, section 9 of the United States Constitution, the section which deals with the limitations upon the powers of Congress, merely states that:

> No bill of attainder or ex post facto law shall be passed.

That Congress may impair contractual obligations by laws pertinent to the powers conferred on it by the federal constitution is not the point in issue. See C.J.S. Constitutional Law, sec. 275. In that regard, the use of judicial decisions upholding the termination by Congress of certain wage claims under the Portal to Portal Act of 1947, 29 U.S.C. 251, is inapposite. To the extent arguments have been raised concerning the applicability of those cases, it should be pointed out that even the Portal to Portal Act did not attempt to extinguish liability for the payment of overtime where there was an express provision of a written or nonwritten contract in effect.

It is fortunate that the United States Supreme Court has very recently set forth rules to be applied in an impairment of contracts analysis. In Energy Reserves Group, Inc. v. The Kansas Power and Light Co., ___ U.S. ___, 74 L.Ed.2d 569, 103 S.Ct 697 (1983), the U.S. Supreme Court stated:

> "The threshold inquiry is 'whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.' Allied Structural Steel Co., 438 U.S., at 244, 57 L.Ed.2d 727, 90 S.Ct. 2716. See United States Trust Co., 431 U.S., at 17, 52 L Ed.2d 92, 97 S.Ct. 1505. The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. Allied Structural Steel Co., 438 U.S., at 245, 57 L.Ed.2d 727, 98 S.Ct. 2716.

> Total destruction of contractual expectations is not necessary for a finding of substantial impairment. United States Trust Co., 431 U.S., at 26 - 27, 52 L.Ed.2d 92, 97 S.Ct. 1505. On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. Id., at 31, 52 L.Ed.2d 92, 97 S.Ct. 1505, citing El Paso v. Simmons, 379 U.S. 497, 515, 13 L.Ed.2d 446, 85 S.Ct. 577 (1965).
>
> * * *
>
> "If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation, United States Trust Co., 431 U.S., at 22, 52 L.Ed.2d 92, 97 S.Ct. 1505, such as the remedying of a broad and general social or economic problem. Allied Structural Steel Co., 438 U.S., at 247, 249, 57 L.Ed.2d 727, 98 S.Ct. 2716. Furthermore, since Blaisdell, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. United States Trust Co., 432 U.S., at 22, n. 19, 52 L.Ed.2d 92, 97 S.Ct. 1505; Veix v. Sixth Ward Bldg. & Loan Assn, 310 U.S., at 39 - 40, 84 L.Ed.1061, 60 S.Ct. 792.
>
> * * *
>
> "The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests." [Footnote omitted.]

Although it typically will be a factual determination for a court to decide if a substantial impairment is caused by this legislation, the testimony offered to date by both the proponents and opponents of this legislation seems to be in agreement that the rights at stake in HB 223 are substantial. Under the analysis of the Supreme Court above, the severity of impairment involved in this case will subject the legislation to a high of level of scrutiny. In order to withstand that scrutiny a "significant and legitimate public purpose" must be identified. I am unable to identify such a purpose.

HB 223, as well as the committee substitute, may pose equal protection problems since there already has been enforcement of the regulatory provisions on certain employers. See Dresser Industries Inc. v. Alaska Department of Labor, 633 P.2d 998 (Alaska 1981). Related to that point is the fact that HB 223 as originally worded would have placed in the statutes those prohibitions which the regulations originally introduced. The legislation would then be merely excusing unlawful conduct for a period of time starting from December 9, 1978, to the effective date of the Act. It is more difficult to show a legitimate public purpose if the prohibition, which some have argued is not in the public interest, remains in the bill. The legislation then appears to be an attempt to excuse unlawful conduct without addressing the circumstances under which that conduct had arisen. CSHB 223 (Judiciary) has not included the placement of the regulatory prohibitions in the permanent law. Sec. 3 of the bill attempts to extinguish any penalty, forfeiture, or liability incurred under the regulations without attempting to annul those regulations. Although there is lower court authority in this state that may be read to allow the retroactive annulment of regulations, that issue was not before the court in State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980), when the Alaska Supreme Court considered the appropriate methodology to be used in annulling regulations. In any event, both HB 223 and CSHB 223 (Judiciary), present a difficult challenge to those who would fashion a legitimate public purpose, since the underlying prohibition which created the liability of those employers is not challenged by either bill.

Section 19 of Article II of the Alaska Constitution states:

> The legislature shall pass no local or special act if a general act can be made applicable.

This window of nonliability created by both versions of HB 223, without any attempt to otherwise change the prohibition on which that liability was based, also subjects the bills to possible criticism as special legislation.

There are no wage cases directly on point concerning the retroactive elimination of employers' liability for wages. The general rules set out by the U.S. Supreme Court seem to give this legislation a very slim chance of withstanding a constitutional challenge in a judicial forum.

TAS:ljb
20/007

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 7, 1983

The Honorable Charlie Bussell
Representative
Chairman, Committee on Judiciary
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Materials relating to subject of House Bill 223

Dear Representative Bussell:

This responds to your two letters of March 30, 1983 requesting information from the Department of Law concerning certain regulations of the Department of Labor (8 AAC 15.100) regarding flexible-work-week employment.

Since I was the attorney in the Department of Law who worked with the Department of Labor in adopting those regulations back in 1978, I thought it appropriate that I respond to your inquiry directly. Pursuant to your request of this morning, I will make myself available to the Committee to address the issues raised in HB 223. I will also be asking Assistant Attorney General Gary Amendola, who now works with the Department of Labor, to attend your Committee's hearings on the bill.

In response to your questions:

1. The Department of Law has not issued any opinions regarding the constitutionality of the current regulations regarding flexible-work-week employment (8 AAC 15.100). However, the Alaska Supreme Court did address the validity of those regulations in 1981 in its decision of Dresser Industries, Inc. v. Alaska Department of Labor 633 P 2d 998. A copy of that decision is attached for your information. Also, back in early 1978 I did prepare a formal opinion to the Department of Labor advising them on their authority to adopt regulations dealing with flexible-work-week employment. A copy of that February 10, 1978 opinion is also attached. As you will note, the Alaska Supreme Court agreed with my analysis.

03-C5LH

2. In response to your request for documentation of the process which led to the adoption of the Department of Labor's regulations on this subject, I am attaching copies of the relevant materials contained in the Lt. Governor's files. These include Affidavits of Publication from the Southeast Alaska Empire, the Fairbanks Daily News Miner, and the Anchorage Daily News, an Affidavit of Oral Hearing indicating that a hearing on these proposed regulations was held in Anchorage on September 15, 1978, an Affidavit of Notice of Adoption of Regulation indicating that the requirements of AS 44.62.190 regarding provision of notice of proposed adoption of regulations was complied with by the Department of Labor, and the memorandum by the Department of Law's regulations attorney, Arthur Peterson, approving these regulations for filing with the Lieutenant Governor. The original of all these documents is on file with the Lieutenant Governor and can be reviewed in his offices.

I hope this information will be of assistance to you and the Committee in your deliberations on HB 223.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:
Ronald W. Lorensen
Deputy Attorney General

RWL:vrb

cc: Gary Amendola
Assistant Attorney General

Jim Robison
Commissioner
Department of Labor

OPINION NO. 7

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL
POUCH K—STATE CAPITOL
JUNEAU 99911

February 10, 1978

Edmund N. Orbeck
Commissioner
Department of Labor
P.O. Box 1146
Juneau, Alaska 99802

Re: Use of Flex-Time Contracts under State Wage and Hour Act; A.G. File J-66-263-78

Dear Commissioner Orbeck:

You have asked our opinion as to whether certain methods for compensating employees, referred to generally as "flex-time", "flexitime", or "fluctuating workweek" plans, may be used by employers in Alaska consistent with the payment for overtime provision of the state's Wage and Hour Act, AS 23.10.060. We understand these plans are used frequently by employers to provide a steady income level to employees whose hours of work vary considerably from week to week. Your question arises because these "fluctuating workweek" pay plans are specifically recognized as valid under the Fair Labor Standards Act of 1938, as amended (FLSA), 29 U.S.C. § 201 et seq., the federal counterpart to the state's overtime provisions. However, these kinds of plans are not addressed under

relevant state laws or regulations dealing with overtime. At least one employer in the state is presently using flex-time plans to compensate certain of its employees, and the Wage and Hour Division of your department has taken the position that the employer's use of those plans is inconsistent with the state's Wage and Hour Act, AS 23.10.050 - 23.10.150.

The fact that flex-time is permissable under the FLSA does not, in and of itself, require that the State of Alaska also permit its use by employers within the state. The FLSA prescribes only minimum requirements with which all covered employers in the United States must comply, however, it does not prohibit the states from adopting wage and hour requirements more stringent than those established in the FLSA. See, sec. 18(a), FLSA; 29 U.S.C. § 218(a); also 29 C.F.R. § 778.5. The question, then, is whether the state has in fact adopted a more stringent approach to the payment of overtime than that taken under the FLSA. It is our conclusion that the state has not done so. We believe, however, that your department may prohibit the use of flex-time plans in Alaska through proper adoption of appropriate regulations.

The basic payment of overtime provisions of the state and federal law are quite similar. /1 Sec. 7(a)(1) of the FLSA, 29 U.S.C. § 207(a)(1) provides, in pertinent part, as follows:

> [N]o employer shall employ any of his employees . . . for a workweek longer than forty hours unless said employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed. (emphasis added)

AS 23.10.060 provides in pertinent part:

> No employer . . . may employ an employee . . . for a workweek longer than 40 hours . . . except that if the employer finds it necessary to employ an employee in excess of 40 hours a week . . . compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid. (emphasis added)

/1 The state act does require that overtime be paid for hours worked in excess of eight in one day in addition to the requirement of both acts that overtime be paid for work in excess of 40 hours in a week, however that difference is not at issue here.

Under both statutes the employee's "regular rate of pay" must be determined before his overtime entitlement can be computed. By way of regulation, the U.S. Department of Labor has stated that "flex-time" pay plans are an acceptable method of determining the employee's "regular rate". 29 C.F.R. § 778.114. It has been suggested that your department must also recognize flex-time as a valid method of compensating for overtime as the result of AS 23.-10.145 which provides:

> Terms used in §§ 50-150 of this chapter shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it.

For two reasons, we do not read this provision as requiring the adoption of flex-time in Alaska, however. First, 29 C.F.R. § 778.114, the "fluctuating workweek" provision, is not a "definition" of a term. It is merely one of many "interpretations" recognized by the federal government in implementing the FLSA. The federal regulations, themselves, explicitly state that the various provisions of 29 C.F.R. § 778, of which "fluctuating workweek" is a part, are "the official interpretation of the Department of Labor with respect to the meaning and application of

the maximum hours and overtime pay requirements of section 7 of the [FLSA]." (emphasis added). The state Wage and Hour Act specifically recognizes this distinction between "definitions" and "interpretations". AS 23.10.095 authorizes, but does not require, adoption of regulations and "interpretations" made under the federal act, while AS 23.10.145 clearly requires adoption of federal definitions, "where applicable".

But even if 29 C.F.R. § 778.114 could be described as a "definition" for purposes of AS 23.10.145, it would still only be binding on the state if it is "applicable". We take the statute's use of "where applicable" to mean if it fits a given situation; if it is fit, suitable, pertinent, appropriate, or capable of being applied; if it is applicable to the habits and conditions of society. McQueeney v. Catholic Bishop of Chicago, 159 N.E.2d 43, 47 (App.Ct. Ill. 1959); Whitney v. American Fidelity Company, 215 N.E.2d 767, 768 (Mass. 1966); Fuchs v. Goe, 163 P.2d 783, 792 (Wyoming 1945). Therefore, the department could determine upon examination that a given definition contained in the FLSA or the regulations adopted under it does not adequately or appropriately address working conditions or the work situation in Alaska. Once the department has made that determination, it may properly adopt a different definition, appropriate to Alaska. In doing so, however, it must

adopt that definition as a regulation under the procedures described in the State's Administrative Procedure Act (AS 44.62) if it is to have any enforceable effect.

The preceding discussion sets out some of the general parameters of the relationship between the FLSA and the state's Wage and Hour Act. The state act specifically looks to the federal provisions for substance. In adopting this legislative scheme, we think the Legislature evidenced a clear intention to follow the federal approach to wages and hours closely, except in those situations where the Department of Labor determines that the federal provisions are inadequate or inappropriate when applied to working in Alaska. Consequently, if the state determines that certain aspects of its Wage and Hours Act should be applied in a manner more stringent than required under the FLSA and the regulations adopted under it, the areas of difference between the federal and state laws should either be set out clearly in the Act or in the department's regulations adopted under the Act.

Nothing in the state's current statutes or regulations indicates that flex-time is not an acceptable method of compensating for overtime work under the Alaska act. At the same time, the federal regulations clearly permit flex-

time under the FLSA, after which the state act is closely patterned. Under those circumstances, the department may not simply make independent ad hoc determinations of acceptable methods of overtime compensation. Unless the state act is clear on its face, the department must either establish its own standards (regulations) or follow FLSA and those established under the FLSA.

There are at least two independent reasons for the department adopting its own wage and hour standards. First, properly adopted and enforceable regulations implementing the state Wage and Hour Act will assure that employers have adequate notice of the requirements with which they must comply in Alaska. In the absence of state standards, Alaska employers have only the federal law and regulations for determining how to comply with applicable wage and hour laws. Second, established standards also insure that the department's wage and hour enforcement activities will be consistent throughout the state.

Since the only standards for overtime entitlement currently in existence are those adopted under the federal FLSA, we must conclude that the department may not presently

refuse to recognize flex-time plans established under 29 C.F.R. § 778.114. The state act does not, on its face, prohibit flex-time plans. As indicated above, the state and federal overtime provisions are quite similar, and the federal provision has been interpreted to permit flex-time. We have no doubt, therefore, that the state provision can also be so interpreted. We are also of the opinion that the department could, through adoption of an appropriate regulation, interpret the state act as not permitting flex-time plans. However, until the department adopts regulations which either specify exclusive standards for the determination of overtime entitlement or reject specific portions of the federal standards, employers in Alaska are entitled to rely on their compliance with the federal standards as also constituting compliance with the state's Wage and Hour Act.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Ronald W. Lorensen
Assistant Attorney General

RWL:jf

ADVERTISING ORDER

NOTICE TO PUBLISHER

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

DEPT. NO.	A.O. NO.
AO- 07	2595

PUBLISHER

Southeast Alaska Empire
235 2nd Street
Juneau, Alaska 99801

VENDOR NO. SAE 734

DATE OF A.O. August 21, 1978

DATES ADVERTISEMENT REQUIRED:
August 30, 31 and September 1, 1978

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.

FROM

Department of Labor
Wage and Hour Division
P.O. Box 630
Juneau, Alaska 99811

BILLING ADDRESS: Alaska Department of Labor
Administrative Services
Fiscal Section
P.O. Box 1149
Juneau, Alaska 99811

AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska } ss
DIVISION.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Jeff A. Wilson WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Gen. Manager OF S.E. Alaska Empire PUBLISHED AT Juneau IN SAID DIVISION AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30th DAY OF August 1978, AND THEREAFTER FOR 2 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1st DAY OF September 1978, AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

Jeff A. Wilson

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 25th DAY OF September 19 78

Rosemary J. Grimes

NOTARY PUBLIC FOR STATE OF
COMMISSION EXPIRES My Commission Expires September 14, 1980

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.055, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.

Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (east to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 18, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/21/78

William E. Spear
Deputy Commissioner
Department of Labor

Publish: Aug. 30, 31, Sept. 1, 1978
800-82

UNDER –

...ES AND PROOF OF PUBLICATION.

AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA
STATE OF ALASKA } ss.
FOURTH DISTRICT

Legal 13,544

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050-AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with their new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, maximum hours and computation of of overtime applicable to employment in Alaska.

ARTICLE 2.

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.

Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/21/78

William E. Spear
Deputy Commissioner
Department of Labor

PUBLISH August 30, 31, September 1, 1, 78

Before me, the undersigned, a notary public, this day personally appeared FRANCES PFEIFFER, who, being first duly sworn, according to law, says that he/she is an Advertising Clerk of the Fairbanks Daily News-Miner, a newspaper published at Fairbanks, in said Fourth District and State, and that the advertisement, of which the annexed is a true copy, was published in said paper on the following day(s),

8/30/78 8/31/78

9/01/78

, and that the rate charged thereon is not in excess of the rate charged private individuals with the usual discounts.

Frances Pfeiffer

Subscribed and sworn to before me this 30 TH day of SEPTEMBER, 1978

Notary Public in and for the State of Alaska.

My commission expires APRIL 10, 1981

CUSNR. 11592 LEGAL NO. 13544-0

ADVERTISING ORDER

NOTICE TO PUBLISHER

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

DEPT. NO.	A.O. NO.
AO- 07	2595

PUBLISHER
Anchorage Daily News
P.O. Box 40
Anchorage, Alaska 99501

VENDOR NO. ADN 501

DATE OF A.O. August 21, 1978

DATES ADVERTISEMENT REQUIRED:
August 30, 31 and September 1, 1978

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN

FROM
Department of Labor
Wage and Hour Division
P.O. Box 630
Juneau, Alaska 99811

BILLING ADDRESS
Alaska Department of Labor
Administrative Services
Fiscal Section
P.O. Box 1149
Juneau, Alaska 99811

AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska } ss
Third DIVISION.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Nathalia M. Chevalier WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Legal Clerk OF THE ANCHORAGE NEWS PUBLISHED AT Anchorage IN SAID DIVISION Third AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30 DAY OF August 19 78 AND THEREAFTER FOR 3 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1 DAY OF Sept. 19 78 AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

3x 6¼ inches $81.90

Nathalia M. Chevalier

SUBSCRIBED AND SWORN TO BEFORE ME THIS 1 DAY OF Sept 19 78.

Patricia Lindsay

NOTARY PUBLIC FOR STATE OF Alaska
MY COMMISSION EXPIRES 5/1/82

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8, of the Alaska Administrative Code to implement AS 23.10.050 — AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.

Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date: 8/21/78

/s/ William E. Spear
Deputy Commissioner
Department of Labor

Pub: Aug. 30, 31, Sept. 1, 1978

L79168

REMINDER—
ATTACH INVOICES AND PROOF OF PUBLICATION.

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

AFFIDAVIT OF ORAL HEARING

I, Don Wilson, W/H Investigator II of the Department of Labor, being sworn depose and state the following:

On September 15, 1978 at 1:30 p.m., in the Division of Aviation Conference Room, 4111 Aviation Avenue, Anchorage, Alaska, I presided over a public hearing held in accordance with AS 44.62.210 for the purpose of taking testimony in connection with the adoption of 8 AAC 15.100-200.

Date: September 15, 1978
Anchorage, Alaska

Donald R. Wilson

SUBSCRIBED AND SWORN TO before me this 15th day of September, 1978.

Sherry A. Strahl
NOTARY PUBLIC IN AND FOR ALASKA

My Commission Expires: 4-5-81

STATE OF ALASKA)
) SS.
FIRST JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF ADOPTION OF REGULATION

I, E.T. "Lee" Leland, W/H Investigator III, of the Department of Labor, being sworn, depose and state the following:

As required by AS 44.62.190, notice of the proposed adoption of 8 AAC 15.100-200 has been given by

(1. being published in a newspaper or trade publication

(2) being mailed to interested persons,

(3) being mailed or delivered to appropriate state officials,

(4) being furnished to the Department of Law,

(5) being furnished to incumbent state legislators.

Date: 10-3-78
Juneau, Alaska

E.T. "Lee" Leland

SUBSCRIBED AND SWORN TO before me this 3rd day of October, 197___.

Notary Public in and for Alaska

My Commission Expires: Oct 30, 78

ORDER REPEALING AND ADOPTING REGULATIONS
OF THE DEPARTMENT OF LABOR

The attached twelve (12) pages of regulations, dealing with 8 AAC 15, Alaska Wages and Hours, are hereby adopted and certified to be correct copies of the regulations which the Department of Labor repeals and adopts, under authority vested by AS 23.10.085 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: 13 October 1978

Wm Spear
William E. Spear
Deputy Commissioner

Designee to
I, Avrum M. Gross, Lieutenant Governor for the State of Alaska, certify that on November 9, 1978, at 10:20 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor's Designee

Effective December 9, 1978.)
Register 68, January 1979.)

STATE OF ALASKA

OFFICE OF LIEUTENANT GOVERNOR

DELEGATION OF AUTHORITY

IN ACCORDANCE WITH AS 44.17.010, THE AUTHORITY AND RESPONSIBILITY FOR ADOPTING REGULATIONS OF THE DEPARTMENT OF LABOR UNDER THE ALASKA ADMINISTRATIVE PROCEDURE ACT, IS HEREBY DELEGATED TO WILLIAM E. SPEAR,

(NAME)

DEPUTY COMMISSIONER

(POSITION)

SIGNED: Edward H. Carlisle

COMMISSIONER

DEPARTMENT OF LABOR

SIGNED AND SWORN BEFORE ME THIS 23rd DAY OF March, 1978.

SIGNED: Mary Jane Smith

NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA

COMMISSION EXPIRES: 2/10/80

PLEASE RETURN TO THE OFFICE OF LIEUTENANT GOVERNOR BY MARCH 31, 1978

ALASKA

MEMORANDUM

TO: William E. Spear
Deputy Commissioner
Alaska Department of Labor

DATE: November 8, 1978

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

By:
Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

SUBJECT: Regulations re Alaska wages & hours (8 AAC 15)
Our File: J-99-095-78

We have reviewed these regulations in accordance with AS 44.-62.060, and approve them for filing by the lieutenant governor. A duplicate original of this memorandum is being furnished the lieutenant governor, along with your regulations and related documents.

Under AS 44.62.125(b)(6), a few, very minor corrections have been made in this material, as shown on the attached copy.

AHP:md

cc: Ronald W. Lorensen
Assistant Attorney General

JUNEAU

CERTIFICATE

I, LOWELL THOMAS, JR., LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, as authorized by AS 44.19.050 designate Avrum M. Gross, Attorney General, as temporary custodian of the state seal and as the officer to perform the authenticating functions of the lieutenant governor during such time as I succeed to the office of governor, act as governor, am absent from the state, or am otherwise unavailable at the state capital to perform these functions.

In the absence of Attorney General Gross, I designate Bill Allen, Commissioner of Administration, to perform the functions stated above.

In the absence of Commissioner Allen, I designate Donald Harris, Commissioner of Transportation and Public Facilities, to perform the functions stated above.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Juneau, the Capital,

This Twentieth day of June

A.D. 19 78

STATE of ALASKA

MEMORANDUM

RECEIVED
Department of Law
Juneau, Alaska
OCT 26 1977
AM 7,8,9,10,11,12,1,2,3,4,5,6 PM

TO: Ronald W. Lorensen,
Assistant Attorney General
Department of Law

THRU: Wilson L. Condon, Deputy Att'y. Gen.

THRU: William E. Spear, Deputy Commissioner

FROM: Dale W. Cheek
Director
Wage and Hour/Mechanical
Engineering Division
Department of Labor

DATE: October 24, 1977

SUBJECT: Request for Opinion
re: AS 23.05.160 and
AS 23.10.060

The Department of Labor respectfully requests of the Department of Law, an interpretation of whether "Flex-time" would or would not be an acceptable condition of employment under AS 23.05.160 and AS 23.05.060. It has always been the Department of Labor's position that flex-time would be contrary to the intent of the Alaska Wage & Hour Act as we read it. This would appear to be supported by the stronger law provision under the FLSA.

We would very much appreciate an early determination of this issue as it bares directly to the outcome of case now pending before the Department of Labor and will have a related effect on other employers, particulary in the oil industry.

We have attached position papers, re: the instant case of Kluting, R. vs. Dowell Division of Dow Chemical Company. In our investigation of this complaint, Investigator Don Wilson of our Wage and Hour Division, Anchorage, has worked closely with Assistant Attorney General, Pat Kennedy of your staff for legal guidance.

Thank you for your attention and the continuing cooperation we enjoy with the Department of Law.

DWC/rh

Attachment

cc: E.T. Lee Leland, Supervisor

STATE of ALASKA

MEMORANDUM

TO: Dale Cheek, Director
Wage & Hour Division
Department of Labor
P. O. Box 630
Juneau, Alaska

DATE: September 28, 1977

FILE NO:

TELEPHONE NO:

Thru:
Benny Joy, Supervisor

SUBJECT: Kluting, R. vs: Dowell Division of Dow Chemical Co (Fluctuating Workweek)

From: Donald R. Wilson
W/H Supervisor II
Wage & Hour Division
Department of Labor
650 W. Int'l Airport Road
Suite 100 Int'l Bldg. Annex
Anchorage, Alaska 99502

The Anchorage Regional Office is currently processing a wage claim as captioned above.

This is a claim in which the department, as assignee for the claimant, disputes the validity, under Alaska Statutes, of a wage payment plan known as the "Fluctuating Workweek."

On August 19, 1977 we met with legal counsel for the defendant corporation and agreed, as a means to reconcile this matter, to submit our separate position statements to the Attorney General's Office for their interpretation of Alaska Statutes and specifically to the validity of the "Fluctuating Workweek," in Alaska.

Therefore, enclosed are the position statements for your review with our request that these positions be forwarded to the Department of Law for their review and opinion.

There is a pay plan under Federal Wage and Hour Law which provides for an irregular workweek (fluctuating hours) for fixed weekly pay. This plan is more commonly known as the "Fluctuating Workweek, (FWW)," and is addressed in Title 29, Part 778 of the "Code of Federal Regulations," Section 778.114.

While the department concedes that the "FWW," is a valid pay plan under Federal Regulations, the department contends that the plan is not now, nor has it ever been recognized as valid for employers engaged in commerce or business within the state of Alaska. We have no specific "Case," upon which to base this conclusion, but instead use the Alaska Statute, Title 23 and "Common Knowledge" to support our rationale.

Specifically, AS SEC. 23.10.060. Payment of Overtime. states:

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

Additionally, AS SEC. 23.05.160. Notice of Wage Payments. states:

> An employer shall notify his employee in writing at the time of hiring of the day and place of payment, and the rate of pay, and of any change with respect to these items on the payday before the time of change. An employer may give this notice by posting a statement of facts, and keeping it posted conspicuously at or near the place of work where the statement can be seen by each employee as he comes and goes to his place of work.

Since Alaska Statute, for the purpose of overtime, incorporates the eight hour law along with the Federal 40 hour law, overtime payment would have to be made for weeks of less than 40 hours where days in excess of eight hours were worked. It would therefore work to the employer's detriment since if the wage rate slides downward after 40 hours it would have to slide upward for

WAGE & HOUR DIVISION
ALASKA DEPARTMENT OF LABOR
INTERNATIONAL BLDG. ANNEX, SUITE 100
650 WEST INTERNATIONAL AIRPORT ROAD
ANCHORAGE, ALASKA 99502

weeks where less than 40 hours were worked, but days in excess of eight hours were worked.

Additionally, since Alaska Statute contains a provision that requires an employer to make notification of changes of the rate of pay, in writing, on the payday before the date of change, an employer attempting to use the "FWW," could not possibly comply with AS 23.05.160.

Accordingly, the "FWW," since it requires continuous rate changes, (everytime overtime is required, or less than 40 hours are worked) cannot be in compliance with the legal requirements to notify employees as set forth in AS SEC. 23.05.160.

Final reference is made to AS SEC. 23.10.095. Adoption of Federal Regulations. We have made diligent search through our department and can find no instance where any commissioner, including the current administration, has adopted that portion of the Code of Federal Regulations that addresses the FWW. To the contrary, and in support of our rationale of "Public Knowledge," we would invite your attention to the attached letter from the U.S. Department of Labor as Enclosure #1.

WAGE & HOUR DIVISION
ALASKA DEPARTMENT OF LABOR
INTERNATIONAL BLDG. ANNEX, SUITE 100
650 WEST INTERNATIONAL AIRPORT ROAD
ANCHORAGE, ALASKA 99502

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION

P.O. Box 1097
Anchorage, Alaska 99510

Date: September 19, 1977

Reply to Attn of:

Subject: Fluctuating work week pay plans

To: Mr. Don R. Wilson
Alaska State Department of Labor
Wage and Hour Division
Suite 100, International Bldg. Annex
650 W. International Airport Road
Anchorage, Alaska 99502

Dear Mr. Wilson:

I am in receipt of your letter of September 15th regarding my instructions or comments to employers concerning the fluctuating work week pay plan.

The fluctuating work week pay plan is a valid pay plan under the Fair Labor Standards Act and employers or employees who ask about it are so advised. I have also made it a practice to advise them that even though it is a legal system under the federal law it is not a valid plan under the State of Alaska labor law and that they should contact the State Wage and Hour Division.

I trust that this letter will answer your questions regarding my comments to persons or firms regarding the applicability of the federal labor laws.

If I can be of further assistance please contact me.

Very truly yours,

Jack E. Harty

Jack E. Harty
Compliance Specialist

ARTHUR MENDELSON
WESLEY J. FASTIFF
GEORGE J. TICHY, II
R. RICHARD THESING
ALLEN W. TEAGLE
ROBERT M. LIEBER
JORDAN L. BLOOM
WILLIAM C. WRIGHT
GARR G. MATHIASON
ALAN B. CARLSON
HARRY FINKLE
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NANCY L. OBER
ALAN S. LEVINS
JOHN T. HAYDEN
RANDOLPH C. ROEDER
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JAMES J. MEYERS, JR.
MARK S. ROSS
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THOMAS E. CAMPAGNE
J. MICHAEL PHELPS
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BARBARA S. DE ODDONE
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FRESNO OFFICE
SUITE 117
5110 E. CLINTON WAY
FRESNO, CALIFORNIA 93727
(209) 252-4065

September 30, 1977

For Submission to:
The Office of the Attorney General
State of Alaska

RE: Alaska Wage and Hour Act
Fluctuating Workweek Question

Dear Sirs:

This position paper is being submitted to the Office of the Attorney General on behalf of the Dowell Division of the Dow Chemical Company ("Company"), pursuant to an agreement between Dowell and the Wage and Hour Division of the Alaska Department of Labor. It is requested by Dowell and the Wage and Hour Division that the Attorney General render a legal opinion regarding the controversy which has arisen between the two parties and which is more fully disclosed below.

INTRODUCTION

On May 19, 1977, the Wage and Hour Division of the Alaska Department of Labor in Anchorage issued a wage claim against the Dowell Division of the Dow Chemical Company. The claim, filed on behalf of Mr. Randy Kluting, asserted that Dowell had failed to provide the claimant with his full overtime pay entitlement while he was in the Company's employ as a service operator from March 3, 1976 until April 28, 1977.

The claim asserted by the Alaska Department of Labor is part of what appears to be a broad challenge to the method by which the Company had paid its employees for several years -- the so-called "fluctuating workweek method". This method of compensation is geared to the special problems confronted by employers and employees in businesses where work schedules vary considerably from day to day and week to week. The uncertain and drastically variable conditions of operations within the oil industry in Alaska have made such

a plan especially suited to the needs of Dowell and many other companies engaged in oil production.

The fluctuating workweek method is essentially a salary plus overtime plan. It provides a guaranteed weekly salary to an employee regardless of the number of hours which he actually works. For example, whether an individual employee works 30 hours or 50 hours in a given week, he is guaranteed to receive his previously specified salary for that week's work.

In addition to that guaranteed salary, however, the employee, under federal and state law, is also entitled to overtime compensation for those hours which he works in excess of 40 per week or 8 per day. The amount of this additional compensation is determined by multiplying the number of overtime hours by one-half of the employee's hourly rate for that week. This is done because the employee, under the fluctuating workweek method, is deemed to have been fully compensated, on a straight time basis, for any overtime hours worked.

The hourly rate of pay for an individual employee under this system is the focal point of the present dispute. Under the fluctuating workweek method the hourly rate, also known as "regular rate of pay", varies from week to week as a function of the number of hours actually worked in that week. In other words, for the purpose of calculating overtime, it is necessary to determine an employee's regular rate of pay during the week in question. This is accomplished by dividing the guaranteed weekly salary by the number of hours actually worked during that week. Once this regular rate of pay has been determined, it is merely divided in half and multiplied by the number of hours of overtime worked by the employee for that week. This result is then added to the weekly salary to arrive at the employee's total compensation for that particular week.

The legitimacy of the fluctuating workweek method has consistently been recognized by the federal courts and in federal regulations adopted pursuant to the Fair Labor Standards Act. For this reason, and because it is so well suited to the particular circumstances of employment in the oil industry in Alaska, many companies throughout the state have implemented the fluctuating workweek method as the standard wage formula for employee compensation.

The fluctuating workweek method of compensation is attractive both to employers, and to employees who work weeks of irregular hours. It enables both parties to make reasonable forecasts with regard to the amount of weekly wages that will be paid. This is especially convenient for employees and their families who otherwise would be uncertain from week to week how much compensation they could expect to receive.

In the present matter, the Alaska Department of Labor is claiming that the fluctuating workweek method is not valid under applicable Alaska wage and hour statutes. Such a determination by the Department of Labor has potentially far reaching ramifications because of the large number of companies currently using the fluctuating workweek method. In this particular action the Department is seeking recovery of the amount of overtime pay which Mr. Kluting would have received under applicable wage and hour statutes if the fluctuating workweek method had not been utilized.

At a meeting on August 19, 1977, in Anchorage, Dowell and the Wage and Hour Division agreed that the Office of the Attorney General would provide an impartial forum for evaluation of the arguments opposing and in support of the fluctuating workweek method of compensation. Since the ultimate resolution of this matter rests upon sophisticated legal analysis and construction of various statutes and other authority, it was agreed that an Attorney General's Opinion should be procured before the Wage and Hour Division expands the application of its internal decision.

II.

ISSUE PRESENTED

Is the fluctuating workweek method of compensation acceptable under the Alaska Wage and Hour Act and/or have companies operating in Alaska, including Dowell, justifiably relied upon the plain language of that statute in utilizing the fluctuating workweek method?

III.

ARGUMENT

A. The Alaska Wage and Hour Act Expressly Recognizes That Its Administration and Construction Are to Be Governed by Prevailing Federal Authority Concerning the Federal Fair Labor Standards Act and the Regulations Adopted Under It

The Alaska Wage and Hour Act is codified in the State statutes in §§23.10.050 - .150. Section 23.10.060 of those statutes sets forth the State's payment for overtime provisions, in pertinent part as follows:

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

here we say rate is weekly not hourly

Later in the Wage and Hour Act, §23.10.145 provides:

> "Terms used in §§50-150 of this chapter shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it."

Clearly the operative language in the first above-quoted section is the underlined term "regular rate of pay". Under §23.10.060, overtime compensation is absolutely dependent upon the amount of pay deemed included in an employee's "regular rate". The fluctuating workweek question with which we are here concerned is also intimately connected with that term. The fluctuating workweek approach is essentially a method of ascertaining an employee's regular rate of pay. The corresponding "regular rate" term in the

federal Fair Labor Standards Act has always been defined to include the fluctuating workweek method as acceptable under that statute.

The question to be resolved, therefore, is whether the term "regular rate of pay" in Alaska statute §23.10.060 encompasses the fluctuating workweek method. The answer is clearly provided in §23.10.145. That section unambiguously states that the terms utilized in the Wage and Hour Act are to be defined as they are defined in the federal Fair Labor Standards Act or the regulations adopted under it.

The only possible complication connected with §23.10.145 arises from the "where applicable" phrase contained therein. Nevertheless, there is no merit in a contention that the term "where applicable" gives the State Department of Labor the discretion to ignore clear and unambiguous federal pronunciations regarding specific provisions of the Act.

Section 23.10.145 contains language which is clearly mandatory and not discretionary. It states that terms used in the Wage and Hour Act "shall be defined" as they are defined under federal law. It is well recognized in the law that the word "shall" in a legislative enactment demonstrates the legislature's intention that the body charged with administration of that statute is obligated to perform the stated function. The fact that this section of the Wage and Hour Act contains such mandatory language is strong evidence that the legislature of Alaska did not intend to grant any particular discretion to the Department of Labor in regard to the definition of terms.

The inclusion of the term "where applicable" does nothing to require a different conclusion. It should be read as though the legislature were saying that if federal law has defined a particular term which appears in the Wage and Hour Act, that federal definition should be applied by the Department of Labor in administering the Alaska statute. Support for this interpretation is found in the definition of the words used in that statutory section. Webster's Dictionary defines the word "applicable" primarily as "capable of being applied." This definition of "applicable" was approved in Thomas v. City of Huntington, 80 Ind. App. 176, 141 N.E. 358, 359 (1928), and Hodges v. Canal Ins. Co., Miss. 223 So.2d 630, 633 (1969). That definition does not contain a discretionary element. In the present context it

merely indicates that if a federal definition can possibly be applied, it must be applied. Any other interpretation of the words "where applicable" would be without foundation.

It is obvious, therefore, that in accordance with §23.10.145 guidance must be sought from the federal Fair Labor Standards Act regarding the definition of "regular rate of pay".

B. The Fair Labor Standards Act and Its Regulations Explicitly Recognize and Support the Use of the Fluctuating Work Week Method of Compensation

Section 7 of the Fair Labor Standards Act provides that overtime must be paid to an employee for all hours worked in excess of 40 hours in a single workweek at a rate not less than one and one-half times the "regular rate" at which he is employed. Extensive regulations have been promulgated by the Federal Department of Labor to explain and define Section 7's "regular rate" term. Those explanations and definitions are codified in Title 29 of the Code of Federal Regulations, beginning at Section 778. As stated in Section 788.1, those regulations constitute "the official interpretation of the Department of Labor with respect to the meaning and application of the maximum hours and overtime pay requirements contained in Section 7 of the Act."

The actual definitions of the "regular rate" term begin with Regulations Section 788.108. It is there stated:

> "The 'regular rate' of pay under the Act cannot be left to a declaration by the parties as to what is to be treated as the regular rate for an employee; it must be drawn from what happens under the employment contract."

Section 778.109 states:

> "The 'regular rate' under the Act is a rate per hour. . . The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that

workweek for which such compensation was paid. The following sections give some examples of the proper method of determining the regular rate of pay in particular instances."

Section 778.114 of the Regulations contains the example of the proper method of determining the regular rate of pay in instances where fixed salaries are paid for fluctuating hours of work. That section provides:

"(a) An employee employed on a salary basis may have hours of work which fluctuate from week to week and the salary may be paid him pursuant to an understanding with his employer that he will receive such fixed amount as straight time pay for whatever hours he is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums), for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period, such a salary arrangement is permitted by the Act if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours he works is greatest, and if he receives extra compensation, in addition to such salary, for all overtime hours worked at a rate not less than one-half his regular rate of pay. Since the salary in such a situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime hours at one-half such rate in addition to the salary satisfies the overtime pay requirement because such hours have

already been compensated at the straight-time regular rate, under the salary arrangement.

"(b) The application of the principles above-stated may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose overtime work is never in excess of 50 hours in a workweek, and whose salary of $80.00 a week is paid with the understanding that it constitutes his compensation, except for overtime premiums, for whatever hours are worked in the workweek. If during the course of 4 weeks this employee works 40, 44, 50 and 48 hours, his regular hourly rate of pay in each of these weeks is approximately $2.00, $1.82, $1.60, and $1.67, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due. For the first week the employee is entitled to be paid $80.00; for the second week, $83.60 ($80.00 plus 4 hours at 91 cents, or 40 hours at $1.82 plus 4 hours at $2.73); for the third week $88.00 ($80.00 plus 10 hours at 80 cents, or 40 hours at $1.60 plus 10 hours at $2.40); for the fourth week approximately $86.72 ($80.00 plus 8 hours at 84 cents or 40 hours at $1.67 plus 8 hours at $2.51).

"(c) The 'fluctuating workweek' method of overtime payment may not be used unless the salary is sufficiently large to assure that no workweek will be worked in which the employee's average hourly earnings from the salary fall below the minimum hourly wage rate applicable under the Act, and unless the employee clearly understands that the salary covers whatever hours the job may demand in a particular workweek and the employer pays the salary even though the

> workweek is one in which a full schedule of hours is not worked. Typically, such salaries are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole. Where all the legal prerequisites for use of the 'fluctuating workweek' method of overtime payment are present, the Act, in requiring that 'not less than' the prescribed premium of 50 percent for overtime hours worked be paid, does not prohibit paying more. On the other hand, where all the facts indicate that an employee is being paid for his overtime hours at a rate no greater than that which he receives for non-overtime hours, compliance with the Act cannot be rested on any application of the fluctuating workweek overtime forumla."

It is absolutely clear from the regulation quoted above that the fluctuating workweek method is included within, and is an integral part of, the definition of "regular rate of pay" under the Fair Labor Standards Act. It is equally clear that since the Alaska Wage and Hour Act looks to the federal Fair Labor Standards Act for its definition of that term, the "regular rate of pay" term in the Alaska statute also includes the fluctuating workweek method. The logic of this reasoning is inescapable.

C. The Lawfulness of the Fluctuating Workweek Method has Consistently Been Upheld Under Federal Case Law

The above conclusion has been strongly and consistently supported by the decisions of the federal courts. Almost immediately after the Fair Labor Standards Act of 1938 was enacted, the United States Supreme Court was confronted with a challenge to the fluctuating workweek method of compensation. That challenge was identical to the present case in that the controversy focused on the meaning of the term "regular rate of pay." In Overnight Transportation Company v. Missel, 316 U.S. 572 (1942), the employee worked

as a "rate clerk" for a corporation engaged in interstate motor transportation as a common carrier. An agreement had been entered into between the company and the employee whereby the employee received a fixed weekly wage for irregular hours, and a rate equal to one and one-half times his "regular rate of pay" for all hours in excess of the statutory maximum. In upholding the use of the phrase "regular rate of pay" interpreted as the total weekly compensation divided by the total number of hours worked (the FWW interpretation), the Court stated:

> "No problem is presented in assimilating the computation of overtime for employees under contract hours which are the actual hours worked, to similar computations for employees on hourly rates. Where the employment contract is for a weekly wage with variable or fluctuating hours, the same method of computation produces the regular rate for each week. As that rate is on an hourly basis, it is regular in the statutory sense inasmuch as the rate per hour does not vary for the entire week, though week by week the regular rate varies with the number of hours worked. It is true that the longer the hours the less the rate and the pay per hour. This is not an argument, however, against this method of determining the regular rate of employment for the week in question. Apart from the Act, if there is a fixed weekly wage, regardless of the length of the workweek, the longer the hours the less are the earnings per hour. This method of computation has been approved by each circuit court of appeals which has considered such problems. It is this quotient which is the 'regular rate at which an employee is employed' under contracts of the types described and applied in this paragraph for fixed weekly compensation for hours, certain or variable." 316 U.S. at 580.

Numerous federal cases have been guided by the principle established in Overnight Transportation Company. The interpretation of Section 7 of the Fair Labor Standards

Act made in that case has been repeatedly utilized to sanction fluctuating workweek programs. In the Ninth Circuit, for example, "regular rate of pay" was similarly defined in Robertson v. Alaska Juneau Gold Mining Company, 157 F.2d 876 (9th Cir. 1946). In striking down a particular pay plan which provided a "regular rate" for seven hours of the working day and so-called "overtime" for the additional one hour of the working day, the court described the plan as "artificial." In finding that the scheme was designed to circumvent the application of the Act, the court stated:

> "The Act [FLSA] does not necessarily require an increase of wages, nor does it forbid a decrease, so long as the wages paid are above the statutory minimum. But it does require that all wages or things of value forming part of the normal working income be used to determine the 'regular rate,' and that that regular rate be applied to the first 40 hours worked, and for all hours worked in addition a rate one and one-half times the regular rate must be paid."

In another much cited case, Landreth v. Ford, Bacon & Davis, 147 F.2d 446 (8th Cir. 1945), the Eight Circuit Court of Appeals also held that the fluctuating workweek method, employing the term "regular rate of pay", is immune from attack in federal courts:

> "If his [an employee's] employment is for a fixed weekly compensation for a week of variable or fluctuating hours, the employee's regular rate of pay must be determined by dividing his fixed weekly compensation by the number of hours actually worked in any workweek; and in cases of employment at a fixed weekly compensation for a workweek of fluctuating hours, the regular rate of an employee will necessarily vary from week to week according to the number of hours worked."

Accord, Mumbower v. Callicot, 526 F.2d 1183 (8th Cir. 1975); Masters v. Maryland Management Co., 493 F.2d 1329 (4th Cir. 1974); Usery v. Godwin Hardware, Inc., 426 F.Supp. 1232 (S.D. Mich. 1976). See, Conkland v. Hofgesang, 407 F.Supp. 1090 (W.D. Ky. 1975).

The same interpretation of the "regular rate" phrase as it is used in §7 of the FLSA has also been adopted in regulations promulgated under the Act, 29 C.F.R. §778.114, which are cited above.

In short, it is inescapable that the drafters of the Alaska statute, by using the key phrase "regular rate of pay" and by expressly stating that the federal interpretation of the terms of the statute should govern, envisioned fluctuating workweek plans similar to those consistently upheld under federal law. Since the meaning of the phrase "regular rate of pay" is beyond dispute under federal law, and since no Alaska statutes or regulations suggest a contrary interpretation, the federal definition should prevail and the use of the fluctuating workweek method of compensation should be acceptable under Alaska law.

D. The Fact That Alaska Requires the Payment of Overtime for Hours Worked in Excess of Eight Hours in a Single Workday, Unlike the Federal Fair Labor Standards Act, Has No Impact Whatsoever on the Use of the Fluctuating Workweek Method

As indicated above, the Fair Labor Standards Act requires overtime to be paid for hours worked in excess of 40 hours in a single workweek. Many state laws, Alaska's included, provide for overtime payments for hours worked in excess of 40 hours in a single workweek or eight hours in a single workday. This is a difference without a distinction as far as the fluctuating workweek question is concerned.

Two federal statutes specifically provide for the payment of overtime for all hours worked after 40 hours in a single week or eight hours in a single day. Those statutes are the Walsh-Healey Public Contracts Act, 41 U.S.C. §§327-333 (covering federal government suppliers) and the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§327-333 (covering federal government construction and service contractors). Both of those statutes rely upon the Fair Labor Standards Act, in the same manner as the Alaska Wage and Hour Law does, for a definition of "regular rate of pay" or similar terms, and both of those statutes recognize the applicability of the fluctuating workweek method.

Walsh-Healey Act Regulations codified at 41 C.F.R. §50.201.103 provide:

> "(a) Employees engaged in, or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 8 hours in any one day or in excess of 40 hours in any one week, provided such persons shall be paid for any hours in excess of such limits [at] the overtime rate of pay which has been set therefor by the Secretary of Labor.
>
> "(b) Until otherwise set by the Secretary of Labor, the rate of pay for such overtime shall be one and one-half times the basic hourly rate received by the employee. The 'basic hourly rate' means an hourly rate equivalent to the rate upon which time and one-half overtime compensation may be computed and paid under Section 7 of the Fair Labor Standards Act of 1938, as amended." (CCH WH ¶26,200.010.)

These Walsh-Healey Act regulations, just like the Alaska Wage and Hour Act, adopt the Fair Labor Standards Act definition for "regular rate of pay". They, therefore, also adopt the fluctuating workweek method which is embodied within the FLSA definition of "regular rate of pay".

Case law and administrative rulings under the Walsh-Healey Act have also specifically approved the use of the fluctuating workweek method of determining overtime. In re Noble Street Motors, Inc., 15 W.H.Cases 517 (1962); In re Richland Lime Co., 10 W.H. Cases 365 (1951); In re B.&W. Sportswear, Inc., 6 W.H. Cases 1224 (1947); Kelly Steel Works, Inc., Ruling of the Secretary of Labor, P.C.-228, March 21, 1947; Edwin & Louis Bry, Inc., Ruling of the Secretary of Labor, P.C.-199, August 26, 1946, CCH WH ¶26,104.27.

The United States Labor Department has similarly determined that the "basic rate of pay" under the Contract Work Hours and Safety Standards Act is to be computed in the same manner as the regular rate of pay is computed under the Fair Labor Standards Act and has expressly recognized the applicability of the fluctuating workweek method under that

statute. CCH WH ¶27,056; BNA WHM §99:345; U.S. Department of Labor Compliance Manual.

The two federal Acts discussed above have the same overtime provisions as the Alaska Wage and Hour Act. Also like that Alaska statute, they rely upon the Fair Labor Standards Act for a definition of the term, "regular rate of pay". In this manner they incorporate the fluctuating workweek method which is embodied in the FLSA "regular rate of pay" definition. The mere fact that these statutes have eight-hour overtime provisions, unlike the Fair Labor Standards Act, does not in any way affect this adoption of the fluctuating workweek method.

Arguments that state eight-hour overtime provisions establish a higher standard which must take precedence over Fair Labor Standards Act procedures are similarly unconvincing. There is no question that Fair Labor Standards Act provisions do not excuse noncompliance with higher statutory overtime standards. The Fair Labor Standards Act itself so provides in 29 U.S.C. §218(a), which reads:

> "No provision of this chapter or of any order thereunder shall excuse non-compliance with any federal or state law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter."

See also, Brennan v. State of New Jersey, 364 F.Supp. 156 (D. N.J. 1973); State v. Comfort Cab, Inc., 118 N.J.Super. 162, 286 A.2d 742 (1972).

Applying the fluctuating workweek method to the Alaska statute, however, would not in any way derogate from that state's eight-hour overtime requirement. The fluctuating workweek method is totally consistent with eight-hour overtime provisions as is demonstrated by its use in connection with the Walsh-Healey and Contract Work Hours Acts. The fluctuating workweek is simply a method for determining an employee's regular rate of pay. Once that regular rate of pay is determined, it can be utilized just as readily in connection with a 40-hour, eight-hour overtime provision like the Alaska statute as it can in connection with a mere 40-hour requirement such as the Fair Labor Standards Act.

Under an Alaska-type statute, overtime would be paid for all hours worked in excess of eight hours in a single day even under the fluctuating workweek method. The only difference is that the regular rate of pay would be determined by dividing total remuneration by total hours worked that week instead of by a standard 40 hours, as the Alaska Department of Labor wishes to do. There is no obstacle whatsoever to utilizing a fluctuating workweek method under both daily and weekly overtime requirements.

E. Because the Statutory Language Involved in the State Statute Is Clear and Unambiguous on Its Face, Dowell Was Entitled to Rely Upon the Facts of the Statute Absent Any Contrary Interpretations of the Act by the State of Alaska

As indicated above, the prevailing interpretation of the term "regular rate of pay" is clear and unambiguous. No cases, statutes, or regulations exist in Alaska or elsewhere which suggest in any way that the regular rate of pay definition under the Fair Labor Standards Act is not applicable to the Alaska Wage and Hour law. That being the case, Dowell and other companies operating in Alaska are totally justified in relying upon the face value of the Alaska statute and taking the position that the fluctuating workweek method may be utilized under the State's Wage and Hour law.

The only authority which has even come close to addressing this particular issue in the State of Alaska is the case of Cameron v. Chickagof Min. Co., 82 F.Supp. 665, 12 Alaska Rpts. 103 (N.D. Alaska 1948). There, consistent with prevailing authority, the district court in Alaska held that "rate of pay" under the Fair Labor Standards Act is determined by dividing the fixed weekly compensation by the number of hours actually worked. It stated that:

> "The [U.S.] Supreme Court has repeatedly pointed out that the regular rate must be the quotient of the amount actually paid divided by the number of hours actually worked; that it must be the actual, not fictitious rate agreed upon and paid." (Citations omitted.) 12 Alaska Rpts., at 108.

Of course, while reported in Alaska, this case was determined in federal court under the federal Fair Labor Standards Act. Nevertheless, it is the only authority of any type reported in Alaska from which guidance could be sought by Dowell and other companies currently using the fluctuating workweek concept. In view of this fact, Dowell, and the other similarly situated companies, could reasonably rely upon the facet of the Wage and Hour Act as justifying their use of the fluctuating workweek method.

It would surely place an onerous burden upon Dowell and those other companies if it were held at this time that they were liable for backpay despite their good faith reliance upon the explicit provisions of the Wage and Hour Act and despite the fact that there has never been any previous indication that the Fair Labor Standards Act definition of "rate of pay" would not apply under the Alaska act. Such a holding would also contravene governing Constitutional due process requirements.

F. Since An Employee's Rate of Pay Can Always Be Determined by Utilizing the Appropriate Formula, There Is No Merit in an Argument That the Fluctuating Workweek Method is Rendered Unacceptable by the Terms of Alaska Statute §23.05.160 as a Pay Rate Change Without Prior Notification

Alaska statute §23.05.160 was relied upon by the Wage and Hour Division of the Department of Labor in its initial condemnation of the fluctuating workweek method. That section reads as follows:

> "An employer shall notify his employee in writing at the time of hiring of the day and place of payment, and the rate of pay, and of any change with respect to these items on the payday before the time of change. An employer may give this notice by posting a statement of the facts, and keeping it posted conspicuously at or near the place of work where the statement can be seen by each employee as he comes or goes to his place of work."

It was contended that this section bars the use of the fluctuating workweek method because under that system of

computation, an employee's rate of pay will be subject to change from week to week. There are three reasons why such an argument cannot be supported.

First, §23.05.160 is not a part of the Alaska Wage and Hour Act. The Wage and Hour Act is found in §§23.10.050 to 23.10.150. Because it is not included in the Act, §23.05.160 cannot serve as an independent basis upon which the Wage and Hour Division can rely in precluding the use of the fluctuating workweek method. This conclusion is clear from the terms of §23.10.075 which creates and empowers the Wage and Hour Division of the Department of Labor. There, and in §23.10.085, the scope of the Wage and Hour Division's authority is expressly limited to administering §§50 to 150 of the Wage and Hour chapter. It does not have jurisdiction to implement a section which is outside of the statutory scope of its powers.

Second, even assuming arguendo that §23.05.160 could be a sufficient ground, it is apparent that the express terms of that section do not, in any way, preclude the use of the fluctuating workweek method. All that §23.05.160 requires is that an employee be informed of the rate of pay he will receive at the time of his hiring, and that he be notified of any changes in his rate of pay which might occur subsequent to that time. Section 23.05.160 is, therefore, essentially a notice statute. Its primary focus is to guarantee that an employee is given sufficient prior notice of any change in his wage rate.

Despite Wage and Hour Division assertions to the contrary, under the fluctuating workweek method, the requirements of this section are satisfied. It should be kept in mind that the fluctuating workweek method is basically a salary approach to employee compensation. As indicated previously, employees working under that method receive a guaranteed weekly salary which remains the same even though the amount of hours they work per week may fluctuate. of course, the rate per hour under such a system may differ from week to week depending on the number of hours worked, but this is true of all salary compensation programs. While the hourly rate may fluctuate, the salary remains the same.

Of course, the calculation of overtime compensation may cause differences in the amount of an employee's weekly compensation, but this, once again, is a situation typical of all employees. Overtime compensation of necessity

fluctuates for all employees depending upon whether, and to what extent, overtime is worked.

Third, §23.05.160 cannot be a bar to the fluctuating workweek method since it has been held not to bar Belo plans. The Alaska Department of Labor has on several occasions indicated that it finds no problem in accepting the use of a Belo plan method of compensation. A Belo plan, like the fluctuating workweek method, involves a system whereby an employee's hourly wage rate changes on a weekly basis relative to the number of hours worked that week. But the guaranteed salary remains the same, just as under the fluctuating workweek method. The theory behind the two methods is identical. If the Belo plan is not precluded by §23.05.160 then logically the fluctuating workweek method should not be subject to attack on this ground.

IV

CONCLUSION

The procedural understanding between Dowell and the Wage and Hour Division calls for the simultaneous submission of position papers to the Attorney General's Office. The decision of the Attorney General's Office is to be based upon those position papers and any additional information which the parties may be called upon to submit. Dowell hereby requests that prior to the issuance of any decision adverse to its position set forth above, it be granted an opportunity to submit additional information, either by further documentation or by an oral presentation, to address points contained in the tentative decision of the Attorney General's Office.

If you have any questions regarding this matter, or if we can supply any additional information whatsoever, please do not hesitate to contact me.

Very truly yours,

Garry G. Mathiason

Garry G. Mathiason

cc: Local Counsel
Norman C. Gorsuch
Ely, Guess & Rudd
Suite A, Mendenhall Building
Juneau, Alaska 99801

STATE OF ALASKA
FISCAL NOTE

Revision Date Original, 1983

I. REQUEST

Bill/Resolution No.: House Bill 223
Title: "...Payment of overtime;..."
Sponsor: Representative Bussell
Requestor: Judiciary

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: PBC Robert J. Bacolas, Sr. Phone 465-4870
Division: Labor Standards & Safety Date: April 4, 1983

Approved by Commissioner: Jim Robison Date: 465-2700
Department: Labor

LEG:A:39

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

April 26, 1983

The Honorable Charlie Bussell
House of Representatives
Chairman, House Judiciary Committee
Alaska State Legislature
Capitol, Room 124
Pouch V
Juneau, Alaska 99811

Dear Sir:

I would like to express my support for H.B. 223 which is now pending in your committee. When the work schedules were set up with the F.W.W. or Belo pay plan, there were no complaints and people were happy to have employment. This is another case of some opportunist lawyer trying to make a case out of something that was approved by the past employee. If the employee did not approve of the plan, then he should have resigned.

Sincerely,

Roger J. Seibert

RJS:te

Address: Roger Seibert
SRA Box 1735-I
Anchorage, AK 99507

April 26, 1983

The Honorable Charlie Bussell
House of Representatives
Chairman, House Judiciary Committee
Alaska State Legislature
Capitol, Room 124
Pouch V
Juneau, AK 99811

Dear Sir:

I would like you to know that I support HB 223. I feel it is a law that we need.

Sincerely,

David C. Sharp

David C. Sharp
SRA Box 1153
Anchorage, AK 99502

TESTIMONY ON HB 223

Mr. Chairman, Members of the Committee, my name is Larry Compton, President and Owner of Time Saver Grocery INC., I have lived in Alaska since 1954 and may I add have no connections with the Gas and Oil Industry. I regret that I was unable to stay and testify in person. I have nothing to gain by this passage of HB 223. However, I do feel I have some thing to lose if it fails. I will lose faith in a system that has beenfair and equitable in my eyes for 30 years. A system that is supposed to deal fairly with Employee and Employer alike. I only ask that you continue to apply that same fairness in the future by passing HB 223.

Larry Compton

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

RECEIVED 2/4/83

MEMORANDUM February 3, 1983

SUBJECT: Retroactivity of overtime pay provisions (Work Order No. 13-0714)

TO: Representative Charlie Bussell

FROM: Thomas A. Sofo TAS
Legislative Counsel

The subject work order includes a request for a retroactive clause to the attached draft bill concerning methods of overtime payment. A retroactive clause may make the bill subject to legal challenge.

I do not know enough about the facts surrounding the proposal contained in the draft bill to advise you in precise terms, but would caution you that the retroactive portion of the bill may be challenged on constitutional grounds. One basis for challenge would be the prohibition against impairment of contracts, found in both the United States and the Alaska Constitutions (U.S. Constitution, Article I, section 10; Alaska Constitution, Article I, section 15). Another basis would be the due process guarantees in the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, section 7 of the Alaska Constitution.

If challenged on these grounds, the court would likely examine the rights and expectations affected by the bill, whether those rights and expectations were substantial and whether those rights or expectations were unfairly defeated by the bill. Some vested rights are immune from legislative interference, but, as indicated above, we are not able to ascertain whether such rights are involved here since we do not have sufficient factual information.

If you wish to discuss this facet of the bill further, please give me a call at your convenience.

TAS:ljb

Michael File
3716

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March 4, 1983

The Honorable John Cowdery
Representative
Capital, Room 409
Juneau, Alaska 99811

Re: HB 223

Dear Representative Cowdery:

We represent the Alaska Wage Security Association, a newly formed association concerned about House Bill 223. Sections 3 and 4 of HB 223 would retroactively eliminate civil and criminal liability of employers who illegally used a fluctuating workweek plan to pay their employees less in overtime than they were entitled to be paid under the Alaska wage and hour law. This legislation would violate the Constitution by denying the employees their existing contract right to payment in accordance with the law.

The Association's members include employees who, if HB 223 passes in its present form, will lose the overtime compensation they have already earned under the law. It also includes individuals who simply believe that it is unjust to take away what Alaskans have earned through their hard labors and to excuse past violations of the law by mainly large, non-Alaskan companies. Among the members are former Senate President Chancy Croft and former Commissioner of Labor Gil Johnson.

Briefly, the law which the companies violated went into effect in January, 1979. The affected companies were given notice before the law became effective, and the Wage and Hour Division of the Department of Labor wrote to three of the largest companies, Otis Engineering, Dresser Industries, and Dowell Division of Dow Chemical, informing them of the new regulation concerning overtime. Nevertheless, the companies chose to ignore the law. Dresser was sued in October, 1979, by the Department of Labor, and lost in both the Superior and Supreme Courts. Incredibly, only in November, 1981, did Dresser finally decide it should comply with the law.

Since the first lawsuit, additional lawsuits have been brought against the companies. The precedent set by the litigation brought by the Department of Labor provides a clear indication that the companies will lose again. Thus, having violated the law, having been sued because of it and having lost, and now facing additional lawsuits which they will lose, the companies seek to evade the law and the judicial process through HB 223.

The precedent that would be set if the current version of HB 223 passes bears close scrutiny. Essentially, the bill asks the Legislature to choose sides in the pending litigation, and to choose the side of large, non-Alaskan companies that have violated the law. The judiciary is the appropriate branch of government to decide the litigation, not the Legislature. If the Legislature involves itself in these lawsuits, it will set a precedent which will be looked to by other parties involved in litigation which they believe they will lose, and by others who have violated the law and seek an easy way out.

We ask only that before you vote, you consider seriously the implications HB 223 has for our systems of law and justice. If you have any questions or need further information, I encourage you to contact me. The members of the Association and others who will unfairly be affected by this legislation are also anxious to discuss this with you.

Very truly yours,

FAULKNER, BANFIELD, DOOGAN
& HOLMES

By Anthony M. Sholty
Anthony M. Sholty

ALASKA WAGE AND HOUR ACT
BRIEFING PAPER - THE FLUCTUATING WORK WEEK

Several inaccurate and misleading claims are being made in support of the position that the Alaska Wage and Hour Act should be amended to eliminate employee claims which are currently pending in court. The employees' claims are for overtime wages which were never paid because of their employers' use of an unlawful payment formula known as the fluctuating work week (FWW). The questions raised by these arguments are discussed below.

1. Did Employers Have Reason to Know of the FWW Regulations?

Prior to adoption of the regulation, the Department of Labor mailed notices of the proposed rule-making directly to affected businesses. Hearings were then held in Juneau, Fairbanks and Anchorage. Shortly after the regulation was adopted, Donald R. Wilson, the Department's Wage and Hour investigator in Anchorage, wrote letters to three oilfield service companies -- Otis Engineering, the Dowell Division of Dow Chemical, and Dresser Industries -- informing them of its adoption.

In October 1979 the Department of Labor sued Dresser Industries, one of the companies now being subjected to a class action, claiming a violation of the regulation. In October 1980 the Superior Court entered a judgment in favor of the Department. In September of 1981 the Supreme Court affirmed this judgment. Dresser did not bring its payment system into compliance with the law until November 1981.

Evidence discovered in a class action lawsuit filed against Schlumberger Limited seeking unpaid wages arising from that company's use of an FWW scheme indicates that awareness of the regulation and the litigation seeking to enforce it was wide-spread among employers. A memorandum obtained from Schlumberger and dated January 23, 1981, states that Schlumberger was assisting with Dresser's legal fees through the Petroleum Equipment Suppliers Association (PESA), an industry trade organization. Another Schlumberger memorandum, dated June 25, 1980, discusses an in-house study "to determine the impact of discontinuing FWW", though this memo does not specifically mention the Dresser lawsuit. Schlumberger did not modify its FWW system until March 1982, five months after the Supreme Court upheld the validity of the FWW regulation.

2. Are Employers Facing "Open-Ended" Liability?

Assuming that somehow employers could have reasonably remained ignorant of the FWW regulation in spite of the public rule-making proceedings and PESA's financing of Dresser's litigation, any excuse for remaining ignorant ended in September 1981, when the Supreme Court upheld the regulation. Since the Wage and Hour Act contains a two years statute of limitations, employers who brought their systems into compliance with the law in a timely fashion and who have not been sued will soon be insulated from liability entirely.

3. Will Employees Receive a Windfall if the Proposed Bill is not Passed?

If an employer tells a worker he will be paid less than the minimum wage or that he will not receive extra compensation for overtime and is then sued for his unlawful conduct, he cannot defend against the lawsuit by arguing that the employee had no basis for expecting to be paid more. Employees have a right to expect that their employers will obey the law when determining their regular and overtime compensation. It is ridiculous to argue that employees, like those who are seeking to recover overtime wages which remain unpaid because of use of the FWW regulation, are somehow obtaining a windfall. They are, of course, merely seeking to obtain what they had a right to receive in their original paychecks.

ALASKA WAGE AND HOUR ACT
BRIEFING PAPER - LIQUIDATED DAMAGES

It has been argued that the mandatory liquidated damages provision is unfair and that Alaska should adopt the "good faith" standard applied by the federal government since 1947. In 1959, when the Alaska legislature adopted a mandatory double damages provision, it wisely chose not to imitate the federal approach. The consequences of adopting the federal standard now will be that employees with small or moderate sized claims will face economic hurdles which will prevent them from enforcing their rights under a statute which depends, in large part, on private enforcement efforts. Adoption of a "bad faith" requirement for double damages will also eliminate an important deterrent to violations. These factors are discussed in greater detail below.

1. The Economic Hurdles.

Though the Department of Labor can prosecute claims for cases involving $5,000.00 or less in unpaid wages [see, 8AAC $15.175(b)], claims in excess of 5,000.00 must be pursued through private attorneys. A "good faith" standard would be extraordinarily difficult to prove to the satisfaction of the court without conducting complex and expensive pre-trial depositions and document searches. Absent "smoking pistols" obtained during pre-trial discovery, many employers will, no doubt, elect to take their chances at a trial at which the employee will bear the burden of proving bad faith. Few people nominally covered by the protection of the Wage and Hour Act would be able to afford such an expensive and lengthy process. Though at the present time, lawyers frequently take such cases on a contingent fee the Code of Professional Responsibility governing attorney conduct requires the client to be ultimately responsible for litigation and discovery expenses, regardless of the outcome. Furthermore, lawyers would soon learn that the imprecision and elasticity of a "good faith" standard make it uneconomical to handle small or moderate claims. The obvious result of these economic disincentives is that many people will simply be unable to enforce their rights.

2. Private Enforcement of the Wage and Hour Act.

Though the Department of Labor has authority to enforce the Wage and Hour Act, it cannot be expected to monitor all activities of all employers of the State and to prosecute all potential wage claims, at least not without an extensive and costly expansion of its current bureaucracy. The current double damages provision in the Wage and Hour Act makes it more economically realistic for private parties to obtain the legal assistance required to redress violations, and, thus, creates an efficient, privately funded enforcement mechanism.

3. Deterrence.

As noted above, it would be difficult to disprove an employer's claim that it was acting in good faith when it underpaid its employees. The current double damages provision encourages employers to educate themselves as to the law's requirements. It also encourages employers to monitor changes in the regulations and in the Wage and Hour Act and to speedily adapt their compensation systems to these changes. The need for such encouragement is demonstrated by the behavior of employers involved in the fluctuating work week litigation, for some of these employers delayed months beyond the issuance of the Supreme Court's final decision adjudicating the validity of the FWW regulation before actually changing their pay systems.

The proposed elimination of mandatory liquidated damages would create a different incentive by encouraging employers to cultivate ignorance of the Wage and Hour laws enacted for the protection of their employees.

I.

FACTUAL BACKGROUND

The flexible work week (hereafter FWW)[1/] method of computing overtime payment has been recognized as an acceptable method of payment under the Federal Wage and Hour Act since 1968. 29 C.F.R. 778.114 specifically allows the use of the fluctuating work week payment method. This method of payment is particularly suited to resource development and service industries where there is frequently a considerable amount of standby service time at remote locations and a variety in the number of hours of work available from week to week. The plan generally provides employees greater certainty in planning their financial budgets and guarantees them a specific amount in their pay checks each pay period thus easing the ups and downs in income which would result from a straight overtime pay plan method. This continuity of income allows employees to reflect a more stable cash flow to loan institutions when qualifying for home loans and the like and also serves to reduce the likelihood of a potentially devastating interruption of income to the employee. Without the FWW plan an employee may find himself returning to work from a two week R&R at a time when work is unexpectedly slack and then leaving on his next two week R&R when work picks up. Thus six weeks may pass

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1/ There are accounting differences in the various plans generally referred to as FWW plans or BELO plans which do not affect the questions raised herein. Both FWW and BELO plans will hereafter be referred to as FWW.

while his bills pile up before he can scramble back to catch up if his next two weeks on the job happen to coincide with an increase in work hours.

Prior to 1978 the use of the flexible work week method of payment was legal under Alaska law. See AS 23.10.060; Attorney General Opinion February 10, 1978. On December 8, 1978, the Department of Labor instituted a change by adopting a new regulation, 8 AAC 15.100, which declared that these flexible work week plans were no longer in compliance with the overtime provisions of Alaska's wage and hour laws.

This change in the administrative regulations was poorly publicized, with little if any input from Alaskan employers. The primary industries affected by the new regulation are the oil and gas support industries with additional effect on mining and other industries. It is estimated that, since this regulation was adopted in 1978, possibly as many as 100 Alaska businesses, unaware that the long standing custom and practice in their industry has been changed by administrative regulation, have continued using the same flexible work week plan they had used for years and, in doing so, may have incurred substantial liability.

In October, 1979, almost a year after the regulatory change, Dresser Industries (the first company to be sued) was named as a defendant in a suit filed by a former employee for $4,000 in back wages. The case was opposed on constitutional

1981, the Alaska Supreme Court upheld the power of the Depa[illegible] of Labor to promulgate regulations on this subject. The U.S. Supreme Court later declined to review the case. Dresser paid the judgment and the case was closed. In November 1981, Dresser was sued by another former employee who agreed to stay action on his case awaiting a U.S. Supreme Court decision on whether to review the case. The case for this one individual has since been settled and dismissed.

In December 1981, two years after the regulatory change, Dresser was again sued, this time in a class action filed by a third employee seeking back wages on behalf of all Dresser employees in an amount exceeding $15,000,000. At least three other companies, including FMC and Schlumbeger, have since been sued. All of these cases are in the preliminary stages, no trial dates have been set at this time and none of the lawsuits have as yet resulted in a judgment against any of the defendant companies.

In addition to the financial liability created by the flexible work week prohibition, Alaska law provides for mandatory liquidated damages which doubles any back wage or overtime award regardless of the good faith efforts on the part of the employer to abide by the wage and hour statutes. AS 23.10.110; AAI, Inc. v. Mussara, 602 P.2 1240 (Alaska 1979). Even if an employer relies on the Department of Labor's opinion or otherwise makes an innocent error in computation of pay, the court has no choice but to award double the amount of damages. The accumulated liability

resulting from the 1978 administrative action coupled with Alaska's double damage statute has resulted in a potential economic disaster for many Alaskan employers.

II.

PROPOSED REMEDY

A multitude of companies and organizations proposed during the latter part of the 1982 legislative session that the FWW administrative prohibition be amended to include a good faith exception and provide that any liability arising out of the regulatory prohibition be extinguished retroactively. A bill to accomplish this, SB 886, was introduced in the Senate.

The bill, as proposed, would have the following effects. The proposed regulation will have no effect on the two individuals who have already brought suit and either received a final judgment from which appeal cannot be taken or settled their case. As to those people who have filed suit, either individually or on behalf of a class of employees, and whose suit is still pending awaiting trial or on appeal, their cases would be dismissed subject to the right of employees to recover expenses of litigation. Companies would be given a period of time to convert over from the FWW pay systems and relieved of the massive potential liability raised by the regulation. Past employees would not receive a windfall gain.

III.

QUESTIONS PRESENTED

1. Does the Alaska legislature have the power to repeal the administrative regulation?

2. Does a retroactive repeal of the regulation constitute an unconstitutional impairment of the right to contract by taking away vested contractual rights of employees?

Question 1 above has been directly addressed by the Alaska courts. Under AS 44.62.320 (Legislative Annulment of Regulations and Review), the legislature was granted the authority to annul a regulation of an agency by concurrent resolution. In 1980 the Alaska Supreme Court in State v. A.L.I.V.E., 606 P.2d 769 (Alaska 1980) held that the legislature could not annul a regulation by concurrent resolution but did set out the proper procedure by which the legislature could annul a regulation. In the A.L.I.V.E. case the Alaska Supreme Court indicated that by a vote of both houses and passage of a new Act the legislature does have the power to annul an agency regulation by following normal legislative procedures. AS 01.10.090 requires that in order for the statute annulling the regulation to have retrospective effect, it must expressly declare in the statute that it is intended to be retrospective. In addition, under AS 01.10.100 (Effect of Repeal or Amendments) the legislature has been specifically granted the power to annul a regulation, the only qualification being that if the annulment is to be retroactive and is to affect any penalty or liability incurred, it must expressly state that this is the legislative intent.

As to question #2 above, the argument that a retroactive repeal or annulment of a regulation and the consequent extinguishing of liability on the part of employers for penalties, forfeitures or back wages is an unconstitutional denial of due process because it violates the fifth amendment prohibition against impairment of contracts or Article I, § 10 of the Constitution has been raised numerous times in the past in various cases and has over the years been resoundingly rejected by literally hundreds of court decisions.

In 1947 the United States Congress faced a situation similar to the problem now facing the Alaska legislature. The United States Supreme Court in Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 interpreted the existing Fair Labor Standards Act as requiring payment for time spent in preliminary and incidental activities on the employer's premises prior to actually beginning work at the employees' work stations. This decision changed the existing custom and practice in industry and between July of 1946 and January of 1947, some 2,000 cases were filed in Federal Court alone seeking back pay in excess of five billion dollars. (House Committee on the Judiciary Report No. 71, Feb. 25, 1947.)

In response to this situation, Congress passed the Portal to Portal Act of 1947 which specifically extinguished any claim arising out of the Fair Labor Standards statutes and relieved employers from liability and punishment from existing claims

whether commenced prior to, or on or after the date of the Act. The Act provided that unless an activity was covered by an express provision of a written or nonwritten contract between the employee and his employer or was a custom or practice in effect at the time of employment, any liability for existing or future claims would be extinguished.

The report of the House Committee on the Judiciary specifically addressed the constitutionality and vested contract right question in passing the Portal to Portal Act and noted that:

> Claims for minimum wages, overtime compensation, liquidated damages and penalties are not vested property rights within the protection of the Fifth Amendment. They are purely statutory rights which may be withdrawn by the Congress at any time before they have ripened into a final judgment from which appeal cannot be taken. (citations omitted).

In the years following passage of the Portal to Portal Act the constitutionality of the retroactive grant of immunity from liability has been challenged many times in many courts. It has been upheld consistently.

In Seese v. Bethlehem Steel Co., 168 F.2d 58 (4th Cir. 1948) the court noted at page 61 that the constitutionality of the Portal to Portal Act was beyond question:

> Its constitutionality has been upheld by the circuit court of appeals of the sixth circuit . . . and by more

than 100 decisions of federal district courts and state courts to which our attention has been called. We list below those available in the federal supplement which we had opportunity to read.

The plaintiffs in Seese argued that the statute violated the constitution because:

> . . . they deprived plaintiffs of vested rights under existing contracts in violation of the due process clause of the fifth amendment.

The court's response to this contention was clear:

> We think that both contentions are entirely without merit.
>
> * * *
>
> The question raised under the fifth amendment is that the statute takes property without due process in that it strikes down vested rights under existing contracts. The answer is that even rights arising out of contract cannot fetter congress in the exercise of a power granted it by the constitution, and that the rights stricken down by the statute are not rights arising out of contract at all, but rights created by statute as an incident of the statutory regulation of commerce.

The court held that the Fair Labor Standards Act does not provide payment for employees engaged in the commerce which Congress sought to regulate but rather provides a means by which wages may be regulated. The Court stated that when it becomes apparent that the instrument of regulation is about to be used in such a way as to

injure the very commerce it is designed to help it is idle to say that the legislature is without power to amend it in such a way as to avoid the evil that is threatened.

The proposed bill before the Alaska legislature will not strike down any right which is based on a contract, a custom or a practice. What is sought to be taken away is purely a statutory right. This is clearly constitutional:

> What was taken away was the right to recover on claims of purely statutory origin, claims given by statute not as compensation for labor performed but as a means of regulating wages and hours of work in interstate commerce. (Seese, supra, at p. 64, citations omitted.)

By both logic and legal reasoning, since the legislature may repeal its own Act, it clearly has the right to take away something which has no existence save by virtue of that Act.

Looked at in another way, the legislature is merely validating contracts and agreements between employers and employees which were only made invalid by reason of the regulation in effect during a period of the employment contract. The legislature's power to validate prior contracts which were invalid by statute has been upheld repeatedly by the U.S. Supreme Court. Westside Belt R Co. v. Pittsburg Construction Co., 219 U.S. 92; McNair v. Knott, 302 U.S. 369.

The argument that the provisions of the Alaska regulation prohibiting FWW must be read into the contract of employment and that the right to recover compensation in accordance with the terms of the regulation becomes a part of the contract and accrues upon the rendering of services provides no basis for rendering a repealing statute unconstitutional.

> . . . that act validates the real contract between the parties and merely takes away a statutory remedy given by the prior act. Even if the provisions of the Fair Labor Standards Act be read into contracts of employment, so also must be read the constitutional power of congress to change that act . . . not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. (Seese, supra, at 65, citations omitted.)

The Alaska Supreme Court has directly addressed this issue and in Bidwell v. Sheele, 355 P.2d 584 (Alaska 1960) joined the array of State, Federal and Supreme Court decisions upholding the power of the legislature to retroactively extinguish statutory rights. Dealing with the repeal of section 16-1-131, Alaska Compiled Laws Annotated 1949, which abolished the requirement for a bond in title dispute cases, the Court addressed the constitutionality of the repeal in the face of challenges based on both the 14th Amendment of the U.S. Constitution and Section 7, Art. 1 of the Alaska Constitution. The Court noted that:

> In 1871 the Supreme Court of the United States ruled that a party cannot have any

> vested right in a remedy conferred by an act of Congress to prevent Congress from modifying it or adding new conditions to its exercise, or from withdrawing the remedy altogether.

The Portal to Portal Act does not stand alone as an example of the constitutionality of legislative action extinguishing prior liabilities. The question has been argued and has been upheld by a staggering majority of Courts in other areas as well.

In American Can Co. v. Davies, 559 P.2d 898 (Or. 1977), the Supreme Court of Oregon upheld the power of the public utilities commissioner to change rates already set by a private contract with the utility. The company contended that:

> Crown contends that the power of the Commissioner to change rates or other conditions memorialized in a written contract between a public utility and one of its customers constitutes an impairment of the contract rights, and as such is in violation of Aritcle 1, § 10 of the United States Constitution.

The Court answered the argument first with legal authority:

> We disagree. In Midland Co. v. K. C. Power Co., 300 U.S. 109, 57 S.Ct. 345, 81 L.Ed. 540 (1937), the court said:
>
> > . . . [T]he State has power to annul and supersede rates previously established by contract between utilities and their customers. It has power to require service at nondiscriminatory rates, to prohibit service at rates too low to yield the cost rightly attributable to it, and to require utilities to publish their rates and to adhere to them.

and second with common sense reasoning:

> Furthermore, were such an argument upheld, then the whole public interest in utility regulation would become meaningless, since by making separate contracts with all or any of its individual customers, the utility and the customer could effectively bypass all or any relevant part of the public utility regulatory statutes and the regulations governing the public utility.

The same logical conclusion would flow from the argument that the legislature is unable to alter contracts in the wage and hour field. Employer and employee would be free to bypass any regulation by the simple expedient of making a contract about it. For that reason legislative enactments in this area are valid, notwithstanding by their terms, they apply to and affect antecedent contracts for the performance of services. 16A C.J.S. Constitutional Law § 349.

Whether plaintiffs have sought to argue that the legislature is prohibited by the due process clause of the Constitution or by Article 1, § 10 from interferring with vested rights of private employment contracts, the result has always been the same. -- No matter how the obligations or rights are denominated, imposed or insured with respect to wages and overtime compensation they are:

> . . . subject to change or abrogation, and are not subject to any of the juridical principles applicable to contractual rights or statutory rights. May v. General Motors Corp., 73 F. Supp. 878.

In Louisville and N.R. Co. v. Mottley, 219 U.S. 467, the court dealt with an act of Congress which retroactively struck down a contract made in settlement of a personal injury case and upheld Congress' power. In Norman v. Baltimore and O.R. Co., 294 U.S. 240 the U.S. Supreme Court noted that Congress has the power to retroactively strike down gold clauses in private contracts and that such power is not unconstitutional. In National Car Loading Corp. v. Phoenix-El Paso Express, 176 S.W.2d 564, the Supreme Court of Texas dealt with the Interstate Commerce Act, 49 U.S.C.A. § 1001 et seq., which wiped out any punishment or liability imposed upon freight forwarders who may have violated existing ICC tariff regulations and upheld its constitutionality in the face of identical arguments. In McNair v. Knott, 302 U.S. 369 the United States Supreme Court upheld the constitutionality of Congress' grant of retroactive validity to invalid pledges of securities by national banking associations.

In Moss v. Hawaiian Dredging Co., 187 F.2d 442 (9th Cir. 1951) the appellate court considered Public Law 393, popularly known as the Overtime-on-Overtime Act. The Act provided in substance that retroactive amendments would validate prior invalid or illegal contracts which were only invalid or illegal by virtue of wage and hour statutes. The argument was again made that such a retroactive enactment was void as it resulted in a deprivation

of property without due process of law in violation of the fifth amendment. The argument was again defeated. The plaintiffs based their right to recover on the following familiar arguments:

> 1. These, they say, were vested rights, contractual in nature.
>
> * * *
>
> 2. . . . became part and parcel of their employment contracts, and hence immune to retroactive legislation modifying those provisions.
>
> * * *
>
> 3. What is here sought, it is said, is no windfall result of a surprise decision . . .

The court resoundingly dealt with these arguments and again reaffirmed that prior decisions:

> . . , establish that if it may be said that private rights, contractual in nature, arose from the overtime provisions of the Fair Labor Standards Act, yet the character and quality of such rights are such that they must yield to the sovereign power to regulate commerce by legislation . . .

The court finally concluded that:

> There is nothing in law or in reason which forbade congress to give validity to these contracts retroactively, . . .

VI.

CONCLUSION

The constitutionality of a retroactive invalidation of a statutory right appears unassailable in light of the repeated

court opinions over the years. So long as the legislative action does not interfere with a written contract between individuals but deals purely with a statutory granted right, the fact that that right is considered a part of an employment contract will not affect the legislature's power. The legislature has a constitutional right to give and to take away what it has given and that right is not affected even if what it has given has by law become part of a contract. As stated by Chief Justice Hughes of the U.S. Supreme Court in Norman v. Baltimore and O. Ry. Co., 294 U.S. 240:

> Parties cannot remove their transactions from the reach of dominent constitutional power by making contracts about them.

The proposed remedy is constitutional.

MEMO
TO: Rep. Walt Furnace, Chairman, Labor & Commerce Committee; Committee Members
FROM: Joe Brewer, Counsel, Judiciary Com.
TOPIC: Supplementing testimony given today at L&C Com. Hearing
DATE: 5/18/'983

In my brief testimony this morning, I cited a case, "Chapman" and sait it was from Illinois. I was in error. It was in California.

Attached, then, is a copy of the case of Chapman v. Farr, 132 Cal. App. 132 (June, 1982). Case involved an amendment to the state constitution (by referendum) creating a certain exemption that applied retroactively and prevented the appellant from being found liable for usury.

Thus, it was constitutional, not statutory, but in getting to that point, the California court used language which probably is pertinent to the situation re: HB223. I have bracketed or underlined significant language on the appropriate pages. Hopefully, this may answer some questions some committee members had in mind.

132 Cal.App.3d 1021

[1021] Mildred H. CHAPMAN, a Conservatee, by Janette Eileen Chapman, her Conservator, Plaintiff, Cross-Defendant and Respondent,

v.

Colleen M. FARR, et al., Defendants, Cross-Complainants and Respondents,

Dominic Frisone, Larry Frisone and Giovanna Frisone, Defendants, Cross-Defendants and Appellants.

Civ. 48352.

Court of Appeal, First District, Division 1.

June 23, 1982.

Hearing Denied Sept. 15, 1982.

Appeal was taken from a judgment of the Superior Court, Santa Cruz County, Christopher C. Cottle, J., finding that loan was made at usurious rates. The Court of Appeal, Goff, J., assigned, held that: (1) amendment to constitutional section defining usury to exclude from its operation "any loans made or arranged by any person licensed as a real estate broker by the State of California and secured in whole or in part by liens on real property" is retroactive in its effect, and therefore loan made by licensed real estate broker and secured by real property was not usurious, and (2) where loan transaction was structured by licensed real estate broker as agent for his parents, the transaction was "arranged" by him and was therefore exempt from constitutional section defining usury under amendment.

Reversed.

1. Statutes ⇐267(2)

Unconditional repeal of special remedial statute without a savings clause stops all pending actions where repeal finds them; if final relief has not been granted before the repeal goes into effect it cannot be granted afterwards, even if a judgment has been entered and the cause is pending on appeal.

2. Usury ⇐7

Amendment to constitutional section defining usury to exclude from its operation "any loans made or arranged by any person licensed as a real estate broker by the State of California and secured in whole or in part by liens on real property" is retroactive in its effect, and therefore loan made by licensed real estate broker and secured by real property was not usurious. West's Ann.Const.Art. 15, § 1.

3. Statutes ⇐261

Questions of retroactivity only arise when a law "takes effect" after the date that a cause of action arose.

4. Usury ⇐34

Where loan transaction was structured by licensed real estate broker as agent for his parents, the transaction was "arranged" by him and was therefore exempt from constitutional section defining usury under amendment excluding from operation of that section any loans made or arranged by any person licensed as real estate broker and secured in whole or in part by liens on real property. West's Ann.Const.Art. 15, § 1.

LaCroix & Schumb, by Michael J. Matteucci, San Jose, for defendants, cross-defendants and appellants.

Perry E. Olsen, Watsonville, for defendant, cross-complainant and respondent Farr.

Dawson, Manning & Rose by Richard M. Manning, Scotts Valley, for plaintiff, cross-defendant and respondent Chapman.

[1021] GOFF, Associate Justice.* [1022]

The trial court awarded damages, injunctive and declaratory relief to plaintiffs and cross-complainants against the Frisones, defendants and cross-defendants, the appellants herein. It did so on the theory that the Frisones, through appellant Larry Fri-

* Assigned by the Chairperson of the Judicial Council

sone, loaned cross-complainants (the Farrs) $50,000 at usurious rates. Three months after judgment was entered below, the California constitutional section defining usury[1] was amended by referendum to exclude from its operation "any loans made or arranged by any person licensed as a real estate broker by the State of California and secured in whole or in part by liens on real property, ..."

The loan in question was secured by real property, and the court made a finding that Larry was a licensed real estate broker.

The decisive issue on this appeal is whether the constitutional amendment is retroactive in its effect. We conclude that it is and therefore reverse.

Orden v. Crawshaw Mortgage & Investment Co. (1980) 105 Cal.App.3d 141, 167 Cal.Rptr. 62,[2] appears to us to state the rule correctly: "The rule that statutes which repeal or modify usury laws are to be given retrospective effect to determine the scope of liability with respect to transactions entered into prior to such repeal or modification is an application of the well-established principle that no person nor the state has a vested right in an unenforced statutory penalty or forfeiture. (*Department of Social Welfare v. Wingo* (1946) 77 Cal.App.2d 316 [175 P.2d 262].) That rule is equally applicable to the instant case. The remedies previously provided for with respect to an allegedly usurious contract are in the nature of a penalty (*Penziner v. West American Finance Co.*, supra, 10 Cal.2d [160] at pp. 170–171 [74 P.2d 252]), and any recovery pursuant to article XV must be determined according to its present text .... [¶] Any cause of action for usury not reduced to judgment as of November 6, 1979, is governed by the provisions of article XV as it exists today, even if the loan at issue was made before November 6, 1979." (Id., at pp. 145–146, 167 Cal.Rptr. 62.)

[1] Although this language might be read as cutting off retrospective application of the amendment if the plaintiff has obtained judgment in the trial court, the case law has consistently held to the contrary. As the court stated in *Southern Service Co., Ltd. v. Los Angeles* (1940) 15 Cal.2d 1, 12, 97 P.2d 963: "'The unconditional repeal of a special remedial statute without a saving clause stops all pending actions where the repeal finds them. If final relief has not been granted before the repeal goes into effect it cannot be granted afterwards, even if a judgment has been entered and the cause is pending on appeal. The reviewing court must dispose of the case under the law in force when its decision is rendered.'"

[2] Most of the decisions applying this rule deal with criminal laws, but as Justice Tobriner noted in *Governing Board v. Mann* (1977) 18 Cal.3d 819, 830, 135 Cal.Rptr. 526, 558 P.2d 1: "[T]he reach of this common law rule has never been confined solely to criminal or quasi-criminal matters." (Fn. omitted.) One of the cases cited in *Mann* was *Wolf v. Pacific Southwest etc. Corp.*, (1937) 10 Cal.2d 183, 74 P.2d 263, dealing with usury.

Governing Board v. Mann, supra, 18 Cal.3d 819, 135 Cal.Rptr. 526, 558 P.2d 1, held that 1976 legislation barring governmental entities from imposing sanctions on persons convicted of possession of marijuana applied to proceedings to dismiss a tenured school teacher that began in 1971. *Southern Service Co., Ltd. v. Los Angeles*, supra, 15 Cal.2d 1, 97 P.2d 963, held that repeal of a statutory right to a refund of illegally collected taxes cut off all pending causes of action based on the statute. (Id., at p. 12, 97 S.Ct. 963.) Another analogous case is *Younger v. Superior Court* (1978) 21 Cal.3d 102, 110, 145 Cal.Rptr. 674, 577 P.2d 1014, holding that repeal of a statute authorizing persons to petition for destruction of the records of prior marijuana convictions eliminated the remedy where the case was on appeal at the time of repeal. The most recent decision applying this rule is *South*

1. Article XV, section 1.

2. This case appeared after all briefs in the case at bar had been filed and it has not been cited or discussed by the parties.

Coast Regional Com. v. Gordon (1978) 84 Cal.App.3d 612, 148 Cal.Rptr. 775. The court held that the South Coast Regional Commission could not collect attorney fees in an action filed in 1973 since the attorney-fee provision was eliminated in 1977, after the original judgment, but before final appellate review. The court synthesized the case law as follows: "Without a saving clause or statutory continuity, a party's rights and remedies under a statute may be enforced after repeal only where such rights have vested prior to repeal. (*People v. One 1953 Buick* (1962) 57 Cal.2d 358, 365–366 [19 Cal.Rptr. 488, 369 P.2d 16]; *Estate of Taylor* (1973) 33 Cal.App.3d 44, 49–50 [108 Cal.Rptr. 778].) A statutory remedy does not vest until final judgment, since '. . . it has been held in a long line of cases that the repeal of a statute creating a penalty, running to either an individual or the state, at any time before final judgment, extinguishes the right to recover the penalty. The same rule applies to remedial statutes unknown to the common law.' (*Lemon v. Los Angeles T. Ry. Co.* (1940) *supra*, 38 Cal.App.2d 659, 671 [102 P.2d 387].) '"The justification for this rule is that all statutory remedies are pursued with full realization that the Legislature may abolish the right to recover at any time."' (*Governing Board v. Mann* (1977) *supra*, 18 Cal.3d 819, 829 [135 Cal.Rptr. 526, 558 P.2d 1], quoting from *Callet v. Alioto* (1930) 210 Cal. 65, 67–68 [290 P. 438].) Patently, the right to recover attorneys fees is such a statutory right or remedy. (Code Civ.Proc., § 1021.) [2] A judgment does not become final so long as the action in which it is entered remains pending (*Pacific Gas & Elec. Co. v. Nakano* (1939) 12 Cal.2d 711, 714 [87 P.2d 700, 121 A.L.R. 417]; *Rich v. Siegel* (1970) 7 Cal.App.3d 465, 469 [86 Cal. Rptr. 665]), and an action remains pending until final determination on appeal. (*Pacific Gas & Elec. Co. v. Nakano, supra; Estate of Molera* (1972) 23 Cal.App.3d 993, 998 [100 Cal.Rptr. 696]; *In re Pine* (1977) 66 Cal. App.3d 593, 595 [136 Cal.Rptr. 718]; Code Civ.Proc., § 1049.) Even if we assume the Supreme Court decision in *South Coast Regional Com. v. Gordon, supra*, constituted a final judgment—which it did not—the decision was filed 6 January 1977, subsequent to the repeal of section 27428. Any statutory right the commission may have had to apply for attorneys fees under the 1972 Act never matured or vested prior to repeal." (Id., at pp. 618–619, 148 Cal.Rptr. 775.)

These rules appear to insulate appellants from liability in the instant case since the usury law now exempts loans made or arranged by real estate brokers and secured by a lien on real property.

[1] Respondents seek to avoid the retroactive effect of the constitutional amendment with several arguments.

Respondents argue that there is no evidence to support the trial court's finding that Larry Frisone was a licensed real estate broker. However, Larry Frisone testified that he had received a real estate license. The record also reveals that the Farrs' attorney presented Proposed Findings of Fact which included a finding identical to that made by the trial court. This is invited error,[3] if error it was.

[3, 4] Respondents also point out that Article XVIII, section 4 of the state Constitution, which was added on November 3, 1970, provides that: "A proposed amendment or revision shall be submitted to the electors and if approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail." However, this provision does not address the retroactivity question. Questions of retroactivity only arise when a law "takes effect" after the date that a cause of action arose. (See, e.g., *Robinson v. Pediatric Affiliates Medical Group, Inc.* (1979) 98 Cal.App.3d 907, 911–912, 159 Cal.Rptr. 791; *Younger v. Su-*

3. The proposed findings and conclusions were inferentially joined in by the Chapmans' counsel.

perior Court, supra, 21 Cal.3d 102, 109, 145 Cal.Rptr. 674, 577 P.2d 1014; *Orden v. Crawshaw Mortgage & Investment Co.*, supra, 109 Cal.App.3d 141, 144, 167 Cal.Rptr. 62.) Respondents also argue that Mr. Frisone was not acting in the capacity of a real estate broker in this case but rather as trustee for his pension plan and trust. However, the trial court found, as respondents strenuously argue elsewhere, that the transaction was structured by Larry Frisone *as agent* for his parents. (See discussion, *supra*.) The transaction was "arranged" by him and it was therefore exempt under the amended constitutional language.

Reversed.

ELKINGTON, P. J., and NEWSOM, J., concur.

133 Cal.App.3d 12

Steven J. GOLDFISHER, Petitioner and Cross-Defendant,

v.

SUPERIOR COURT OF the State of California, For the COUNTY OF LOS ANGELES, Respondent,

SHAPIRO, LAUFER, POSELL & CLOSE, a California Professional Corporation, Mitchell S. Shapiro, an individual, Richard E. Posell, an individual, Richard H. Close, an individual, Real Parties in Interest.

Civ. 63871.

Court of Appeal, Second District, Division 2.

June 23, 1982.

Hearing Denied Aug. 18, 1982.

Present attorney for clients petitioned for writ of mandamus to mandate Superior Court to vacate its order overruling his general demurrer to cross complaint of former attorney for clients filed against present attorney and to enter a judgment against former attorney. The Court of Appeal, Roth, P. J., held that public policy prohibited initiation by former attorney of the action seeking equitable indemnification from present attorney for any liability of former attorney for negligent creation of the situation which had engendered a preliminary injunction action against clients based on allegations that present attorney could have successfully defended the request for preliminary injunction had he been properly prepared, and that by reason of lack of defense to the issuance of the preliminary injunction and in other respects as to management of the action the damages which clients suffered which they claimed were caused by former attorney were generated by the professional negligence of present attorney in his management of the action.

Petition granted.

Indemnity ⇐13.1(2)

Public policy prohibited initiation by former attorney of clients of action seeking equitable indemnification from present attorney for clients for any liability of former attorney for negligent handling of situation which had engendered preliminary injunction action brought against clients based on allegation that present attorney could have successfully defended request for preliminary injunction had he been properly prepared and alleging that by reason of lack of defense to issuance of the preliminary injunction and in other respects as to management of such action damages which clients suffered which they claimed were caused by former attorney were generated by professional negligence of present attorney in his management of the action.

Steven J. Goldfisher, Toluca Lake, for petitioner and cross-defendant in pro per.

No appearance for respondent court.

CONSTITUTIONAL

(WHAT DID EMPLOYEES EXPECT - EMPLOYEES WERE NOT EXPECTED TO PAY ANYTHING BUT F.W.W.?

EMPLOYEES DID NOT KNOW ABOUT THE REGULATION.

(MR. ROLLO) GOOD FAITH CLAUSE

MICHAEL BISCOTT -- 1.) ADMINISTRATIVE PROCEDURES ACT

TONY

2.) 44.62.300

3.) OCT. 1979 - VIOLATE LAWS OVER TWO YEARS

4.) CLASS ACTION SUITS

(CLASS ACTION SUIT)
REASONABLE EFFORT

EXCUSE FOR VIOLATIONS

1.) WAGE AND HOUR ACT

2.) F.W.W.

3.) POTENTIAL VIOLATIONS UNDER

Chuck Becker
TERRY FLEGHER -

(Jow ECLUDED TO THE FACT THAT THERE WERE CLASS ACTION SUITS

DOW WILSON —

WHAT THE NORMAL PROCEDURE FOR SETTING UP A PUBLIC HEARING

(Jow SUGGESTED

DOW CHEMICAL -
(QUESTION SUBMITTED)

(U.S DEPARTMENT OF LABOR ALWAYS WITHDREW ACTION AGAINST DRESSER ATLAS)

PUBLISHED CODE ON REGULATIONS

1. DOWEL
2. OTIS ENGINEERING
3. DRESSER ATLAS INDUSTRIES
4. WROTE COMPANIES INVOLVED QUESTION

NATURE OF COMPLAINT
(RECORDS)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2720

April 5, 1983

Honorable Charlie Bussell
Chairman, Committee on Judiciary
House of Representatives
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

In response to your letter dated March 30, 1983, enclosed are copies of the following documents pertaining to the December 9, 1978 amendments to the Department's wage and hour regulations in 8 AAC 15.

Enclosure #1: Regulations as proposed on 8/21/78 including the notice of proposed changes.

Enclosure #2: Affidavit of notice of adoption of proposed regulation.

Enclosure #3: Affidavits of Publication from the Anchorage Daily News, Southeast Alaska Empire, and Fairbanks Daily News Miner.

Enclosure #4: Affidavit of oral hearing, and the hearing attendance roster indicating that no one appeared to testify.

Enclosure #5: Proposed regulations as submitted to the Department of Law on 10/9/78 for final review and filing by the Lt. Governor's office.

Enclosure #6: Regulations as filed by the Lt. Governor and the signed order of adoption.

Enclosure #7: Regulations in effect prior to the December 9, 1978 amendments.

GBLH

These enclosures include copies of the correspondence between the Departmentof Labor and Department of Law on these regulations.

If you have further questions concerning the promulgation of these regulations, please let me know.

Sincerely,

Jim Robison
Commissioner

Enclosures

PLEASE PRINT

TITLE 23

HEARING - PROPOSED REGULATIONS

FRIDAY, SEPTEMBER 15, 1978

NAME	ADDRESS	ORGANIZATION REPRESENTED	WILL YOU BE OFFERING TESTIMONY ORAL	WRITTEN	BOTH

1:30 pm opened

2:15 pm Closed

No attendance

Register 68

PERMANENT REGULATION

DEPARTMENT OF Labor DATE 11/22/78

~~BOARD/COMMISSION~~

REGULATION (S) 8 AAC 15 (Alaska wages & hours)

8 AAC 15.015-.070 repealed

Register 68 January 1979

Date regulation signed by lieutenant governor (or designee) 11/9/78
Date regulation effective 12/9/78
Date regulation sent to Book Publishing Company 11/27/78
Date regulation sent to Admin. Regulation Review Committee ✓

ATTACHMENTS (in order):

1. Department of Law Opinion . . . . . ✓
2. Order of Adoption (or Certification of Compliance) . . ✓
   Signature of Designated Official . . . . . ✓
3. Designee's Certificate (if applicable) . . . . . ✓
4. Original Regulation . . . . . ✓
5. Notice of Proposed Changes . . . . . ✓
6. Affidavit of Notice of Adoption . . . . . ✓
   - ✓ Oral Hearing/Written Input Anchorage
   - ✓ Notice to Incumbent Legislators
   - ✓ Notice to Interested Parties
   - ✓ Notice(s) of Publication in Newspaper(s)
     Papers: Anchorage Daily News, Fairbanks Daily News-Miner, SE Alaska Empire
7. Other: (Correspondence/Phone Conversations)

1-3-79 Talked w/ Bob Smathers & Art Peterson re. renumbering of Articles to conform w/ style & format of the Code. Agreed that the change in numbering as earlier determined by Art was correct. Mr. Smathers may print a small errata sheet to include w/ this printed regs.
2-2-79 Informed Lon Hanson of same (above).

TO BE DONE:

- ✓ Complete register designation on each page
- ✓ Complete history line following section
- ✓ Review statutory authority following section
- ✓ Return copy of signed adoption order to agency
  Sent 11/22/78 to Bill Spear.

Form 2 5/1/75; Rev. 9/8/75; 1/30/11

STATE
of ALASKA

MEMORANDUM

TO
William E. Spear
Deputy Commissioner
Alaska Department of Labor

DATE
November 8, 1978

FILE NO

TELEPHONE NO.

SUBJECT
Regulations re Alaska
wages & hours (8 AAC 15)
Our File: J-99-095-78

FROM
Avrum M. Gross
Attorney General

By:
Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

We have reviewed these regulations in accordance with AS 44.-62.060, and approve them for filing by the lieutenant governor. A duplicate original of this memorandum is being furnished the lieutenant governor, along with your regulations and related documents.

Under AS 44.62.125(b)(6), a few, very minor corrections have been made in this material, as shown on the attached copy.

AHP:md

cc: Ronald W. Lorensen
Assistant Attorney General

ORDER REPEALING AND ADOPTING REGULATIONS
OF THE DEPARTMENT OF LABOR

The attached twelve (12) pages of regulations, dealing with 8 AAC 15, Alaska Wages and Hours, are hereby adopted and certified to be correct copies of the regulations which the Department of Labor repeals and adopts, under authority vested by AS 23.10.085 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: 13 October 1978

Wm Spear
William E. Spear
Deputy Commissioner

Designee to
I, Avrum M. Gross, , Lieutenant Governor for the State of Alaska, certify that on November 9, 1978, at 10:20 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor's Designee

Effective December 9, 1978.)
Register 68, January 1979.)

STATE OF ALASKA
LIEUTENANT GOVERNOR
JUNEAU

CERTIFICATE

I, LOWELL THOMAS, JR., LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, as authorized by AS 44.19.050 designate Avrum M. Gross, Attorney General, as temporary custodian of the state seal and as the officer to perform the authenticating functions of the lieutenant governor during such time as I succeed to the office of governor, act as governor, am absent from the state, or am otherwise unavailable at the state capital to perform these functions.

In the absence of Attorney General Gross, I designate Bill Allen, Commissioner of Administration, to perform the functions stated above.

In the absence of Commissioner Allen, I designate Donald Harris, Commissioner of Transportation and Public Facilities, to perform the functions stated above.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Great Seal of the State of Alaska, at Juneau, the Capital, this Twentieth day of June, A.D. 19 78.

Donald Harris
LIEUTENANT GOVERNOR

STATE OF ALASKA

OFFICE OF LIEUTENANT GOVERNOR

DELEGATION OF AUTHORITY

IN ACCORDANCE WITH AS 44.17.010, THE AUTHORITY AND RESPONSIBILITY FOR ADOPTING REGULATIONS OF THE DEPARTMENT OF LABOR, UNDER THE ALASKA ADMINISTRATIVE PROCEDURE ACT, IS HEREBY DELEGATED TO WILLIAM E. SPEAR,

(NAME)

DEPUTY COMMISSIONER

(POSITION)

SIGNED: Edward N. Carlisle

COMMISSIONER

DEPARTMENT OF LABOR

SIGNED AND SWORN BEFORE ME THIS 23rd DAY OF March, 1978.

SIGNED: Mary Jean Smith

NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA

COMMISSION EXPIRES: 2/10/80

PLEASE RETURN TO THE OFFICE OF LIEUTENANT GOVERNOR
BY MARCH 31, 1978

TITLE 8. LABOR

PART 1. INDUSTRIAL WELFARE.

CHAPTER 15. ALASKA WAGES AND HOURS.

* Editor's Note: The articles contained in this chapter, secs. 10-70, [illegible] Exemptions, and succeeding [illegible]

Publisher. Please be sure that the chapter listing for Title 8 shows the changes in the Ch. 15 headings, made in 1974.

Section
10-70. Repealed

8 AAC 15.010 SUMMARY: ALASKA WAGE AND HOUR ACT. Repealed (11/ 4/74, Reg. 52)

8 AAC 15.015 EXEMPTIONS FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. Repealed (12/ 9/78, Reg. 68)

8 AAC 15.020 EXEMPTIONS FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. Repealed (12/ 9/78, Reg. 68)

8 AAC 15.030 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). Repealed (12/ 9/78, Reg. 68)

8 AAC 15.040 SMALL MINING OPERATIONS. Repealed (12/ 9/78, Reg. 68)

8 AAC 15.050 DEDUCTIONS FROM AN EMPLOYEE'S WAGES. Repealed (12/ 9/78, Reg. 68)

8 AAC 15.060 PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. Repealed (12/ 9/78, Reg. 68)

8 AAC 15.070 DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 - 23.10.150. Repealed (12/ 9/78, Reg. 68)

Article

1. Minimum Wages and Overtime (8 AAC 15.100 — 8 AAC 15.105)
2. Exemptions (8 AAC 15.120 — 8 AAC 15.145)
3. Deductions from Wages (8 AAC 15.160)
4. Procedures Relating to Violations, Investigations or Hearings (8 AAC 15.175 — 8 AAC 15.180)
5. General Provisions (8 AAC 15.900 — 8 AAC 15.910)

ARTICLE 1.

MINIMUM WAGES AND OVERTIME.

Section
100. Payment for overtime
105. Minimum wage

8 AAC 15.100 PAYMENT FOR OVERTIME. (a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. Employees need not actually be hired at an hourly rate; they may be paid by piece-rate, salary, commission or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.

(b) The regular rate referred to in (a) is that fixed hourly amount determined from an employee's hourly wage, salary, commission, piece-rate or other basis of compensation that he is to be paid for all contract hours up to the daily or weekly maximum, established under AS 23.10.060, that he is regularly employed to work during a work week.

(c) When computing an employee's hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then those periods need not be counted.

(d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29U.S.C. 207(f) as implemented in 29 C.F.R. 778-402-778.414);

(2) compensatory time off in place of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a work-week. (Eff. 12/1/78, Register 68)

Authority: AS 23.10.060
AS 23.10.085

8 AAC 15.105. MINIMUM WAGE. As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206(a)(1)) as the minimum wage generally applicable to employees subject to that Act.
(Eff. 12/9/78, Register 68)

Authority: AS 23.10.065
AS 23.10.085

ARTICLE 3.

EXEMPTIONS.

Section
120. Minimum wage exemption for handicapped persons
125. Minimum wage exemption for student learners
130. Exemption for searching for placer or hard rock minerals
135. Exemption for individuals under 18 who are part time employees
140. Determining the number of employees for purposes of AS 23.10.060(1)
145. Small mining operations

8 AAC 15.120. MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS. (a) An application to employ a person at less than the minimum wage established under AS 23.10.065 must be made either on a form provided by the department or by filing an application for a special certificate to employ a handicapped person (29.C.F.R. Part 525) with the Regional Director of the Wage and Hour Division, U.S. Department of Labor, 909 First Avenue, Seattle, Washington, 98104.

(b) An application filed with the department must set out the facts showing that the person's productive capacity to do the work he is to perform is impaired by physical or mental deficiency, age, or injury. A medical certificate will be required in all cases in which the handicap is not clearly obvious. The information in the application must be complete and must be certified by a responsible person who has knowledge of the facts.

(c) If the commissioner determines, from the information provided in the application, that the person would otherwise be deprived of employment opportunity, he will, in the exercise of his discretion, approve a wage rate lower than that established under AS 23.10.065. With the exception of very extreme cases where the person is so seriously impaired that he is unable to engage in competitive employment, that rate will not be less than 50 percent of the minimum wage established under AS 23.10.065.

(d) If an approval is issued under (c) of this section, it will specify the approved wage rate and the period for which it is effective. An application for renewal of an exemption must be made in the same manner as the original but must also include an evaluation of that person's productivity, comparing the degree of productivity between the initial application and the renewal.

(e) As a general rule, approval for payment of a wage lower than that established under AS 23.10.065 to persons with a temporary handicap will not be granted.

(f) Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of AS 23.10.070 and this section. (Eff. 12/9/78, Register 68)

Authority: AS 23.10.070(1)
AS 23.10.085

8 AAC 15.125 MINIMUM WAGE EXEMPTION FOR STUDENT LEARNERS. (a) An exemption for student learners from the minimum wage requirement of AS 23.10.065 is available when the student learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) An application for an exemption under (a) of this section must be made on a form provided by the department. The information required must be complete and must be signed by the employer and the student learner's school coordinator or principal. To qualify for the exemption, the employment must meet all the requirements set out in AS 23.10.325-23.10.370 and chapter 5 of this title relating to the employment of children.

(c) A wage rate authorized under this section will not be less than 75 percent of the minimum wage established under AS 23.10.065.

(d) The exemption from minimum wages for full-time students established by Sec. 14(b) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 214(b)) as implemented in 29 C.F.R. 519.1 - 519.2 does not apply to employment subject to the provisions of AS 23.10.065. (Eff. 12/9/78, Register 68)

Authority: AS 23.10.070(3)
AS 23.10.085

8 AAC 15.130 EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has ~~been~~ begun. (Eff. 12/9/78, Register 68)

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.135 EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. 12/9/78, Register 68)

Authority: AS 23.10.055(11)
AS 23.10.085

8 AAC 15.140 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part time employees will be counted regardless of the number of days or hours worked. (Eff. 12/9/78, Register 68)

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.145 SMALL MINING OPERATIONS. (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried on during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirements of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week. (Eff. 12/9/78, Register 68)

Authority: AS 23.10.060(5)
AS 23.10.085

ARTICLE 3.

DEDUCTIONS FROM WAGES.

Section
160. Deductions from an employee's wages.

8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. (a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee other than the cost of board and lodging. However, a written agreement for other deductions payable to the employer or person acting in the employer's behalf or interest, other than the cost of board or lodging, is not valid if it would have the effect of reducing an employee's wage rate below the statutory minimum wage or requiring an employee to reimburse the employer for any of the following:

(1) customer checks returned due to insufficient funds or any other reason ;

(2) non-payment for goods or services as a result of customers walking out or defaulting on credit;

(3) cash or cash register shortages for which the employee does not acknowledge responsibility;

(4) lost or stolen property or alleged theft by the employee for which the employee does not acknowledge responsibility;

(5) damage or breakage costs unless they are clearly due to willful conduct on the part of the employee, the responsibility for which has been acknowledged by the employee.

(b) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement whereby the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other third party and neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction.

(c) Written agreements for deductions from earnings are not required for any lawful deduction otherwise authorized or required by state or federal law or by order of a court of competent jurisdiction.

(d) An employer subject to AS 23.10.050-23.10.150 shall furnish each person employed by him who is not exempted from the coverage of those sections by AS 23.10.055 a statement of earnings and deductions for each pay period. The statement of earnings and deductions ~~shall~~ must contain the following information:

(1) employee's rate of pay;

(2) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;

(3) federal income tax deductions;

(4) federal insurance contribution act deductions;

(5) Alaska income tax deduction;

(6) Alaska school tax deduction;

(7) Alaska employment security act contributions;

(8) board and lodging costs;

(9) advances; and

(10) other authorized deductions. (Eff. 12/9/78, Register 68)

Authority: AS 23.10.085

ARTICLE 5.

PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS, OR HEARINGS.

Section
175. Assignment of claims
180. Investigations, conference and persuasion

8 AAC 15.175. ASSIGNMENT OF CLAIMS. (a) A person who believes that he has not been paid wages due him under AS 23.10.050 - 23.10.150 may assign his claim to the department for collection.

(b) The department will not accept an assignment of a claim under AS 23.10.050 - 23.10.150 in excess of $5,000, excluding liquidated damages. (Eff. 12/9/78, Register 68)

Authority: AS 23.10.085
AS 23.10.110(b)

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION. (a) The wage and hour division will investigate potential violations of AS 23.10.050-23.10.150 on its own motion or on the assignment to it of a claim under sec. 175 of this chapter.

(b) If, after investigation, the division finds that probable cause exists for believing that a violation of AS 23.10.050 - 23.10.150 has occurred, it will attempt to correct the unlawful practice by conference and persuasion as follows:

(1) the division will provide the employer believed to have violated AS 23.10.050 - 23.10.150 with a copy of the assignment or a description of the alleged violation and inform him of the results of its investigation; and

(2) the division will schedule an informal conference with the employer to discuss the matter and attempt to eliminate the alleged violations.

(c) If the informal conference succeeds in correcting the alleged violation, no further action will be taken by the division against the employer.

(d) If an alleged violation is not rectified by the informal conference or if the employer fails to attend the conference without good cause shown, the director may, at his discretion;

(1) conduct a further investigation into the matter;

(2) enforce the claim through initiation of an adjudicative hearing under provisions of the Administrative Procedures Act (AS 44.62);

(3) enforce the claim through filing of an action in a court of competent jurisdiction.

(e) If the director determines under (d)(1) of this section that a further investigation into the matter should be conducted, he may provide that it be carried out by initiation of an investigative proceeding conducted in accordance with secs. 10 through 30 of chapter 25 of this title. (Eff. 12/9/78, Register 68)

Authority: AS 23.10.080
AS 23.10.085
AS 23.10.090
AS 23.10.110

ARTICLE 5.

GENERAL PROVISIONS

Section
900~~195~~. Place of employment for purposes of recordkeeping
910~~200~~. Definitions

8 AAC 15.900~~195~~. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORDKEEPING. For purposes of AS 23.10.100, "the place where an employee is employed" means a central office of the employer located within the state. However, the employer may keep duplicate records at the sites or premises where the work is performed. (Eff. 12/9/78, Register 68)

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15.910. DEFINITIONS. In this chapter and in AS 23.10.050 - 23.10.150, unless the context requires otherwise:

(1) "administrative employee" means an employee;

(A) whose primary duty consists of work directly related to management policies or supervising the general business operations of his employer;

(B) who customarily and regularly exercises discretion and independent judgment;

(C) who performs his work under only general supervision;

(D) who is paid on a salary or fee basis;

(E) who regularly and directly assists a proprietor or an exempt executive employee of the employer; and

(F) who performs work along specialized or technical lines requiring special training, experience or knowledge and does not devote more than 20 percent of his weekly hours to activities which are not described in this paragraph or paragraphs (7) or (11) of this section;

(2) "casual employee," as used in AS 23.10.065(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer;

(3) "commissioner" means the commissioner of labor;

(4) "department" means the Alaska Department of Labor;

(5) "director" means the director of the wage and hour division of the department, or his designee;

(6) "domestic service in or about a private home" as used in AS 23.10.055(4), means a person employed in or about a private home of a person by whom he is employed and who performs such services or activities as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a launderess, a caretaker, a handyman, a gardener, a footman, a groom, or a chauffeur of automobiles for family use;

(7) "executive employee" means an employee:

(A) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department, or subdivision of the enterprise;

(B) who customarily and regularly directs the work of two or more other employees;

(C) who has the authority to hire or fire or effect any other change of status of other employees or whose suggestions or recommendations regarding these kinds of changes are given particular weight;

(D) who customarily and regularly exercises discretionary authority;

(E) who does not devote more than 20 percent of his weekly hours to activities which are not directly and closely related to the work described in this paragraph or paragraphs (1) or (11) of this section; and

(F) who is compensated on a salary basis;

(8) "nonprofit" as used in AS 23.10.055(6), means an organization no part of the income or profit of which is distributable to its members, directors, or officers and whose status has been determined by the U.S. Internal Revenue Service as nonprofit;

(9) "on call" means time that an employee is required to remain on call on the employer's premises or other place of employment or so close to them that he cannot use the time effectively for his own purposes, but does not include the time an employee is not required to remain on or near his employer's premises or other place of employment but is merely required to leave word at his home or with the employer where he may be reached;

(10) "outside salesman" means a person who is employed for the purpose of making sales, contracts for sales, consignments, or shipments for sale or obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (12) of this section do not exceed 20 percent of the hours worked in the workweek;

(11) "professional" means an employee, except for the classifications of registered nurse and licensed practical nurse,

(A) whose primary duty is:

(i) to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(ii) to perform work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(iii) to teach, tutor, instruct, or lecture in the activity of imparting knowledge, and who is employed and engaged in this activity as a teacher certified or recognized as such in a school or other educational establishment or institution; and

(B) whose work:

(i) requires the consistent exercise of discretion and judgment in its performance;

(ii) is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized on a time basis; and

(iii) is compensated on a salary or fee basis;

(12) "salesman employed on a straight commission basis" means a person who is regularly employed on the business premise of his employer and is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments, or shipments for sale or in obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (10) of this section do not exceed 20 percent of the hours worked in the workweek;

11

(13) "standby or waiting time" means time that an employee is required to be at or near his post or place of employment and is required to wait for work or an assignment, whether nor not because of shutdown or repair, and during which he cannot use the time effectively for his own purposes;

(14) "supervisory capacity" means those primary duties performed, except for the classifications of registered nurse and licensed practical nurse, by an employee who is employed solely for the purpose of regularly assigning and directing the activities of other employees, and is responsible for results of the work performed, and who does not perform duties regularly performed by the employees supervised, except for brief periods of time not to exceed 20 percent of the hours worked in the workweek; For the purpose of AS 23.10.060, it does not apply to any employee required by the employer to perform ~~such~~ these activities on an intermittent or substitute basis during the course of his employment;

(15) "workweek" means a fixed and regularly recurring period of 168 hours, i.e. seven consecutive 24 hour periods. It may begin on any day of the week and need not coincide with the calendar week; An individual employee's workweek is the statutory or contract number of hours that he is to regularly work during that period; The workweek may not be artificially adjusted for the purpose of avoiding the payment of overtime, however the workweek may be changed for any other purpose in the manner provided in AS 23.05.160. (Eff. 12/9/78, Register 68)

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085

NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050 - AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.

Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P. O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/21/78

Wm. Spear.

William E. Spear
Deputy Commissioner
Department of Labor

To be published August 30, 31 and September 1. 1978.

STATE OF ALASKA)
) SS.
FIRST JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF ADOPTION OF REGULATION

I, E.T. "Lee" Leland, W/H Investigator III, of the Department of Labor, being sworn, depose and state the following:

As required by AS 44.62.190, notice of the proposed adoption of 8 AAC 15.100-200 has been given by

(1) being published in a newspaper or trade publication

(2) being mailed to interested persons,

(3) being mailed or delivered to appropriate state officials,

(4) being furnished to the Department of Law,

(5) being furnished to incumbent state legislators.

Date: 10-3-78
Juneau, Alaska

E.T. Lee Leland
E.T. "Lee" Leland

SUBSCRIBED AND SWORN TO before me this 3rd day of October, 197___.

James J. O'Brien
Notary Public in and for Alaska

My Commission Expires: Oct 3, 78

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

AFFIDAVIT OF ORAL HEARING

I, Don Wilson, W/H Investigator II of the Department of Labor, being sworn depose and state the following:

On September 15, 1978 at 1:30 p.m., in the Division of Aviation Conference Room, 4111 Aviation Avenue, Anchorage, Alaska, I presided over a public hearing held in accordance with AS 44.62.210 for the purpose of taking testimony in connection with the adoption of 8 AAC 15.100-200.

Date: September 15, 1978
Anchorage, Alaska

Donald R. Wilson

SUBSCRIBED AND SWORN TO before me this 15th day of September, 1978.

Sherry A. Strahl
NOTARY PUBLIC IN AND FOR ALASKA

My Commission Expires: 4-5-81

ADVERTISING ORDER

NOTICE TO PUBLISHER

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO. CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

DEPT. NO.	A.O. NO.
AO- 07	2595

PUBLISHER

Anchorage Daily News
P.O. Box 40
Anchorage, Alaska 99501

VENDOR NO. ADN 501

DATE OF A.O. August 21, 1978

DATES ADVERTISEMENT REQUIRED:
August 30, 31 and September 1, 1988

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.

FROM

Department of Labor
Wage and Hour Division
P.O. Box 630
Juneau, Alaska 99011

BILLING ADDRESS *Alaska Department of Labor
Administrative Services
Fiscal Section
P.O. Box 1149
Juneau, Alaska 99811

AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska } ss
Third DIVISION.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Nathalia M. Chevalier WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Legal Clerk OF THE ANCHORAGE NEWS PUBLISHED AT Anchorage IN SAID DIVISION Third AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30 DAY OF August 1978 AND THEREAFTER FOR 3 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1 DAY OF Sept. 1978 AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

3x 6½ inches $81.90

Nathalia M. Chevalier

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 1 DAY OF Sept 78.

Patricia Lundsay

NOTARY PUBLIC FOR STATE OF Alaska
MY COMMISSION EXPIRES 5/1/82

NOTICE OF PROPOSED CHANGE IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050 — AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.
Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.
Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.
Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.
Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.
Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock, on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date: 8/21/78

/s/ William E. Spear
Deputy Commissioner
Department of Labor

Pub: Aug. 30, 31, Sept. 1, 1978

L79168

REMINDER—

ATTACH INVOICES AND PROOF OF PUBLICATION.

AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA
STATE OF ALASKA
FOURTH DISTRICT

} ss.

Legal 13,544

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

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Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/21/78

William E. Spear
Deputy Commissioner
Department of Labor

PUBLISH: August 30, 31, September 1, 1978

Before me, the undersigned, a notary public, this day personally appeared FRANCES PFEIFFER, who, being first duly sworn, according to law, says that he/she is an Advertising Clerk of the Fairbanks Daily News-Miner, a newspaper published at Fairbanks, in said Fourth District and State, and that the advertisement, of which the annexed is a true copy, was published in said paper on the following day(s),

8/30/78	8/31/78
9/01/78	

, and that the rate charged thereon is not in excess of the rate charged private individuals, with the usual discounts.

Frances Pfeiffer

Subscribed and sworn to before me this 30 TH day of SEPTEMBER, 1978

Notary Public in and for the State of Alaska.

My commission expires APRIL 10, 1981

CUSNR. 11592 LEGAL NO. 13544-0

ADVERTISING ORDER

NOTICE TO PUBLISHER

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO. CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

2. PUBLISHER

DEPT. NO.	A.O. NO.
AO- 07	2595

PUBLISHER:
Southeast Alaska Empire
235 2nd Street
Juneau, Alaska 99801

VENDOR NO.: SAE 734

DATE OF A.O.: August 21, 1978

DATES ADVERTISEMENT REQUIRED:
August 30, 31 and September 1, 1978

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN

FROM:
Department of Labor
Wage and Hour Division
P.O. Box 630
Juneau, Alaska 99811

BILLING ADDRESS:
Alaska Department of Labor
Administrative Services
Fiscal Section
P.O. Box 1149
Juneau, Alaska 99811

AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska } ss
DIVISION.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Jeff A. Wilson WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Gen. Manager OF S.E. Alaska Empire PUBLISHED AT Juneau IN SAID DIVISION AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30th DAY OF August 1978, AND THEREAFTER FOR 2 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1st DAY OF September 1978, AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

Jeff A. Wilson

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 25th DAY OF September 19 78

Rosemary J. Thurman

NOTARY PUBLIC FOR STATE OF
COMMISSION EXPIRES My Commission Expires September 14, 1980

—NDER—
—ES AND PROOF OF PUBLICATION.

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.160, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

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Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/31/78

William E. Spear
Deputy Commissioner
Department of Labor

Publish: Aug. 30, 31, Sept. 1, 1978
800-82

Good afternoon Mr. Chairman, Committee members, and guests. My name is John Martin. I am the Area Manager for Dresser Atlas, a division of Dresser Industries. I have resided and have been registered as an Alaska citizen for the past six years.

I am here today, in that I strongly believe that a 1978 Alaska Department of Labor regulation prohibiting the use of the fluctuating work week pay plan has created an enormous managerial and employee compensation problem that is not conducive to a healthy business climate. This regulation has created a potentially disastrous unjust economic impact on my firm and others operating in this state.

Dresser Atlas employs the fluctuating work week plan in all of the United States where we operate. It is proven to be the best pay plan suitable to the oil and gas service business for both the employee and employer. Dresser Atlas' largest Alaskan core of operation is on the North Slope. Our employees work one week on duty and one week off. During the week on, our employees may be dispatched to a remote location where they may remain on standby waiting in a camp, sleeping, eating or relaxing for hours before they are actually called for to perform the well logging or perforating services. Often the direct true productive working time on the job is minimal compared to the unproductive waiting time. The nature of the oil and gas service business makes work hours next to impossible to predict. The

unpredictability of the Arctic weather and normal drilling problems creates actual job timing merely guess work. This inherent industry problem is fully appreciated by all that have knowledge of the business.

The fluctuating work week system lends itself perfectly to this work environment. First of all, it guarantees the employees a base steady income, even when they are off duty at their homes. Our average Senior Operator was guaranteed $530.00 per week in 1981 whether they were off duty or on duty. This enabled them to maintain standard income levels even when they were off work whether it be due to their days off or low activity periods which are inherent to our business. When they were on the job, they received a guaranteed 16 hours per day, C.O.L.A., isolated location allowance and job bonuses. In 1981, our average Operator made $60,678.00 and a Senior Operator made $67,829.00. Please keep in mind this is unskilled labor, most of which is hired in Alaska. They are also making over double what their Lower 48 counterparts make and have much more personal time off. There was also never a complaint about the fluctuating work week system and each employee was well versed on computation of his earnings.

The unpredictable nature of hours and remoteness makes it virtually impossible to hire additional personnel to spread out the total hours over more employees. As a businessman, what would you think about changing out your employees every eight

hours when the shift coming in had been sleeping in a camp for their eight hours of work? And what about the high cost of flying the personnel back and forth every eight hours and the safety implications of flying in Alaska, frankly, it is totally unacceptable; both economically and from a safety standpoint.

Through some infinite wisdom, the Alaska Department of Labor determined it should abolish the fluctuating work week system. Dresser Atlas was not asked, or any other company to my knowledge, our opinion of the use of the fluctuating work week system in determining why it should be banned. It seems incredible to me, how one state agency could make a judgement on the validity of a pay plan that is acceptable in the other forty-nine states and approved by the Federal Government. Such a gross adjustment from the normal accepted and proven way of doing things in the United States would appear to me to be a responsibility of the state legislature.

To make matters worse, the Alaska Department of Labor did not notify our company or any other company, to my knowledge, of the fluctuating work week abolishment. Dresser Atlas management and corporate management has absolutely no record or knowledge of any correspondence either written or oral from the Alaska Department of Labor informing us of such a drastic change in wage administration. Attorneys on several occasions have formally requested that the Alaska Department of Labor furnish correspondence records depicting the

Department's notices before and after the regulation. The only correspondence discovered was a short hearing notice published in the Anchorage Daily News on August 30, 31 and September 1 of 1978. It is also incredible that the words fluctuating work week were not mentioned in the small print common to public hearing notices.

This entire matter did not come to Dresser's attention until the Department of Labor filed a $4,000 suit against Dresser Swaco in 1979 for an employee who was paid under the fluctuating work week plan. Dresser chose to challenge the Department of Labor's suit regarding the validity of the regulation. When losing in the State Supreme Court, Dresser immediately had no choice but to bow down and submit to the Alaska Department of Labor's regulation prohibiting the use of the fluctuating work week pay plan. We changed pay plans seven weeks after the State Supreme Court ruling. Within one month after changing pay plans, we were served a summons in the form of a class action lawsuit. Within a very few months, four other companies were served class action suits for past use of the fluctuating work week plan. These suits are all being handled by one law firm. Two of these suits alone called for judgements in excess of thirty five (35) million dollars!

An Alaska Department of Labor spokesman has estimated that there may be up to 90 companies affected with an excess of 100 million dollars in liability.

H.B. 223 would prohibit retroactive recovery by employees who were paid under the fluctuating work week system during the period the regulatory prohibition was being appealed in the courts.

I encourage you to strongly consider the possible consequences if H.B. 223 does not pass. It would create a definite windfall profit for many past and present employees. Definite windfall, because facts prove these employees were paid fair and equitable wages, which were fully agreed upon and expected by our employees. Who else may profit? One law firm! What is 33.3% of 100 million dollars?

I cannot say I enjoy being here today. I have a business to run as you do a state government. Please keep in mind that my firm and many others have a lot to lose on this issue and the opposition has only to gain. To conclude, I must add that it is totally ironic that in the State of Alaska under the fluctuating work week plan, Dresser had the lowest turnover rate of operators in all of the United States. But yet it is the only state where this fair and just pay plan has been banned and consequently our business stands in financial jeopardy.

I feel your fair and moral judgement will lead you to support H.B. 223.

Thank you for this opportunity to testify.

HB 236

Alaska State Legislature

REPRESENTATIVE
BARBARA LACHER
P.O. BOX 478
PALMER, ALASKA 99645
(907) 376-4215

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4894

House of Representatives

TO: Representative Walt Furnace

FROM: Representative Barbara Lacher

SUBJECT: HB 236

DATE: March 21, 1983

Unlike many other states, Alaska does not have a legal definition of "trade or commerce" which includes real property. Without the needed definition and clear legislative direction, the Alaska courts have declined to apply the existing Fair Trade and Commerce Statutes to real property transactions, particularly involving sales in subdivisions.

There are clear cases of fraud involving real property transactions in the state that the Department of Law has not prosecuted because of the absence of legislative direction. The materials you have been provided describe in detail the type of situations that this legislation will remedy.

Connie Cipe, Chief of the State Consumer Protection Division, Department of Law, and the Mat-Su Borough attorney, both of whom have been involved in trying to assist people who have been victims of fraud or misrepresentation, drafted the legislation.

I'm sure you will find HB 236 to be needed legislation and that enactment will be of major benefit to purchasers of property in subdivisions.

Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-3248

BOROUGH ATTORNEY'S OFFICE

February 8, 1983

The Honorable Barbara Lacher
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Barbara:

The recent Supreme Court decision of Brown v.State of Alaska, Opinion No. 2591 (December 3, 1982) effectively limits the Unfair Trade Practices and Consumer Protection Act by excluding real estate development transactions.

The Brown case involved alleged fraudulent misrepresentations to purchasers of lots in Windsong Subdivision in the Matanuska-Susitna Borough, that flooding possibilities were remote and that flood and mortgage insurance was available. Purchasers were given the second page of the Windsong Subdivision plat, but they never received the first page, which had a flood warning notation placed on it by the Platting Board. Although the Army Corps of Engineers concluded that the subdivision was in a high-hazard area, the developer represented that experts, including the Corps, had concluded the possibility of flooding was remote.

The Supreme Court ruled that the scope of the Unfair Trade Practices Act did not include the sale of real property. The decision was based on statutory interpretation. The Court noted that, unlike certain other states, Alaska did not have a definition of "trade or commerce" which includes real property. It noted that none of the list of prohibited acts in A.S. 45.50.471 mentions real property. Without clear legislative direction, the Court declined to apply the Act to real property transaction.

This does not entirely eliminate remedies for a purchaser of a lot based on fraudulent misrepresentations. The Uniform Land Sales Practices Act, A.S. 34.55.004--34.55.046 provides for individual relief. However, in the Brown case, the Court found that the State could not sue the developer directly for fraud, but had to bring suit as representative of defrauded consumers, "in the nature of a class action." This requires costly and time-consuming steps to assure individual notices to all consumers, who then may be treated as parties in the lawsuit.

Common law fraud is also a basis for suit. However, this does not provide for the clear authority of the Attorney General to prosecute fraudulent land developers and obtain injunctive relief in the manner provided by the Unfair Trade Practices Act.

The result of the Brown decision may be to eliminate any easy remedy to a homeowner who purchases a home based on knowing, fraudulent misrepresentations. The Consumer Protection Division of the Department of Law has declined to pursue a recent case in this Borough involving possible fraud in the sale of homes to consumers in this Borough. Although sympathetic, that office indicated that the problems created by the Brown decision would make it inadvisable to use its scarce legal resources on such a problem.

The attached bill has been drafted to rectify this problem. It includes a definition for "trade or commerce" similar to that in the Massachusetts consumer act of similar nature. The bill was prepared after consultation with Connie Sipe at the State Consumer Protection Division, who provided valuable comment. The bill, as proposed, would provide the legislative direction which the Supreme Court has found to be absent.

I would be happy to discuss this matter further at your convenience.

Sincerely,

Steven H. Morrissett
Borough Attorney

er

Sec. 45.50.450. Violations constituting misdemeanor. Every person, in addition to the other penalties provided in AS 45.50.330 — 45.50.460, who violates or who procures, or aids or abets in the violating of AS 45.50.330 — 45.50.460, or who conspires to make ineffectual a valid order or decision of a court in the enforcement of AS 45.50.330 — 45.50.460, or who procures, conspires with, or aids or abets any person in his failure to obey the provisions of AS 45.50.330 — 45.50.460, or to make ineffectual an order of a court in connection with the enforcement of AS 45.50.330 — 45.50.460 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $500, or by imprisonment in jail for not more than six months, or by both. (§ 35-2-100 ACLA 1949)

Sec. 45.50.460. Definition of sale for single use. The owner, holder, or person having control of a copyrighted work is considered to sell and part with the right to further restrict the use of the copyrighted work if (1) he sells the right to the single use of it; (2) its sole value is in its use for public performance for profit; and (3) he receives consideration for it, either inside or outside the state. (§ 35-2-92 ACLA 1949)

Article 4. Unfair Trade Practices and Consumer Protection.

Repeal of former article. — Section 1, ch. 246, SLA 1970, repealed former Article 4, entitled "False or Misleading Advertising." The former article consisted of §§ 45.50.470 — 45.50.510 and derived from ch. 86, SLA 1961.

Constitutionality. — Absent a history or strong likelihood of uneven application, this article cannot be said to be unconstitutionally vague. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Any defects in the constitutional sufficiency of the warning provided by this article is cured by authoritative administrative interpretations of the Federal Trade Commission which clarify obscurities or resolve ambiguities. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Liberal construction. — The provisions of this article should not be strictly construed, for it is basic that remedial civil statutes are to be accorded a liberal construction. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

This article as applied, is not a penal statute. State v. O'Neill Investigations,

Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

This article embraces independent debt collection practices. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

The exemption clause of AS 45.50.481(1) does not withdraw the activities of independent debt collection agencies from the scope of the Unfair Trade Practices and Consumer Protection Act. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Sec. 45.50.471. Unlawful acts and practices. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(1) fraudulently conveying or transferring goods or services by representing them to be those of another;

(2) falsely representing or designating the geographic origin of goods or services;

(3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;

(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(5) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;

(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(7) disparaging the goods, services, or business of another by false or misleading representation of fact;

(8) advertising goods or services with intent not to sell them as advertised;

(9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity;

(10) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;

(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or

omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting out the name and address of the seller and the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

(14) representing that an agreement confers or involves rights, remedies or obligations which it does not confer or involve, or which are prohibited by law;

(15) knowingly making false or misleading statements concerning the need for parts, replacement, or repair service;

(16) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(17) basing a charge for repair in whole or in part on a guaranty or warranty rather than on the actual value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the guaranty or warranty, if any;

(18) disconnecting, turning back or resetting the odometer of a vehicle to reduce the number of miles indicated;

(19) using a chain referral sales plan by inducing or attempting to induce a consumer to enter into a contract by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the consumer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of the same or related goods;

(20) selling or offering to sell a right of participation in a chain distributor scheme;

(21) selling, falsely representing or advertising meat, fish or poultry which has been frozen as fresh food;

(22) failing to comply with AS 45.02.350;

(23) failing to comply with AS 45.45.130 — 45.45.240;

(24) counseling, consulting or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a

provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of his estate; upon demand by the person on whose behalf the arrangements are made, all money or property in the trust including accrued interest, shall be paid to him; this paragraph does not prohibit the charging of a separate fee for consultation, counseling or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

(25) failing to comply with the terms of the Alaska Gasoline Products Leasing Act (AS 45.50.800 — 45.50.850).

(c) The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.

(d) Repealed by § 21 ch 166 SLA 1978. (§ 2 ch 246 SLA 1970; am § 1 ch 53 SLA 1974; am § 1 ch 138 SLA 1974; am § 1 ch 183 SLA 1975; am § 2 ch 146 SLA 1976; am § 3 ch 197 SLA 1976; am § 3 ch 234 SLA 1976; am § 21 ch 166 SLA 1978)

Effect of amendments. — The first 1976 amendment added paragraph (23) of subsection (b).

The second 1976 amendment added paragraph (24) of subsection (b).

The third 1976 amendment added paragraph (25) of subsection (b).

The 1978 amendment repealed subsection (d), which read "When a person is tried under the criminal provisions of this chapter for engaging in an unlawful act or practice under this chapter, it must be shown that he acted knowingly and with intent."

Editor's note. — The paragraph added to subsection (b) by § 3, ch. 197, SLA 1976, was designated paragraph (23) in the act. The paragraph added to subsection (b) by § 3, ch. 234, SLA 1976, was designated paragraph (22) in the act.

Section 1, ch. 234, SLA 1976 provides: "Findings of the legislature. The legislature finds and declares that since the distribution and sales, through lease agreements, of gasoline in the state vitally affect the economy of the state, the public interest, welfare, and transportation, it is necessary to define the relationships and responsibilities of the parties to certain agreements pertaining to leasing."

Legislative history report. — For report on ch. 246, SLA 1970 (FCCS 2d HCS CSSB 252), see 1970 House Journal, p. 1546; 1970 House Journal Supplement No. 10; 1970 Senate Journal, p. 1295.

This statute did not chill constitutionally protected speech, where the speech in question involved communications regarding alleged debts and thus fell within the rubric of commercial speech, which enjoys a lesser first amendment protection than noncommercial speech. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Subsection (a) not vague. — The words of subsection (a) of this section have a "well-defined" meaning in the area of trade regulation and are therefore not vague. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Two elements must be proved to establish a prima facie case of unfair or deceptive acts or practices under the act: (1) that the defendant is engaged in trade or commerce; and (2) that in the conduct of trade or commerce, an unfair act or practice has occurred. State v. O'Neill Investigations, Inc., Sup. Ct. Op.

No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

When act or practice is deceptive or unfair. — An act or practice is deceptive or unfair if it has the capacity or tendency to deceive. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Actual injury as a result of the deception is not required. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Intent to deceive need not be proved. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Testimony of consumers that they were misled is sufficient to sustain a prima facie case of unfair and deceptive practices. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

An act or practice need not be deceptive to be unfair. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Unfairness will be determined by a variety of factors, including: (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise — whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers or competitors or other businessmen. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Deceptive and unfair acts by collection agencies. — Threats by debt collection agencies of imminent legal action when no such action is actually contemplated is a deceptive act or practice. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Harassment of debtors by telephone calls to them, their relatives or their employers constitutes an unfair act or practice. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

A misrepresentation by a debt collection agency that failure to pay an alleged debt will result in impairment of one's credit rating has been held to be an unfair and deceptive act or practice. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

The use by collection agencies of simulated legal documents or collection forms labelled "Final Demand Before Legal Action" when no legal action is in fact taken constitutes a deceptive act. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Quoted in Swenson Trucking & Excavating, Inc. v. Truckweld Equip. Co., Sup. Ct. Op. No. 2008 (File No. 4268), 604 P.2d 1113 (1980).

Am. Jur. 2d, ALR and C.J.S. references. — 32 Am. Jur. 2d, False Pretenses, § 1 et seq.; 37 Am. Jur. 2d, Fraud and Deceit, § 41 et seq.

Validity, construction, and effect of state legislation regulating or controlling "bait-and-switch" or "disparagement" advertising or sales practices, 50 ALR3d 1008.

Scope and exemptions of state deceptive trade practice and consumer protection acts, 89 ALR3d 399.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

35 C.J.S. False Pretenses § 14; 37 C.J.S. Fraud § 154; 37 C.J.S. Fraudulent Conveyances § 469.

Sec. 45.50.472. Junk telephone calls. (a) Making a junk telephone call without the prior written consent of the person called is unlawful.

(b) In this section "junk telephone call" means a telephone call made for the purpose of advertising through the use of a recorded advertisement.

(c) The provisions of AS 45.50.481 — 45.50.561 apply to this section. (§ 1 ch 17 SLA 1978)

Sec. 45.50.481. Exemptions. Nothing in AS 45.50.471 — 45.50.561 applies to

(1) an act or transaction regulated under laws administered by the state, by any regulatory board or commission, or officer acting under statutory authority of the state or of the United States, unless the law regulating the act or transaction does not prohibit the practices declared unlawful in AS 45.50.471;

(2) an act done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement or did not have a direct financial interest in the sale or distribution of the advertised product or service;

(3) an act or transaction regulated under AS 21.36 or AS 06.05 or any regulations promulgated under authority of those chapters. (§ 2 ch 246 SLA 1970: am §§ 2, 3 ch 53 SLA 1974)

Mere regulation under a separate and distinct statutory scheme satisfies only one prong of paragraph (1) of this section; unfair acts and practices are exempt from the purview of the act only where the business is both regulated elsewhere and the unfair acts and practices are therein prohibited. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

This article embraces independent debt collection practices. — See note under this catchline following the article analysis.

ALR references. — Scope and exemptions of state deceptive trade practice and consumer protection acts, 89 ALR3d 399.

Sec. 45.50.491. Regulations. The attorney general, in accordance with the Administrative Procedure Act (AS 44.62), may adopt regulations interpreting and forms necessary for administering the provisions of AS 45.50.471 — 45.50.561. (§ 2 ch 246 SLA 1970; am § 4 ch 53 SLA 1974)

Sec. 45.50.495. Investigative power of attorney general. (a) If the attorney general has cause to believe that a person has engaged in, is engaging in or is about to engage in, a deceptive trade practice under AS 45.50.471, he may

(1) request the person to file a statement or report in writing, under oath, on forms prescribed by him, setting out all facts and circumstances concerning the sale or advertisement of property by the person, and other information considered necessary;

(2) examine under oath any person in connection with the sale or advertisement of property;

(3) examine property or sample of the property, record, book, document, account or paper that he considers necessary;

(4) make true copies of records, books, documents, accounts, or papers examined under (3) of this subsection which may be offered in evidence in place of the originals in actions brought under AS 45.50.471 — 45.50.561; and

(5) under an order of the superior court, impound samples of property which are material to his investigation and retain the sample until proceedings undertaken under AS 45.50.471 — 45.50.561 are completed.

(b) The attorney general, in addition to other powers conferred on him by this section, may issue subpoenas to require the attendance of witnesses or the production of documents or other physical evidence, administer oaths, and conduct hearings to aid an investigation or inquiry. Service of an order or subpoena shall be made in the same manner as a summons in a civil action in the superior court. (§ 5 ch 53 SLA 1974)

Sec. 45.50.501. Restraining prohibited acts. (a) When the attorney general has reason to believe that a person has used, is using, or is about to use an act or practice declared unlawful in AS 45.50.471, and that proceedings would be in the public interest, he may bring an action in the name of the state against the person to restrain by injunction the use of the act or practice. The action may be brought in the superior court in the judicial district in which the person resides or is doing business or has his principal place of business in Alaska, or, with the consent of the parties, in any other judicial district in the state.

(b) The court may make additional orders or judgments that are necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of an act or practice declared to be unlawful by AS 45.50.471. (§ 2 ch 246 SLA 1970)

ALR reference. — Validity of express statutory grant of power to state to seek, or to court to grant, restitution of fruits of consumer fraud, 59 ALR3d 1222.

Sec. 45.50.511. Assurances of voluntary compliance. In the administration of AS 45.50.471 — 45.50.561, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice considered to be violative of AS 45.50.471 — 45.50.561 from a person who has engaged or was about to engage in such an act or practice. Such an assurance shall be in writing and shall be filed with and is subject to the approval of the superior court in the judicial district in which the alleged violator resides or is doing business or has his principal place of business in Alaska. Such an assurance of voluntary compliance is not considered an admission of violation for any purpose. Matters closed in this way may at any time be reopened by the attorney general for further proceedings in the public interest, under AS 45.50.501. (§ 2 ch 246 SLA 1970)

Sec. 45.50.521. When information and evidence confidential and nonadmissible. (a) Repealed by § 6 ch 53 SLA 1974.

(b) Subject to the provisions of AS 45.50.501(a), the attorney general may not make public the name of a person alleged to have committed an act or practice declared unlawful in AS 45.50.471 during an investigation conducted by him under AS 45.50.471 — 45.50.561, nor are the records of investigation or intelligence information of the attorney general obtained under AS 45.50.471 — 45.50.561 considered public records available for inspection by the general public. However, the attorney general is not prevented from issuing public statements describing or warning of a course of conduct or a conspiracy which constitutes or will constitute an unlawful act or practice, whether on a local, state, regional, or national basis. (§ 2 ch 246 SLA 1970; am § 6 ch 53 SLA 1974)

Sec. 45.50.531. Private and class actions. (a) A person who purchases or leases goods or services and thereby suffers an ascertainable loss of money or property, real or personal, as a result of another person's act or practice declared unlawful by AS 45.50.471, may bring a civil action in the judicial district in which the seller or lessor resides or has his principal place of business or is doing business, to recover actual damages or $200, whichever is greater. The jury or, if the action is tried without a jury, the judge may, in cases of wilful violation, award up to three times the actual damages sustained, and in all cases the court may provide equitable relief it considers necessary or proper.

(b) A person entitled to bring an action under this section may, after investigation by and approval of the attorney general, if the unlawful act or practice has caused similar injury to numerous other persons similarly situated and if he adequately represents the similarly situated persons, bring an action on behalf of himself and other similarly injured and situated persons to recover actual damages. A person planning to bring an action under this subsection shall first submit to the attorney general a copy of his proposed complaint, and he may not file the complaint in court without the attorney general's approval. In an action brought under this subsection, the court may in its discretion order, in addition to damages, injunctive or other equitable relief.

(c) Upon commencement of an action brought under this section the clerk of the court shall mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of an order or judgment in the action, shall mail a copy of the order or judgment to the attorney general.

(d) In an action brought by a person under this section, the court may award, in addition to the relief provided in this section, reasonable attorney fees and costs.

(e) A permanent injunction or final judgment against a person against whom an action was initiated under AS 45.50.501 is prima facie evidence in an action brought under this section that the person

used or employed an act or practice declared unlawful by AS 45.50.471.

(f) No person may commence an action under this section more than two years after he discovers or reasonably should have discovered that his loss resulted from an act or practice declared unlawful by AS 45.50.471.

(g) If the court finds for the defendant in an action brought under this section, it may award the defendant an amount equal to the actual costs and attorney fees he incurred in his defense.

(h) Manufacturers or suppliers of merchandise, the fault of which is the basis for the action under this chapter, are liable for the damages assessed to or suffered by retailers charged under this chapter. (§ 2 ch 246 SLA 1970; am § 1 ch 225 SLA 1976)

Effect of amendment. — The 1976 amendment deleted the former fourth sentence of subsection (b), which read "Also, in an action brought under this subsection, the plaintiff shall post bond of not less than $5,000 and which is sufficient to cover costs and attorney fees which may be awarded under (g) of this section."

Applied in Swenson Trucking & Excavating, Inc. v. Truckweld Equip. Co., Sup. Ct. Op. No. 2008 (File No. 4288), 604 P.2d 1113 (1980).

ALR references. — Consumer class action based on fraud or misrepresentations, 53 ALR3d 534.

Right to private action under state consumer protection act, 62 ALR3d 169.

Reasonableness of offer of settlement under state deceptive trade practice and consumer protection acts, 90 ALR3d 1350.

Sec. 45.50.541. Nonnegotiability of consumer paper. (a) If a contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, the note, instrument or evidence of indebtedness shall have printed on its face the words "consumer paper," and the note, instrument or evidence of indebtedness with the words "consumer paper" printed on it is not a negotiable instrument within the meaning of Uniform Commercial Code (AS 45.01 — 45.09).

(b) Notwithstanding the absence of such a notice on a note, instrument or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. An agreement to the contrary has no effect in limiting the rights of a consumer.

(c) The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. (§ 2 ch 246 SLA 1970)

Cross reference. — As to form of negotiable instruments, see AS 45.03.104.

Sec. 45.50.542. Waiver. A waiver by a consumer of the provisions of AS 45.50.471 — 45.50.561 is contrary to public policy and is unenforceable and void. (§ 7 ch 53 SLA 1974)

Sec. 45.50.545. Interpretation. In interpreting AS 45.50.471 due consideration and great weight should be given the interpretations of sec. 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)) made by the Federal Trade Commission and the federal courts. (§ 8 ch 53 SLA 1974)

The Federal Fair Debt Practices Act, 15 U.S.C. § 1692 (Supp. 1977), expands already existing Federal Trade Commission jurisdiction over unfair or deceptive acts and practices of collection agencies; it is not written on a clean slate. The Federal Trade Commission's prior exercise of jurisdiction in this area is entitled to great weight, and leads to the conclusion that the new act merely supplements the old. State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Sec. 45.50.551. Penalties. (a) A person who violates the terms of an injunction or restraining order issued under AS 45.50.501 shall forfeit and pay to the state a civil penalty of not more than $25,000 per violation. For the purposes of this section, the superior court in a judicial district issuing an injunction retains jurisdiction, and the cause shall be continued, and in these cases the attorney general acting in the name of the state may petition for recovery of the penalties.

(b) In an action brought under AS 45.50.501, if the court finds that a person is using or has used an act or practice declared unlawful by AS 45.50.471, the attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than $5,000 per violation.

(c) Repealed by § 21 ch 166 SLA 1978. (§ 2 ch 246 SLA 1970; am § 9 ch 53 SLA 1974; am § 21 ch 166 SLA 1978)

Effect of amendment. — The 1978 amendment repealed subsection (c), which contained a penalty for conduct declared unlawful by AS 45.50.471.

Sec. 45.50.561. Definitions. In AS 45.50.471 — 45.50.561

(1) "advertising" includes the attempt directly or indirectly by publication, dissemination, solicitation, endorsement or circulation, display in any manner, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce directly or indirectly a person to enter or not enter into an obligation or acquire title or interest in any merchandise or to increase the consumption of it or to make a loan;

(2) "documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate;

(3) "examination" of documentary material includes the inspection, study, or copying of the material, and the taking of testimony under oath or acknowledgment in respect of documentary material or copy of it;

(4) "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard;

(5) "chain distributor scheme" means a sales device whereby a person, upon condition that he make an investment, is granted a license or right to solicit or recruit for profit one or more additional persons who are also granted a license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted a license or right upon the condition of investment; a limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the license or right to solicit or recruit or the receipt of profit from these does not change the identity of the scheme as a chain distributor scheme; as used in this paragraph, "investment" means acquisition, for a consideration other than personal services, of tangible or intangible property, and includes but is not limited to franchises, business opportunities and services; "investment" does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(6) "consumer" means a person who seeks or acquires goods or services by lease or purchase;

(7) "knowingly" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness;

(8) "fresh" means a condition of food which has never been frozen. (§ 2 ch 246 SLA 1970; am § 10 ch 53 SLA 1974; am § 2 ch 138 SLA 1974)

Article 5. Monopolies; Restraint of Trade.

Wehling

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, Appellant, v. FIRST NATIONAL BANK OF ANCHORAGE, Appellee.	File No. 5006 O P I N I O N
GEORGE H. BROWN, JR., LAWRENCE BROUSE, JOHN LRYER and COMMONWEALTH MORTGAGE CORPORATION, Appellants, Cross-Appellees, v. STATE OF ALASKA, Appellee, Cross-Appellant.	File No. 5107 Cross-Appeal No. 5085 [No. 2591 - Decmeber 3, 1982]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, James K. Singleton, Judge.

Appearances: Michele D. Brown, Donna Dell'Olio, Connie J. Sipe, Assistant Attorneys General, Anchorage, Avrum M. Gross and Wilson L. Condon, Attorneys General, Juneau, for Appellant, State of Alaska. John R. Beard, Beard & Lawer, Anchorage, for Appellee, First National Bank. Terry C. Aglietti, John W. Sivertsen, Aglietti, Offret & Pennington, Anchorage, for Appellants, George H. Brown, Jr., Lawrence Brouse, John Dryer, and Commonwealth Mortgage Corporation.

Before: Rabinowitz, Chief Justice, Connor, Burke, Matthews and Compton, Justices.

MATTHEWS, Justice.
RABINOWITZ, Chief Justice, dissenting in part.

These appeals arise from an action brought by the Attorney General against George Brown, Jr. and others[1] involved in the development and sale of certain real property in this state. The basic conduct complained of consists of various misleading statements and omissions concerning the suitability of the land for residential construction. The State sought to enjoin such conduct and to obtain restitution on behalf of individual lot purchasers. After obtaining a preliminary injunction, the State joined as an

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1. The others are: Neil Hausam, Brown's engineer; John Dryer, Brown's primary Windsong lot salesman; Lawrence Brouse, hired by Brown to manage the Windsong development project; Knik River Estates, a limited partnership of which Brown is the general partner; and Commonwealth Mortgage Corporation, formed by Brown after the State instituted this action and to which Brown subsequently transferred the promissory notes and deeds of trust executed by Windsong lot purchasers. For simplicity, these defendants will frequently be referred to collectively as "Brown."

additional defendant First National Bank of Anchorage, which had financed the real estate development, seeking cancellation of purchasers' promissory notes which the Bank was holding as collateral for its loans to Brown. The lower court dismissed the State's action against First National and, after a non-jury trial, entered judgment against Brown. That judgment permanently enjoined Brown from engaging in certain conduct and adjudged him liable to the State, as trustee for individual purchasers, for $1,911,357.60.[2] Brown has appealed that judgment and the State has filed a cross-appeal. The State has also appealed the trial court's dismissal of its claim against First National.

I. BACKGROUND

A. Facts

The following facts were found by the court. They are not challenged on appeal and we therefore take them as true.

George Brown, Jr. is the general partner of Knik River Estates, a limited partnership. In the summer of 1975, he began developing some property which lies adjacent

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2. Judgment was entered jointly and severally against Brown and Commonwealth Mortgage Corporation for the full amount. Dryer was held liable for only $50,000 and Brouse for $37,500. Hausam was dismissed as a defendant earlier in the case upon prevailing on a summary judgment motion and is not a party to these appeals. Knik River Estates is not mentioned in the trial court's final judgment.

to the Knik River in the Matanuska-Susitna Borough, known as the Windsong Subdivision. He knew at that time that the land had in the past been subject to flooding. The source of that flooding is Lake George, which periodically forms when the Knik River becomes dammed by a glacier. When the ice dam breaks, water is released flooding certain downstream areas, including on occasion the Windsong Subdivision, covering it with as much as fifteen feet of water.[3]

Brown hired Neil Hausam, a civil engineer and land surveyor, to survey and plat the land. Hausam studied the possibility of flooding and concluded that a reoccurrence was unlikely. Prior to approving the plat, the Matanuska-Susitna Borough requested that the Army Corps of Engineers conduct a flood-hazard evaluation of the Windsong Subdivision. The Corps concluded that virtually all of the subdivision was in a high-hazard area. Although Hausam disagreed with that conclusion and informed the Borough of this, the Borough required that the first page of the Windsong plat contain a flood-warning notation.

In 1976, Brown commenced selling lots. To assist him, he hired a salesman, John Dryer, and a property manager, Lawrence Brouse. Although purchasers were given the second

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3. The most recent occurrence of such flooding appears to have been in 1966.

page of the Windsong plat, they never received the first page containing the flood warning. In addition, Brown represented to purchasers, among other things, that: (1) Lake George had not formed since the Good Friday earthquake of 1964; (2) it would take another earthquake of equal magnitude for the lake to form again; (3) experts, including the Army Corps of Engineers, had concluded that the possibility of flooding was remote; (4) purchasers of Windsong lots would be able to obtain flood and mortgage insurance; and (5) construction financing was readily available. None of these representations were true.

In December 1977, the Consumer Protection Section of the Attorney General's Office began investigating the sale of Windsong lots. Upon learning of that investigation, Brown sent all purchasers a letter telling them that certain unfounded complaints were being directed at the Windsong development. The purpose of that letter was to make purchasers feel secure about their investments and continue making their property payments. In late January of 1978, a meeting was held at which Brown, Brouse, Hausam and various representatives of the Attorney General's Office were present. At that meeting Brown was told that the State had received several consumer complaints regarding the sale of Windsong lots. He was also shown letters that the State had received from various experts indicating the existence of a

flood hazard at the Windsong Subdivision.

Immediately following this meeting, Brown contacted between sixty and seventy lot purchasers and induced them to sign a preprinted form affidavit entitled "Declaration and Memorandum of Understanding." This was drafted by Brown's attorneys for the purpose of lining up favorable witnesses in case of future litigation. At the time the document was presented to purchasers, Brown reassured them that the possibility of flooding was still remote and that property values had increased. Signing purchasers were not given a meaningful opportunity to study the document, and the language contained therein was not comprehensible to the average purchaser. In effect, the affidavits purported to be a vote of confidence by investors in the Windsong development. Those purchasers whom Brown knew to be dissatisfied with their investments were not offered the memorandum.

B. Proceedings Below

In February 1978, the State filed a complaint in superior court against Brown seeking injunctive relief and civil penalties. The State alleged various violations of the Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.50.471-45.50.561. Brown filed his answer and later moved for summary judgment on the ground that the Consumer Protection Act did not apply to real estate transactions, or in the alternative that he was exempt from the

Act under AS 45.50.581.[4] The trial court granted Brown's summary judgment motion, but gave the State leave to amend its complaint.

In June 1978, the State filed its amended complaint, this time alleging that Brown had violated the Uniform Land Sales Practices Act ("ULSPA"), AS 34.55.004-34.55.046. Shortly thereafter, the State moved for a preliminary injunction to enjoin Brown from disposing of Windsong lots in violation of ULSPA and the administrative regulations promulgated thereunder, 3 AAC 20.010-.130.

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4. That section provides:

> Nothing in AS 45.50.471-45.50.561 applies to
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> (1) an act or transaction regulated under laws administered by the state, by any regulatory board or commission or officer acting under statutory authority of the state or of the United States, unless the law regulating the act or transaction does not prohibit the practices declared unlawful in AS 45.50.471; . . .

Brown argued that he was exempt under this section because the transactions at issue were regulated under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§ 1701-1720, which, Brown claimed, prohibits the practices alleged by the State in this case to violate AS 45.50.471. Although Brown had obtained an exemption from the registration provisions of the federal act, the trial court agreed that Brown was exempt from the Consumer Protection Act and granted summary judgment to Brown on that basis. Later in the case, however, the trial court concluded that the Consumer Protection Act did not apply to real property transactions. See Part II of this opinion, infra.

After a lengthy hearing, the lower court entered a preliminary injunction against Brown ordering him to disclose fully to prospective purchasers the Windsong Subdivision's flooding potential, and enjoining him from disposing of land in violation of ULSPA and its implementing regulations. Brown was also enjoined from taking any adverse action against lot purchasers who, after being notified by the State of the court's preliminary findings, elected to rescind their land purchase contracts. Such purchasers were directed to make all future payments to the court registry. Approximately seventy purchasers indicated that they wished to rescind their contracts and obtain restitution.

In December 1978, the State amended its complaint again to add First National Bank of Anchorage as a defendant. The Bank's involvement in this case stems from loans it made to Brown to finance the Windsong development. In 1977, First National loaned $200,000 to Knik River Estates to purchase materials for constructing a sewer system in the Windsong Subdivision. In accordance with its collateral and loan agreement, Knik River Estates pledged to the Bank the promissory notes and deeds of trust executed by lot purchasers. When, in the early part of 1978, Brown formed Commonwealth Mortgage Corporation to assume ownership of the Windsong Subdivision, Commonwealth continued to pledge to

the Bank the promissory notes and deeds of trust received from the sale of Windsong lots. In August 1978, First National loaned Commonwealth $500,000 to retire the balance of the earlier loan and to install electric and telephone utilities at Windsong.

The 1977 and 1978 loan agreements were substantially identical. Neither involved actual endorsement of the promissory notes that had been pledged as security and delivered to First National. Instead, the loan agreements authorized the Bank to endorse the notes to itself on behalf of the borrower. In late November of 1978, First National endorsed over to itself all of the promissory notes in its possession. It then sent collection letters to all Windsong lot purchasers who were delinquent in their payments. First National informed these purchasers that unless all delinquent payments were paid within fifteen days, the entire balance would become due immediately. The Bank also told these purchasers that their payments to the court registry, pursuant to the preliminary injunction, would not be credited toward the amounts claimed due.

In its complaint against the Bank the State sought a declaratory judgment that First National was not a "holder in due course" as well as an order enjoining the Bank from

taking action against purchasers who were making their note payments to the court registry. The State later moved for summary judgment against First National, requesting that the court order the Bank to deliver to the court the promissory notes of purchasers who had elected to rescind their land purchase contracts. First National responded by moving for dismissal of the State's complaint against it for failure to state a claim. The lower court ultimately granted First National's motion, concluding that the Attorney General lacked standing to maintain an action against the Bank.

Trial of the case commenced on March 16, 1979. On the first day, the lower court orally granted summary judgment against the State in favor of Hausam, Brown's engineer. The basis for the court's ruling was that AS 34.55.006,[5] the

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5. AS 34.55.006 provides:

> It is unlawful for a person, in connection with the offer, sale or purchase of subdivided land directly or indirectly, to knowingly
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> (1) employ a device, scheme, or artifice to defraud;
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> (2) make an untrue statement of a material fact or omit a statement of a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or
>
> (3) engage in an act, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

general antifraud section of ULSPA, could not be applied retroactively and Hausam had done nothing to affect land sales at Windsong after the effective date of that section, September 21, 1977.[6] Immediately following that ruling, in response to a question by Brown's counsel, the trial court stated:

> Well, I guess, implicit in what the court has already ruled with regard to Mr. Hausam is that any claim based upon anyone who relied -- whose actions were motivated by acts that took place prior to the effective date of the amendment must fail.

Counsel for the State interjected stating that it was the State's position that "lulling conduct" by Brown which occurred after the effective date of the ULSPA amendments could supply the basis for granting restitution to purchasers who bought lots before the amendment's effective date. The court reserved ruling on that question and allowed the case to proceed.

On October 25, 1979, the trial court entered its final judgment in the matter. That judgment permanently enjoined Brown from disposing of Windsong lots without first

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6. As originally enacted, ULSPA applied only to sales of subdivided land located outside the state. See Ch. 179, SLA 1968. In 1977, the legislature amended ULSPA to bring in-state land sales within its scope. See Ch. 138, SLA 1977. As part of the same bill, the legislature added AS 34.55.006. The effective date of these changes was September 21, 1977. Id.

obtaining a purchaser's signature on a document, drafted by the court, fully disclosing the flood risk at Windsong. It also enjoined Brown from making any statements inconsistent with those contained in that document. In addition, Brown was enjoined from engaging in certain acts and practices prohibited by the administrative regulations implementing ULSPA. With respect to the State's claim for restitution, the trial court entered judgment against Brown in favor of the State, as trustee for those purchasers who had elected to rescind, for $1,611,357.60. The basis for this award, however, was not ULSPA, upon which the State had predicated its case and upon which Brown had defended. Instead, the lower court sua sponte ordered restitution on the basis of common law fraud, and specifically declined to rule on the applicability or ULSPA. In all, the court's judgment listed seventy-one purchasers who were eligible for restitution, eighteen of whom had bought lots after and fifty-three of whom had bought lots before September 21, 1977, the effective date of the ULSPA amendments. Finally, the lower court awarded the State attorney's fees and costs of $42,000 and $1,894.24, respectively.

C. Contentions on Appeal

On appeal, Brown contends that the trial court erred in ordering restitution to Windsong lot purchasers on

the basis of common law fraud. Brown asserts that the State is without authority to pursue the common law rights of defrauded land purchasers. In essence, Brown claims that the trial court was bound to apply ULSPA, under which the lower court's restitution order would not have been proper since, Brown asserts, ULSPA cannot be retroactively applied. Brown also contends that application of ULSPA to in-state subdividers is unconstitutional, and that the administrative regulations promulgated under ULSPA are invalid as applied to him. Finally, Brown claims that the lower court erred in refusing his request for a jury trial.

The State, on the other hand, argues that the trial court did not err in granting relief on the basis of common law fraud. The State also contends that the trial court's judgment would have been proper under ULSPA, and under the Consumer Protection Act as well. The State does, however, claim that the trial court erred in dismissing its claim against First National Bank of Anchorage. The State also contends that the trial court erred when, shortly following the issuance of the preliminary injunction, it denied the State's request for prejudgment attachment of certain property belonging to Brown.

II. APPLICATION OF THE CONSUMER PROTECTION ACT TO SALES OF REAL PROPERTY

We begin by addressing the State's contention that the trial court's judgment can be affirmed under the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471-45.50.561. We address this argument first because, as the State points out, AS 45.50.501 specifically authorizes the Attorney General to bring suit to enjoin violations of the Act, and expressly empowers the court in such cases to award restitutory relief.[7] As noted earlier, the State's original complaint alleged that Brown's Windsong activities violated the Consumer Protection Act. The lower court dismissed that complaint on the basis of the exemption contained in AS

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7. AS 45.50.501 provides in relevant part:

> (a) When the attorney general has reason to believe that a person has used, is using, or is about to use an act or practice declared unlawful in AS 45.50.471, and that proceedings would be in the public interest, he may bring an action in the name of the state against the person to restrain by injunction the use of the act or practice. . . .
>
> (b) The court may make additional orders or judgments that are necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of an act or practice declared to be unlawful by AS 45.50.471.

45.50.481(a).[8] Later, however, in rendering its final decision, the court held that the Act does not apply at all to the sale of real property, a conclusion which the State claims is erroneous. For the reasons discussed below, we agree with the lower court's decision.

AS 45.50.471(a) provides:

> Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

Standing alone, this language could be construed as prohibiting misrepresentations made by sellers of real property. Added by way of amendment to the Act in 1974, see Ch. 53, § 1, SLA 1974, subsection (a) was intended "to make the prohibitory language . . . of the present Act more responsive to the needs of the Alaskan consuming public and the business community."[9] And, because the Act is remedial, we are mindful that its provisions are to be liberally construed. State v. O'Neill Investigations, Inc., 609 P.2d 520, 528 (Alaska 1980).

Nevertheless, we are persuaded that the entire thrust of the Consumer Protection Act is directed at regulating practices relating to transactions involving

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8. See note 4 supra.

9. Governor's Transmittal Letter, 1974 House Journal 122.

consumer goods and services. Immediately following AS 45.50.471(a) is a list of twenty-five specific acts or practices which are expressly prohibited as "unfair methods of competition" and "deceptive acts or practices." AS 45.50.471(b). Of these, thirteen concern practices relating to transactions involving "goods" or "goods and services" generally.[10] The remaining twelve deal with practices involving the sale of particular types of goods[11] or services,[12] or relate to certain types of activities commonly associated with consumer goods and services transactions.[13]

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10. See AS 45.50.471(b)(1),(2),(3),(4),(5),(6),(7),(8),(9),(11),(13) and (19).

11. AS 45.50.471(b)(10)(resetting vehicle odometers); (21)(selling frozen meat as "fresh"); (25)(failure to comply with AS 45.50.800-45.50.850, the Alaska Gasoline Products Leasing Act).

12. AS 45.50.471(b)(17)(excess charges for warranty repairs); (23)(failure to comply with AS 45.45.130-45.45.240, regulating motor vehicle repairs); (24)(prohibiting certain practices in connection with counseling, consulting or arranging for future services relating to the disposition of a body upon death).

13. AS 45.50.471(b)(10)(misrepresentations regarding price reductions); (14)(misrepresenting legal rights or obligations in an agreement); (15)(misrepresenting the need for parts, replacement or repair service); (16)(misrepresenting the authority of an agent or representative to negotiate the terms of a consumer transaction); (20)(selling or offering to sell a right of participation in a chain distributor scheme); (22)(failure to comply with AS 45.02.350, regulating the sale of goods or services by door-to-door solicitation).

While subsection (b) makes clear that this list is not exclusive, none of the enumerated prohibited acts mentions real property. Nor do any other provisions of the Act suggest that the legislature intended the sale of real property to come within the Act's purview.[14]

It is our judgment that the trial court properly invoked the rule of ejusdem generis to construe the language of AS 45.50.471(a). "[W]hen particular words are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described." Chugach Electric Ass'n v. Calais Co., 410 P.2d 508, 509-10 (Alaska 1966). The doctrine is equally applicable when, as here, specific words comprehending a class of activity follow a more general description. 2A C. Sands, Sutherland Statutory Construction § 47.17, at 103 (4th ed. 1973). In our view, real property falls outside of the class "particularly described," i.e., "goods and services." The list

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14. In this respect, Alaska's Act differs from the Acts of several states, cases from which have held that real property transactions are within the Act's scope. See, e.g. Nash v. Hoopes, 332 A.2d 411, 413 (Del. Super. 1975) (Act prohibiting deceptive merchandising practices where "merchandise" statutorily defined to include real property); Commonwealth v. DeCotis, 316 N.E.2d 748, 752 (Mass. 1974) ("trade or commerce" statutorily defined to include the sale of real property); Commonwealth v. Monumental Properties, Inc., 329 A.2d 812, 820 (Pa. 1974)("trade or commerce" statutorily defined to include the sale of real property); Woods v. Littleton, 554 S.W.2d 662, 667 n.9 (Tex. 1977) ("consumers" statutorily defined to include purchasers of real property).

of proscribed activities found in AS 45.50.471(b) suggests that the Act is directed solely at regulating transactions involving "products and services sold to consumers in the popular sense." Neveroski v. Blair, 358 A.2d 473, 480 (N.J. 1976). In Neveroski, the court was called upon to construe the word "merchandise," which was defined in the New Jersey Consumer Fraud Act to include "anything offered, directly or indirectly, to the public for sale." Id. at 479. Because that language was preceded by the words "objects, wares, goods, commodities, [and] services," the court invoked the doctrine of ejusdem generis to hold that misrepresentation by a real estate broker in connection with the sale of real property was not actionable under the New Jersey Act. Id. at 479-81. The broad language of AS 45.50.471(a), like that involved in Neveroski, "can logically be attributed to a legislative desire to incorporate other consumer transactions" which may not be regulated by the specific prohibitions found in subsection (b). Neveroski, 358 A.2d at 480.

This construction of subsection (a) also finds support in other provisions of the Act. AS 45.50.561(6) defines a "consumer" as "a person who seeks or acquires goods or services by lease or purchase." (Emphasis added). Moreover, AS 45.50.531(a) grants a private right of action only to "[a] person who purchases or leases goods or services

and thereby suffers an ascertainable loss . . . as a result of another person's act or practice declared unlawful by AS 45.50.471." (Emphasis added). That the section authorizing the Attorney General to sue to enjoin violations of AS 45.50.471 contains no comparable limitation, see AS 45.50.501, does not, in our opinion, indicate that the scope of the Act enlarges when suit is instituted by the State.

In sum, we hold that the sale of real property is not within the regulatory scope of the Consumer Protection Act. Accordingly, Brown's liability for restitution to Windsong lot purchasers could not properly be predicated on asserted violations of that Act.

III. THE UNIFORM LAND SALES PRACTICES ACT

After the trial court dismissed the Consumer Protection Act claim against Brown, the State amended its complaint to allege violations of the Uniform Land Sales Practices Act (ULSPA), AS 34.55.004-34.55.046. Throughout the remainder of the proceedings, the State consistently asserted and Brown consistently denied liability under this Act. At the conclusion of the case, the lower court declined to rule on the applicability of ULSPA, relying instead on the common law. The State contends that the judgment would have been proper under ULSPA. Brown, on the other hand, maintains that ULSPA cannot constitutionally apply to him since the 1977 amendments, which made the Act

applicable to in-state land sales, were enacted in violation of article II, section 13 of the Alaska Constitution. Brown also claims that a court is without authority to award restitution in a suit brought under ULSPA by the Attorney General. Finally, Brown argues that even if the court could award restitution, it could not do so as to those purchasers who bought their lots prior to the effective date of the ULSPA amendments.

A. The Constitutional Validity of the ULSPA Amendments.

Article II, section 13 of the Alaska Constitution[15] requires that every bill be confined to one subject which must be expressed in its title. The 1977 amendments to ULSPA find their genesis in House Bill 67, entitled "An Act Relating to the Uniform Land Sales Practices Act." 1977 House Journal 63. The bill was introduced at the Governor's request and all of its provisions related directly to ULSPA.

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15. Alaska Constitution, art. II, § 13 provides:

> Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

See Governor's Transmittal Letter, id. at 63-66. The primary impact of House Bill 67 was to amend ULSPA to bring in-state sales of subdivided land within the Act's scope and to add a general antifraud section. With only minor changes, the bill received the House's approval and was sent to the Senate for its consideration. At the instance of the Senate Rules Committee, a Senate Committee Substitute was approved. 1977 Senate Journal 1517. This version of the bill was entitled "An Act Relating to Land; And Providing for an Effective Date." Id. at 1489. The sections relating to ULSPA were essentially the same as those approved by the House, but the Senate Committee Substitute also contained various amendments to the Alaska Land Act, AS 38.05.005-38.15.370. These amendments pertain to the leasing of state-owned lands and to the Division of Lands' zoning power. It was this version of the bill that ultimately became law. Ch. 138, SLA 1977.

That every section of Chapter 138, SLA 1977 in some respect concerns land is not disputed. However, it is just as clear that many of its provisions have nothing else in common. Thus, the issue to be resolved is whether the general heading "land" can be considered "one subject" for purposes of article II, section 13. Were we writing on a clean slate, we would be inclined to find this subject impermissibly broad. Permitting such breadth under the one-

subject rule could conceivably be misconstrued as a sanction for legislation embracing "the whole body of the law." Trumble v. Trumble, 55 N.W. 869, 870 (Neb. 1893). Nevertheless, while the issue is indeed close, we are unable to say that the legislature has transgressed the limits of article II, section 13 established by prior decisions of this court.

To determine if a bill is confined to one subject,

> [a]ll that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be part of, or germane to, one general subject.[16]

Thus, "what constitutes one subject for purposes of art. II, § 13 is broadly construed."[17] And "[n]o act will be set aside for failing to comply with this provision except where the violation is both substantial and plain."[18]

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16. Gellert v. State, 552 P.2d 1120, 1123 (Alaska 1974), quoting Johnson v. Harrison, 50 N.W. 923, 924 (Minn. 1891). See Short v State, 600 P.2d 20, 24 (Alaska 1979); North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978).

17. Short v. State, 600 P.2d 20, 23 (Alaska 1979). See North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978); Gellert v. State, 522 P 2d 1120, 1122 (Alaska 1974).

18. North Slope Borough v Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978). See Short v. State, 600 P.2d 20, 23 (Alaska 1979); Suber v. State Bond Comm., 414 P.2d 546, 557 (Alaska 1966).

In Gellert v. State, 522 P.2d 1120 (Alaska 1974), we upheld a bill that provided for the issuance of bonds to finance flood control and small boat harbor projects. These two topics were found to be confined to one subject because they both pertained "to one ongoing plan for the development of water resources." Id. at 523. More recently, in North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978), we upheld "An Act Relating to Taxation; And Providing for an Effective Date." Because its various provisions, although diverse, all related to "state taxation," we found no violation of the one-subject rule. Id. at 544-46. In light of these decisions, we must likewise conclude that "land" is not an unduly broad subject for purposes of article II, section 13. Consequently, Chapter 138, SLA 1977, the provisions of which all relate to this subject, is constitutionally valid.[19]

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19. Brown also contends that Chapter 138 is defective under art. III, § 13 because the title, "An Act Relating to Land; And Providing for an Effective Date," does not adequately express its subject matter. Since we have concluded that "land" constitutes one subject, we believe that the requirement that the title express that subject is also satisfied. The purpose of the requirement is to prevent surreptitious introduction of legislation not indicated by the title. See Griffin v. Sheldon, 11 Alaska 607, 615 (1948). Chapter 138 contains no hidden provisions unrelated to its title, and "[a]nyone interested in any of the particulars of the bill would be advised by this title to look to the body of the law. . . ." Wass v. Anderson, 252 N.W.2d 131, 137 (Minn. 1977).

B. Restitution Under ULSPA in a Public Action.

Unlike the Consumer Protection Act, ULSPA does not expressly authorize the court to award restitutory relief in a suit instituted by the State. Although restitution is expressly available in a private action under ULSPA, AS 34.44.040(b), with respect to public enforcement, the Act merely provides that the State "may bring an action in the superior court . . . to enforce compliance with this chapter or a regulation or order under this chapter." AS 34.55.022(c). According to Brown, the absence of a provision authorizing restitution in a public action impliedly circumscribes the court's power to award such relief unless the State proceeds under Civil Rule 23, and the case is properly certified as a class action. While we agree that in a case of this nature the State must proceed in a representative capacity, we conclude that certification as a class action is not a prerequisite to an award of restitutory relief.

In People v. Superior Court, 507 P.2d 1400 (Cal. 1973), the California Supreme Court was confronted with substantially the same issue involved here. In that case, the California Attorney General brought suit under a statute that authorized the Attorney General to sue to enjoin misleading advertising, "but was silent as to the power of the trial court to order restitution in such a proceeding." Id. at 1402. Noting that the statute involved "did not

restrict the court's general equity jurisdiction 'in so many words, or by a necessary and inescapable inference,'" id., quoting Porter v. Warner Holding Co., 328 U.S. 395, 398, 90 L.Ed. 1332, 1337 (1946), the court held that "a trial court has the inherent power to order, as a form of ancillary relief, that the defendants make or offer to make restitution to the consumers found to have been defrauded." 507 P.2d at 1402. In support of its holding the court relied on a number of analogous federal cases that had reached the same conclusion. See Mitchell v. DeMario Jewelry, Inc., 361 U.S. 288, 291-92, 4 L.Ed. 2d 323, 326 (1960); Porter v. Warner Holding Co., 328 U.S. 395, 398-99, 90 L.Ed. 1332, 1336-38 (1946); Securities and Exchange Comm'n v. Texas Gulf Sulphur Co. 446 F.2d 1301, 1307-08 (2d Cir. 1971); McComb v. Frank Scerbo & Sons, 177 F.2d 137, 138-39 (2d Cir. 1949). See also Interstate Commerce Comm'n v. B & T Transportation Co., 513 F.2d 1182, 1184-85 (1st Cir. 1980). But see United States v. Parkinson, 240 F.2d 918 (9th Cir. 1956).

We find the California Supreme Court's reasoning persuasive and therefore hold that the trial court has the inherent power to order restitution in an action brought by the State under ULSPA. Nothing in that Act or in its legislative history suggests that the legislature intended to restrict the court's traditional equity powers when properly

invoked. That the legislature saw fit to provide a private right of action for restitution under ULSPA does not, in our judgment, operate to curtail the court's power to award such relief at the instance of the State. See Pierce v. Superior Court, 37 P. 460, 461 (Cal. 1934).

There remains, however, the question of how the State must proceed in a case of this nature; an issue that has received scant attention from the courts. As we perceive it, the principal difference between this case and one brought as a private class action is that the State is not a member of the class of persons whom it seeks to represent.[20] While the State here denies that it is representing anyone other than itself, asserting that its action is predominantly founded in law enforcement, it is clear that as to the restitution claim the State is attempting to enforce the rights of a class of private individuals. Thus, we believe that the State must be regarded as acting in a representative capacity. This conclusion finds support in the case of Kugler v. Romain, 279 A.2d 640 (N.J. 1971), in which the court sustained the Attorney General's authority to maintain an action for restitution on behalf of defrauded consumers

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20. By its own terms Rule 23 requires that a representative be a member of the class on behalf of which suit is brought. It states that "[o]ne or more members of a class may sue or be sued as representative parties on behalf of all. . . ." Alaska R. Civ. P. 23(a). Thus, the State could not have brought this suit as a Rule 23 class action.

as a suit "in the nature of a class action." Id. at 649. Although the court did not discuss at length the procedural aspects of such a suit, it did note in passing that "guidance may be found in [New Jersey statutes] which relate generally to class actions." Id.

We likewise conclude that guidance as to the procedural aspects of a case such as this may be found in our own rule governing the maintenance of representative actions, Civil Rule 23. Of particular importance is that part of the Rule relating to notice to members of the class being represented. Subsection (c)(2) of the Rule in relevant part provides:

> [T]he court shall direct to the members of the class the best notice practicable under the circumstances, including notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

Alaska R. Civ. P. 23(c)(2). Following this procedure will assure that those individuals who elect to be represented by the State will be bound by the judgment, "like any other persons whose claims are prosecuted by an authorized representative." McComb v. Frank Scerbo & Sons, 177 F.2d 137, 140 (2d

Cir. 1949)(Hand, C.J., concurring). And ensuring that the judgment has this res judicata effect will promote judicial economy by lending finality to litigation and protect the defendant from the unfair risk of being subjected to multiple lawsuits arising from the same claim. See Note, New York City's Alternative to The Consumer Class Action: The Government As Robin Hood, 9 Harv. J. Legis. 301, 345-47 (1972); California Corporations Code Section 25530(b): Government Agency Suit Versus The Private Class Action, 27 Hastings L.J. 265, 279-80 (1975).

In the instant case, the trial court instructed the State to notify all Windsong lot purchasers of the State's action against Brown. The purpose of such notice was to determine which purchasers wished to participate in any order of restitution ultimately decreed by the court. This notice, however, did not comport with the requirement discussed above that the notice state that those electing to participate will be bound by the final judgment, whether favorable or not. Consequently, whether the lower court's judgment in this case would be binding on each Windsong lot purchaser remains open to question. However we do not believe that this defect requires that the case be remanded for further proceedings. Before an individual lot purchaser receives money under a judgment ordering restitution, he

should first consent in writing to be bound by that judgment. That will, under the circumstances of this case, in large part accomplish the goals of the notice requirement of Rule 23(c)(2).

C. Brown's Liability Under ULSPA

We must now determine whether the lower court's restitution order can be upheld under ULSPA.

AS 34.55.006 provides:

> It is unlawful for a person, in connection with the offer, sale or purchase of subdivided land directly or indirectly, to knowingly
>
> (1) employ a device, scheme or artifice to defraud;
>
> (2) make an untrue statement of a material fact or omit a statement of material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
>
> (3) engage in an act, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

A person who disposes of subdivided land[21] in violation of

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21. "Subdivided land" is defined in AS 34.55.044(6) as including "land which is divided or is proposed to be divided for the purpose of disposition into two or more lots, parcels, units or interests. . . ." That Brown was selling subdivided land at the time the State instituted this action is not disputed. Since Brown received an exemption from the registration provisions of the federal Interstate Land Sales Full Disclosure Act, see note 4 supra, he is also exempt from the registration provisions of ULSPA. AS 34.55.042(a)(8). This does not, however, immunize Brown from liability under AS 34.55.006. See id.; Governor's Transmittal Letter, 1977 House Journal 65.

this section is civilly liable to a purchaser

> . . . unless in the case of an untruth or omission it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided land did not know and in the exercise of reasonable care could not have known of the untruth or omission.

AS 34.55.030(a). See Stepanov v. Gavrilovich, 594 P.2d 30, 33 (Alaska 1979).

With respect to the eighteen individuals who purchased Windsong lots on or after September 21, 1977, the date when ULSPA became applicable to sales of in-state land, Brown does not seriously dispute his liability. The trial court found that Brown knew, prior to developing Windsong, of the facts relating to the flood hazard. Brown does not contest those findings, nor does he contest the trial court's findings that the facts he misrepresented or omitted to mention were material. Since Brown had ample opportunity but failed to show facts which could constitute a defense under AS 34.55.030(a), ordering restitution under ULSPA was proper as to those individuals who purchased their lots on or after September 21, 1977.

The vast majority of purchasers on whose behalf restitution was ordered bought their lots prior to this date, however. Liability as to those purchasers under ULSPA, Brown argues, would require impermissible retro-

spective application of the Act to in-state subdividers. The State contends that because ULSPA is "remedial," it can be given retroactive effect. The State further claims that liability as to the pre-September 21, 1977 purchasers can be predicated on conduct by Brown that occurred after that date, thereby avoiding retrospective application of ULSPA.

AS 10.01.090 provides that "[n]o statute is retrospective unless expressly declared therein." Chapter 138, Sections 1-8, SLA 1977, which added AS 34.55.006 and amended ULSPA to apply to in-state subdividers, contains no such express declaration. Nor does its legislative history indicate that retrospective application was intended.[22]

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22. AS 01.10.020 provides:

> The provisions of §§ 40-90 of this chapter shall be observed in the construction of the laws of the state unless the construction would be inconsistent with the manifest intent of the legislature.

In City and Borough of Juneau v. Commercial Union Ins. Co., 598 P.2d 957 (Alaska 1979), we adverted to this provision as modifying to some extent the "iron-clad language" of AS 01.10.090. Id. at 958 n.3. Thus, in Zurfluh v. State, 620 P.2d 690 (Alaska 1980), we held that AS 12.55.086, which relates to sentencing in criminal cases, could be retroactively applied for a 153-day period since "[t]he apparent intent of the legislature as [sic] that the benefits of this type of sentencing should be available to trial judges as soon as possible. . . ." Id. at 693.

Recently, we observed:

> We have heretofore closely adhered to the clear mandate expressed in the statutory language. Statutes are not to be applied retroactively unless the language used by the legislature indicates the contrary. City and Borough of Juneau v. Commercial Union Ins. Co., 598 P.2d 957, 958-59 (Alaska 1979); Davenport v. McGinnis, 522 P.2d 1140, 1142 (Alaska 1974); Stephens v. Rogers Constr. Co., 411 P.2d 205, 208 (Alaska 1966).

Matanuska Maid, Inc. v. State, 620 P.2d 182, 187 n.8 (Alaska 1980). In that case we did hold that "mere procedural changes which do not affect substantive rights are not immune from retrospective application." Id. at 187. But the broad prohibitory language of AS 34.55.006 can hardly be characterized as bringing about mere procedural changes. Thus, we hold that ULSPA cannot be retrospectively applied to hold Brown liable for conduct predating its application to in-state land sales.[23] We note that this conclusion is in accord with the construction given to the Interstate Land Sales Full Disclosure Act, ULSPA's federal counterpart. See Davis v. Rio Rancho Estates, Inc., 401 F. Supp. 1045, 1048 (S.D.N.Y. 1975).

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23. The State's argument that ULSPA is "remedial" and thus deserving of retroactive application on that basis alone is, in our opinion, without merit. Even when a statute is remedial in nature, it will be construed retroactively only if the legislative intent clearly indicates that retroactive operation is intended. See 2 C. Sands, Sutherland Statutory Construction § 41.04, at 253 (4th ed. 1973).

The State alternatively argues that liability for restitution to pre-September 21, 1977 purchasers can be premised on Brown's later "lulling" activities, which, the State urges, constitute "fresh" ULSPA violations. Reference is made to the trial court's findings that Brown's letter to all Windsong lot purchasers, sent in January 1978, contained numerous misrepresentations designed to induce purchasers to continue making their property payments. According to the State, these misrepresentations were made "in connection with the offer, sale or purchase of subdivided land," thereby triggering liability under AS 34.55.006.

The State's argument in large part centers on the Act's definition of "offer."[24] AS 34.55.044(2) defines that

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24. The State also points to the word "disposition," which AS 34.55.044(1) defines as including the "sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit." (Emphasis added). Noting that AS 34.55.030(a), the civil remedies section, creates liability when a person "disposes" of land in violation of AS 34.55.006, the State argues that Brown's "lulling" activities constituted "other transactions concerning a subdivision," and hence created liability under the Act. In our view, the language relied upon, preceded as it is by specific examples of "transactions," i.e., "sale, lease," etc., should be construed under the doctrine of ejusdem generis as limited to transactions involving the transfer of an interest in land. See Chugach Electric Ass'n v. Calais Co., 410 P.2d 508, 509-10 (Alaska 1966). Because Brown's "lulling" activities were not, under our construction, "transactions concerning land" within the meaning of AS 34.55.044(1), the State's reliance on that section is misplaced.

term as including "every inducement, solicitation or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit." The State reasons that Brown's "lulling" activities were "inducements" or "attempts" to get purchasers to "acquire" further interests in land.

We think it would be straining the language of the Act to hold that post-sale conduct designed to induce the continuation of payments constitutes an "offer" as that term is defined above. The continuation of payments under the land sales contracts involved here did not result in the acquisition by purchasers of further interests in land. Legal title to the property vested in the purchasers at the time the contracts were signed.[25]

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25. Under the deed of trust and promissory note arrangement used by Brown in selling Windsong lots, title to the property passed to the purchaser immediately upon signing the purchase agreement. This is not to say, however, that our conclusion would differ if the sales had been made pursuant to a conditional land sales contract in which legal title technically does not pass until the final installment is paid. For under this arrangement equitable title vests immediately in the purchaser upon execution of the contract, and the seller retains legal title only as a security interest for the unpaid portion of the purchase price. Davis v. Rio Rancho Estates, Inc., 401 F. Supp. 1045, 1048 (S.D.N.Y. 1975). In our judgment, the payment of installments by the equitable owner would not constitute further acquisitions of land under AS 34.55.044(2).

The State's reliance on Husted v. Amrep. Corp., 429 F. Supp. 298 (S.D.N.Y. 1977) is misplaced. That case involved the question whether a violation of the antifraud provisions of the federal Interstate Land Sales Full Disclosure Act could occur after the sale of land so that the plaintiff's claim would not be barred by the applicable statute of limitations. The court held that such a violation could occur, but emphasized that unlike S.E.C. Rule 10b-5, upon which the section at issue was in part modelled, the Act did not require that the violation occur "in connection with" the sale. Id. at 307. See also Fogel v. Sellamerica, Ltd., 445 F. Supp. 1269, 1274-75 (S.D.N.Y. 1978). AS 34.55.006, like the S.E.C. Rule, requires that the conduct complained of occur "in connection with" the sale.

This is not to say that fraudulent post-sale conduct could never constitute a violation of AS 34.55.006. If such conduct in fact occurred "in connection with" the offer, sale or purchase of subdivided land, then it would be actionable. Our review of federal decisions construing the scope of the "in connection with" requirement of S.E.C. Rule 10b-5 suggests that activity post-dating the time that the initial contract to purchase is signed is not necessarily immune from liability. For example, in Goodman v. Epstein, 582 F.2d 388 (7th Cir. 1978), cert. denied, 440 U.S. 939, 59

L.Ed. 2d 499 (1979), the court noted that "the crucial fact . . . is whether an investment decision remains to be made by the party from whom disclosure is withheld, and not upon when the agreement to purchase or sell was executed." Id. at 413; see also Issen v. GSC Enterprises, Inc., 508 F. Supp. 1278, 1286-87 (N.D. Ill. 1981). Goodman involved a limited partnership agreement in which the plaintiff limited partners were in an "on-going relationship" with the defendant general partners. 582 F.2d at 412. From time to time, the limited partners were called upon to make additional capital contributions based upon the partnership's performance. Although the conduct complained of occurred after the partnership agreement was signed, the court held that later nondisclosure of material facts by the general partners to induce continued payment of capital contributions by the limited partners was actionable under Rule 10b-5. However, the court was careful to distinguish the situation where

> . . . the investment decision was completed at the time the parties entered into the agreement, the contract being, in effect, a "one-shot deal." No continuing relationship was contemplated. All that was left undone was the ministerial exchange of money for the stock.

Id. at 412. In such an instance, the fraudulent conduct must occur at or before "the time when the parties to the transaction are committed to one another." Id., quoting

Radiation Dynamics, Inc. v. Goldmuntz, 464 F.2d 876, 891 (2d Cir. 1972). See also Clinton Hudson & Sons, v. Lehigh Valley Cooperative Farms, Inc., 73 F.R.D. 420, 425 (E.D. Pa.), aff'd mem., 586 F.2d 834 (3d Cir. 1977).

Applying these principles to the instant case, we conclude that Brown's post-sale "lulling" conduct directed at pre-September 21, 1977 purchasers was not "in connection with" the sales to such purchasers. Brown's relationship with these purchasers was "in effect, a 'one-shot deal,'" Goodman, 582 F.2d at 412, rather than one involving a "series of 'investment decisions.'" Id. at 413. The parties were committed at the time the contracts were executed and the continued payments required thereunder involved nothing more than a means of effectuating "the ministerial exchange of the money" for the land. Id. at 412. Accordingly, Brown's liability, if any, to pre-September 21, 1977 Windsong lot purchasers cannot be predicated on violations of ULSPA.

IV. COMMON LAW FRAUD

We must now decide whether restitution as to the fifty-three purchasers who bought lots before the effective date of the ULSPA amendments can be upheld on the basis of common law fraud. This was in fact the basis for the trial court's restitution order. Brown contends that the State was without authority to enforce the common law rights of

these purchasers. In addition, he argues that the trial court erred in applying the common law since the parties had tried the case under ULSPA.

A. The Attorney General's Common Law Powers

The duties of the Attorney General are statutorily set forth in AS 44.23.020(b). Among other things, that statute states that the Attorney General shall "perform all other duties required by law or which usually pertain to the office of attorney general in a state." AS 44.23.020(b)(7). In Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947, 950 (Alaska 1975), we stated that this language "indicates that the office of the Attorney General is to function with those powers and duties normally ascribed to it at common law." We further noted:

> Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best. This discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases.
>
> When an act is committed to executive discretion, the exercise of that discretion within constitutional bounds is not subject to the control

> or review of the courts. To interfere with that discretion would be a violation of the doctrine of separation of powers.

Id. (Citations omitted).

We believe that the above language forecloses any argument that the State is without authority to bring suit in the absence of express statutory authority. This view finds ample support in the decisions of other jurisdictions where the attorney general's common law powers are recognized. See, e.g., State v. Bristol-Myers Co., 470 F.2d 1276, 1278 (D.C. Cir. 1972) (construing Illinois Law); D'Amico v. Board of Medical Examiners, 520 P.2d 10, 20 (Cal. 1974); State ex rel. Shevin v. Yarborough, 257 So.2d 891, 894-96 (Fla. 1972)(Ervin, J., concurring); Lowell Gas Co. v. Attorney General, 385 N.E. 2d 240, 247-48 (Mass. 1979); Michigan State Chiropractic Ass'n v. Kelly, 262 N.W.2d 676, 677 (Mich. 1977); Gandy v. Reserve Life Insurance Co., 279 So.2d 648, 649 (Miss. 1973); Hyland v. Kirkman, 385 A.2d 284, 289-90 (N.J. Super. 1978); State ex rel. Derryberry v. Kerr-McGee Corp., 516 P.2d 813, 818 (Okla. 1973). This authority has been held to confer standing on the attorney general to seek redress for common law fraud. Lowell Gas Co. v. Attorney General, 385 N.E.2d 240, 247-48 (Mass. 1979); Hyland v. Kirkman, 385 A.2d 284, 289-90 (N.J. Super. 1978).

We therefore hold that the State has the authority to bring suit in the public interest on the basis of common law fraud to obtain restitution for defrauded land purchasers. While it is not the court's function to pass upon the Attorney General's determination of what is or is not in the "public interest," see Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947, 950 (Alaska 1975), we do note that the trial court in this case found:

> The State has an interest in preventing unjust enrichment by land developers based on widespread misrepresentations and nondisclosure. . . . Here the defendants advertised the land sales in local newspapers, reaching about half the population of the state. The State also has an interest in protecting the economy of the State against developers who misrepresent the desirability of the land they sell. . . . The State also has a pecuniary interest in this particular case since its resources may be called upon to aid victims of a potential flood in the Windsong Subdivision.

B. Brown's Liability For Common Law Fraud.

The State did not allege that Brown should be held liable on the basis of common law fraud. The focus of the State's case against Brown was on ULSPA. On the first day of the trial, the lower court granted summary judgment in favor of Brown's engineer, Hausam, on the theory that his involvement in the Windsong development ceased prior to the effective date of the ULSPA amendments, which could not be retroactively applied. In response to a question by Brown's

counsel, the trial court indicated that this ruling would apply to Brown as well, or in other words that Brown too could not be held liable for acts pre-dating September 1, 1977. During the trial, Brown presented evidence relating only to the defense of innocent misrepresentation provided in AS 34.55.030(a), the civil remedies section of ULSPA. Nevertheless, the trial court sua sponte relied on common law fraud to hold Brown liable for restitution to all Windsong lot purchasers who had elected to participate in the State's action, regardless of when they purchased their lots.

We agree with Brown that his right to a fair trial was jeopardized by the trial court's adoption of a new theory of the case. The focus of the pleadings, discovery, preliminary hearings, and earlier motions on ULSPA, coupled with the trial court's dismissal of Hausam from the case and assurance that the basis therefor would apply to Brown, could reasonably have led Brown to believe that his liability, if any, would be predicated on ULSPA, and ULSPA alone. Consequently, in preparing his defense, he had no notice that he was going to have to defend against fifty-three separate restitution claims based on the common law. Under these circumstances, we cannot countenance the trial court's re-engineering of the case to hold Brown liable for common

law fraud. Compare Clary Insurance Agency v. Doyle, 620 P.2d 194, 200-01 (Alaska 1980).

We conclude, therefore, that as to Brown's liability to pre-September 21, 1977 purchasers, the case must be remanded for supplemental evidentiary hearings. On remand the parties and the lower court should devote particular attention to the issue of reliance, a necessary element to a common law claim for rescission of a land sales contract. Cousineau v. Walker, 613 P.2d 608, 612 (Alaska 1980). Although the lower court here found that all Windsong lot purchasers had relied on the false information supplied them by Brown, the present record does not support this finding. In all, only twelve of the purchasers listed in the court's restitution order testified either at the hearing on the preliminary injunction or at the trial. Of these twelve, only ten bought their lots prior to September 21, 1977. Because of this evidentiary void, we believe that it would be unfair, on the present record, to hold Brown liable to the pre-September 21, 1977 purchasers on the basis of common law fraud. See Landex, Inc. v. State ex rel. List, 582 P.2d 786, 790-92 (Nev. 1978). While Brown may have had the burden of going forward to produce evidence of non-reliance in order to avoid

liability,[26] his failure to do so below may have been due to the absence of any notice that he might be held liable for common law fraud. Accordingly, on remand Brown must be afforded the reasonable opportunity to present such evidence, if any, as well as evidence tending to establish any

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26. According to Williston: "Where representations have been made in regard to a material matter and action has been taken, in the absence of evidence showing the contrary, it will be presumed that the representations were relied on." 12 Williston on Contracts § 1515, at 480 (W. Jaeger 3d ed. 1970); see also Restatement (Second) of Contracts § 167 comment b, illustration 3 (1981). In Vasquez v. Superior Court, 484 P.2d 964, 972-73 (Cal. 1971), the California Supreme Court, relying on the above-stated rule, held that issues of reliance would not preclude certification of an action as a class action because if it was shown that alleged misrepresentations were material, an inference of reliance would arise as to the entire class. See also Occidental Land, Inc. v. Superior Court, 556 P.2d 750, 754 (Cal. 1976). But see Newman v. Tualatin Development Co., 597 P.2d 800, 803-04 (Or. 1979); Johnson v. Travelers Ins. Co., 515 P.2d 68, 72 (Nev. 1974).

While we have no quarrel with the rule suggested by Williston and the Restatement, its application

> cannot be utilized to establish reliance as to the entire class without examining the facts and circumstances of each individual transaction which may establish that the misrepresentation was not the inducing factor. The defendant should be given the opportunity to examine each purchaser individually as to causation.

Hoffman v. Charnita, Inc., 58 F.R.D. 86, 91 (M.D. Pa. 1973). In our view, the absence of any notice to Brown that he was defending against common law fraud claims deprived him of a fair opportunity to rebut any inference of reliance that may have arisen.

other defenses he may have to the common law claims.[27]

We do not agree with our dissenting colleague that the State's case against Brown as to the pre-September 21, 1977 purchasers should simply be dismissed. The trial court had inherent discretionary authority to inject the theory of common law fraud into the case. A trial court's authority to require the presentation of new legal theories is implied in Alaska R. Civ. P. 16(e) authorizing amendment of a pre-trial order without limitation as to time "to prevent manifest injustice," and in the penultimate sentence of Alaska R. Civ. P. 15(b) allowing the amendment of pleadings at any time "when the presentation of the merits of the action will be subserved thereby" and no prejudice will result.

The authority to decide a case on an unplead legal theory should be sparingly exercised. In particular it should only be used when the new theory applies to the transaction in issue, is related to the theories presented by the parties, and is necessary for a proper and just disposition of the case. Here, those standards can be reasonably regarded as having been fulfilled.

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27. What we have earlier said about requiring a purchaser's written consent to be bound by the court's final judgment as a condition to participating in any restitutory relief is likewise applicable to pre-September 21, 1977 purchasers who elect, on remand, to continue being represented by the State.

Where prejudice will result a court either should not employ a new theory or should take steps to eliminate the prejudice by giving notice that the new theory will be used and affording an opportunity to the parties to present evidence and arguments relevant to it. The error committed by the trial court in this case was not in invoking the theory of common law fraud, but in failing to give the parties notice that it would do so along with an opportunity to adjust their cases accordingly.

In MacCormack v. Robins Construction, 521 P.2d 761 (Wash. App. 1974) the plaintiffs brought suit alleging that the defendants had sold them defective homes in violation of the State's Consumer Protection Act. The lower court concluded that plaintiffs were not entitled to relief under the state act but, on its own initiative, transformed the suit into a claim for damages based on common law breach of warranty. The lower court then granted the defendants' motion to reopen the case to present additional evidence. When the case was later appealed, this action by the trial court was upheld as within its discretion.

> In the case at bench, it is apparent from the record that the trial court allowed the defendants sufficient additional time and opportunity to present additional evidence and to cure any surprise defendants may have experienced as a result of the trial court's disposition of the case. . . .

Id. at 763.

Here, remand will do what the trial court should have done once the decision to invoke common law fraud was made. It will give Brown an opportunity to present evidence relevant to the common law fraud theory and thus eliminate the possibility of prejudice which would otherwise result from the court's reliance on that theory. That trial of the common law fraud issue may result in Brown being liable to pre-September 1977 purchasers, whereas under the statute he is not, is not the type of prejudice which precludes a remand. See Wright v. Vickaryous, 598 P.2d 490, 496-97 (Alaska 1979).

V. JURY TRIAL

The State correctly notes that Brown did not demand a jury trial until more than thirty days after he had answered the State's second amended complaint. Under Civil Rule 38, demand for a jury trial must be made not later than 10 days after the service of the last pleading directed at an issue for which the right to a jury trial is claimed. Alaska R. Civ. P. 38(b). The Rule further provides that the untimely filing of such a demand constitutes a waiver of the right Alaska R. Civ. P. 38(d); Hollembaeck v. Alaska Rural Rehabilitation Corp., 447 P.2d 67 68 (Alaska 1968). But, as Brown points out, the State twice amended its complaint after Brown's jury demand, each time adding additional parties and raising new issues. We need not decide, how-

ever, whether Brown's demand was timely, for, even if it was, it is clear that Brown had no right to a jury trial in this case.

Article I, section 16 of the Alaska Constitution provides in relevant part:

> In civil cases where the amount in controversy exceeds two hundred and fifty dollars, the right of a trial by a jury of twelve is preserved to the same extent as it existed at common law.

At common law, the existence of a right to trial by jury depended upon whether the claim asserted was legal or equitable in nature. Ross v. Bernhard, 396 U.S. 531, 533, 24 L.Ed. 2d 729, 733 (1970). When only equitable relief is sought, there is no right to a jury trial. 5 Moore's Federal Practice ¶ 38.17 (2d ed. 1981); see Loomis Electronic Protection, Inc. v. Schaefer, 549 P.2d 1341, 1344 (Alaska 1976). In this case, the State sought injunctive and restitutory relief only.[28] Such relief being equitable, 5 Moore's Federal Practice ¶ 38.24 (2d ed. 1981), Brown was not entitled to a jury trial and the lower court thus did not err in refusing Brown's jury trial demand.

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28. In its original complaint, the State sought civil penalties as well, but this claim was dropped prior to Brown's demand for a jury trial. We therefore need not decide whether a right to a trial by jury would exist had the State sought civil penalties under either ULSPA or the Consumer Protection Act. See State v. O'Neill Investigations, Inc., 609 P.2d 526, 538-39 (Alaska 1980) (Matthews, J., dissenting).

VI. VALIDITY OF THE INJUNCTION

As part of its final judgment, the lower court permanently enjoined Brown from engaging in certain practices prohibited by the administrative regulations promulgated under ULSPA, 3 AAC 20.010-20.390.[29] Brown claims that this part of the injunction is invalid because the regulations were not adopted in accord with statutory notice

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29. Included among the practices enjoined are (1) using contracts which contain provisions that loss of the property can result without notice or a hearing in a court of competent jurisdiction (3 AAC 20.060(a)(7)); (2) using contracts that provide for acceleration of payments upon default (3 AAC 20.060(a)(6)); (3) representing to prospective purchasers that they must act quickly to purchase land at a savings because the price is about to increase, unless a decision has in fact been made to increase the price and the increased price remains in effect for at least 30 days (3 AAC 20.110(1)); (4) representing to purchasers that the seller will buy back or resell the purchased property unless this is true (3 AAC 20.120(1)); (5) failing to inform purchasers that any evidence of indebtedness can be assigned (3 AAC 20.130(3)); (6) advertising "homesites" as for sale when the land has not been approved for utilities (3 AAC 20.080 (3)); and (7) failing to include on the face of any agreement that the purchaser has a right to rescind for any reason within five days (3 AAC 20.270(b)).

requirements.[30] We disagree.

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30. Brown also claims that these regulations are inconsistent with legislative intent, and that application of them to him would be a denial of procedural due process. The basis for Brown's first argument is that since the regulations were promulgated prior to the effective date of the ULSPA amendments, the legislature could not have intended them to apply to in-state sellers of land. In effect, Brown argues that administrative regulations must be re-promulgated before they may be applied to enforce an amended statute that covers a new class of persons. We think that requiring such a procedure would be unduly burdensome to the administrative agency when, as here, the regulations are consistent with, and not rendered unreasonable or arbitrary by, the statute as amended. See Kenai Peninsula Fisherman's Cooperative Ass'n v. State, 628 P.2d 897, 906 (Alaska 1981)

Brown's due process argument is that since the regulations when promulgated applied only to out-of-state subdividers, he reasonably believed that he had no interest in them. Thus, he argues that application of the regulations to him without re-promulgating them denies him notice of and an opportunity to be heard in the administrative process. The only authority cited by Brown in support of his argument is City of Homer v. State, 566 P.2d 1314, 1319-20 (Alaska 1977). His reliance on that case is misplaced, however, since it involved due process requirements in connection with administrative action that is adjudicatory, rather than legislative, in nature. As Professor Davis notes, numerous regulations are promulgated without notice to or participation by those that might be affected. 1 K. Davis, Administrative Law Treatise § 6.01 (1958). In our judgment, Brown's due process argument is without merit.

AS 34.55.020(a)[31] authorizes the Department of Commerce to prescribe regulations as are necessary to accomplish ULSPA's purpose, and states that such regulations shall be adopted in compliance with the Administrative Procedure Act, AS 44.62.010-44.62.650. AS 44.62.190 requires that notice of proposed agency action be given at least thirty days before regulations are adopted. The content of such notice is governed by AS 44.62.200, which, among other things, requires that the notice contain "an informative summary of the proposed subject of agency action." AS 44.62.200(a)(3). It is this requirement that Brown claims was not complied with here.

The challenged regulations were adopted after publication of the following notice:

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31. AS 34.55.020(a) provides:

> The department shall prescribe regulations which shall be adopted, amended, or repealed in compliance with the Administrative Procedure Act (AS 44.62). The regulations shall include but not be limited to provisions for advertising standards to assure fair and full disclosure; provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for; provisions for operating procedures; and other provisions as are necessary or proper to accomplish the purpose of this chapter.

> NOTICE IS HEREBY GIVEN that the Department of Commerce . . . proposes to adopt regulations in Title 3 of the Administrative Code to implement AS 34.55 Uniform Land Sales Practices Act as follows:
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> | | |
> |---|---|
> | Article 1. | General Provisions |
> | Article 2. | Filing Procedures |
> | Article 3. | Unfair Acts and Practices |
> | Article 4. | Advertising and Promotion Plans |
> | Article 5. | Protection of Purchasers |
> | Article 6. | Severability |

Brown contends that this notice was insufficient to convey any meaningful description of the proposed agency action.

AS 44.62.100(a) establishes a rebuttable presumption that the procedural requirements for the promulgation of administrative regulations have been satisfied. When a regulation is challenged for failure to comply with these requirements, the violation must be "substantial" before the regulation will be declared invalid. AS 44.62.300; Kingery v. Chapple, 504 P.2d 831, 834 (Alaska 1972). We think that Brown has failed to show a violation of the informative summary requirement substantial enough to overcome the statutory presumption of validity. The contents of the above summary gave members of the public sufficient information to decide whether their interests could be affected by the agency action and thus whether to make their views known

to the agency.[32] Accordingly, that portion of the trial court's judgment permanently enjoining Brown from violating the administrative regulations implementing ULSPA is affirmed.

VII. FIRST NATIONAL BANK AS A DEFENDANT

The relief sought by the State against First National Bank of Anchorage was a declaratory judgment that the Bank was not a "holder in due course" of the Windsong lot purchasers' promissory notes. The Bank held these notes as security for its loans to Brown used to finance the Windsong Subdivision. Although when delivered the notes were unendorsed, the collateral and loan agreements between Brown and First National authorized the Bank to endorse the notes to itself on Brown's behalf. After a time it did so and

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32. That this is all that AS 44.62.200(a)(3) requires finds support in its legislative history. The precursor to that section required that the notice of proposed agency action contain "[e]ither the express terms or an informative summary of the proposed agency action." Ch. 143, § 6(3), SLA 1959. In 1970, the legislature changed this language to that presently found in AS 44.62.200(a)(3). See ch. 185, § 1, SLA 1970. A report from the House Judiciary Committee reveals that the change came about because it was felt that under the prior version notice of proposed regulations had to be very detailed and specific; a requirement that the Judiciary Committee believed was too restrictive and hence undesirable. See 1970 House Journal 917-18. Thus, it is clear that the legislature intended that the "informative summary" requirement be liberally construed. Cf. AS 44.62.200(b) (a regulation may vary from the content specified in the summary if "the subject matter remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject").

then notified purchasers that they were obligated to make their payments to the Bank, despite the lower court's directive that those purchasers seeking restitution should make their payments to the court registry. It was at this point that the State amended its complaint to add First National as a defendant.

The lower court dismissed the State's action against the Bank, reasoning that the State was without standing to assert potential claims that individual lot purchasers might have against First National because the Bank had violated no law.[33] In our view, the lower court impermissibly substituted its own judgment for that of the executive official charged with bringing suit when, in his judgment, the public interest requires, and therefore erred in dismissing the State's action against First National.

We have already had occasion to discuss the Attorney General's broad common law powers. What we have said is equally applicable to the question of the State's authority to sue the Bank.

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33. Subsequent to its decision to dismiss the Bank, the trial court expressed as a tentative opinion the view that the Bank was not a holder in due course and thus would be subject to the same defenses available to a purchaser in an action on the note by Brown. The court correctly pointed out, however, that this view was not an adjudication binding on the Bank.

> Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest. . . .

Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947, 950 (Alaska 1975)(emphasis added). And, subject to constitutional bounds, what is or is not in the public interest is a matter committed to the Attorney General's sound discretion. Id. That the State saw fit to try to prevent First National from collecting on notes executed by persons whom it had reason to believe may have been the victims of fraud, is not a decision subject to the control or review of the courts. The trial court's concern that allowing the State to sue First National in the absence of a specific statutory violation by the Bank would create a "horrendous risk of overreaching" by the State as litigant, is answered by the observation that "the fact that the exercise of power may be abused is no sufficient reason for denying its existence." United States v. San Jacinto Tin Co., 125 U.S. 273, 284, 31 L.Ed. 747, 751 (1888).

We conclude, therefore, that the trial court erred in dismissing the State's claim against First National. On remand, the State must be given the opportunity to show,

with respect to the individual purchasers represented,[34] that the Bank does not occupy the status of a "holder in due course" of the various purchasers' promissory notes.

The judgment is AFFIRMED in part and REVERSED in part and the case is REMANDED for further proceedings consistent with this opinion.[35]

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34. First National's argument that permitting the State to sue will require the Bank to engage in litigation which offers it no prospect of obtaining complete relief is disposed of by our earlier holding that those individuals electing to be represented by the State must first consent to be bound by the court's final judgment.

35. In light of our disposition of the case, the lower court's award to the State of costs and attorney's fees must be vacated. We do not address the State's claim that the lower court erred in denying its request for pre-judgment attachment under AS 09.40.010. Since the State has represented to the court that it has been unable to find significant assets other than Windsong lots on which to execute during the pendency of this appeal, and since the State will have a partial judgment on which to execute following remand, this issue is moot.

RABINOWITZ, Chief Justice, dissenting in part.

My only disagreement with the court's disposition of the various issues in this appeal concerns its holding that determination of Brown's liability to pre-September 21, 1977 purchasers on the basis of common law fraud must be remanded for a second trial. The court reaches its remand conclusion on the following rationale: "The state did not allege that Brown should be held liable on the basis of common law fraud." Agreeing that Brown's right to a fair trial was jeopardized by the trial court's adoption of a new theory of the case, and refusing to countenance the trial court's re-engineering of the case to hold Brown liable for common law fraud, the majority has concluded that the matter should be remanded for trial of the common law fraud question.

I do not believe that a remand to address the issue of common law fraud is appropriate. The case against Brown was tried solely on the theory that Brown was liable under the ULSPA, not on the basis of common law fraud. Further, it cannot be shown that the issue of common law fraud was tried with the express or implied consent of the parties. In short, I think it unfair to require Brown to go through a second trial in circumstances where the state never asserted a claim of common law fraud in the original proceedings.

Even if I was persuaded that the issue of common law fraud had been raised and tried, in my view the appropriate disposition of the case would be to reverse a significant portion of the superior court's judgment ordering restitution to purchasers. As to these fifty-odd pre-September 21, 1977 purchasers, there is no evidence in the record concerning what misrepresentations, if any, were made to them or whether a particular purchaser relied on any such misrepresentation.[1] In short, I fail to comprehend the justifica-

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1. Although the superior court's order permits numerous purchasers to rescind their purchases and obtain a refund of their money on the ground that they were defrauded by Brown, there is no evidence in the record concerning most of these persons' dealings with Brown. A total of fifteen purchasers testified (several on Brown's behalf), and their testimony establishes that Brown or his agents told different things to different persons and that purchasers had varying amounts of knowledge about the condition of the property that they were purchasing. In other words, it is impossible to infer from the testimony of record that Brown defrauded dozens of purchasers, and thus the superior court's judgment lacks evidentiary support.

For example, on the issue of Brown's alleged failure to inform purchasers that their riverside parcels might flood, several of the state's witnesses testified that they knew the area was prone to flooding. Another two witnesses explained that they were told by Brown's representative of the subdivision's history of flooding. Many purchasers told stories much like that told by Thomas Doggett, who explained that he had bought his lot "more or less on impulse" within two hours of first seeing it and that he "didn't think about it, didn't research it, didn't ask any of the neighbors nothing." In other words, even if the testimony of some purchasers established that those persons were entitled to rescind their transactions, that testimony also establishes that it is impossible to infer that Brown is liable to other purchasers; the testimony of record does not establish that all purchasers were in the same position or that they all were told the same thing.

tion for the court's ordering a remand which will afford the state a second opportunity to attempt to present sufficient evidence to show that a particular purchaser is entitled to rescind his or her transaction with Brown.[2]

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2. First, this is not a case in which the state is the victim of poor lawyering or inartful pleading. The state was permitted to amend its complaint four times over the course of almost a year. The state had ample opportunity, both before and after conducting extensive investigations, to tailor its pleadings and theories to fit its view of the facts.

Second, this is not a case in which defrauded consumers would be left without a remedy should the state be denied the remand opportunity to litigate the common law fraud issue on their behalf. Each and every landowner is free to maintain an individual suit should he or she wish to rescind the transaction or to recover damages.

Third, this is not a case in which significant judicial resources would be saved by litigating all purchasers' claims in a single class action type lawsuit. The state must prove its allegation of fraud as to each purchaser. On remand, the proceedings could become a confusing series of up to 53 mini-trials.

Fourth, this is not a case in which the state's objectives would be frustrated should individual purchasers be required to bring separate suits to vindicate their rights, if any. The state has repeatedly represented that its objective is not to redress individual purchasers' grievances but rather to vindicate its separate interest in "public law enforcement" by enjoining Brown from violating state law. Indeed, the state has already obtained precisely the relief that it claims to have been seeking, an injunction.

Fifth, this is a case in which Brown will suffer significant prejudice should the case be remanded for a second trial. There is the obvious prejudice of forcing Brown to incur the expense of a second trial which would not have been necessary had the state raised the theory that it now wishes to rely upon, and the prejudice of possible liability to purchasers who would not have been entitled to recover under the state's statutory theory of liability.

In my view, the court's disposition of the common law fraud issue also raises basic considerations of fairness. Brown's engineer, Neil Hausam, moved for summary judgment on the ground that the ULSPA could not be applied to reach his activities. The superior court granted summary judgment on that ground. In response to Brown's inquiry at the outset of the trial, the superior court indicated that "implicit in what the court has already ruled with regard to Mr. Hausam is that any claim based upon anyone who relied - whose actions were motivated by acts that took place prior to the effective date of the amendment must fail." The record indicates that Brown obviously was proceeding under the assumption that, if Hausam was out of the case because the act could not be applied retroactively, so was he unless the state could prove some post-ULSPA misbehavior affecting a pre-ULSPA purchaser. In my view, inconsistent application of the law in this case has resulted in a basically unfair decision against Brown.

(footnote 2 continued)

Further, there is no assurance that Brown will not be faced with separate suits brought by individual purchasers after the state's suit comes to an end. The state's suit has no res judicata effect as to individual landowers, and landowners are not required to elect to participate in any judgment obtained by the state until after the lawsuit has drawn to a close. Thus, if the state loses, individual purchasers are free to ignore the state's suit and to file their own lawsuits; even if the state wins, no landowner is bound by the judgment, although it is plausible to assume that most landowners will elect to participate in the judgment rather than to bring separate suits.

[illegible] 3/22/83 9:30 AM

O: REPRESENTATIVE BARBARA LACHER

FROM: STEVEN H. MORRISSETT
MAT-SU BOROUGH
BOX B
PALMER 99645
PHONE 745 4801

Answered

MAR 21 1983

I WOULD LIKE TO TESTIFY IN SUPPORT OF HB236. THIS BILL AMENDS THE 'AIR TRADE PRACTICE AND CONSUMER PROTECTION ACT TO PROVIDE A DEFINITION FOR 'RADE OR COMMERCE.' THE EFFECT OF THIS BILL IS TO ASSURE THAT CONSUMERS ILL HAVE THE SAME PROTECTION AGAINST FRAUDULENT SALES OF HOMES AND REAL ROPERTY AS THEY DO AGAINST FRAUDULENT SALES OF OTHER GOODS AND SERVICES.

A RECENT DECISION OF THE ALASKA SUPREME COURT THREW INTO DOUBT WHETHER PERSON WHO BOUGHT A LOT OR A HOME BASED ON FRAUDULENT MISREPRESENTATIONS OULD BE PROTECTED UNDER ALASKA'S CONSUMER PROTECTION ACT. THE LARGEST NVESTMENT MOST FAMILIES MAKE IS IN THE PURCHASE OF THEIR HOME. THE LEGIS-ATURE SHOULD CLARIFY THAT THE STATE'S POLICY OF PROTECTION FOR CONSUMERS GAINST FRAUD EXTENDS TO THE PURCHASE OF HOMES.

****

Pls Pass Bill

HB 241

Josephson
5-13-83

Original sponsor: Martin

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 241 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the creation of the Alaska ~~Athletic~~ BOXING Commission and the regulation of professional boxing and wrestling."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

(24) Alaska ~~Athletic~~ BOXING Commission (AS 08.15.010).

* Sec. 2. AS 08 is amended by adding a new chapter to read:

CHAPTER 15. BOXING ~~AND WRESTLING~~.

Sec. 08.15.010. CREATION OF ~~ATHLETIC~~ BOXING COMMISSION. (a) There is created in the Department of Commerce and Economic Development the ~~Athletic~~ BOXING Commission.

(b) Members of the commission serve at the pleasure of the governor and shall be selected on the basis of their knowledge of and contribution to ~~athletics~~ PROFESSIONAL BOXING in the state.

Sec. 08.15.020. COMPOSITION AND TERMS OF MEMBERSHIP. (a) The commission consists of five members appointed by the governor for staggered three year terms as follows:

(1) a licensed physician, preferably a specialist in sports medicine;

(2) one member of the public;

(3) three members from the profession, one of whom shall be a contestant licensed under this chapter.

(b) A vacancy shall be filled for the balance of the unexpired term.

Sec. 08.15.030. GENERAL DUTIES AND ANNUAL REPORT. (a) The commission shall report annually to the governor. The report shall include the recommendations of the commission for the advancement and improvement of professional ~~athletic~~ BOXING programs and activities in the state, in addition to including the commission's findings.

(b) The commission shall recommend to the legislature statutory changes that the commission considers desirable or necessary to promote and maintain a ~~high standard of sportsmanship~~ level Boxing in the state.

Sec. 08.15.040. POWER OF COMMISSION. (a) The commission shall supervise all professional BOXING contests conducted in the state.

(b) The commission shall adopt regulations for the safe, organized, sportsmanlike and honest conduct of contests, including regulations relating to

(1) licensing of persons under the personal license provisions of this chapter;

(2) establishing the minimum fees payable to attending physicians, referees, judges, and timekeepers; OR OTHER MEDICAL PERSONNEL / FEES CAN BE WAIVED

(3) qualifications and duties of all persons required to be licensed under this chapter;

(4) conduct of contests, including their format and duration;

(5) approved equipment and facilities for the safety and protection of contestants;

(6) any other provision of this chapter.

(c) The commission may subpoena witnesses, administer oaths, take testimony and require the production or examination of any records concerning matters before the commission or under its investigation.

Sec. 08.15.050. DESIGNATED REPRESENTATIVES. (a) The commission

shall maintain a list of designated representatives.

(b) Whenever possible, a local designated representative shall substitute for a commissioner unable to supervise a contest in the commissioner's area. Commissioners and designated representatives shall minimize travel from one area of the state to another.

Sec. 08.15.060. ATTENDANCE AT CONTESTS. A contest may not be held without the attendance and supervision of a commissioner or a designated representative.

Sec. 08.15.070. PROVISION OF OFFICIALS. If not provided by the promoter, a commissioner supervising a contest shall provide for the attending physician, OR OTHER MEDICAL PERSONNEL timekeepers, referees, and judges at all contests in the state.

Sec. 08.15.080. MEETINGS AND COMPENSATION. (a) The commission shall meet at least once a year at the call of the chairperson, at the request of a majority of the commissioners, or at a regularly scheduled time determined by the commission. Commissioners serve without compensation but are entitled to per diem and travel expenses authorized by law for boards and commissions under AS 39.20.180.

(b) The commissioners shall elect a chairperson and a vice-chairperson from among their membership. The affirmative vote of a majority of the commissioners is required to exercise the powers of the commission.

(c) Meetings may be held by teleconference or other electronic means. Commissioners participating in a meeting from a location out of state may not vote at that meeting.

(d) The commission shall keep full and accurate minutes of its proceedings and records of its transactions.

Sec. 08.15.090. LICENSES REQUIRED. (a) A person may not act as a promoter, contestant, manager, attending physician, trainer,

referee, or judge in or for a contest unless that person has been issued the appropriate personal license by the commission.

(b) Application procedures and qualifications for the licenses required under this section shall be set out in regulations adopted by the commission.

(c) Licenses are biennial and shall expire on December 31.

Sec. 08.15.100. LICENSE FEES. The fees for licenses under this chapter are as follows:

(1) promoters.....$100;

(2) managers.....50;

A. TENDOR → PERMIT

(3) all other licensees except attending physicians. OTHER MEDICAL PERSONNEL ~~10~~.

Sec. 08.15.110. PROMOTER'S BOND. A promoter shall file a bond in the amount of $5,000 with the department upon approval of the application for a license and before the license is issued. The bond shall be conditioned on the faithful performance by the licensee of the provisions of this chapter, the payment of the contestants, and the good faith effort to conduct each contest for which tickets have been sold.

Sec. 08.15.120. CONTESTANT RESTRICTIONS. (a) A person may not participate as a contestant who

(1) was intoxicated or under the influence of a controlled substance at the time the person agreed to participate;

(2) did not agree to participate in writing;

(3) except as provided in (b) of this section, has used alcohol or a controlled substance within eight hours preceding the contest or is under the influence of alcohol or a controlled substance at the time of the contest; and

(4) is not at least 18 years of age or has not obtained a

waiver from the commission. OR DESIGNATED REP.

(b) A contestant may participate in a contest if

(1) the attending physician is aware that the contestant is using a prescription drug; and

(2) in the opinion of the attending physician, the safety of the contestant is not jeopardized and the prescription drug offers the contestant no advantage over the opponent in the contest.

Sec. 08.15.130. EXAMINATION OF CONTESTANTS. (a) Every contestant shall be examined no more than 24 hours, but no less than eight hours, before the contest by a practicing physician. The examining physician may disqualify a contestant considered physically unfit to participate.

(b) A contestant shall obtain a CAT scan of the head, or an equivalent examination, every 150 contest rounds or less and promptly supply the most recent CAT scan, or its equivalent, to the commission. If the contestant has been knocked out since the contestant's last CAT scan, a CAT scan taken after the last knockout shall be supplied to the commission before the contestant's next contest.

Sec. 08.15.140. ATTENDING PHYSICIAN REQUIRED. An attending physician currently licensed to practice medicine and surgery in the state must be on duty throughout a contest. The attending physician has the authority and duty to stop a contest when it is the physician's opinion that it would be dangerous to a contestant to continue.

Sec. 08.15.150. NOTICE OF CANCELLATION. (a) When it has been determined by means other than a physician's examination that a scheduled contestant will be unable to appear, the scheduled contestant's manager and the promoter of the contest shall notify the commissioner or the designated representative supervising the contest of the cancellation of the contest. When the cancellation is the result of an

examining physician's examination, the examining physician shall notify the commissioner supervising the contest in writing, stating the medical reason for, and the duration of, the cancellation.

(b) Upon receipt of notice of the cancellation of a contest for any reason, the commissioner or the designated representative supervising the contest, shall report the cancellation promptly to the chairperson of the commission and immediately to the public. If the commission, rather than the commissioner or the designated representative supervising the contest, is notified of a cancellation, the commission shall notify the public immediately.

Sec. 08.15.160. PAYMENT OF FEES. Failure of a promoter to pay the fees ~~of~~ the referee, attending physician, judges, and timekeeper is grounds for the suspension of the promoter's license.

Sec. 08.15.170. STATEMENT OF CONTEST. (a) Before a contest, a promoter shall file with the commission a statement setting out the name of ~~each~~ contestant, the managers' names and other information the commission may require.

(b) Failure to file the statement required under (a) of this section is grounds for suspension of the promoter's license.

Sec. 08.15.180. PARTICIPATION IN PURSE. (a) A person who acts as a promoter for a contest may not participate directly or indirectly in the purse or fee of a contestant or a contestant's manager.

(b) A person who violates (a) of this section forfeits any license held under this chapter.

(c) An unlicensed person who violates (a) of this section is guilty of a class B misdemeanor.

Sec. 08.15.190. ACTING WITHOUT A LICENSE. A person who violates AS 08.15.090(a) is guilty of a class B misdemeanor.

Sec. 08.15.200. ~~ENJOINING UNLICENSED CONTEST. The attorney~~

general, the commission, a commissioner or a concerned person may seek an injunction to prevent the conduct of a contest for which the necessary license has not been obtained.

Sec. 08.15.210. SHAM CONTEST. (a) A person may not conduct or participate in a sham or false contest.

(b) A licensee who violates (a) of this section shall be penalized by the commission as follows:

(1) for a first offense, a license shall be suspended for a minimum of three months, beginning from the date of the suspension order;

(2) for a second offense, a license shall be revoked permanently.

(c) The commission shall institute action to enforce (a) of this section within 10 days of receipt of notice of a possible violation.

(d) An unlicensed person who violates (a) of this section is guilty of a class B misdemeanor.

Sec. 08.15.220. EFFECT OF LICENSE SUSPENSION. (a) A licensee may not promote or participate in a contest when the licensee's license is suspended.

(b) A licensee who violates (a) of this section forfeits the license.

Sec. 08.15.230. EFFECT OF LICENSE FORFEITURE. A license forfeited under this chapter is cancelled and void. The licensee is forever ineligible for any of the licenses issued by the commission.

Sec. 08.15.240. GENERAL PENALTY. A person violating a provision of this chapter or a regulation of the commission for which no penalty is provided is guilty of a class B misdemeanor.

Sec. 08.15.250. INAPPLICABILITY OF CHAPTER. Nothing in this chapter gives the commission jurisdiction over the athletic programs

of any school, college or university or any other nonprofessional athletic events.

Sec. 08.15.260. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter.

Sec. 08.15.900. DEFINITIONS. In this title

(1) "CAT scan" means a rotating three dimensional computer-enhanced X-ray image;

(2) "commission" means the athletic commission created in AS 08.15.010;

(3) "commissioner" means a member of the athletic commission;

(4) "contest" includes a professional boxing or wrestling exhibition, sparring match or contest or fight, match, bout or fight;

(5) "contestant" means a person who competes in a professional contest;

(6) "designated representative" means a person knowledgeable about boxing or wrestling and qualified under the regulations adopted by the commission for designated representatives;

(7) "personal license" means the license issued to a promoter, contestant, manager, attending physician, referee, judge, second, or trainer;

(8) "professional" means a person receiving money or other thing of value other than a trophy, plaque, or medal for participation in a contest, and also means the contest itself;

(9) "promoter" means the person primarily responsible for the sponsorship, organization or furtherance of a contest.

* Sec. 3. AS 44.62.330(a) is amended by adding a new paragraph to read:

(52) Alaska Athletic Commission.

* Sec. 4. AS 44.66.010(a) is amended by adding a new paragraph to read:

(12) Alaska Athletic Commission (AS 08.15) -- June 30, 1986.

* Sec. 5. AS 05.05.010 - 05.05.040 and AS 05.10 are repealed.

* Sec. 6. INITIAL TERMS OF ALASKA ATHLETIC COMMISSION MEMBERS. Initial terms of the Alaska Athletic Commission shall be one year for two members, two years for two members, and three years for one member. The governor shall specify the initial term for each appointee.

* Sec. 7. REGULATIONS. The commission shall compile an initial list of designated representatives and also shall adopt comprehensive regulations under AS 08.15.040 within one year after the effective date of this Act.

Josephson
5-9-83

Original sponsor: Martin

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 241 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the creation of the Alaska Athletic Commission and the regulation of professional boxing and wrestling."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

(24) regulation of boxing under AS 08.15.

* Sec. 2. AS 08 is amended by adding a new chapter to read:

CHAPTER 15. BOXING AND WRESTLING.

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(b) Members of the commission serve at the pleasure of the governor and shall be selected on the basis of their knowledge of and contribution to athletics in the state.

Sec. 08.15.020. COMPOSITION AND TERMS OF MEMBERSHIP. (a) The commission consists of five members appointed by the governor for staggered three year terms as follows:

(1) a licensed physician, preferably a specialist in sports medicine;

(2) one member of the public;

(3) three members from the profession, one of whom shall be a contestant licensed under this chapter.

(b) A vacancy shall be filled for the balance of the unexpired term.

Sec. 08.15.030. GENERAL DUTIES AND ANNUAL REPORT. (a) The commission shall ~~study the amateur and professional athletic programs of the state and~~ shall report annually to the governor. The report shall include the recommendations of the commission for the advancement and improvement of PROFESSIONAL athletic programs and activities in the state, in addition to including the commission's findings.

(b) The commission shall recommend to the legislature statutory changes that the commission considers desirable or necessary to promote and maintain a high standard of sportsmanship in the state.

Sec. 08.15.040. POWER OF COMMISSION. (a) The commission shall supervise all professional contests conducted in the state.

(b) The commission shall adopt regulations for the safe, organized, sportsmanlike and honest conduct of contests, including regulations relating to

(1) licensing of persons under the personal license provisions of this chapter;

(2) establishing the minimum fees payable to attending physicians, referees, judges, and timekeepers;

(3) qualifications and duties of all persons required to be licensed under this chapter;

(4) conduct of contests, including their format and duration;

(5) approved equipment and facilities for the safety and protection of contestants;

(6) any other provision of this chapter.

(c) The commission may subpoena witnesses, administer oaths, take testimony and require the production or examination of any records concerning matters before the commission or under its investigation.

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(b) Whenever possible, a local designated representative shall substitute for a commissioner unable to supervise a contest in the commissioner's area. Commissioners and designated representatives shall minimize travel from one area of the state to another.

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Sec. 08.15.070. PROVISION OF OFFICIALS. If not provided by the promoter, a commissioner supervising a contest shall provide for the attending physician, timekeepers, referees, judges and ~~umpires~~ at all contests in the state.

Sec. 08.15.080. MEETINGS AND COMPENSATION. (a) The commission shall meet at least once a year at the call of the chairperson, at the request of a majority of the commissioners, or at a regularly scheduled time determined by the commission. Commissioners serve without compensation but are entitled to per diem and travel expenses authorized by law for boards and commissions under AS 39.20.180.

(b) The commissioners shall elect a chairperson and a vice-chairperson from among their membership. The affirmative vote of a majority of the commissioners is required to exercise the powers of the commission.

(c) Meetings may be held by teleconference or other electronic means. Commissioners participating in a meeting from a location out of state may not vote at that meeting.

(d) The commission shall keep full and accurate minutes of its proceedings and records of its transactions.

Sec. 08.15.090. LICENSES REQUIRED. (a) A person may not act as

a promoter, contestant, manager, attending physician, second, trainer, referee, or judge in or for a contest unless that person has been issued the appropriate personal license by the commission.

(b) Application procedures and qualifications for the licenses required under this section shall be set out in regulations adopted by the commission.

(c) Licenses are biennial and shall expire on December 31.

Sec. 08.15.100. LICENSE FEES. The fees for licenses under this chapter are as follows:

(1) promoters.....$100;

(2) managers.....50;

(3) all other licensees.....10.

(4) ATTENDING PHYSICIAN

Sec. 08.15.110. PROMOTER'S BOND. A promoter shall file a bond in the amount of $5,000 with the department upon approval of the application for a license and before the license is issued. The bond shall be conditioned on the faithful performance by the licensee of the provisions of this chapter, the payment of the contestants, and the good faith effort to conduct each contest for which tickets have been sold.

Sec. 08.15.120. CONTESTANT RESTRICTIONS. (a) A person may not participate as a contestant who

(1) was intoxicated or under the influence of a controlled substance at the time the person agreed to participate;

(2) did not agree to participate in writing;

(3) except as provided in (b) of this section, has used alcohol or a controlled substance within eight hours preceding the contest or is under the influence of alcohol or a controlled substance at the time of the contest; and

(4) is not at least 18 years of age or has not obtained a

waiver from the commission.

(b) A contestant may participate in a contest if

(1) the attending physician is aware that the contestant is using a prescription drug; and

(2) in the opinion of the attending physician, the safety of the contestant is not jeopardized and the prescription drug offers the contestant no advantage over the opponent in the contest.

Sec. 08.15.130. EXAMINATION OF CONTESTANTS. (a) Every contestant shall be examined no more than 24 hours, but no less than eight hours, before the contest by a practicing physician. The examining physician may disqualify a contestant considered physically unfit to participate.

(b) A contestant shall obtain a CAT scan of the head, or an equivalent examination, every 150 contest rounds or less and promptly supply the most recent CAT scan, or its equivalent, to the commission. If the contestant has been knocked out since the contestant's last CAT scan, a CAT scan taken after the last knockout shall be supplied to the commission before the contestant's next contest.

Sec. 08.15.140. ATTENDING PHYSICIAN REQUIRED. An attending physician currently licensed to practice medicine and surgery in the state must be on duty throughout a contest. The attending physician has the authority and duty to stop a contest when it is the physician's opinion that it would be ~~life-threatening~~ DANGEROUS to a contestant to continue.

Sec. 08.15.150. NOTICE OF CANCELLATION. (a) When it has been determined by means other than a physician's examination that a scheduled contestant will be unable to appear, the scheduled contestant's manager and the promoter of the contest shall notify the commissioner or the designated representative supervising the contest of the

cancellation of the contest. When the cancellation is the result of an examining physician's examination, the examining physician shall notify the commissioner supervising the contest in writing, stating the medical reason for, and the duration of, the cancellation.

(b) Upon receipt of notice of the cancellation of a contest for any reason, the commissioner or the designated representative supervising the contest, shall report the cancellation promptly to the chairperson of the commission and immediately to the public. If the commission, rather than the commissioner or the designated representative supervising the contest, is notified of a cancellation, the commission shall notify the public immediately.

Sec. 08.15.160. PAYMENT OF FEES. Failure of a promoter to pay the fees of the referee, attending physician, judges, and timekeeper is grounds for the suspension of the promoter's license.

Sec. 08.15.170. STATEMENT OF CONTEST. (a) Before a contest, a promoter shall file with the commission a statement setting out the name of each contestant, the managers' names and other information the commission may require.

(b) Failure to file the statement required under (a) of this section is grounds for suspension of the promoter's license.

Sec. 08.15.180. PARTICIPATION IN PURSE. (a) A person who acts as a promoter for a contest may not participate directly or indirectly in the purse or fee of a contestant or a contestant's manager.

(b) A person who violates (a) of this section forfeits any license held under this chapter.

(c) An unlicensed person who violates (a) of this section is guilty of a class B misdemeanor.

Sec. 08.15.190. ACTING WITHOUT A LICENSE. A person who violates AS 08.15.090(a) is guilty of a class B misdemeanor.

Sec. 08.15.200. ENJOINING UNLICENSED CONTEST. The attorney general, the commission, a commissioner or a concerned person may seek an injunction to prevent the conduct of a contest for which the necessary license has not been obtained.

Sec. 08.15.210. SHAM CONTEST. (a) A person may not conduct or participate in a sham or false contest.

(b) A licensee who violates (a) of this section shall be penalized by the commission as follows:

(1) for a first offense, a license shall be suspended for a minimum of three months, beginning from the date of the suspension order;

(2) for a second offense, a license shall be revoked permanently.

(c) The commission shall institute action to enforce (a) of this section within 10 days of receipt of notice of a possible violation.

(d) An unlicensed person who violates (a) of this section is guilty of a class B misdemeanor.

Sec. 08.15.220. EFFECT OF LICENSE SUSPENSION. (a) A licensee may not promote or participate in a contest when the licensee's license is suspended.

(b) A licensee who violates (a) of this section forfeits the license.

Sec. 08.15.230. EFFECT OF LICENSE FORFEITURE. A license forfeited under this chapter is cancelled and void. The licensee is forever ineligible for any of the licenses issued by the commission.

Sec. 08.15.240. GENERAL PENALTY. A person violating a provision of this chapter or a regulation of the commission for which no penalty is provided is guilty of a class B misdemeanor.

Sec. 08.15.250. INAPPLICABILITY OF CHAPTER. Nothing in this

chapter gives the commission jurisdiction over the athletic programs of any school, college or university or any other nonprofessional athletic events.

Sec. 08.15.260. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter.

Sec. 08.15.900. DEFINITIONS. In this title

(1) "CAT scan" means a rotating three dimensional computer-enhanced X-ray image;

(2) "commission" means the athletic commission created in AS 08.15.010;

(3) "commissioner" means a member of the athletic commission;

(4) "contest" includes a professional boxing or wrestling exhibition, sparring match or contest or fight, match, bout or fight;

(5) "contestant" means a person who competes in a professional contest;

(6) "designated representative" means a person knowledgeable about boxing or wrestling and qualified under the regulations adopted by the commission for designated representatives;

(7) "personal license" means the license issued to a promoter, contestant, manager, attending physician, referee, judge, second, or trainer;

(8) "professional" means a person receiving money or other thing of value other than a trophy, plaque, or medal for participation in a contest, and also means the contest itself;

(9) "promoter" means the person primarily responsible for the sponsorship, organization or furtherance of a contest.

* Sec. 3. AS 44.62.330(a) is amended by adding a new paragraph to read:

(52) Alaska Athletic Commission.

* Sec. 4. AS 44.66.010(a) is amended by adding a new paragraph to read:

(12) Alaska Athletic Commission (AS 08.15) -- June 30, 1986.

* Sec. 5. AS 05.05.010 - 05.05.040 and AS 05.10 are repealed.

* Sec. 6. INITIAL TERMS OF ALASKA ATHLETIC COMMISSION MEMBERS. Initial terms of the Alaska Athletic Commission shall be one year for two members, two years for two members, and three years for one member. The governor shall specify the initial term for each appointee.

* Sec. 7. REGULATIONS. The commission shall compile an initial list of designated representatives and also shall adopt comprehensive regulations under AS 08.15.040 within one year after the effective date of this Act.

Concerns on HB241:

page 1 - line 17: seven member commission is toounworkable. Most of the states that I have had the pleasure of dealing with has five or less members. Ideally, for Alaska it should remain as is: four members from the judicial districts and a chairman appointed by the Governor for a five-year term.

page 1 - line 19: The public's interest is served by a sizeable perfomance bond put up by the promoter.

page 1 - line 22: some states, Michigan for instance, has in their statutes: "No person interested in any way, financially or otherwise, in any club, organization or corporation the main object of which is the holding or giving of boxing, sparring or wrestling exhibitions, shall be eligible to appointment on such board."

page 1 - line 23: Since this legislation does not govern amateur boxing, there is no need to mandate a seat on the commission.

page 1 - line 29: semiprofessional does not belong on this legislation. You are a professional if you receive compensation for putting on a performance. The definition of a semiprofessional on page 11, line 13 is too unworkable. In my past experiences with boxing in the state, your preliminary bouts are often times compensated differently. One boxer may receive $150 to $300 and the other $350 to $600. Would this mean that one boxer would be a professional and the other a semi-pro? Would one boxer have to wear protective headgear and a 16 ounce glove and the other can wear a 10 ounce glove?

If this was designed to protect or regulate roughhouse boxing, this should not be the forum for it. Roughhouse boxing is not boxing and if I had some say on the matter I would eliminate the words "professional boxing" in their advertisements.

page 3 - line 14 Are other boards and commissions paying a surety bond? The bond is payable to the state but in essence is being paid by the state with the reimbursement clause on line 20. Why would it be needed?

page 4 - line 27 This section can be strengthened by a higher bond. I would assume that this is no more than a performance bond. While I was the commissioner, legally or not, I was asking and getting cash only bonds and would return the cash 10 days after the event. This took care of any spectator that felt they did not get their money's worth. Needless to say, no problem was ever encountered during any matches which I licensed during my term on the commission.

page 6 - line 10 line 11 while a physician has the duty to voice an opinion that it would be dangerous to a contestant to continue fighting, it is solely the authority and responsibility for a referee to stop a fight. The control of a fight, once the bell rings, rest solely on the third man in the ring.

page 6 - line 20 thru line 27 fees should be based on gross receipts. Fees should be paid to the referees; judges, time keeper, announcer and the ringside physician. No fee should be paid an inspector since he is acting in the absence of a commissioner. The examining physician (line 23) should be paid as if the person being examined went on a doctor's office visit. During my term as a commissioner, all judges, timekeepers, referees and announcers were paid with complimentary tickets. However, there is no reason that they could not be paid by the commission with money collected from the promoters.

Perhaps I missed it but there should be a clause in the bill that requires some form of insurance. The wording could go something like this:

> THE PROMOTER OR PROMOTERS OF ANY PROFESSIONAL BOXING CONTEST OR CONTESTS SHALL INSURE EACH CONTESTANT PARTICIPATING IN SUCH BOXING CONTEST FOR NOT LESS THAN $1,000.00 FOR MEDICAL AND HOSPITAL EXPENSES TO BE PAID TO THE CONTESTANT TO COVER INJURIES SUSTAINED IN SUCH CONTEST, AND FOR NOT LESS THAN $5,000.00 TO BE PAID IN ACCORDANCE WITH THE STATUTES OF DESCENT AND DISTRIBUTION OF PERSONAL PROPERTY IN SUCH CASE MADE AND PROVIDED TO PERSONS THEREUNDER ENTITLED, IN THE EVENT THE CONTESTANT SHOULD DIE AS A RESULT OF INJURIES RECEIVED IN A BOXING CONTEST.

We had a case in Alaska in 1974 where a female boxer was hospitalized and later died in Illinois. Since no insurance was in force at the time of the injury, the hospital ended up writing off her medical bill.

There are undoubtedly other changes in the legislation that I would like to see, however, in the interest of getting this to you, I will sign off right here. I will send a copy of this to Sen Josephson.

Josephson
4/25/83

Original sponsor: Josephson

IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 166 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the creation of the Alaska Athletic Commission and the regulation of professional boxing and wrestling."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 05.05 is amended by adding new sections to read:

Sec. 05.05.050. CREATION OF ATHLETIC COMMISSION. (a) There is created in the Office of the Governor DEPT. OF COMMERCE the Athletic Commission.

(b) Members of the commission serve at the pleasure of the governor and shall be selected on the basis of their knowledge of and contribution to athletics in the state.

Sec. 05.05.060. COMPOSITION AND TERMS OF MEMBERSHIP. (a) The commission consists of seven members appointed by the governor for staggered three year terms as follows:

(1) a licensed physician, preferably a specialist in sports medicine;

(2) ~~six~~ members-at-large, ~~including one from each judicial district.~~

(b) The ~~six~~ members-at-large ~~shall~~ may include representatives of professional boxing managers and amateur boxing interests.

(c) A vacancy shall be filled for the balance of the unexpired term.

Sec. 05.05.070. GENERAL DUTIES AND ANNUAL REPORT. (a) The commission shall study the amateur and professional athletic programs of the state and shall report annually to the governor. The report

wrestling coming

shall include the recommendations of the commission for the advancement and improvement of athletic programs and activities in the state, in addition to including the commission's findings.

(b) The commission shall recommend to the legislature statutory changes that the commission considers desirable or necessary to promote and maintain a high standard of SAFETY AND sportsmanship in the state.

Sec. 05.05.080. POWER OF COMMISSION. (a) The commission shall supervise all contests conducted in the state.

(b) The commission shall adopt regulations for the safe, organized, sportsmanlike and honest conduct of contests, including regulations relating to

(1) licensing of persons under the telecast and personal license provisions of this chapter;

(2) establishing the fees to be charged for licenses required under this chapter;

(3) establishing the minimum fees payable to examining physicians, attending physicians, inspectors, referees, judges, umpires, scorekeepers, and timekeepers;

(4) qualifications and duties of all persons required to be licensed under this chapter;

(5) conduct of contests, including their format and duration;

(6) approved coaching, managing, training, equipment and facilities for the safety and protection of contestants;

(7) any other provision of this chapter.

~~(c) The commission may contract for professional services and shall employ an executive director. It may employ a staff.~~ A member of the commission may not serve as the executive director or on the staff.

ADMINISTRATIVE PROCEDURE ACT

(d) The commission may subpoena witnesses administer oaths, take testimony and require the production or examination of any records concerning matters before the commission or under its investigation. (E) TAKE THE APPROPRIATE ACTION IN ACCORDANCE W/APA

Sec. 05.05.090. ATTENDANCE AT CONTESTS. (a) ~~Except as provided in (c) of this section, the executive director~~, or in the ~~director's~~ absence a commissioner or inspector, shall ~~attend and supervise~~ all contests.

(b) ~~The executive director or a~~ The commissioner ~~appointed by the executive director~~ shall provide for the attending or examining physician, inspectors, scorekeepers and timekeepers at all contests in the state. If not provided by the promoters, the ~~executive director or~~ the appointed commissioner shall also provide referees, judges and umpires. (A)

(c) A contest may not be held without the attendance and supervision of the ~~executive director~~, a commissioner ~~or an inspector~~. In the event that the executive director is unable to attend and supervise a contest, arrangement shall be made with a local commissioner to attend the contest. In the event that a local commissioner is unable to attend and supervise a contest in that commissioner's area, that commissioner shall appoint an inspector licensed under this chapter to attend and supervise the contest. If no local inspector is available, a commissioner from the area in which the contest is to be held may appoint a commissioner or inspector from another area to attend and supervise the contest as a substitute.

(d) When a commissioner or inspector from one region of the state attends a contest in another area as a substitute under (c) of this section, the substitute is entitled to receive per diem and reasonable travel expense compensation authorized by law.

Sec. 05.05.100. COMMISSIONERS' BONDS. Before entering the duties of office, a commissioner shall enter into a surety bond, executed by a surety company authorized to do business in the state, payable to the state, and approved by the attorney general. The bond shall be in the penal sum of $2,000, conditioned on the faithful and unbiased performance of the commissioner's duties. The bond shall be filed with the governor. A commissioner shall be reimbursed for the cost of the bond.

Necessary?

Sec. 05.05.110. MEETINGS AND COMPENSATION. (a) The commission shall meet at least once a year at the ~~call of the governor~~ or the chairperson, at the request of a majority of the commissioners, or at a regularly scheduled time determined by the commission. Commissioners serve without compensation but are entitled to per diem and travel expenses authorized by law for boards and commissions under 39.20.180.

(b) The commissioners shall elect a chairperson and a vice-chairperson from among their membership. The affirmative vote of a majority of the commissioners is required to exercise the powers of the commission.

(c) Meetings may be held by teleconference or other electronic means. Commissioners participating in a meeting from a location out of state may not vote at that meeting.

(d) The commission shall keep full and accurate minutes of its proceedings and records of its transactions. ~~A copy of each financial report, the minutes of all meetings, and a copy of each report filed~~ with the commission under this chapter shall be sent to the governor's office within 10 days after the record or report is completed or received.

Sec. 05.05.120. LICENSES REQUIRED. (a) A person may not act as

a promoter, contestant, manager, ~~examining or attending physician,~~ Attending physician ~~second, sparring partner~~, trainer, ~~booking agent~~, referee, judge, or ~~umpire~~ in or for a contest unless that person has been issued the appropriate personal license by the commission.

(b) A person may not telecast a contest unless that person has been issued a telecast license by the commission.

(c) Application procedures, and qualifications, ~~and fees~~ for the licenses required under this section shall be set out in regulations adopted by the commission.

(d) Licenses are annual and shall expire on December 31 of each year.

Sec. 05.05.130. CONTEST LICENSEE BOND. Every promoter shall file a bond in the amount of $1,000 with the commission for each contest held in a city of less than 10,000 inhabitants and a bond in the amount of ~~$3,000~~ $10,000 for each contest held in a city of more than 10,000 inhabitants. The bond shall be conditioned on the faithful and unbiased performance by the promoter of the provisions of this chapter, the payment of the taxes under this chapter and the compliance with all regulations of the commission. The bond shall be subject to the approval of the attorney general.

Sec. 05.05.140. CONTESTANT RESTRICTIONS. (a) A person may not participate as a contestant who

(1) was intoxicated or under the influence of a controlled substance at the time the person agreed to participate;

(2) did not agree in writing to participate at least 72 hours before a contest;

(3) except as provided in (b) of this section, has used alcohol or a controlled substance within eight hours preceding the contest or is under the influence of alcohol or a controlled substance

at the time of the contest; and

(4) is not at least 18 years of age, OR HAS RECIEVED A WAIVER.

(b) A contestant may participate in a contest if

(1) the attending physician is aware that the contestant is using a prescription drug; and

(2) in the opinion of the attending physician, the safety of the contestant is not jeopardized and the prescription drug offers the contestant no advantage over the opponent in the contest.

Sec. 05.05.150. EXAMINATION OF CONTESTANTS. (a) Every contestant shall be examined at least 24 hours, but no less than eight hours, before the contest by a practicing physician. The examining physician may disqualify a contestant considered physically unfit to participate.

(b) A contestant shall obtain a CAT scan of the head every ~~75~~ 150 contest rounds or less and supply the most recent CAT scan to the ~~examining physician for review during the pre-contest examination.~~ If the contestant has been knocked out since the contestant's last CAT scan, a CAT scan taken after the last knockout shall be supplied to the examining physician for review.

Sec. 05.05.160. ATTENDING PHYSICIAN REQUIRED. An attending physician currently licensed to practice medicine and surgery in the state must be on duty throughout a contest. The attending physician has the authority and duty to stop a contest when it is the physician's opinion that it would be ~~life-threatening~~ dangerous to a contestant to continue.

Sec. 05.05.170. SMOKING PROHIBITED. Notwithstanding the provisions of AS 18.35.310, ~~smoking~~ is not permitted at a contest held under the provisions of this chapter.

Sec. 05.05.180. NOTICE OF CANCELLATION. (a) When it has been

determined by means other than a physician's examination that a scheduled contestant will be unable to appear, the scheduled contestant's manager and the promoter of the contest shall notify the ~~executive director~~, or the commissioner or inspector supervising the contest, of the cancellation of the contest. When the cancellation is the result of an examining physician's examination, the examining physician shall notify the commissioner supervising the contest, IN WRITING AND STATING THE MEDICAL REASON AND DURATION OF THE CANCELLATION.

(b) Upon receipt of notice of the cancellation of a contest for any reason, the executive director, or the commissioner or inspector supervising the contest, shall report the cancellation promptly to the chairperson of the commission and immediately to the public. If the commission, rather than the executive director or the commissioner or the inspector supervising the contest, is notified of a cancellation, the commission shall notify the public immediately.

Sec. 05.05.190. PAYMENT OF FEES. (a) At least 10 days before a contest, the promoter shall pay to the commission an amount sufficient to pay the fees of the referee, the inspector and the examining physician.

(b) The commission shall pay the fees in (a) of this section to the persons entitled to them and furnish the governor with a record of the receipt of the amount paid under (a) of this section and of the payment of the fees.

(c) Failure of a promoter to pay the amount in (a) of this section is grounds for the suspension of the promoter's license.

Sec. 05.05.200. STATEMENT AND REPORT OF CONTEST. (a) A promoter shall, at least 10 days before a contest, file with the commission a statement setting forth the name of each contestant, the managers' names and other information the commission may require.

(b) Within 72 hours after a contest, the promoter shall file

with the Department of Revenue and the commission a written report showing the number of tickets sold for the contest, the price charged for them, the gross proceeds from the sale, and other information the commission may require.

(c) Failure to file the statement or report required under this section is grounds for suspension of the promoter's license.

Sec. 05.05.210. REPORT OF TELECAST. (a) A telecast licensee shall, within 72 hours after the telecast, file with the commission a written report showing the number of tickets issued or sold and the amount of the gross receipts.

(b) Failure to file the report required by this section is grounds for suspension of a telecast license.

Sec. 05.05.220. FAILURE TO PAY GROSS RECEIPTS TAX. (a) In addition to any other penalty provided by law, a licensee who fails to pay the gross receipts taxes under AS 43.77 shall be penalized by the commission as follows:

(1) for a first offense, a license shall be suspended for a minimum of three months, beginning from the date of the suspension order;

(2) for a second offense, a license shall be revoked permanently.

(b) The commission shall institute action to enforce (a) of this section within 10 days of receipt of notice of a possible violation.

Sec. 05.05.230. PARTICIPATION IN PURSE. (a) A person who acts as a promoter for a contest may not participate directly or indirectly in the purse or fee of a contestant or a contestant's manager.

(b) A person who violates (a) of this section forfeits any license held under this chapter.

(c) An unlicensed person who violates (a) of this section is

guilty of a class B misdemeanor.

Sec. 05.05.240. ACTING WITHOUT A LICENSE. A person who violates AS 05.05.120(a) or (b) is guilty of a class B misdemeanor.

Sec. 05.05.250. ENJOINING UNLICENSED CONTEST. The attorney general, the commission, a commissioner, the executive director or a concerned person may seek an injunction to prevent the conduct of a contest for which the necessary license has not been obtained.

Sec. 05.05.260. SHAM CONTEST. (a) A person may not conduct or participate in a sham or false contest.

(b) A licensee who violates (a) of this section shall be penalized by the commission as follows:

(1) for a first offense, a license shall be suspended for a minimum of three months, beginning from the date of the suspension order;

(2) for a second offense, a license shall be revoked permanently.

(c) An unlicensed person who violates (a) of this section is guilty of a class B misdemeanor.

(d) The commission shall institute action to enforce (a) of this section within 10 days of receipt of notice of a possible violation.

Sec. 05.05.270. EFFECT OF LICENSE SUSPENSION. (a) A licensee may not promote or participate in a contest when the licensee's license is suspended.

(b) A licensee who violates (a) of this section forfeits the license.

Sec. 05.05.280. EFFECT OF LICENSE FORFEITURE. A license forfeited under this chapter is cancelled and void. The licensee is forever ineligible for any of the licenses issued by the commission.

Sec. 05.05.290. GENERAL PENALTY. A person violating a provision

of this chapter or a regulation of the commission for which no penalty is provided is guilty of a class B misdemeanor.

Sec. 05.05.300. INAPPLICABILITY OF CHAPTER. Nothing in this chapter gives the commission jurisdiction over the athletic programs of any school, college or university or any other nonprofessional athletic events.

Sec. 05.05.310. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter.

Sec. 05.05.900. DEFINITIONS. In this title

(1) "CAT scan" means a rotating three dimensional computer-enhanced X-ray image;

(2) "commission" means the athletic commission created in AS 05.05.050;

(3) "commissioner" means a member of the athletic commission;

(4) "contest" includes a professional boxing or wrestling exhibition, sparring match or contest or fight, match, bout or fight;

(5) "contestant" means a person who competes in a professional contest;

(6) "executive director" means the executive director of the Athletic Commission created in AS 05.05.050;

(7) "~~inspector~~ designated Representative" means a person knowledgeable about boxing or wrestling and qualified under the regulations adopted by the commission for inspectors;

(8) "personal license" means the license issued to a promoter, contestant, manager, examining physician, attending physician, referee, judge, umpire, booking agent, inspector, sparring partner, second, or trainer;

(9) "professional" means a person receiving money or other thing of value other than a trophy, plaque, or medal for participation in a contest, and also means the contest itself;

(10) "promoter" means the person primarily responsible for the sponsorship, organization or furtherance of a contest;

(11) "telecast" means the television broadcast of a live or current contest on a closed circuit, whether originating in this state or not, for admission fees;

(12) "telecast license" means the license issued under this chapter for a telecast.

* Sec. 2. AS 43 is amended by adding a new chapter to read:

CHAPTER 77. SPORTS TAX.

Sec. 43.77.010. CONTEST AND TELECAST GROSS RECEIPTS TAX. (a) A tax of five percent is imposed upon the gross receipts from a combative sports contest and from the telecast of a contest.

(b) The minimum tax obligation under (a) of this section is $25.00 for each contest or telecast.

Sec. 43.77.020. DEPARTMENT OF REVENUE AUTHORITY. The Department of Revenue shall:

(1) collect the tax in this chapter;

(2) adopt regulations necessary to carry out the purposes of this chapter.

Sec. 43.77.030. PAYMENT OF TAX. (a) Within 72 hours after a combative sports contest or telecast, the licensee under AS 05.05.120 or the person conducting the contest or telecast shall

(1) file with the Department of Revenue the written report required by AS 05.05.200 or AS 05.05.210 showing the number of tickets sold for the contest or telecast, as appropriate, the price charged, the gross proceeds from the sale, and other information the Department

of Revenue may require;

(2) pay to the Department of Revenue the tax under AS 43.77.010.

Sec. 43.77.040. FAILURE TO MAKE REPORT AND TAX PAYMENT. (a) The commissioner of revenue shall examine the books and records of the promoter or the telecast licensee when

(1) a promoter or a telecast licensee fails to make a report under AS 43.77.030;

(2) the report is unsatisfactory to the commission or to the Department of Revenue; or

(3) a promoter or a telecast licensee fails to pay the full amount of the taxes due with the report.

(b) The commissioner of revenue may subpoena and examine under oath a licensee and any other person considered necessary to determine the total gross receipts of a contest or telecast and the amount of tax due.

(c) If, upon the completion of the examination, it is determined that some or all of the tax owed to the state is unpaid, notice shall be served upon the promoter or the telecast licensee stating the amount of the tax owed. The taxes shall be paid within 20 days of receipt of the notice.

Sec. 43.77.050. PENALTY. A person who violates AS 43.77.030 or AS 43.77.040 is guilty of a class B misdemeanor.

Sec. 43.77.060. DEFINITIONS. For purposes of this chapter, the terms "commission", "contest", "promoter", "telecast", and "telecast licensee" have the meanings set out in AS 05.05.900.

* Sec. 3. AS 44.62.330(a) is amended by adding a new paragraph to read:

(52) Alaska Athletic Commission.

* Sec. 4. AS 44.66.010(a) is amended by adding a new paragraph to read:

(12) Alaska Athletic Commission (AS 05.10) -- June 30, 1986.

* Sec. 5. AS 05.05.010 - 05.05.040 and AS 05.10 are repealed.

* Sec. 6. INITIAL TERMS OF ALASKA ATHLETIC COMMISSION MEMBERS. Initial terms of the Alaska Athletic Commission shall be one year for two members, two years for two members, and three years for three members. The governor shall specify the initial term for each appointee.

* Sec. 7. FIRST MEETING. The governor shall call the first meeting of the Alaska Athletic Commission within 15 days after appointment of the members.

* Sec. 8. REGULATIONS. Comprehensive regulations shall be adopted by the commission under AS 05.05.080 within one year after the enactment of this Act. shall be maintained

Alaska State Legislature

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HOUSE MAJORITY WHIP
CHAIRMAN
STATE AFFAIRS
MEMBER
TRANSPORTATION
LEGISLATIVE COUNCIL

Representative Mitch Abood
HOUSE DISTRICT 11

MEMORANDUM

TO: Rep. Joe Hayes, Speaker
House of Representatives

FROM: Rep. Mitch Abood, Chairman MA/rlp
House Committee on State Affairs

DATE: April 13, 1983

SUBJECT: Athletic Commission

In response to your request to me as Chairman of the House Committee on State Affairs concerning the Athletic Commission, would you please find attached a memo dated July 30, 1980 from then Governor Jay Hammond to Commissioner Webber of the Department of Commerce and Economic Development.

I specifically direct your attention to paragraphs 2,3, and 4. After exhaustive investigation, my findings do indeed show there has never been an Executive Order generated by the Governor's Office to change the Athletic Commission from the Governor's Office to the administration of the Department of Commerce and Economic Development; nor have there been any official transfers made by the 12th Legislature.

In addition, no statutory revisions have been prepared on this by the past or current Legislatures.

Finally, it would appear that the transferring of the Athletic Commission from the Governor's Office to the Department of Commerce and Economic Development without legislative approval is an illegal act.

cc: Representative Terry Martin
Joe Montgomery

Enclosure
M'./rlp

Based on follow-up information we obtained from Katie Wallon, this is not ~~true~~, true. They did try to pass a bill, as you know.

MEMORANDUM State of Alaska

TO: Charles R. Webber
Commissioner
Department of Commerce and
Economic Development

DATE: July 30, 1980

FILE NO:

TELEPHONE NO:

FROM: Jay S. Hammond
Governor

SUBJECT: Athletic Commission

Alaska Statutes 05.05.010 - .040 created the Athletic Commission within the Office of the Governor. The statute assigns the commission the authority to promulgate rules and regulations governing athletic programs and contests in Alaska. Further, AS 05.10.010 - .170 provides for licensing by the Athletic Commission of participants in boxing contests, sparring or wrestling matches and for licensing of groups of individuals to conduct boxing contests, sparring or wrestling matches. These statutory provisions originated at Statehood and have remained intact since that time.

The Athletic Commission has not been funded since FY 77. The Commission has never promulgated rules or regulations governing athletic programs or contests. There are no records of previous licenses issued by the Commission. Portions of the statutes are outdated and in need of revision.

The members of the Athletic Commission are anxious to comply with their statutory responsibilities and are interested in evaluating their program to define their role in Alaskan athletics. Temporary licensing forms and procedures have been developed by my staff with the assistance of the Department of Law. These forms should be sufficient for the Commission to use over the next few months.

Adequate staff is necessary to assist the Commission in recommending revisions to the statutes, promulgating regulations, and performing their licensing responsiblities. The Division of Occupational Licensing is the most appropriate location for the Athletic Commission. Although official transfer cannot be made without legislative approval, I am requesting that Occupational Licensing assume the staff responsibility to assist the Commission in evaluating and revising their program and in performing their licensing and regulatory responsibilities. Official transfer will be made during the first session of the Twelfth State Legislature by Executive Order or, if statute revisions are prepared, by legislation.

Appointments to fill the two vacancies on the Commission will be made as soon as possible.

Should you find that additional funds are necessary for the Athletic Commission for travel, per diem, or other expenses, contingency funds may be available for the remainder of FY 81. Occupational Licensing should include the Athletic Commission in preparation of their FY 82 budget request.

Thank you for your assistance and cooperation.

cc: Vicki Clayman, Special Assistant
Boards and Commissions
Office of the Governor

Keith Specking, Legislative Assistant
Office of the Governor

Rod Mourant, Director of Administrative Services
Office of the Governor

Harry Traeger, Director
Division of Occupatinal Licensing
Division of Commerce and Economic Development

A SPECIAL BOXING REPORT

Too Many Punches, Too Little Concern

With boxing's ills under fresh public scrutiny, new research on brain damage in experienced fighters suggests a road to medical reform

by **Robert H. Boyle and Wilmer Ames**

. . . See, all the brains are in a sort of cup, and after you get hit a few times it shakes them out of that cup. When they give you smelling salts it pulls them back into the cup. It's when the brains get shook up and run together that you get punch-drunk.

—SONNY LISTON

. . . I don't want to be one of them old [retired] fighters with a flat nose saying 'duh-duh-duh' before a fight.

—MUHAMMAD ALI, announcing his withdrawal from boxing on Dec. 12, '81

If a boxer ever went as batty as Nijinsky, all the wowsers in the world would be screaming "punch-drunk." Well, who hit Nijinsky? And why isn't there a campaign against ballet?

—A.J. LIEBLING, "The Sweet Science"

The death of Korean boxer Duk Koo Kim last fall aroused yet another cry for the reform or abolition of prizefighting in the U.S. Half a dozen times over the past 50 years a fatality has prompted a like reaction—in editorials or in Congressional hearings—but the result has been nil. Certainly reform is needed, but no amount of it will eliminate death in the ring. As long as there's boxing, there will be fatalities. Boxers die from acute brain trauma, caused either by a blow (or blows) to the head or, sometimes, a heavy fall to the canvas. The brain is like so much jelly suspended in a bucket, and when you strike the bucket sharply, the brain inside accelerates, twists and bumps around. In a knockout, which is technically a concussion, the force of a punch, transmitted to the brainstem, causes the fighter to lose consciousness. A KO is considered an acute injury, but it's relatively mild compared to what happens if the jarred brain ruptures the blood vessels that surround it. Then a hematoma (a massive buildup of blood) occurs in the narrow space between the rigid skull and the soft brain. As it expands, the hematoma simply squeezes the brain to death. There has been no dispute about that for 50 years.

But no one can predict when a punch will cause a knockout or a killing hemato-

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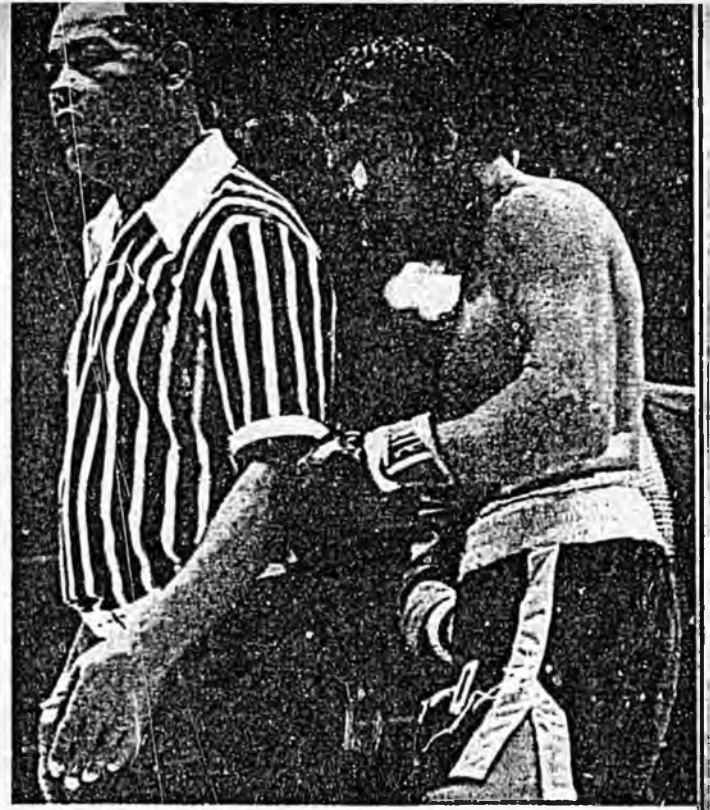
Mark Pacheco gets a brain scan. Below, he gets belted in a flyweight bout in Las Vegas in '81.



Losses like this, to Frazier in '74, may affect Quarry later.

weight named Mark Pacheco were brought together by SI for neurological examinations at Quarry's rural training camp north of Los Angeles. Quarry, 37, retired in 1977 after 63 professional fights. Beaten by Ali in 1970 and '72, he was the last white heavyweight to make a serious championship bid until Gerry Cooney challenged Larry Holmes last year. But Quarry wants to come out of retirement; he has reportedly agreed to fight again in June. Cobb, 28, has a record of 20–3. Last year he earned a measure of fame when, courageous but incompetent, he lost to Holmes in a WBC title bout. He took such a bad drubbing that a dismayed Howard Cosell, who announced the fight for ABC-TV, declared he'd never broadcast a professional boxing match again. Pacheco, 23, isn't a celebrated fighter. With a record of 11–11–1, he's one of those unsung battlers who hit and get hit on undercards in cities like Portland, Ore. and Sacramento. But Pacheco has become a minor notable because of two defeats. He was TKO'd in Portland in May 1982 and denied a license, on medical grounds, to fight in Oregon again for 45 days. But he had a bout 43 days later in New York, and he was again TKO'd. In the current round of Congressional hearings on boxing, which began after Kim's death and the *JAMA* editorials and reports, the Pacheco case has been cited as evidence of the sport's inadequate medical supervision.

All three men signed releases waiving their rights to medical privacy, and Quarry and Cobb were confident that nothing would be found amiss. The three were examined by Dr. Ira Casson of New York, a board-certified neurologist at Long Island Jewish Medical Center who was acting as a consultant to SPORTS ILLUSTRATED. Admittedly, this trio doesn't constitute a scientific sample. But recent research published by Casson and others indicates that the degree of a boxer's brain impairment can, as a rule, be related to the number of bouts he has fought. This indeed proved to be the case with two of our subjects, as will be shown. But none of the three are at this point in their lives punch-drunk.

In May 1928, Dr. Harrison Martland, a New Jersey pathologist, delivered a landmark paper at the New York Academy of Medicine. Using punch-drunk as a formal term for the first time, Martland said that its early signs were well recognized by the fans and promoters. They also referred to these boxers, he said, as "goofy," "cuckoo," "slug nutty" and "cutting paper dolls."

"Punch drunk most often affects boxers of the slugging type, who are usually poor boxers and who take considerable head punishment, seeking only to land a knockout blow," Martland reported. "It is also common in second-rate fighters used for training purposes, who may be knocked down several times a day." Early symptoms, he said, usually appeared in the extremities, for example, as a slight unsteadiness in gait, and in some cases periods of slight mental confusion occurred. In more advanced cases, there was a general slowing down in muscular movement, "a peculiar mental attitude characterized by hesitancy in speech, tremors of the hands and nodding movements of the head." In severe cases, symptoms included a peculiar tilting of the head, a staggering gait, "the facial characteristics of the Parkinson's syndrome," backward swaying of the body, tremors and "marked mental deterioration" that sometimes required commitment to an asylum. Martland estimated that almost 50% of veteran professional boxers had the condition in either severe or mild forms.

Martland said, "I am of the opinion that in punch drunk there is a very definite brain injury due to a single or repeated blows on the head or jaw which cause multiple concussion hemorrhages in the deeper portions of the cerebrum." About this pathology he was wrong, because he had no scientific data and could only speculate on the basis of his study of people who had died from random head injuries. He admitted that his theory couldn't then be proved, yet he felt compelled to report it because "the condition

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Dr. Casson used a rubber hammer to show that Quarry's reflexes—and his chin—are still sound.

Boxing *continued*

can no longer be ignored by the medical profession or the public." Accordingly, he called it "the duty of our profession to establish the existence or nonexistence of punch drunk by preparing accurate statistical data as to its incidence, careful neurologic examinations of fighters thought to be punch drunk and careful histologic examinations of brains of those who have died with symptoms."

Martland ended his paper by quoting Gene Tunney on his retirement after his second heavyweight championship fight with Jack Dempsey the year before. While training for the fight, Tunney had been hit hard by a sparring partner and suffered amnesia. Tunney said later that he didn't know who he was for 48 hours and that it was not until the seventh round of the Dempsey fight that he felt entirely normal. Martland quoted Tunney as concluding, "From that incident was born my desire to quit the ring forever, the first opportunity that presented itself. . . . But most of all I wanted to leave the game that had threatened my sanity before I met with an accident in a real fight with six-ounce gloves that would permanently injure my brain."

Though it made further study of the punch-drunk condition respectable among medical researchers, Martland's technical paper did little to alter the perception of the condition in the public mind, the sport or the press. Most promoters, writers and ringside physicians continued to discount it. Yes, they agreed, there was such a thing as a boxer becoming punchy, and it probably happened to more than a few, but it could not be accurately diagnosed and therefore was not a matter of serious concern.

Besides, it was not unusual for boxers, especially aging former fighters, to drink too much, to take pills, to eat poorly and generally not to take care of themselves. Some were said to have contracted syphilis, which in advanced cases can attack the brain. In any case, most people in the fight business attributed punch-drunk symptoms solely to causes unrelated to boxing. To do otherwise was to launch an attack on the sweet science. As for the boxers themselves, the ones who seemed punch-drunk denied it; the others didn't care to talk about it. One fighter, Slapsie Maxie Rosenbloom, had it both ways: He made a career in show business spoofing the punch-drunk myth (*box, page 56*).

For 50 years after Martland, the best medical research on the punch-drunk syndrome was done in England, which has a rich prizefighting tradition. In the heyday of the sport early in this century, novice boxers and fading pros used to fight in booths at fairs, taking on all comers in unsupervised bouts and receiving all kinds of punishment for little money. There were a great many organized fights as well. Thirty-year careers in the ring were not uncommon.

In 1957 an eminent neurologist named MacDonald Critchley reported in the *British Medical Journal* that he had examined 69 cases of chronic neurological disease in boxers and that "many of these—perhaps the great majority—should be looked upon as examples of punch-drunkenness, either early or well established." Like Martland, he found the symptoms more common among professionals than amateurs, in sluggers than in more stylish boxers and "in the second-rate or third-rate performers than in the intelligent scientific exponent with a championship title." He also concluded that "the sum total of contests is important, as well as the number of occasions upon which the boxers have been rendered unconscious."

Focusing on 21 patients, Critchley found that on the average punch-drunkenness developed 16 years after a boxer began his career. "Of great interest, pathological as well as practical, is the fact that this traumatic encephalopathy is a progressive condition," he wrote. "Once established, it not only does not permit reversibility, but it ordinarily advances steadily. This is the case even though the boxer has retired from the ring and repeated cranial traumas are at an end." Critchley went on to note that a victim usually showed little insight into his deteriorating condition even though his speech and thought became progressively slower and his memory lapsed. "There may be mood-swings, intense irritability, and sometimes truculence leading to uninhibited violent behavior. Simple fatuous cheerfulness is, however, the commonest prevailing mood, though sometimes there is depression with a paranoid colouring."

In 1959 an editorial in the British medical journal *The Lancet* concluded, "The medical case against boxing is now so strong that we have a clear duty to fight

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and he was the only man to examine Mohr's brain.

In 1962 the professional boxing world was shocked by the death of Benny (Kid) Paret in a welterweight title bout with Emile Griffith. Paret had been knocked out twice in the previous year—demonstrating, in the view of some observers, a

Cobb would rather forget his shellacking by Holmes last fall, but in this test he showed he could draw geometric shapes from memory.

Boxing *continued*

for its total abolition." But in the U.S. medical opinion was divided, and appeals for the banning of the sport were considered ill-founded and fanatical. A study released by Drs. Harry A. Kaplan and Jefferson Browder in 1954 had taken the steam out of the reform movement. The researchers had given 1,043 boxers electroencephalograms (EEGs), a test that records patterns of electrical activity in the surface aspects of the brain. Kaplan and Browder could find nothing wrong in the EEGs of boxers. Sluggers who were hit often tested no worse than skillful fighters, although those with lower ring ratings tended to have "disorganized" EEGs more frequently. The study noted that derogatory remarks about punch-drunk boxers were prevalent, but that this was only "popular theory." Martland, they said, had no documentary evidence such as theirs. The punch-drunk probably would have suffered the same fate had he never boxed at all. Kaplan said that he had served as a ringside physician for three years and that his slow-motion films showed that most blows in the ring missed their mark. Not surprisingly, defenders of boxing still cite this study, though subsequent research has proved that the EEG doesn't reliably measure the type of brain damage that would result in punch-drunkenness.

The consensus of American medical opinion in the late '50s, at the time of *The Lancet* editorial, could be summed up in the words of Dr. Ira McCown, medical director of the New York Athletic Commission, who wrote in a research paper in 1959 that the notion of punch-drunk was a "medical cliché with which to label any boxer whose performance and behavior in or out of the ring is unsatisfactory or abnormal."

A series of conspicuous fight deaths in the early '60s brought renewed medical attention to boxing. In the spring of 1960 Charlie Mohr, a middleweight from the University of Wisconsin, died of a hematoma he suffered while defending his NCAA championship in Madison, Wis. Mohr was wearing headgear. An overhand right to his padded left temple literally propelled his brain against the other side of his skull, where the fatal damage occurred. His death led to the banning of boxing as an intercollegiate sport, but the controversy over the circumstances continues. The editor of *Ring* magazine claimed earlier this year that Mohr had gone into the ring with an aneurysm, a cerebral blood vessel waiting to burst. But this charge is hotly disputed by the neurosurgeon who operated on Mohr, serious inability to defend himself. That wasn't a big consideration; Paret was known for being able to absorb punishment. Significantly, he had taken a pre-fight EEG and had been found normal.

Davey Moore, a former flyweight champ, was killed in a Los Angeles bout in 1963. Moore, too, had taken and passed an EEG, but he apparently lied to the California authorities about other health problems. It was clear that the medical supervision of boxing was superficial and, thanks to disparate standards among state commissions, gravely inconsistent. Some boxers were fighting in different states under different names; commissions had little knowledge of medical histories. But the very lack of data and the paucity of long-term research dissuaded most doctors from pressing for reform. Boxing, after all, was a popular and powerful industry.

A 1962 *JAMA* report asked for up-

graded safety standards and more thorough medical exams in boxing. It also called for experimentation with "less padding in the gloves so that the threat of damage to the hands will inhibit the power of blows." At the time, eight-ounce gloves were in general use, as they are today. Compared with the six-ounce gloves used early in this century, they reduced hand injuries and facial cuts, but they allowed boxers to punch each other harder in the head.

Meanwhile, in Britain, research on the punch-drunk syndrome continued. A book-length study completed by Dr. A.H. Roberts in 1969 established the condition as a statistical reality. Roberts examined 224 men randomly selected from among 16,781 who had registered as pro fighters. All were retired. Seventeen percent had hard evidence of brain damage, in the form of drooling, slurring, unsteady gait and/or memory loss. An unspecified number of others showed "disturbed neurological function." Roberts' statistics also indicated that the longer a boxer's career had been, the more likely he was to have conspicuous punch-drunk symptoms.

In the same year a psychiatrist named John Johnson reported on the psychological problems of former fighters in the *British Journal of Psychiatry*. Johnson found that 16 of the 17 subjects he examined were suffering from one or more of the following clinical conditions: chronic amnesia, morbid jealousy, undue rage reactions or outright psychosis. Using air encephalography, a technique that produces an X ray after air is injected into the brain, Johnson also found a pattern of cerebral atrophy in 10 of the 17. It had long been known that brain tissue doesn't regenerate, that damaged brain cells are lost forever. More than half the men in the sample, in other words, were missing brain tissue. Johnson was interested in the charge that punch-drunk fighters had drinking problems. Alcoholism, like senility, can cause loss of brain cells and evoke psychological disturbances similar to the ones he studied, but Johnson maintained that the patterns of damage in his air encephalograms of boxers were never seen in alcoholics.

In 1973 came the most important study to date, when the brains of punch-drunk fighters were examined in physical detail. Dr. J.A.N. Corsellis, a neuropathologist, and his colleagues in England

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performed autopsies on the brains of 15 former fighters who had died of natural causes. Friends and family members had provided accounts of the boxers' conditions in later life, from which Corsellis had determined that they had been punch-drunk. The autopsies revealed a striking pattern of cerebral atrophy in 14 of the 15. Though the researchers said that medical controls in boxing had probably improved since their fighters were active, they warned: ". . . there is still the danger that, at an unpredictable moment and for an unknown reason, one or more blows will leave their mark. The destruction of cerebral tissue will have then begun and although this will usually be slight enough in the early stage to be undetectable, it may build up, if the boxing continues, until it becomes clinically evident. At this point, however, it could already be too late. . . ."

The abnormalities and atrophy Corsellis found were located deep in the middle of the brain, around the septum pellucidum (*illustrations, pages 62-63*), and also in the cerebellum, the outer section close to the back of the head. The cerebellar structures regulate muscular coordination and balance. A person with damage here may slur his speech or may appear to stagger—"walk on his heels," in ring parlance. The deep midline regions help regulate short-term memory. Forgetfulness may occur if a person has lost tissue here. The conspicuous hallmarks of this damage are abnormally enlarged ventricles, the ventricles being the brain vessels filled with spinal fluid. They expand to fill the space left by the tissue atrophying around them. A more critical finding is a cavum septum pellucidum—literally, a cave in the septum. The jarring from cumulative punches may eventually cause the septum to pull apart, leaving a tunnel-like hole two to eight millimeters wide between the ventricles.

In the 1970s came the introduction of the tool that has revolutionized the medical literature on boxing. This is the CAT scan (computerized axial tomography), a highly advanced form of X ray. With it, abnormalities in the brain can now be observed as they develop and before they result in symptoms. Within the past year three independent studies utilizing CAT scans have come to similar conclusions about chronic brain impairment among boxers.

The first was published in February 1982, in the British *Journal of Neurology, Neurosurgery and Psychiatry*. In this study Casson and other specialists performed detailed neurological examinations, EEGs and CAT scans on nine professional boxers in New York shortly after they'd been knocked out in a bout and on a 10th boxer who had been stopped on a TKO. The 10 boxers, who

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Maxie couldn't cuff Olin around in this '34 title fight.

How Punchy Was Slapsie Maxie?

The most frequently cited defense of boxing is that it gives poor kids an opportunity to better themselves, to fight their way out of the ghetto. In the U.S. today that applies primarily to blacks and Hispanics, but in the old days the disadvantaged young fighters tended to be European immigrants' sons—Irish, Italian, Jewish. They were the scrappers reared in the tenements of the turn of the century. Slapsie Maxie Rosenbloom, a light-heavyweight champion in the early 1930s, was one. Born in New York in 1904, Maxie started boxing at the age of 12, not long after being released from the Hawthorne Reform Home for Jewish Boys. He'd been parked there for 13 months for hitting a teacher and knocking out two of her teeth. Soon thereafter his mother enrolled him in ballet school, but that only made him more pugnacious because the other kids on the street called him a ballerina. Maxie later claimed that it was George Raft, the future Hollywood actor but then just another neighborhood pal, who steered him from ballet to a better use of his skills in the ring.

From the beginning Rosenbloom was an eccentric fighter. He never trained very much. He gambled and ran around, and he would get into shape by "dancing" in the gym. But he became an excellent defensive boxer—hard to hit. His offense consisted of open-handed cuffs, delivered in startling flurries, and crazy-legged footwork. He confused his opponents and wore them down. Rosenbloom had several hundred fights as an amateur, winning the New York State light-heavyweight crown in 1930. Damon Runyon, then a sportswriter, dubbed him Slapsie Maxie soon after he turned pro in 1923. On June 25, 1930, the 25-year-old Rosenbloom won the world light-heavyweight title by outpointing Jimmy Slattery in 15 bloody rounds. By then he'd discovered he could make people laugh with his parody of the punch-drunk boxer, the happy-sad staggering figure that fight fans knew so well. That Maxie, they'd say as they watched him prance and joke in the gym, what a card.

Rosenbloom's reign as light-heavyweight champ ended in November 1934 when he lost to Bob Olin, but he continued to fight until 1939. He can't be said to have been a great champion. In 289 professional bouts—a stupendous number—he scored only 18 knockouts. He utterly lacked a killer instinct. Once a referee was about to award him a TKO because his opponent had a badly cut ear, but Rosenbloom told the ref no, don't stop it, I just won't hit the guy in the head anymore. He always liked to go the distance.

The Hollywood film crowd fell in love with Maxie. In 1933, while still champion, he appeared in his first feature, and for the next 25 years he was as active as a character actor as he'd been as a fighter. In more than 60 movies he usually played one of two parts—if he wasn't a boxer, he was invariably the comic tough guy, the B-movie gangster, saying "dese," "dem" and "dose" in his heavy New York accent and getting into trouble with his punchy foolishness.

For a while he had his own nightclub in Los Angeles, Slapsie-Maxie's. When he got up on stage, rocking back on his heels, he'd slur his trademark opening line—"I never liked to hit very hard"—and the audience would break up. He had a gift for the addled malapropism: "Waitress, I'll have a steak sandwich."

"How would you like it?"

"Well-to-do, please."

He used gag writers, but he could ad-lib, too. Countless columnists, knowing Maxie to be a reliable source of funny material, inter-

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came from all weight divisions, were from 20 to 31 years old. CAT scans showed that five of the boxers had cerebral atrophy. "We were surprised by [these] findings [in] active boxers," Casson and colleagues reported. Three fighters who had become champions all showed signs of brain damage. A fourth boxer, who was top-ranked, had a normal scan, but he was the only boxer in the series with an organic mental syndrome—memory loss and confusion. Further analysis revealed that the number of bouts was probably of critical importance. Of the five fighters with 20 or more fights, four had cerebral atrophy; of the five fighters with fewer than 12 fights, only one did. The CAT scan of one fighter, whom Casson characterized as a "slugger," showed a cavum septum pellucidum, and he'd had more fights than any of the others. "Since none of the boxers had been knocked out more than two times in their careers," the researchers concluded, "a cumulative effect of multiple subconcussive head blows is the most likely culprit."

Last November in *The Lancet*, Dr. M. Kaste and a team of physicians at the University of Helsinki reported on 14 boxers (six professionals and eight amateurs) who had been Finnish, Scandinavian or European champions. Using EEGs and CAT scans, the physicians found brain injury in four of six professionals and in four of eight amateurs.

Finally, in the controversial *JAMA* issue of last January, Dr. Ronald J. Ross, a Cleveland radiologist, and colleagues published a paper that agreed with the key finding of Casson and Kaste: the more bouts, the worse the CAT scan. Their study involved 40 boxers, only two of them still active. Thirty-eight had CAT scans, and 24 had a complete neurological examination. "The number of bouts fought was significantly related to the presence or absence of ventricular enlargement," wrote the researchers. Moreover, "Patients with abnormal findings on CAT examination did have more frequent neurological symptoms and abnormal neurological findings."

In the same issue with the Ross study was a report by a scientific council formed by the AMA to summarize what was known about brain injuries and deaths in boxing. (Although the report cited the literature on chronic injuries, the council was formed primarily as a reaction to Classen's death. Classen, a middleweight, had been knocked out twice in the eight months before his fatal fight, proving that little had changed in the medical regulation of boxing since Paret's death 17 years before. Kim's death occurred as the council was completing its work.) The council did not recommend a ban on boxing, although two pas-

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SLAPSIE MAXIE *continued*

viewed him to find out which sweet thing he wanted to marry next or how much he'd lost at the track.

Maxie was always "on," always in character, whether he was performing or not. A few people began to suspect that it was more than an act. If you didn't know Maxie, you'd have certified him as punch-drunk, because he so looked the part. He had a swollen left ear and a splayed nose. He was jealous of Max Baer, another fighter-actor who did a routine with him, because Baer had bushy eyebrows while Maxie had only adhesions where stitches had been. His slurring and unsteadiness grew more pronounced, though his friends maintained until the end that it was all an exaggeration, as it had been in the beginning.

Though he was out of show business by the late '50s, Maxie was still a minor celebrity at the corner of Hollywood and Vine, not far from the residential hotel where he lived for 25 years, mostly alone. In 1968, while leaving the hotel one night, he was mugged and apparently hit on the head with a pipe. Though he recovered after being hospitalized, within a year he lost his bearings altogether.

In January 1972, with Maxie's relatives nowhere to be seen, a Los Angeles court appointed the executive director of the Motion Picture Fund to be his guardian. Two weeks earlier, the court papers show, "the alleged incompetent," then 67 years old, had been committed to the Braewood Sanitarium in South Pasadena. His friends from show business and sports would come to visit Maxie, at least for the first few years, until he began failing to recognize them. Even so, he was able to get off one more good line: A friend brought in a former boxer to see Maxie—the two had fought exhibitions in the Pacific during the war. Maxie didn't know who the man was. "Maxie," the fighter protested, "you remember New Caledonia, don't you?" Maxie still looked blank but shot back, "I don't even remember *old* Caledonia." According to his death certificate, he expired on March 6, 1976 of heart failure abetted by influenza and Paget's disease, a degenerative bone condition—none of which, presumably, disturbed his twilight of demented contentment.

Although the obituaries reported Rosenbloom's doctor's assertion that Maxie's decline was attributable to the head blows from his numerous fights, sports columnists disputed this. John Hall in *The Los Angeles Times*: "The doctors said he took too many punches and there was 'a good deal of damage to his brain.' That's got to be a lie. Nobody ever hit Maxie. He slapped and slipped and danced. But he looked as if he'd been hit. The twisted nose was smashed all over his magnificent face."

Red Smith in *The New York Times*: "The obituaries said his condition was the result of taking too many punches. Nonsense. Plenty of wives take more punches than Max ever did, and bury several husbands."

To this day most of the people who knew Rosenbloom are vehement on this subject. "Are you crazy?" says Everett Sanders, a former California boxing commissioner, now 88. "I knew Maxie like a son. Maxie Rosenbloom was never punch-drunk. Not at all." Sanders and others maintain that he showed only the effects of premature aging and that the rest was a gag. "He went *senile*, not punchy," says Sammy Lewis, a nightclub partner of Maxie's. "But later in life," Lewis adds, "if you take those punches, something's got to give."

Maxie, sporting square-barreled guns, appeared with Baer in "Skipalong Rosenbloom" in 1951.

Dr. Robert Kerlan, a sports physician who knew Rosenbloom slightly, has perhaps a more balanced opinion. "He had the classic slurring, the cauliflower ears, the scar tissue," Kerlan says. "He was the prototype of the punch-drunk fighter. But the real punch-drunk boxers are a far cry from what Maxie was. Believe me, I've seen them and they're far worse. But Maxie just exaggerated whatever tendencies he had in that direction."

—JEFF WHEELWRIGHT

Boxing M.D. Campbell calls CAT-scan findings "shadows."

sionate editorials in the front of the journal did so. Instead the council called for a national registry of boxers' records and medical histories, more training for ring personnel and standardized safety regulations among state and local commissions. Responding to the *JAMA* initiative, Congress has once more held hearings and proposed legislation to create a federal boxing commission.

Casson, meanwhile, says that he has now seen examples of cavum septum pellucidum on the CAT scans of eight pro boxers. It's disquieting that five of the eight are former world champions and two others were top-ranked. Champion fighters stay on their feet in the ring; they can take a punch. The question is, how much will they have to pay for that durability later in life?

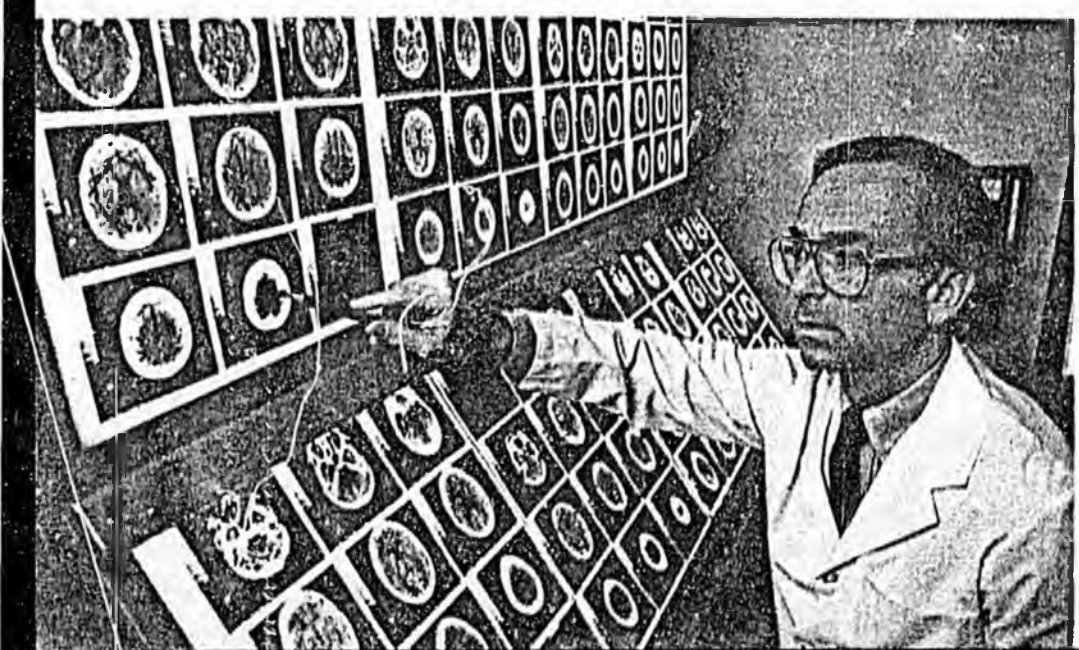
Ali has a cavum septum pellucidum, SPORTS ILLUSTRATED has learned. The abnormality shows up clearly on his CAT scan, along with other indicators of damage or atrophy, such as an enlarged third ventricle. The scan was performed at New York University Medical Center in July 1981, five months before Ali's final fight, with Trevor Berbick. In the radiologist's written report, these two findings are noted, but the conclusion is that the scan is "negative," meaning normal. It's a question of interpretation. In reviewing CAT scans of the general population, neuroradiologists occasionally see a cavum or a widened third ventricle. This atrophy is more often characteristic of older people. But most neuroradiologists aren't familiar with the scans of boxers. They don't know that the atrophy like that found on Ali's scan shows up in 50% of boxers with more than 20 bouts—a percentage far higher than in the general population, and that, by other criteria, these same boxers often show evidence of brain impairment. The cavum abnormality is found four times as frequently in boxers as in non-boxers.

As far back as 1976, Dr. Ferdie Pacheco, a general practitioner who has known Ali since 1962, warned him that he should retire from the ring to avoid brain and kidney damage. In 1977, Pacheco quit working Ali's corner. "If you spent 20 years in boxing and an equal amount of time in medicine, you could see brain injury coming up," Pacheco says. "He took some mammoth beatings. There were the fights with Frazier, Foreman and Norton, to say nothing of all the sparring with Larry Holmes and Michael Dokes. Holmes and Dokes were not ordinary sparring partners. They're now heavyweight champions of the world. A moron could add up the picture of impending brain damage, and I urged him to quit because I didn't think it would be wonderful to have the most joyful, talented guy in the world stumbling around and mumbling to himself. But he was the one who wanted to stay on stage. The only role he knew was being champion. I'd just as soon have been wrong."

At the time of his first warnings, Pacheco was unheeded—understandably, perhaps, because he had no data, no hard proof. But in April of 1980, after Ali announced that he was returning to the ring after a 10-month "retirement" to fight Holmes, his father, Cassius Clay Sr., publicly expressed concern. "I thought he wasn't walking good," he said. "I thought maybe his hip was bothering him. I wasn't sure of his speech, either, but the way I look at it, that boy has been fighting since he was 12 years old. A man can only stand so many licks to the head."

Ali went to the Mayo Clinic in July of that year for a series of tests. The Mayo report, attesting that he was normal, reassured Nevada authorities that he was fit to fight Holmes in October. But after his poor showing—Holmes was awarded a TKO when Ali didn't come out for the 11th round—Ali consulted Dr. Dennis Cope, a specialist in endocrinology at the UCLA Medical Center. Ali revealed that he'd been taking excessive amounts of medication for a thyroid condition while training for the Holmes bout. One of the drug's effects had been to help Ali lose weight, but it also left him drained for the fight. However, Cope's report released in December 1981 declared Ali's thyroid gland normal. Cope also wrote that a neurological examination, which included an EEG and a CAT scan, had found no abnormalities except for a partial or complete loss of smell. The report stated, "The patient tended to talk softly and to almost mumble his speech at times; but when he was questioned about this, he was able to speak appropriately without any evidence of a speech disorder. He was evaluated by a neurosurgeon and neurologist who felt that his speech pat-

continued



Radiologist Ross, who has done 30,000 CAT scans, sees patterns of damage in veteran fighters.

tern was not pathologic." The report concluded, "The patient's health status is excellent and there is no evidence from a health standpoint that he should be limited whatsoever in his activities."

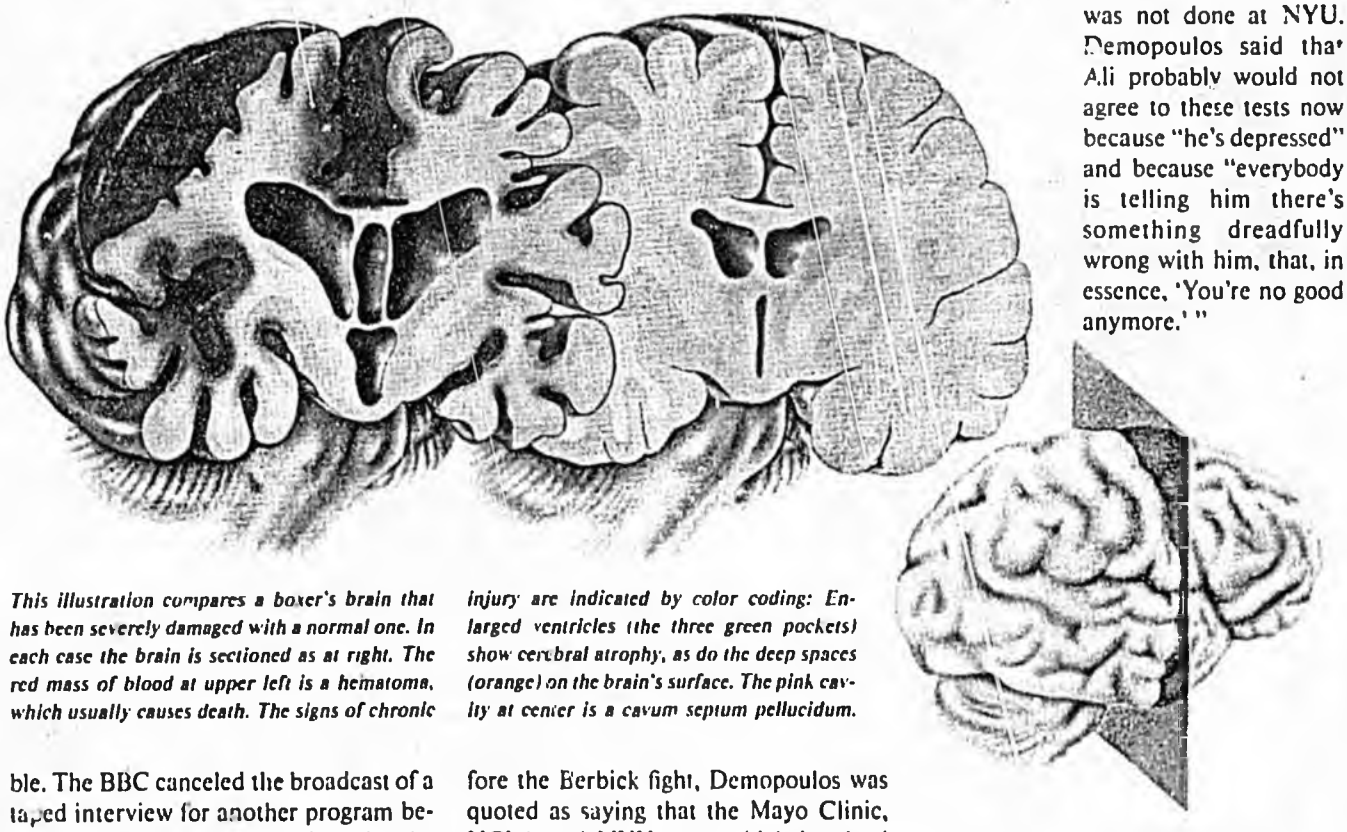
Two weeks later Ali visited England. Interviewed on BBC radio, he slurred his speech, and when he recited a poem on how he would beat Holmes in a rematch, listeners found most of it incomprehensible. The BBC canceled the broadcast of a taped interview for another program because Ali's speech was too slurred to be understood. A BBC spokesman said, "It was very sad that so much of what history's most celebrated fighter said was unintelligible." When a London reporter asked him if he could possibly be punch-drunk, Ali replied, "I have heard about people being punch-drunk, but I do not feel drunk." He added, "When you get as great as me, people always look for some type of downfall."

The series of tests that Ali underwent at the NYU Medical Center in the summer of 1981 was supervised by Dr. Harry Demopoulos, a professor of pathology. Ali had met Demopoulos through Clint Eastwood, the actor, and Demopoulos says, "He [Ali] came here to NYU because he was contemplating going back into the ring, or at least trying to get in shape, to think about it. I don't think any of us encouraged him to go back into the ring. We did encourage him to get back into shape, though. Because he had gotten fat, eating crap, laying around the house. We didn't think that was good for him. So we sort of convinced him that he ought to go through a full battery of tests to see if he could go back into training."

The tests included an EEG, a neurological exam and a CAT scan. Then, before the Berbick fight, Demopoulos was quoted as saying that the Mayo Clinic, UCLA and NYU tests, which involved 30 doctors, all showed "absolutely no evidence that Muhammad had sustained any injury to any vital organ.... His blood tests indicate he has the vessels of a young man." He attributed the slurring to "a psychosocial response" and added, "If the slurring were due to permanent damage, it would be there all the time."

Last February, Casson and SI reporters visited Demopoulos at NYU to review Ali's CAT scan. "They read this as normal?" Casson asked, referring to the NYU neuroradiologists who had approved the report. Demopoulos assented. "I wouldn't have read this as normal," said Casson, looking closely at the sequence of X-rays. "I don't see how you can say in a 39-year-old man that these ventricles aren't too big. His third ventricle's big. His lateral ventricles are big. He has a cavum septum pellucidum." Demopoulos stood by the NYU specialists' negative findings.

In the course of the discussion that followed, Casson made the point that many boxers with enlarged ventricles and a cavum have neurological problems. He said that given what Ali's CAT scan showed, additional testing—particularly exams that identify shortcomings in memory—might have been in order. Such testing was not done at NYU. Demopoulos said that Ali probably would not agree to these tests now because "he's depressed" and because "everybody is telling him there's something dreadfully wrong with him, that, in essence, 'You're no good anymore.' "



This illustration compares a boxer's brain that has been severely damaged with a normal one. In each case the brain is sectioned as at right. The red mass of blood at upper left is a hematoma, which usually causes death. The signs of chronic injury are indicated by color coding: Enlarged ventricles (the three green pockets) show cerebral atrophy, as do the deep spaces (orange) on the brain's surface. The pink cavity at center is a cavum septum pellucidum.

ILLUSTRATIONS BY KIRK MOLDOFF

Casson asked, "What do you base this diagnosis of depression on if a psychiatrist hasn't examined him? Does he have any of the vegetative symptoms of depression? Loss of appetite, changing sleep patterns?"

Demopoulos: "He has changes in sleeping patterns. But I'll tell you what tips you off that it's not an organic problem. The man perks up sometimes under favorable circumstances, and he's just like the Ali of old."

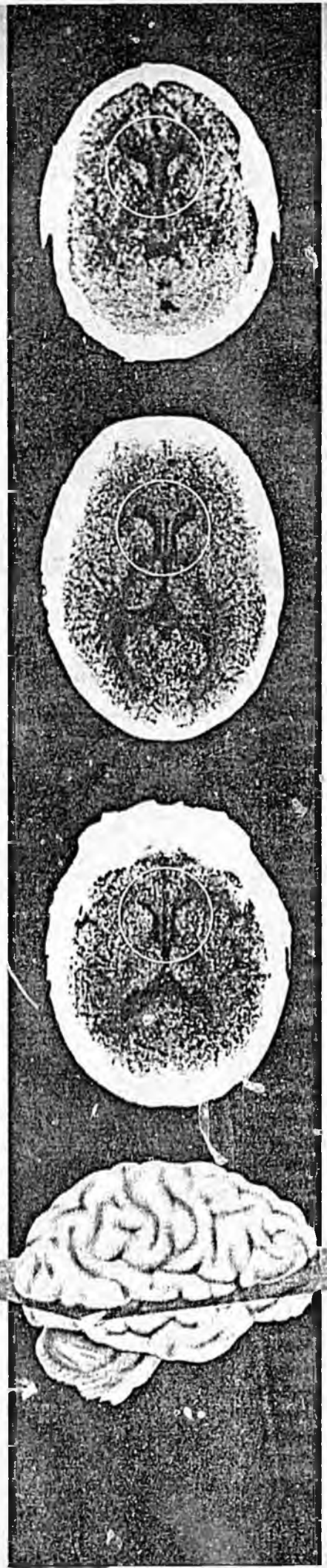
Casson: "Well, that doesn't mean it's not organic. I've seen many patients, especially the early dementias, who one day seem fine, the next day seem terrible, the next day seem fine.... Do you think slurring of speech is from depression?"

Demopoulos: "I think in his case, yes. You have to see the man. You have to meet him, you have to know him, and you have to talk to him."

The testing methods employed by contemporary researchers such as Casson, Ross and Kaste have centered on CAT scans, neurological exams and neuropsychological testing. A formal neurological exam consists of a battery of tests measuring muscle tone and strength, reflexes, coordination and balance (the subject is asked to walk and then hop in a straight line), eye movement, heart and lung function and basic cognitive exercises. In the cognitive tests, the subject is asked to spell some simple words backward or to name the year and day of the week. Casson stresses that in the case of Ali one cannot make a judgment on the basis of the scan alone; one must also test Ali neurologically. Ali's previous neurological results have all been reported as normal, although SPORTS ILLUSTRATED has learned that one of those exams nevertheless revealed a mild organic mental syndrome, *i.e.*, failure to perform normally on the cognitive tests.

In their unpublished, ongoing research, Casson and his colleague, Dr. Ozzie Siegel, chief psychologist at the Queens Hospital Center in New York, have introduced a third test to their study of boxers, the neuropsychological battery. These are standardized probes of perception and short-term memory. The subject is asked to recall the details of a paragraph that is read to him. He also uses a pencil to connect dots and to draw simple geometric designs, once from memory and once with the design in front of him. His performance is timed as well as analyzed. To a layman, how somebody draws a squiggle may not seem like a sophisticated test of brain damage. But Siegel points out that this battery had been used for years to measure damage in victims of head injuries, from such things as car crashes or falls, and it had been found reliable. When neuropsychological tests are given to boxers, say Casson and Siegel, the results tend to correlate with the findings of the CAT scans and, to a lesser extent, the neurological exams.

Which brings us back to SI's tests of Quarry, Cobb and Pacheco, who is not related to Ali's former doctor. All three



From top to bottom are CAT scans of Cobb, Pacheco and Quarry. The illustration beneath them shows where this X-ray "slice" was taken. Yellow circles were added to point out the septum pellucidum, a membrane between the ventricles. Cobb's normal septum is the light vertical line between the dark curving ventricles. But on the scans of Pacheco and Quarry there's a double line with a dark band in between, showing the septum is divided to form a cavum septum pellucidum.

men had CAT scans. At Quarry's camp, all three were given neurological exams by Casson and underwent neuropsychological tests, administered by Casson and evaluated by Siegel, who wasn't present. The CAT scans were reviewed and the results confirmed by specialists other than Casson—Ross and the two radiologists who collaborated on his *JAMA* paper, and Dr. John Bentson of UCLA, where Quarry and Pacheco underwent their scans. Ross and his colleagues did not know the subjects' identities.

First, Cobb. His neurological exam was normal. His CAT scan (*left*) was normal. His neuropsychological results were also normal. In other words, Cobb shows no evidence of brain damage. Is this surprising, considering the beating he took from Holmes and given that he fits the "slugger" mold? The key fact about Cobb is that he has had only 23 professional bouts, most of them victories by knockout, and no amateur fights at all. (He had been trained in karate.) It can be concluded that the cumulative effects of his short career in the ring have not made a mark—not yet, maybe never.

Next, Pacheco. His neurological exam was normal. But his CAT scan showed a cavum septum pellucidum and a mildly enlarged third ventricle. He performed badly on the neuropsychological tests, says Siegel, who guessed—accurately—that his scan would reveal some damage. But Pacheco is only 23, five years younger than Cobb. "I'll bet this guy had a lot of fights," Siegel had predicted to Casson.

Pacheco says he has been boxing since he was four. He estimates that he has had "over a couple hundred" amateur bouts. In his 11 losses as a pro, he has sometimes been hurt, particularly in the back-to-back TKOs in Portland and New York, and since then in a defeat in California in which the ref stopped the fight in the first

continued

round. "The way his record was going," says Dr. Jack Battaglia, who lifted Pacheco's licence after the Portland loss, "he didn't need a CAT scan, he should have just been stopped."

Pacheco himself is disgusted with his career in boxing and won't continue it. "It's not worth it," he says. "The officials are getting worse. I can't give it 100 percent anymore. I'm just tired of it. So I might as well get out before I get hurt." Upon hearing the results of SI's tests, Pacheco reconfirmed his decision to retire.

Finally, Quarry. Like the others', his neurological exam was normal. But his CAT scan was slightly worse than Pacheco's—it showed a cavum, enlarged lateral and third ventricles and a suggestion of cortical atrophy. And his neuropsychological results were poor. Says Casson: "He did poorly on the test of visual motor perception. He did poorly on that test of connecting the dots. The only one he did well on was the digit symbol test. The psychologist and I are not saying that Quarry is punch-drunk where he can't walk straight, that kind of thing. What we're saying is that he has problems with certain cognitive functions—short-term memory and perceptual motor ability."

Quarry had his first formal fight at the age of five, a junior Golden Gloves event. At 16, he had had 105 amateur bouts. His amateur record was 170–13–4, and his pro record 51–8–4. One of his early losses occurred 10 days after he broke an ankle. His trainer, Harold Taber, went to Quarry's father, who was then the boy's co-manager, and told him that Jerry couldn't fight because his ankle was broken. "He's got to fight," Quarry's father said. "We've got to have the money." Before the fight, father and trainer took Quarry to "a Mexican witch doctor," says Taber, "who put fire on his ankle and everything, but they still stuck him in there."

Quarry says, "I fought a lot of fights I shouldn't have fought—one with a broken hand, one with hepatitis and another one with a broken back. I was 22 years old. I was so naive and young I didn't have the intelligence. If I had the intelligence I have now, there's no way in hell I would have gotten in the ring like that. I figured I had some people behind me, especially my father being my co-manager, that they would have pulled me out. But no, they needed the money, so they sent me to the wolves. 'Prostitute him'—that's exactly what they did."

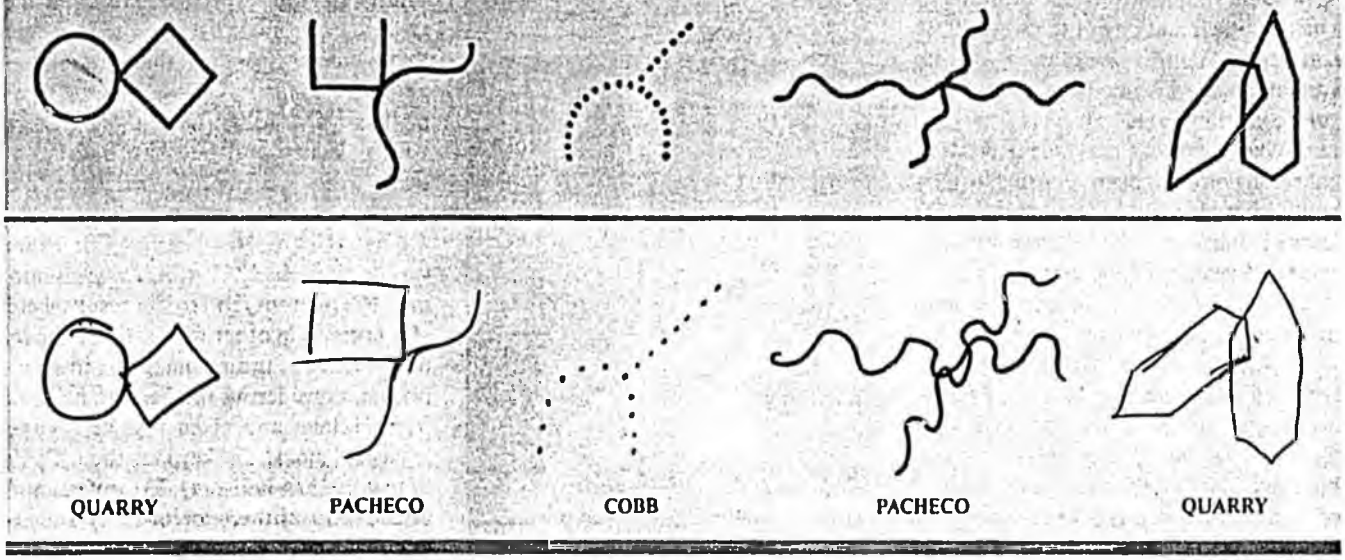
As Quarry says these words, he doesn't sound bitter, and he doesn't sound punchy. A thoughtful, animated man, he is mindful of the need for medical reform in boxing, yet personally philosophical, not bothered by the threat of brain damage. "You step into the ring," he says, "and you know there's a chance of getting knocked out, of getting hurt, but you figure your abilities are good enough that you can handle yourself appropriately." But he hopes that federal legislation will result in uniform medical standards and that these in turn will protect fighters from ruthless managers. "The manager is the one putting a fighter back into the ring one week after he's been knocked out," he says. "But if they have strict enforcement of physicals, then the manager won't have a damn thing to do with it." Quarry's scenario for himself, which apparently wasn't altered by learning the results of the tests, is to get in shape and, if all goes well, mount a challenge for the cruiser-weight title.

Although Casson was troubled by the prospect of Quarry's return to the ring—he urged Quarry against it—he emphasizes that his research has not convinced him that boxing should be banned. Casson describes himself as a sports fan; he will watch a fight on TV. "No matter what anybody says, boxing will continue," he says. But he thinks that young boxers could reduce their chances of in-

continued

Significant Squiggles

In their neuropsychological exam, Quarry, Cobb and Pacheco each took a test of visual motor perception, which measures ability to reproduce simple designs like those in the top row. Cobb's figures were normal. Errors by Pacheco and Quarry, even subtle tilting or overlapping, show brain injury.



jury by passing up unnecessary bouts at the lower levels and fighting only to advance their careers. "Even bums hit you in the head," he observes.

But to become a champion, wouldn't a boxer have to withstand a sufficient number of punches, 20 or 30 fights' worth, to affect his CAT scan, even if those punches didn't result in neurological or punch-drunk symptoms? Just when his work was beginning to pay off, would a doctor tell him he should stop? A real dilemma, Casson concedes. Still, he says, "A boxer ought to know what he's getting into if he wants to go on and be a champion. He should know what he may be sacrificing. A doctor has to tell the boxer if he thinks the fighter should stop, but in the end it's not really a medical decision. Society has to decide what we're going to do about boxing."

Just how bad is the brain damage that shows up on CAT scans and neuropsychological tests? For Quarry and Pacheco and perhaps Ali, it's not bad, not a disability. Minor memory failures aren't crippling. But aging certainly compounds whatever deterioration may exist, as all the research shows.

Physicians who disagree with the implications of Casson's work and that of researchers like Ross point out that there are no *prospective* studies; that is, studies that track a younger boxer with alleged abnormalities over a period of 10 or 20 years.

"I think we're jumping the gun," says Dr. Edwin Campbell, medical director for pro boxing in New York. Campbell helped enlist the fighters for Casson's studies and was a co-author, but says, "We just haven't done enough work yet. And we don't know how boxers compare with athletes in other sports, like football, who get frequent concussions."

Casson and Ross are the first to admit that more detailed, long-term work should be done. "But let's start now," Casson says, "before another generation of fighters comes through." Though Ross's work received considerable publicity, three months later he's frustrated by the lack of follow-up concern. "The big people in boxing haven't commented," he says. "Who's going to pay for these longer studies? What's being done? I'm afraid everything's going to die down."

The new legislation being discussed in Congress would create a commission to institute national standards among state commissions for all pro fights. There would be rigorous physical screenings and a "passport" for each boxer that would certify his medical history from past bouts. But CAT scans and full neurological exams before and after fights aren't practical—nor, at $300 apiece, cost-efficient, given what the average boxer earns. Casson and Siegel suggest that their neuropsychological tests, which are easy and cheap to administer, might serve as a first screen for possible brain damage. They have developed an "impairment index." If a fighter scores abnormally on at least half their tests, they have found, his CAT scan and/or EEG will also show abnormalities. Of course, no legislation is a substitute for vigilance and care within boxing itself. Dr. Battaglia of Oregon points to the ringside physicians. "If you've got problems on a CAT scan, you're too darn late," he says. "You've got to pick up the signs in these kids way before then. If I see a kid taking three licks now to put one in, as far as I'm concerned school's out—*then* you do the scan."

Will there be real reform? Cobb's reaction to the brain injury controversy may give a clue, even though he might be described as a boxing anarchist. "Dammit, I'm a grown man," he says heatedly. "If a man doesn't want to fight, then lay down, sucker. I'm not going to have someone run my life for me. If you get a federal commission involved, all you're going to have is a bunch of political appointees. A lot of flurry, a lot of fluff, all show and no go.

"I'm a whore who sells his blood instead of his ass. But that comes with the sport." END

A Conversation With The Greatest

I'd been trying to reach him for weeks, but I was still surprised—unprepared, in fact—when I picked up the ringing phone one night and there was Muhammad Ali. He was in fine fettle, charged up, and what ensued was not an interview so much as a vintage Ali monologue:

"Why do you want to check my brain? How about white boxers—Jerry Quarry, George Chuvalo, are you going to show their brains? No, it's me, a leader of the black people, they want to say I have a brain injury, that I'm crazy. I won't be no guinea pig, it's an embarrassment, a humiliation. What about my reputation, my family, my children—they're worth more to me than anything. For me to take that gamble, even to show nothing's wrong, I'd have to have $10 million. . . .

"Why don't you do a test on Richard Nixon's brain? Get the top whites and let *them* submit to it. I'll tell you what. You get the wisest of the whites, you get William F. Buckley and some others, the brainiest. I'll pay 'em $25,000 to go on TV with me and let 'em try and trip me up, ask me any questions they like, any subject they want. Then we'll all do the brain show afterwards, for everyone, on TV. I want an hour and a half. . . .

"Do you think, talking to you, that I sound crazy? Do I? Do you have this on tape? You don't? Well there's something wrong with *your* brain. . . . Why are they picking on boxing? It's because the black men are so superior in boxing that they want to stop it. Well, the black man's so hungry, he's got to fight. Yes, I think it's racial, the whole thing. . . ."

Ali talked for half an hour. I got in a few sheepish words edgewise. But as he went on, he began to wind down and repeat himself. He was not interested in my questions. It has always been his pattern, even when he was in his early 20s, to grow tired of declaiming. Now his fatigue was obvious. He began to mumble and speak more and more softly. The angry tape in his head, what he wanted to say, was running out, or going onto a loop. At the end he was talking as if in a trance of self-hypnosis. He didn't hang up, he just dropped the phone. —J.W.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM April 13, 1983

SUBJECT: Boxing regulation
(Work Order No. 13-1161)

TO: Representative Walt Furnace

FROM: Russ Josephson
Legislative Counsel

While drafting your bill concerning the regulation of boxing, Steve Levi and I have discussed several aspects of the approach taken in this bill. He asked me to indicate to you some of the areas of difference between your bill and HB 241, introduced by Representative Martin.

First, a number of provisions relating to the athletic commission have been omitted, as your approach calls for regulation of boxing by the Department of Commerce and Economic Development, without a board.

Another difference between the bills is that your bill will license only promoters, referees, and boxers, while HB 241 licenses several other classes of persons involved in boxing. I have provided regulatory authority to the department to license others should the need arise in the future.

Your bill has none of the restrictions of HB 241 concerning contestants, such as age limitations and restrictions on the use of alcohol or drugs. Your bill contains none of the provisions of HB 241 regarding equipment, although the department has been given regulatory authority to cover this should they desire to do so. Similarly, the details of holding contests, such as the limitation of rounds, have been omitted. Again, the department might address this in regulations if they so desire.

No provision appears in your bill concerning cancellation of contests and the notification of the public of a cancellation. The provision for promoter's bonds deals with the subject by

requiring a good faith effort to put on the contest for which the tickets have been sold.

No provision appears in your bill to handle they payment of fees to the referee, the examining physician, or the attending physician. The bonds provision above is intended to assure that the boxers are paid as contracted.

Your bill contains no provisions concerning telecasts, reports, or the taxation of receipts of contests or telecasts. No provisions prohibit sham contests or the participation in the purse of a boxer or manager by a promoter.

Unlicensed contests are prohibited, but there is no provision to enjoin them.

There is no provision to suspend a license of a person licensed under the chapter the bill creates. Revocation of a license is possible for participation in or for promoting an unsafe contest. No other ground for license revocation has been specified.

In brief, those are the differences between the two bills.

In addition, I would point out a few things in the bill that appear to deviate from your request and explain them. In the section providing for an attending physician, the medic/paramedic option has been omitted. After reviewing the qualifications of those people and talking with the Department of Health and Social Services, I felt that you would be better with a physician in that role. First, the Department of Health and Social Service's answer to the question of what level of emergency medical technician would be qualified was "None". Second, I think that you very well may run into legal problems with the paramedic approach. I doubt that their licenses would cover them if they act as attending physicians. The same thinking applies to the use of paramedics to examine boxers before a bout. I think that in both cases you will find that the paramedics are practicing medicine beyond the limits of their licenses.

Another difference between HB 241 and the request is in the section on licenses. You will note that an "individual" may apply for a boxer's or referee's license and that a "person" may apply for a promoter's license. The word "person" in the statutes, under AS 01.10.060, covers all applicants listed in your request for the promoter's license. So,

where you mean a person in the common sense, "individual" is used.

Finally, you requested a section excluding certain contests. Some of those are not mentioned in the section of this bill that limits the authority under the chapter. This is simply because it is clear that the chapter covers only professional boxing. It was not necessary, therefore, to say that wrestling was not covered, for example.

If I may be of further service, please let me know.

RJ:ljb
14/020

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 241
Title: Creation of Ath. Comm./Sports Tax
Sponsor:
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Revenue
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL						
REVENUE		12.0	13.2	14.5	16.0	17.6

FUNDING: (Thousands of Dollars)

GENERAL FUND		12.0	13.2	14.5	16.0	17.6
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert W. Elliott — Robert W. Elliott
Division: Revenue - Research
Phone: 465-2173
Date: 3/15/83

Approved by Commissioner: Joseph K Dorlune
Department: Revenue
Date: 3/25/83

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

Analysis: HB 241

The figures represent the estimated revenues the sports tax would generate based on average yearly gross receipts provided by the Athletic Commission. The estimates did not take into consideration any future major championship fights held within the state.

HB 257

alaska
state
hospital
association

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

April 1, 1983

The Honorable Jerry Ward
House of Representatives
Pouch V
Juneau, Alaska 99811

Subject: HJR 35.

Dear Representative Ward:

The Alaska State Hospital Association wishes to indicate our support for House Joint Resolution 35.

We believe that the use of health insurance by those who are entitled to services provided by the Alaska Native Health Service would be in the public's best interest. That additional influx of funds would allow the Alaska Native Health Service to continue to provide needed services in the face of federal budget reductions.

The Alaska State Hospital Association believes that the concepts in HJR 35 are necessary if an adequate health care delivery system is to continue in Alaska. We believe it merits legislative support.

Sincerely,

Dennis L. DeWitt
President

DLD:hb

cc: House HESS Committee
John Dumbolton
Frank Sutton
Richard E. Zitzow

Offered: 4/15/83
Referred: Labor & Commerce

Original sponsor: Ward

IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 257 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to certain limitations and exclusions in health insurance policies; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.42 is amended by adding a new section to read:

Sec. 21.42.347. COVERAGE WHEN ALASKA AREA NATIVE HEALTH SERVICE BENEFITS AVAILABLE. An ~~individual or~~ group health insurance policy that provides coverage on an expense incurred basis or ~~an individual or~~ group service or indemnity type contract issued by a nonprofit corporation may not exclude or limit coverage for the reason that the covered person is eligible to receive health care benefits provided by the Alaska Area Native Health Service.

* Sec. 2. This Act applies only to policies and contracts issued or renewed after December 31, 1983.

* Sec. 3. This Act takes effect January 1, 1984.

M E M O R A N D U M

DATE: May 2, 1983

TO: Jeff Barry, Professional Assistant
House Labor & Commerce Committee

FROM: M. E. Tirador, Manager
Alaska Provider & Government Relations
Blue Cross of Washington & Alaska

SUBJECT: Committee Substitute for HB 257

This memo is for information purposes only. There is no intent on behalf of Blue Cross of Washington and Alaska to either endorse or oppose this legislation. In the very near future, the Federal Government will probably initiate changes in the Indian Health Service delivery system that will render this legislation moot.

Blue Cross of Washington and Alaska doesn't believe there is an obligation for Indian Health Service beneficiaries to pay for services received in Indian Health Service hospitals or clinics. Therefore, if there is no obligation to pay, no third-party payor has an obligation to a policyholder or subscriber. In my experience, the Indian Health Service apparently is not in a position to render billings for services. The accounting mechanism is not presently able to provide itemization necessary to properly adjudicate a claim.

As I understand this bill, the Indian Health Service hospitals and clinics would benefit from third-party payment for services provided policyholders who are also Indian Health Service beneficiaries. This may be a fallacy because in instances where only contract hospitals might be directly reimbursed, the patient would receive payment and not the hospital. This could encourage over-utilization of health care services and make medical necessity take second place.

This bill might be considered to be a subsidy to the Federal Government in providing health care services to Alaska Natives and American Indians. A double taxation measure, if you will. This is also a bill requiring the first dollar come from third-party payors rather than an effort to coordinate benefits using the Indian Health Service as any other third-party payor. The result of such legislation could well be an increase in the premiums paid by other subscribers, but would directly benefit the Federal Government.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CS for HB 257
Title: An Act relating to Health Insurance
Sponsor: Ward
Requestor:

II. FISCAL DETAIL

Agency Affected: All State Agencies
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		-0-	327.1	353.3	381.5	412.1
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	327.1	353.3	381.5	412.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			295.7	319.4	344.9	372.5
FEDERAL FUNDS			15.0	16.2	17.5	19.0
*OTHER (Specify Source)			16.4	17.7	19.1	20.6

*4% Veterans; 12% Fish & Game; 26% Highways; 58% Airport

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: J.K. Humphreys, Director — Phone: 465-4460
Division: Retirement & Benefits — Date: 4/25/83

Approved by Commissioner: Lisa Rudd, Commissioner — Date: 4/26/83
Department: Administration

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

3/8/83

State of Alaska

Fiscal Note

HB 257

IV Analysis: Premiums are assumed to increase by 8% per year.

The impact of this bill is estimated to be a 1% increase in premiums. These cost figures are based on the assumption that the state's plan will be primary when benefits are available through the Alaska Area Native Health Service.

alaska state hospital association

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

April 1, 1983

The Honorable Jerry Ward
House of Representatives
Pouch V
Juneau, Alaska 99811

Subject: HB 257.

Dear Representative Ward:

The Alaska State Hospital Association wishes to offer our support to the concepts found in House Bill 257.

We believe that it is imperative that the Alaska Native Hospitals be able to collect third party payments for services they provide. With the impending reductions in federal funds, all potential sources of revenue must be pursued by the ANS facilities if they are to remain viable and up to the standard of quality Alaskans have the right to demand. While some may scoff at HB 257, we suggest that is how most forward looking proposals are treated. Without this gradual movement away from depending on federal funding, health services to Alaskan Natives will soon only be a memory.

The Alaska State Hospital Association commends your willingness to address this critical issue in such a meaningful fashion.

Sincerely,

Dennis L. DeWitt
President

DLD:hb

cc: House HESS Comm.
John Dumbolton
Richard E. Zitzow
Frank Sutton

HB 258

NOT GERMAIN

{ REVENUE BASE INCREASE -
BY GIVING A TAX CREDIT LIKE THIS
HOW WILL THIS STIMULATE - THE
PRODUCTION OF MINING }

14500
125.00
$270.00

80,000.00

5

30,000

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No: SSHB 258
Title: Special Investment Tax Credit
Sponsor: Hayes & Szymanski
Requestor: Labor, Commerce & Finance

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Vincent D. Wright VW Phone: 465-2173
Division: Revenue - Research Date: 3/25/83

Approved by Commissioner: Date: 4/4/83
Department: Revenue

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

Analysis of SSMB 258

The incorporation of this expanded credit in effect would reduce state taxes as a deductible item at the federal level and thus increase the federal tax take at the expense of Alaska.

The bill is also discriminatory in that it applies only to specified geographical regions within the state.

The impact of this bill is negative to the state in terms of lost revenues. The quantitative impact cannot be assessed due to carry forward and carry backward provisions which vary from one existing operation to another. If the bill is intended for new facilities, the effect cannot be assessed until they are completed and in operation.

Alaska State Legislature

{1980}

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

H3-866

SPECIAL INVESTMENT TAX CREDIT LEGISLATION

As projections of declining revenue loom in Alaska's near future, we must begin to diversify our economy so that both state government and local economies are not so heavily dependent on oil derived revenues. I have introduced legislation which would accomplish this goal by establishing a special investment tax credit. Such a credit would apply for investments to develop gas processing facilities South of the Arctic Circle and to investments for exploration, development and mining of minerals other than oil and gas throughout Alaska. A major priority of both myself and the House Majority is diversification of our economy. I believe enactment of this legislation would go a long way towards achieving that goal. MAKING IT EQUAL 100% FEDERAL CREDIT

Currently state law limits the amount of investment tax credit (ITC) which is allowed to corporations in computing their Alaska income taxes to 18% of the amount of investment tax credit which is allowed for federal income tax purposes. So while the Federal ITC is 10%, the Alaska investment tax credit is only 1.8%. Current law also limits the ITC which is allowed in computing Alaska income taxes to the first $20 million of qualified investment put into use in the state for each taxable year. That limitation would be removed by this bill.

The Alaska tax credit would only apply to investments which also qualify for the federal credit. This is primarily personal proprty such as trucks, machinery and manufacturing equipment.

2 1/2 - MILLION (27-M) NO FISCAL NOTE

It would not include roads, buildings, mine sites and such things as feasibility studies. Using the $1 billion Quartz Hill mine project for example, a very limited amount of that development would qualify for the tax credit. But enough of an incentive would be created to attract industry to Alaska that currently is lacking.

The promotion of exploration, development and mining of minerals and other natural deposits in the state will encourage development of Alaska's non oil and gas mineral resources. This legislation would also accelerate the diversification of the state's economy and employment base.

One new addition to this legislation, not included in the version which passed the House last session, 866 is inclusion of gas processing facilities South of the Arctic Circle. There are areas in Alaska where established infrastructure, access to ice free ports and substantial amounts of uncommitted reserves of natural gas combine to provide great potential for gas processing development and export activity. The development of these gas processing facilities will promote full and stable employment and minimize adverse population and environmental impacts.

I expect the impact on state revenues upon enactment of this legislation would be minimal. While initially there would be be a slight loss of revenue, the long range goal to promote investment and development would increase non petroleum related revenue in future years. The investment tax credit is a temporary tax reduction directly tied to profitable investment that will produce increased revenues in the future. Additionally, investments in targeted industries may substantially expand local governments sales and property tax bases. If the Prudhoe bay curve is accurate, and oil revenues begin to decline in the late 1980's, it is our responsibility to plan to offset that decline. I am confident it will have the support of the administration, which has stated a desire to reach this goal as well.

# # # # # # #

MAR(1983

MAR - 1983

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M March 23, 1983

SUBJECT: Special investment tax credit (HB 258)

TO: Representative Joe L. Hayes

FROM: Richard C. Folta
Legislative Counsel

You have requested a sectional analysis of HB 258, relating to special investment tax credits.

Section 1 of the bill modifying the special investment tax credit for state corporate income taxes, sets out the state legislature's purpose, which is identical to the congressional purpose, in providing for an additional allowance for tax credits for certain property. The thrust of the investment credit is to stimulate the economy through encouragement of investment in productive resources, which tend to wear out at quicker rates than those which have been recognized by depreciation previously allowed by the Internal Revenue Service. In the Alaska case, these special properties which the sponsor wishes to give additional credits, are stated to be gas processing facilities and mineral extraction systems established south of the arctic circle in the State of Alaska.

Section 2 of the bill provides that the 18 percent investment credit limit on state corporation income tax will not be applicable for the gas processing facilities and mineral extraction systems established south of arctic circle.

Section 3 of the bill provides for a 100 percent investment credit instead of the previous 18 percent for gas processing facilities and mineral extraction systems. Subsections (j) and (k) also provide that the 20 million dollar investment credit allowed will not be in addition to that under sec. (b). There is also a provision that the credits will not apply on leased property -- they have to be purchased properties.

Sections 4 and 5 provide that the tax years for credit considerations under this bill begin January 1, 1984, and this act will be in effect immediately upon passage.

RCF:ljb
12/002

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

MEETING SCHEDULE

FOR THE WEEK OF APRIL 4 - APRIL 10

LABOR & COMMERCE

Meets: Behrends Rm 209
M - F 8:45 - 10 am

Monday, April 4

NO MEETING SCHEDULED

Tuesday, April 5

** HB 25 An Act providing for preferences and reservations in sale or purchase of state royalty oil to companies purchasing state coal.

HB 258 An Act establishing a special investment tax credit; and providing for an effective date.

Wednesday, April 6

HB 22 An Act establishing a state residence requirement for loans purchased by the Alaska Industrial Development Authority.

Sunset - Medical Board

HB 111 An Act relating to investments and deposits of public money with foreign banks.

Thursday, April 7

HB 126 An Act limiting the liability of aircraft owners or operators for personal injury or death to guest passengers.

HB 246 An Act relating to the deregulation of interest rates; and providing for an effective date.

Friday, April 8

HB 26 An Act establishing the business refinancing and expansion loan program in the Alaska Industrial Development Authority; and providing for an effective date.

** HB 308 An Act relating to insurance

** Indicates notice of first public hearing on a new bill.

Introduced: 3/25/83
Referred: Labor & Commerce
and Finance

FUTURE REVENUES
KENAI GAS PRODUCTION

1. COAL PRODUCTION
2. MINING
3. GAS PRODUCTION

IN THE HOUSE BY HAYES AND SZYMANSKI

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 258

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a special investment tax credit; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. LEGISLATIVE FINDINGS AND INTENT. The legislature finds and declares that

(1) there exist areas of the state south of the Arctic Circle in which the factors of established population centers, established infrastructure, access to ice-free ports, and substantial uncommitted reserves of natural gas combine to provide an optimum basis for gas processing development for an export market;

(2) development of gas processing facilities in the areas will minimize adverse population and environmental impacts on the other areas of the state;

(3) development of gas processing facilities in the areas will promote full and stable employment, promote the creation of export markets for the natural energy resources of the state, and promote the long-term development of other natural resources in the state;

(4) it is in the statewide public interest, and is declared to be a public purpose, to promote the prosperity and general welfare of all citizens of the state by stimulating the development of gas processing facilities in such areas;

(5) it is further in the statewide public interest, and is declared to be a public purpose, to promote the exploration, drilling of wells, development, and mining of minerals and other natural deposits

(other than oil and gas) in the state, to assist the state by diversifying its economy, to make it less dependent on oil and gas, provide increased employment opportunities and provide an incentive for investment in the state; and

(6) the establishment of a special investment tax credit is necessary in order to promote and accomplish the objectives listed in (1) - (5) of this section.

* Sec. 2. AS 43.20.021(d) is amended to read:

(d) Where a credit allowed under the Internal Revenue Code is also allowed in computing Alaska income tax, it is limited to 18 percent for corporations of the amount of credit determined for federal income tax purposes which is attributable to Alaska. This limitation shall not apply to the credits allowed by AS 43.20.036(j) and (k).

* Sec. 3. AS 43.20.036 is amended by adding new subsections to read:

(b) For purposes of calculating income tax payable under this chapter the taxpayer may apply as a credit against a tax liability 100 percent of the investment credit allowed as to federal taxes under Internal Revenue Code Section 38 (26 U.S.C. 38 P.L. 87-834) on the full amount of qualified investment put into use south of the Arctic Circle in the state for each taxable year for gas processing facilities; for the purposes of this paragraph, "gas processing facilities" means plants and facilities for processing any product, other than crude oil, of an oil or gas well, including but not limited to liquefied natural gas, methanol and urea processing plants and facilities, excluding any pipelines from oil and gas wells to any plants and facilities. The amount of credit allowed under this subsection shall not be subject to the limitations imposed by (b) of this section, but any credit which is allowed under this subsection shall not also be

allowed under (b) of this section. No credit shall be allowed under this subsection for any investment credit which is allowed as to federal taxes for leased property by reason of section 168(f)(8) P.L. 97-34 of the Internal Revenue Code (26 U.S.C. 168(f)(8) P.L. 97-34).

(k) For purposes of calculating income tax payable under this chapter the taxpayer may apply as a credit against a tax liability 100 percent of the investment credit allowed as to federal taxes under Internal Revenue Code Section 38 (26 U.S.C. 38 P.L. 87-834) on the full amount of qualified investment put into use south of the Arctic Circle in the state for each taxable year for exploration, drilling of wells, development, or mining of the natural deposits listed in Section 613(b) of the Internal Revenue Code (26 U.S.C. 613(b))(P.L. 89-809 and P.L. 88-571); for the purpose of this subsection, "mining" has the meaning given in Section 613(c)(2) of the Internal Revenue Code (26 U.S.C. 613(c)(2) P.L. 85-866). The amount of credit allowed under this subsection shall not be subject to the limitations imposed by (b) of this section, but any credit which is allowed under this subsection shall not also be allowed under (b) of this section. Credit shall not be allowed under this subsection for any investment credit which is allowed as to federal taxes for leased property by reason of Section 168(f)(8) of the Internal Revenue Code (26 U.S.C. 168(f)(8) P.L. 97-34).

* Sec. 4. This Act applies to tax years beginning after December 31, 1983.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.-10.070(c).

CIRI COOK INLET REGION INC.

Inter - Office Memorandum

TO: Lance Anderson, Vice President, Finance

FROM: Steve Hillard, Vice President and General Counsel

Date: March 28, 1983

Subject: CONSTITUTIONALITY OF GEOGRAPHIC CLASSIFICATION IN INVESTMENT TAX CREDIT BILL

You have asked for a review of the constitutionality of a geographic distinction contained in an bill drafted by CIRI and introduced in the Alaska State Legislature. The legislation will grant certain investment tax credits to those gas processors located south of the Arctic Circle. The question presented is whether this type of classification, based on geography, violates the United States or Alaska Constitutions.

Based upon a review of pertinent federal and state authorities, it is my view that the proposed legislation does not violate the United States or Alaska Constitutions.

I. Federal Constitutional Issues

It is useful to note at the outset that there is one significant constitutional provision which does not appear to apply to the proposed tax credit. The United States Constitution provides that all taxes levied by Congress shall be uniform throughout the United States. U.S. Const. Art. 1, Section 8. The United States Supreme Court has consistently interpreted this requirement to mean geographic uniformity. Knowlton v. Moore, 178 U.S. 41 (1900); Steward v. Davis, 301 U.S. 494 (1938). Under this interpretation, distinctions among the states are impermissible. Thus, the United States District Court for the District of Wyoming has recently held that the Crude Oil Windfall Profits Tax Act of 1980 is unconstitutional because it exempts oil produced from north of the Arctic Circle. Ptasynski v. United States, 82-2 USTC Para. 9654 (D.C. Wyo. 1982). The court noted that although rational justifications for the exemption do exist, the exemption is specifically forbidden by the Constitution. In short, the court appeared to hold that geographic distinctions are per se unconstitutional. The United States Supreme Court recently has determined to review this distinction.

In light of these precedents, it would appear that if Congress were to enact the proposed bill, the bill would run a strong risk of being held unconstitutional. The federal uniformity provision, however, by its terms applies only to acts of Congress, not acts of the states. Generally it has been held, for example, that there is nothing in the United States Constitution which requires state taxation to be uniform. See Carmichael v. Southern Coal Co., 301 U.S. 495 (1937). Thus, the proposed legislation does not violate the uniformity clause of the United States Constitution.

It is also possible to assert that the legislation violates the Equal Protection Clause of the Fourteenth Amendment. It might be contended, in other words, that the proposed legislation impermissibly discriminates against gas processors

located north of the Arctic Circle. The United States Supreme Court, however, has consistently held that where state "taxation is concerned and no special right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." Lehnhauser v. Lake Shore Auto Parts, 410 U.S. 356 (1973); State Board of Tax Comm'rs of Indiana v. Jackson, 283 U.S. 527 (1931). The appropriate test to be applied to state taxation schemes is whether the state classification has a "rational basis" or whether it is "palpably arbitrary" or "capricious." Id. If "any state of facts reasonably can be conceived" to justify a classification, the Court will sustain it.

Applying the foregoing principles to the proposed legislation, it appears that the Supreme Court would uphold the classification. Although not in the context of a taxation case, the Supreme Court has specifically stated that the "Equal Protection Clause relates to equality between persons as such rather than between areas . . . . Territorial uniformity is not a constitutional requisite." Salsburg v. Maryland, 346 U.S. 545 (1954). In the tax area, the Court has upheld a state tax which provided for different tax rates based on the "gravity" of certain oil and which arguably discriminated between oil produced in Northern and Southern Louisiana. Ohio Oil Co. v. Conway, 228 U.S. 146 (1930). The Court held that the classification based on "gravity" was not unreasonable. Although not directly on point, since the case did not involve a specific geographic distinction, Conway does confirm that the Court will apply a relaxed standard of review to state taxation schemes and that all areas of a state need not have an equal tax burden.

A number of lower courts have specifically addressed state tax classifications based on geography. These courts have held that "distinctions based on geographical areas are not, in and of themselves, violative of the Fourteenth Amendment." Levy v. Parker, 346 F.Supp. 877 (E.D. La. 1972); McCarthy v. Jones, 449 F.Supp. 480 (S.D. Ala. 1973) (no "rational basis" for different tax rates for different counties); Weissinger v. Boswell, 330 F.Supp. 615 (M.D. Ala. 1979) (same). These courts have explained that a state "must demonstrate, if it wishes to establish different classes of property based on different geographical locations -- e.g., rural areas as opposed to urban areas -- that the classification is neither capricious nor arbitrary but rests upon some reasonable consideration of difference or policy." Id.

The question thus remains whether the justification asserted for the geographic classification in this case -- to encourage the location of a certain industry in a certain region of the State -- is sufficient to sustain the classification. Although I have not found a case directly on point, the Supreme Court has suggested that tax classifications designed to create incentives for business to locate within a state are permissible. In Allied Stores of Ohio v. Bowers, 358 U.S. 522 (1959), the Court stated that a tax statute which "encourages the location within the state of needed and useful industries by exempting them, though not also others, from its taxes is not arbitrary and does not violate the Equal Protection Clause of the Fourteenth Amendment." The same rationale would appear to apply equally well to the proposed legislation here, since it is designed to encourage location of a business in a particular part of the state.

II. Alaska Constitutional Issues

There are at least three potential issues under the Alaska Constitution. First, the legislation might violate an implied requirement of "equality and uniformity" of all state taxes. Second, the legislation might violate the Equal Protection Clause found in the Alaska Constitution, Article I, Section 1, which has been interpreted somewhat differently from the Equal Protection Clause of the Fourteenth Amendment. Third, the legislation might constitute a "local or special act" prohibited by Article II, Section 19 of the Alaska Constitution. Let me address the first two issues together, since they are interrelated.

It is necessary to begin with a bit of background. The vast majority of state constitutions embody some provisions for "uniform or equal" taxes. There is, however, no such provision in the Alaska Constitution. The general rule appears to be that in the absence of express provision in the state constitution, it is not essential that state tax statutes operate equally and uniformly. See generally 84 C.J.S. 2d. Taxation, Section 21 (discussing authorities). However, at least one court has held that the principle of uniformity in taxation applies even in the absence of an explicit constitutional provision. See, e.g., Commissioners of Sinking Fund of City of Louisville v. Ohio Valley Grocery Store Co., 240 S.W. 2d 56 (Ky.). Thus, there is at least some possibility that a court might imply a uniformity requirement in the Alaska Constitution.

This possibility is further complicated in the State of Alaska. Although the Constitution of the State of Alaska nowhere requires state taxes to be uniform, Section 9 of the Organic Act of Alaska, 48 U.S.C. Section 28, provides that "all taxes should be uniform upon the same class of subjects." Under the Organic Act, the courts have interpreted the requirement of uniformity to require geographic uniformity. In Hess v. Mullaney, 91 F.Supp. 139 (D.C. Alaska 1950), reversed on other grounds, 189 F.2d 417 (9th Cir. 1950), the court considered whether Alaska's first property tax violated the uniformity requirement of the Organic Act. The property tax levied a tax on all properties in the state, provided that if the property was located within an incorporated city, town or school district, that entity should assess and collect the tax. Plaintiff claimed that the tax was unlawful, since property would be taxed differently depending on where it was located. The District Court agreed, reasoning that classifications may not be based on geographical lines or mere location of the property.

This view was somewhat modified in a successor case, Hess v. Mullaney, 102 F. Supp. 430 (D.C. Alaska 1952), affirmed, 213 F.2d 635 (9th Cir. 1954). Although the court ultimately upheld the property tax, it acknowledged that "unquestionably, systematic geographical discriminations in the burdens of taxation have been held void." The court found, however, that "we assume that the uniformity clause of the Organic Act requires the same measure of uniformity or equality which is required by the Equal Protection Clause of the Fourteenth Amendment." The court held that under the "rational basis" test, it was reasonable for the legislature to have cities assess and collect taxes for property within their jurisdiction.

In light of the foregoing, a strong argument can be made that a separate and distinct "uniformity" requirement no longer exists in Alaska. First, the Alaska Constitution does not provide for uniformity. The Organic Act is a mere act of Congress, and, whatever its continuing effect in light of Alaska statehood, it

probably adds little to the provision of the Alaska Constitution. Second, even if the uniformity requirement of the Organic Act is still controlling, the Ninth Circuit in Hess v. Mullaney held that the Alaska uniformity requirement is no stricter than the equal protection requirement.

A recent case, State v. Reefer King Co., Inc., 559 P.2d 56 (Alas. 1976), support this view and is particularly relevant to this case. The case involved the constitutionality of a state tax which drew a distinction between "floating" and "shore-based" fish processors. Because the tax placed a higher tax rate on floating processors, the floating processors claimed that the statute created an illegal classification under the State equal protection clause. The Alaska Supreme Court rejected that contention. Although the classification could in one sense be deemed to be a "geographical" classification, the Court did not even mention the Hess v. Mullaney cases. Instead, the Court held that the classification should be tested against the State's equal protection analysis, which provides that a statutory classification must

> "be reasonable, not arbitrary, and must rest upon some ground of difference having fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced, shall be treated alike."

The Court held that the classification reflected a legislative judgment that shore-based processors make a more valuable contribution to the State's local economies than the floating processors. According to the Court, it is not arbitrary for the legislature to conclude that shore-based processors were to be preferred over floating processors, which distributed economic benefits over several locations. And, in important language for the present issue, the Court concluded that

> "The state may legitimately encourage, through tax incentives or exemptions, industries or types of industries which it considers desirable, and this method of encouragement does not deprive other taxpayers, who do not qualify for the benefit, of equal protection of the laws.

Two additional points should be made with respect to Reefer King. First, the case strongly supports the notion that the State of Alaska may make a classification in order to encourage businesses to locate in a particular area. A primary reason for CIRI's proposed legislation, of course, is to encourage gas processors to locate south of the Arctic Circle. Second, the equal protection test adopted by the Alaska Supreme Court is somewhat more demanding than the test used in interpreting the Equal Protection Clause of the Fourteenth Amendment. The Alaska test, for example, requires the classification to bear a "fair and substantial" relation to the purpose of the statute, rather than merely a "reasonable" relationship. More significantly, under the Alaska test, unlike the federal test, the courts will "no longer hypothesize facts which would otherwise sustain questionable litigation." Isakson v. Rickey, 550 P.2d 359 (1975). This means that in order to survive constitutional scrutiny, the proposed legislation must clearly articulate the purpose of the legislation and the rationale for the geographic classification. The rationale for the geographic classification is expressly contained in the investment tax credit bill.

There is one final issue. Article II, Section 19 of the Alaska Constitution provides that the "legislature shall pass no local or special act if a general act can be made applicable." In this case, it could be argued that the proposed legislation is a local or special act in that it favors a particular region of the State.

It is doubtful that the proposed legislation constitutes a local or special act. In Baucher v. Engstrom, 528 P.2d 456 (Alas. 1974), the Alaska Supreme Court stated that "legislation does not become local merely because it operates only on a limited number of geographical areas rather than on a statewide geographical basis. A legislative act may affect only one of a few areas and yet relate to a matter of statewide concern or common interest." Accord, Abrams v. State, 534 P.2d 91 (Alas. 1975); State v. Lewis, 559 P.2d 630, cert denied, 432 U.S. 901 (1977) (upholding the land exchange between CIRI, the United States and Alaska). Thus, to the extent the proposed legislation is a matter of statewide concern, which we believe it is, the proposed legislation is permissible.

More significantly, the Alaska Supreme Court in State v. Lewis held that the test for determining what constitutes "local or special" acts is substantially the same for determining what violates the State equal protection clause. If the equal protection standard is satisfied, "the legislation will not be invalid because of incidental local or private advantages." Id. In terms of our case, then, the crucial issue is whether the proposed legislation violates the State standard of equal protection. If not, Article II, Section 19 will not pose a problem.

SCH:lw

HB 274

STATE OF ALASKA
FISCAL NOTE

Revision Date March , 1983

I. REQUEST

Bill/Resolution No.: HB 274
Title: Regulation of public utilities
Sponsor: Bettisworth
Requestor: Labor and Commerce

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Development
Program Category Affected: Protection
BRU, Program of Subprogram(s) Affected:
Alaska Public Utilities Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200						
300 IAL						
400 ES						
500						
600 STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE		0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Carolyn Guess, Chairman Phone: 273-2107
Division: Alaska Public Utilities Commission Date: 3/22/83

Approved by Commissioner: Richard A. Lyon Date: 3/22/83
Department: Commerce and Economic Development

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

3/8/83

HB 274: FISCAL NOTE ANALYSIS:

In the event that HB 274 is not enacted, $122,500 will be required in FY '84 to regulate the currently exempted cable television utilities.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

March 23, 1983

To: Representative Walt Furnace, Chairman
and all House Labor & Commerce Members

From: Jefferson B. Barry
Professional Aide

Re: Staff Analysis HB 274

BACKGROUND. In the late 1970's the FCC (Federal Communication Commission) started deregulating major portions of the communications industry. There existed the impending break-up of the Bell System, proposed Federal legislation changing the ground rules and policy in communications, and the advent of new technology making commercial cable television and other communication enterprises feasible on a large scale. In addition, a number of lawsuits were filed (nationally) which requested the Courts to clarify the regulatory powers of the State, Municipalities, cities, etc.; and, define the rights of the various regulated businesses. Final determination in a number of these cases is still pending.

Even though a uniform national policy had not been developed, one thing was clear. It was the intent of the Federal government to deregulate. In 1980, on an experimental basis, the State deregulated cable television. The deregulation was not all inclusive, but it was an attempt to conform to the deregulation policy. All indications are that the deregulation in Alaska has worked satisfactory.

EFFECT. HB 274 would make the economic regulation of cable television public utilities exempt from the Alaska Public Utilities Commission and local municipalities. To insure protection of the consumer, there is a provision that if 25 per cent of the subscribers feel their treatment is not satisfactory, they may petition, and will be granted, for regulation by APUC.

If the legislation, or similar legislation, is not passed the APUC will be required to hold hearings and establish rates for all of the cable television companies in the State. The current exemption expires on July 1, 1983 and it takes an affirmative action by the Legislature to continue the deregulation. This legislation would continue the deregulation.

Juneau, Alaska 99811

Dear Governor Sheffield:

We are pleased to transmit for your consideration the attached legislation that would make permanent and clarify the present statutory exemption of cable television (CATV) public utilities from economic regulation by the Alaska Public Utilities Commission.

The existing statutory exemption of CATV systems was enacted by the Legislature in 1980 and extends only through June 30, 1983; it was intended to be a three-year experimental deregulation program. As originally enacted, Ch. 136, SLA 1980, added subsection (i) to AS 42.05.711, but later was revised by the Revisor of Statutes as Sec. 13 of that chapter which reads:

> Cable television systems are exempt from the provisions of AS 42.05, other than the provisions of AS 42.05.221 - 42.05.281, until July 1, 1983. This exemption does not apply in cities or villages which have a population of less than 3,500 people and which are not located on a state road or marine highway. The effects of the exemption of cable television systems from rate regulation by the Alaska Public Utilities Commission provided in this section shall be reviewed by the legislature before July 1, 1983. If the legislature fails to extend the exemption before July 1, 1983, this section is repealed on that date, and cable television systems lose their exempt status on that date and become subject to regulation by the Alaska Public Utilities Commission.

The proposed legislation would permanently deregulate CATV services with respect to rates and charges for those services, the quality of that service, management practices and customer complaints, but would retain the Commission's authority with respect to the issuance of a certificate of public convenience and necessity to a CATV public utility (AS 42.05.221-42.05.281) under which the Commission determines if an applicant CATV company is fit, willing, and able to furnish CATV service and whether the public convenience and necessity requires that CATV service be provided to the proposed service area. (Under existing AS 42.05.321(b), CATV utilities also still are subject to Commission jurisdiction with respect to joint use and interconnection of utility facilities.)

The proposed bill also would delete the language from the existing CATV exemption which includes within the exemption those CATV systems operating in small Alaska communities if these communities are located on a "state road or marine highway". The effect of this provision has been to include within the ambit of the exemption every CATV system operating in the State except that in Barrow. Often it has been difficult to determine what constitutes a "state road," and many hours of Staff and Commission time have been consumed in making that determination. Instead the Commission proposes to simplify the exemption by substituting for that language, a provision which parallels the existing exception to economic deregulation contained in AS 42.05.711(e)(small electric and telephone utilities) and 42.05.711(i)(small garbage and refuse collection and disposal public utilities); namely, that if 25 percent or more of the subscribers to CATV service petition the Commission, CATV service in a given community would once again be subject to economic regulation. The Commission believes that this exception to deregulation responds to the concern of the CATV subscriber who wonders to whom the subscriber complains if he/she is dissatisfied with the service received and if resort to the CATV management does not produce a resolution of the complaint. Moreover, it furnishes a "safety valve" for CATV subscribers and a protection of them against a totally unsupervised monopoly which recent case law development in the application of anti-trust law to local governments suggests is a concern of the courts (e.g., the City of Boulder case) and is consistent with legislatively-established policy with respect to economically deregulated public utilities. Additionally, the Commission believes that this exception to permanent economic deregulation is protective of the public interest in that it recognizes that in the smaller communities in Alaska, CATV well may be the only entertainment option and also may function as an important communications medium for the community, whereas in the larger, urban areas there are indeed other entertainment/communications alternatives. As a practical matter, the 25 percent petition "trigger" would require substantial

In requesting your support for the proposed legislation and its presentation for consideration at the 1983 legislative session, the Commission believes that the absence of subscriber problems or concerns arising from the economic deregulation of CATV service in Alaska over the past two and one-half years, as well as the many entertainment/communications alternatives that now are competing in the market place for most Alaskans, are ample evidence that economic regulation by the Commission is indeed unnecessary. Additionally, continuing the present exempt status of CATV services, subject to the exception proposed above, will allow the Commission to devote its time and resources to those necessary utility services in which economic regulation is essential to protect the public interest.

If we can assist your office in responding to any questions concerning this proposed legislation, please contact me at your convenience.

Very truly yours,
ALASKA PUBLIC UTILITIES COMMISSION

Carolyn S. Guess, Chairman

Enclosure.

Alaska Cable Television Association

TESTIMONY OF CLARK KING

BEFORE THE HOUSE LABOR AND COMMERCE COMMITTEE

REGARDING HOUSE BILL 274.

Mr. Chairman, members of the Committee, my name is Clark King and I am Executive Director of the Alaska Cable Television Association. And I thank you for this opportunity to come before you today to testify on House Bill 274.

House Bill 274 provides the cable operators of the State of Alaska to proceed with economic deregulation that was afforded cable systems in Alaska by Chapter 136 SLA 1980.

I would like to provide the committee with some background regarding the bill. In 1979, Legislative Audit provided a report on the Alaska Public Utilities Commission. At that time the Legislative Auditor suggested that cable television be excluded from regulation by the Alaska Public Utilities Commission. The sunset legislation on the Public Utilities Commission (SB 577) included only a partial deregulation of the cable utility in the state. The Public Utilities Commission is still responsible for certification of any operator doing business in the state. It

is still the arbitrator of any conflicts between a utility and the cable operator wishing to attach its lines to poles. And still has control over who is issued a certificate of public convenience and need.

The 1980 Legislature did confer upon the cable operators of the state, the ability to establish and set their own rates and tariffs. In most cases the rate charged for cable service has not exceeded the inflation rate and, in fact, has resulted in expanded service.

A case in point would be the Juneau cable operation, BC Cable, who, at the time the act was passed, had a cable rate of $39.00 reduced to $36.00 per subscriber. In the same time period, BC Cable has offered additional channels to the public through the use of mid-band converters.

House Bill 274 extends the deregulation of the cable industry for an indefinite period of time. There is also a proviso in the bill that if 25% of the subscribers of a cable system are dissatisfied, they may petition the Public Utilities Commission for re-regulation. This proviso appears in AS 42.05, the Public Utilities Commission, on a number of occasions.

I might note at this time that cable is not just an entertainment medium that most people conceive it to be. The State of Alaska, Department of Revenue, subscribes to the Reuters News Service for

financial information. This gives the department instantaneous update on all major stock exchanges and commodity exchanges in handling the State's vast portfolio. After two years of operation the then deputy commissioner of Revenue stated that the instantaneous availability of information actually increased the State's revenues from their investment portfolio.

Another feature of cable is the ability to be used as fire detection and security alarm systems. Currently, a proposal is being drafted by the Bethel cable operator for a fire prevention network. It is interesting to note that Bethel has the highest per capita death rate due to fires in the United States. It is hoped that this system will drastically reduce that circumstance.

Cable is also used in communities to distribute the State's Learn Alaska Program to both homes and schools. It is also interesting to note that in those communities that are served by cable operators, most public buildings, including schools, libraries, etc., are all wired for cable, thus making it available to all members of the community. Several communities in the state are experimenting with a public access channel. Most notably would be Nome, where the citizens produce their own programming. The cable operator in Nome provides technical assistance and the free channel time, but has nothing to do with the content of the programming. This programming ranges from cultural shows to coverage of the local assembly meetings.

With the completion of the cable system in the Anchorage bowl, the Kenai-Soldotna area, and Mat-Su, over 90% of the homes in the State of Alaska will have cable service available to them.

With expanded programming and advanced technical services, Alaska will have greater access to one of the truly growing telecommunications services.

Again, on behalf of the Alaska Cable Television Association, I would like to stress our support for House Bill 274 and urge the committee to take favorable action.

HB 281

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.

TITLE PAGE ONLY HAS BEEN FILMED.

STATE OF ALASKA
DEPARTMENT OF LABOR

TITLE 23. LABOR

CHAPTER 05. -- CHAPTER 10.

DEPARTMENT OF LABOR

EMPLOYMENT PRACTICES & WORKING CONDITIONS

AS 23.05.010 - AS 23.05.340

AS 23.10.015 - AS 23.10.150 & AS 23.10.375 - AS 23.10.40(

July, 1981

WAGE & HOUR DIVISION PAMPHLET NO. 100

BILL SHEFFIELD
GOVERNOR

CJ

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 18, 1983

(3 DAYS OF TERMINATION SENT) VERBAL

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the payment of wages. This bill would make discretionary the imposition of the wage claim penalty under AS 23.05.140(d) against an employer who fails to pay wages to an employee within three days of the date of termination. In addition, the bill would strengthen the protection given an employee who has been offered a partial payment of a wage claim on the condition that he release the employer from paying the entire amount of wages claimed. The bill would void such a release which is given contingent on part payment of the wage claim.

The final provision of the bill would limit the application of the definitions in the federal Fair Labor Standards Act, 29 U.S.C. 203, to only those terms used in the Alaska Wage and Hour Act which are not defined by state law or regulation.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA
FISCAL NOTE

Revision Date March 10, 1983

I. REQUEST

Bill/Resolution No.: HB 281
Title: "...payment of wages..."
Sponsor: Rules Committee
Requestor: Rules Committee

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: No fiscal impact.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Judy Knight, Special Assistant — Phone: 465-2700
Division: Commissioner's Office — Date: March 10, 1983
Approved by Commissioner: Jim Robison — Date: March 10, 1983
Department: Labor
LEG:A:11

Distribution:
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3/8/83

2801 DeBarr Road
Pouch 8-AH
Anchorage, Alaska
99508
907/276-1131

April 19, 1983

Mr. Ron Pavellas
Executive Director
Humana Hospital Alaska
2801 DeBarr Road
Anchorage, Alaska 99508

Humana Hospital Alaska

Dear Mr. Pavellas,

I am writing this letter, along with support of other hospital staff members, to stress the importance of re-establishing an 8/80 workweek at Humana Hospital Alaska. In order to meet the needs of our community, we naturally must be available 7 days a week, 24 hours a day, making a 40-hour workweek difficult to schedule. We are denied an 8/80 workweek because we are not a non-profit hospital.

Following are a list of reasons to support an 8/80 workweek:

(1) It would allow the possibility of 10 days on/4 days off.

(2) Long working stretches allow for 4 days off in a row.

(3) Part-time staff members could work extra days for their peers without the hospital having to pay overtime.

(4) During high census readings, a nurse manager would have a larger list to call from without having to pay overtime.

We feel that such a change would improve employee morale, and we totally support an 8/80 workweek.

Sincerely,

Cheryl Stanton RN

Cheryl Stanton, R.N.
Nursing Supervisor

CS/ng

Christine Hunter LPN
Christine Hiss RN.
Shannon Crayton U.S.
Linda Webster RN
Jude Williams RN
Ruth Burggraff RN

Valerie Fahlen RN.
Nursing Supervisor
Lorraine Michaud RN, BSN
Renee M. Pelowski RN
Mary S. Atwood RN
Susan Canada RN. BSN
Elizabeth Stanley RN
Linda Stephan RN
Barbara L Owen U.S.
Mary Jones RN
Cheryl Stanton RN

2801 DeBarr Road
Pouch 8-AH
Anchorage, Alaska
99508
907/276-1131

Humana Hospital Alaska

Mr. Ronald A. Pavellas
Executive Director
Humana Hospital Alaska
2801 DeBarr Road
Pouch 8-AH
Anchorage, Alaska 99508

Dear Ron,

I wish to stress the importance of obtaining a change in the legislation which would permit that overtime be calculated on an 8 (hours per day) and 80 (hours per pay period) instead of the 8 and 40 as currently exists.

Humana Hospital Alaska is currently denied the 8 and 80 because we do not have the status of "Non Profit" as the overtime law states.

This law limits us in the following ways:

(1) Requires that we split employees' days off (into some single days) in order to avoid unnecessary overtime.

(2) Hinders our flexibility in creating flexible scheduling which is generally helpful in attracting Registered Nurses.

(3) Creates an inability for us to allow our 11PM to 7AM employees several days off together without incurring substantial costs in overtime.

Any assistance in a change in this legislation would be appreciated, as it would permit more effective utilization of our nursing personnel.

Sincerely,

Patricia K Davis

Patricia K. Davis, R.N.
Associate Executive Director
for Nursing

PKD/ng

HB 282

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 18, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

NOTICE TO EMPLOYER
WHAT IS THE AVERAGE FINE TO EMPLOYER!

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to notices for occupational safety and health violations.

This bill would allow the Department of Labor to issue a notice, rather than a citation, to an employer for an occupational health and safety violation which is not serious, if the employer agrees to remedy the violation within a reasonable time. If the employer fails to remedy the violation, then a citation is issued in accordance with the procedures for serious violations.

The bill would accomplish several things. It would free occupational safety and health compliance officers from cumbersome administrative responsibilities which attend the issuance of citations, and thereby allow them to devote more time to inspections, while also saving clerical time. (Currently, inspectors can only inspect approximately eight percent of the state's work sites a year). The bill would also promote speedier correction of hazards, since much of the paperwork that must flow between employer and agency in the citation-issuance process would be eliminated. The department strongly urges passage of this bill, and it has the support of unions and employer organizations as well.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA
FISCAL NOTE

Revision Date March 10, 1983

I. REQUEST

Bill/Resolution No.: HB 282
Title: "...citations for occupational..."
Sponsor: Rules Committee
Requestor: Rules Committee

II. FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program of Subprogram(s) Affected: Occupational Safety and Health

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: No fiscal impact.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Judy Knight, Special Assistant — Phone: 465-2700
Division: Commissioner's Office — Date: March 10, 1983

Approved by Commissioner: Jim Robison — Date: March 10, 1983
Department: Labor

LEG:A:10

Distribution:
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Copy to Department (for Governor introduced bills)
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3/8/83

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

MEMORANDUM

February 8, 1984

To: John Cowdery, Chairman

From: Ken Johnson, Committee Aide

RE: HB 283 -- An Act relating to the creation of the Alaska Life and Disability Insurance Guaranty Association.

This bill was drafted about two years ago by the National Association of Insurance Commissioners. The NAIC put together a number of so called "model acts" in order to help states bring insurance statutes and regulations up to date. These model acts were presented to all 50 states for fine tuning and legislative introduction. This is one of those bills. To date, 34 states have passed very similar legislation.

The bill of course would create the Alaska Life and Disability Association. Any company licensed to sell insurance in the state would be a member of this association. Each member would pay an assessment, not to exceed $150 per year, to cover the costs of administration and general expenses.

The purpose of the association is to guarantee the policy's of an insurer who has become impaired or insolvent. In the event an insurance company insolvency, the association would assume control of the company's policies and set into motion the action necessary to see policy holders do not lose any investment or benefit. For example, an impaired or insolvent company may get a loan from or its assets be sold by the association. There are limits set for the aggregate liability the association will assume.

The association has the power to borrow and loan money. Most all of the funds necessary for the associations transactions would come from assessments on its members. There is a formula which would be used to make these assessments, however, Ken Moore, Director of the Division of Insurance could better explain this formula. He would serve as director of this association.

A board of governors would be elected, by association members, to carry out the duties of the association. The director must approve the selection of each board member.

This is a general outline of a lengthy and detailed bill. The NAIC has deemed this legislation a "consumer protection bill" because of the insurance policy guarantees. It has passed, as I stated, in 34 states some which have created standing committees in their legislatures to deal with insurance matters.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 283
Title: Life Guaranty Association

Sponsor: Governor
Requestor: Labor & Commerce
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Economic Development
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Kenneth C. Moore, Director
Division: Insurance
Phone: 465-2515
Date:

Approved by Commissioner: Richard A. Lyon
Agency: Commerce and Economic Development
Date: 2/1/84

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
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12/1/83

OF COUNSEL
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JAMES F. CLARK
PAUL M. HOFFMAN
J. P. TANGEN
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ANCHORAGE, ALASKA 99510
PHONE (907) 277-6693
CABLE: ROMEA
TELEX: 090-26-486

February 10, 1984

Honorable John Cowdery
Chair, House Labor & Commerce Committee
Alaska StateLegislature
Pouch V
Juneau, AK 99811

Re: HB 283

Dear Representative Cowdery:

On behalf of the American Council of Life Insurance, this is to make a matter of record the support of that organization for HB 283.

May I also extend our thanks for your help in seeing to it that HB 373, the Valuation and Non-Forfeiture bill, was unanimously passed by the House of Representatives. That bill will mean real savings for Alaskans.

Best regards,

Michael T. Thomas

MTT/gmm

cc: Kenneth C. Moore
William L. Lincoln

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 18, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill establishing the Alaska Life and Disability Insurance Guaranty Association (the association). This bill is based on the Life and Health Insurance Guarantee Association Model Act proposed by the National Association of Insurance Commissioners in 1971, as amended in 1976.

The bill would provide a mechanism for paying claims on direct life insurance policies, disability insurance policies, and annuity contracts, which are outstanding against insolvent or impaired insurers. The bill would require that all insurers licensed to do business in Alaska be members of the association, and would provide for periodic assessments of the members of the association.

The Alaska Life and Disability Insurance Guaranty Association will provide protection for life and disability insurance similar to the protection provided under existing law for other kinds of direct insurance by the Alaska Insurance Guaranty Association Act (AS 21.80).

Sincerely,

Bill Sheffield
Governor

BRIEF SUMMARY: This bill provides a mechanism for paying claims on direct life insurance policies, disability insurance policies, and annuity contracts which are outstanding against insolvent or impaired (next page)
(Attach a more detailed explanation if you can.)

ESTIMATED FISCAL IMPACT: none

OTHER STATE AGENCIES CONSULTED/AFFECTED:

CONSTITUENT GROUPS:
Those opposed:

Those in favor:

Those yet to be contacted:

Has this or a substantially similar bill been introduced (and not passed) in the legislature in a previous session? Yes X No ____

If so, please state: Bill number SB 116 (1981)
Dept. of Law log no: J-77-064 - 081
(if it was a Governor's bill)

PREFERRED HOUSE OF INTRODUCTION: either

RATE THE BILL'S IMPORTANCE TO DEPARTMENT BY PRIORITY #: 4

DRAFT ATTACHED: Yes X No ____ Not finalized ____

COMMISSIONER'S SIGNATURE:

DATE: 1/10/83

insurers. The bill would require that all insurers licensed to do business in Alaska be members of the association, and would provide for periodic assessments of the members of the association.

This bill is based on the Life and Health Insurance Guaranty Association Model Act proposed by the National Association of Insurance Commissioners in 1971 as amended in 1976. The Alaska Life and Disability Insurance Association will provide protection for life and disability insurance similar to the protection provided under existing law for other kinds of direct insurance by the Alaska Insurance Guaranty Association Act.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Commerce & Econ. Dev.	Insurance	HB 283	Governor

DEPARTMENT POSITION

In favor

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Kenneth C. Moore	2/7	Richard A. Lyon	

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
None	All holders of life or disability insurance and annuity contracts.
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Not known	Not known

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

This bill will provide public protection that currently does not exist. Policyholders of life and disability policies issued in Alaska will have their policies guaranteed by all life and disability insurers doing business in this state. It also provides a mechanism to enhance the director's review of life or disability insurer solvency.

ANALYSIS OF BILL/PROGRAM EFFECTS

This proposal is based on the Life and Health Insurance Guarantee Asssociation Model Act of the National Association of Insurance Commissioners developed in 1971 and amended in 1976. The bill would provide a mechanism for paying claims on life, disability and annuity contracts on behalf of an impaired or insolvent insurer. Participation would be a condition to license in this state.

Alaska has previously had a domestic insolvency of a life insurance company. In June 1969, the Alaska Western Life Insurance Company was placed in receivership and was ultimately liquidated. The division managed some control through AS 21.78, but that chapter offers little protection for policyholders.

This bill is similar in concept to AS 21.80 which provides protection for property and casualty kinds of insurance.

AMENDMENTS PROPOSED

On page 7, line 20, change "health" to read "disability."

On page 7, line 27, insert "(a)" following "ASSESSMENTS."

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

01-009 (Rev. 12/83)

~~25.~~ WHAT OTHER STATES HAVE LIFE GUARANTY FUND ACTS?

While it has not been determined exactly how the provisions of these Acts would apply to the financial problems of NILIC and UNIVERSITY, the following 34 states and the Commonwealth of Puerto Rico have Life Guaranty Acts:

1. Alabama
2. Arizona
3. Connecticut
4. Delaware
5. Florida
6. Georgia
7. Hawaii
8. Idaho
9. Illinois
10. Indiana
11. Kansas
12. Kentucky
13. Maryland
14. Michigan
15. Minnesota
16. Montana
17. Nebraska
18. Nevada
19. New Hampshire
20. New Mexico
21. New York
22. North Carolina
23. North Dakota
24. Oklahoma
25. Oregon
26. Pennsylvania
27. South Carolina
28. Texas
29. Utah
30. Vermont
31. Virginia
32. Washington
33. West Virginia
34. Wisconsin

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 283
Title: Life Guaranty Association

Sponsor: Governor
Requestor: Labor & Commerce
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Economic Development
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Kenneth C. Moore, Director Phone: 465-2515
Division: Insurance Date:

Approved by Commissioner: Richard A. Lyon Date: 2/7/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

283

HB

~~Senate~~ Bill ~~No~~

Section by Section Commentary

Section 1. AS 21.21.050(7)

AS 21.21 is the chapter in the insurance code dealing with investments of insurance companies. .050 deals with limitations by kinds of investment to provide for diversity in the investment portfolio of an insurer. This change adds notes and other evidence of indebtedness of the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) to the miscellaneous category of investments which are limited to 10% of assets.

Section 2. AS 21.21.250(c)

AS 21.21.250 defines miscellaneous investments and is changed by adding notes and other evidence of indebtedness of the ALDIGA.

Section 3.

Section 21.79.010. PURPOSE.

The basic purpose of this model act is to protect policyholders, insureds, beneficiaries, annuitants, payees and assignees against losses, both in terms of paying claims and continuing coverage, which might otherwise occur due to an impairment or insolvency of an insurer. Unlike the property and liability situations, life and annuity contracts in particular are long-term arrangements for security. An insured may be of impaired health or an advanced age so as to be unable to obtain new and equivalent coverage from other insurers. The payment of cash values alone does not adequately meet such needs. Thus, it is essential that coverage be continued. In like manner, an insured may be unable to obtain new health insurance or at least he may lose protection for prior illnesses.

Section 21.79.020. SCOPE.

This section outlines what the bill does and does not cover. Basically, it covers those policies of life, disability, and annuities written by insurers which have submitted to regulation in this State. Policies of nonadmitted insurers are not covered. The term "disability" also includes "accident and health," "sickness and accident" and more.

Subsection (b)(1) is directed toward variable policies and contracts. That portion of the contract where the risk is borne by the policyholder is excluded. However, the obligations of the insurer for mortality and expense guarantees are covered.

Subsection (b)(2) excludes deductibles from coverage.

Subsection (b)(3) exempts the reinsurance business of the impaired or insolvent insurer other than reinsurance for which assumption certificates are used.

Subsection (b)(4) excludes Blue Cross. The logic to this is that Blue Cross is a nonprofit health care provider. It markets prepaid health care through participant providers who in effect guarantee the delivery of the contracted service. The financial structure of Blue Cross is such that they cannot be expected to participate in insolvencies of profit making corporations.

Some additional limitations on the scope are found elsewhere in the act. For example, ALDIGA assumes no liability concerning policies of nonresidents issued by a foreign or alien insurer or for policies of residents issued by a foreign or alien insurer, if such insurer is domiciled in a state having a comparable act (See Section .060). These limitations are not found in the scope section, since it provides exclusion from the entire act and not just portions of it.

Section 21.79.030. CONSTRUCTION.

This section calls for liberal construction.

Section 21.79.040. CREATION OF THE ASSOCIATION.

Subsection (a) creates three accounts, for both administration and assessment purposes, the disability insurance account, the life insurance account, and the annuity account. These three categories of coverage are significantly different, so that persons protected by virtue of one account should not be required to pay for the protection afforded persons protected by the other accounts.

Supplementary contracts are covered under the account in which the basic policy is covered for purposes of assessment. For example, settlement options under a life insurance contract would be covered under the life insurance account.

Section 21.79.050. BOARD OF GOVERNORS.

Subsection (a) provides that the number and term of the members of the Board of Governors shall be determined in the plan of operation. To avoid problems in initially selecting the board, this section includes a provision for a start-up meeting, which shall be called by the Director of Insurance. To determine voting rights at the organizational meeting, each member insurer would have one vote. Thereafter the plan of operation will establish the voting procedures, bylaws, etc., governing the conduct of ALDIGA.

Section 21.79.060. POWERS AND DUTIES OF THE ASSOCIATION.

Subsections (a)-(f) constitute the heart of this model act. These subsections detail the duties of the association by distinguishing: (1) between those insurers whose "impaired" status is attributable to a finding by the Director prior to an order of liquidation, and those whose "insolvent" is attributable to such orders; and, (2) between insolvent domestic insurers and insolvent foreign or alien insurers.

Prior to an order of liquidation, rehabilitation or conservation, ALDIGA has no liability. However, upon a finding by the Director that the insurer is impaired under (a), ALDIGA is authorized to guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of the impaired insurer to assess member insurers the amounts necessary to effectuate this activity. ALDIGA would presumably do so in those situations where early assessments would prevent a more costly insolvency later, such as liquidation. ALDIGA, as a condition of its assistance, may negotiate any requirements or safeguards it deems necessary so long as they are approved by the Director and are accepted by the impaired insurer and do not impair the contractual obligations to the policyholders, insureds, and beneficiaries. In the absence of any court order, before any negotiations become final the impaired insurer's acceptance of the terms of ALDIGA is necessary. Through this approach, a mechanism is provided for early action by ALDIGA before the situation further deteriorates. The policyholder, insured, and beneficiaries are protected, claims are paid and coverages continued, for example, through rehabilitating the impaired insurers, or reinsuring the policies elsewhere. Furthermore, the statutory language is highly flexible as to what techniques the association may employ so as to be able to meet a variety of situations.

Under (b) and (c), if the insurer acquires its insolvency status as a result of a final order of liquidation, rehabilitation or conservation, the association shall, rather than may, guarantee, assume, reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of the insolvent insurer and to assure payment of contractual obligations.

It should be noted that the duties of ALDIGA vary with the kind of insurer. If it is a domestic insurer then all the covered policies must be continued and the contractual obligations met (See (b)). However, if the insolvent insurer is a foreign or alien insurer, contractual obligations which apply to residents of the State must be paid or continued if they are not covered by a similar law in such insurer's domiciliary jurisdiction. (See (c) and (d))

Subsection (d) avoids duplication of coverage by providing that the association shall have no liability for any covered policy of a foreign or alien insurer domiciled in the State having similar protection by statute or regulation. If every state adopts the model act, each state association would protect only covered policies of domestic insurers.

Subsections (e) and (f) relate to the imposition of policy and contract liens, moratoriums, etc. These are devices which have been used in the past in connection with the continuation of the insolvent insurers' coverage. Since, by definition, the assets of the insolvent insurer were not adequate to support its contractual obligations, liens were used to reduce his obligations to a level where the assets would be adequate. However, in the past there was no means to infuse additional funds where needed to make whole policyowners, insurers and beneficiaries. The purpose of the model act is to provide against losses due to insolvent insurers by prompt fulfillment of the insolvent insurer's contractual obligations. To the extent that liens and moratoriums are sanctioned, the model act retreats from this principle. Of course, in situations prior to a court order there may be some question whether a lien or moratorium could be legally imposed so as to impair the contractual obligations of the insurer even in the absence of the specific provisions of this act.

On the one hand, it can be argued that if liens or moratoriums cannot be used there will be a run on the assets of the impaired company. In the past this seems to have been true. However, unlike the past, the performance of the insurer's contractual obligations would be guaranteed under this act.

Also, the standard nonforfeiture laws provide that an insurer in its policies shall reserve the right to defer the payment of cash values for a period of six months after demand thereof with surrender of the policy. Similarly, it is common to require an insurer to reserve for a period of six months the right to defer the granting of any policy loan (other than to pay premiums). For these various reasons, the model act does not encourage use of these liens and moratoriums in ordinary situations.

On the other hand, in periods of severe liquidity problems and economic stress, perhaps of even catastrophic proportions, such devices may become essential. While the model bill concentrates on the protection of those to whom the impaired insurer has a contractual obligation, the impact of assessments on the policyholders of assessed companies is also an important consideration, such as the significant sales of depressed value assets in a tight money market. Consequently, Subsection (e) authorizes ALDIGA to cause to be imposed liens and moratoriums or other similar means:

1. If the court finds that the amounts assessable are less than what is needed, or that the economic or financial conditions as they affect member insureds are sufficiently adverse to render the use of such tools in the public interest; and,

2. The court approves the use of a specific lien, moratorium, etc.

This provides a highly flexible mechanism while, at the same time, it avoids impairing the contractual obligations of the impaired insurer as a routine manner under ordinary economic and financial conditions. The provision also recognizes that while contractual rights of policyowners may not constitutionally be impaired, when the insolvent insures obligation under the contract as assumed by another insurer, the policyowner has two options. The policyowner may accept the new contract with such liens or moratoriums as permitted by the court, or accepts such pro rata payment as is available from the State of the insolvent insurer.

Furthermore, to provide added flexibility in a temporary situation, such as a run on assets, Subsection (f) provides for temporary moratoriums or liens on payment of cash values and policy loans, but not on the payment of other benefits, with the court's approval.

Subsection (g) permits the Director to assume the duties of ALDIGA if they fail to exercise their authority under the act within a reasonable period of time.

Subsection (h) permits the Director to request ALDIGA member assistance with impaired or insolvent insurer issues.

Subsection (i), to enable ALDIGA to protect its interest and the best interests of the policyholders in the handling of an impairment or insolvency, provides that ALDIGA shall have standing to appear in a court with jurisdiction over an insolvent insurer and such standing will extend to any matters concerning the duties of ALDIGA.

Subsection (j) provides for assignment of rights of a beneficiary of benefits under this act. It also establishes subrogation rights for ALDIGA and provides that ALDIGA's right to assets of the insolvent insurer is the same as any other person entitled to benefits under this act.

Subsection (k) places a limit on the liability of ALDIGA as respects a single life.

Subsection (l) allows ALDIGA to contract, sue or be sued, borrow money, employ persons, negotiate, act as a domestic life or disability insurer and take legal action to avoid payment of improper claims.

Section 21.79.070. ASSESSMENTS.

Subsection (b) outlines different assessment methods for assessments needed to cover foreign or alien insurers and for assessments needed to cover domestic insurers. When a foreign or alien insurer is impaired or insolvent, the member insurers will be assessed on the basis of the premiums they write in the State. This corresponds to the association's liability which is limited to covered policies of residents when the policies are issued by a foreign or alien insurer. When a domestic

insurer is impaired or insolvent, the total amount to be assessed will be allocated to each state in which the impaired or insolvent insurer was authorized at any time to transact insurance in the proportion that the impaired or insolvent insurer premium income in each state for the last calendar year preceding the assessment in which it had premium income bears to its total premium income in such calendar year. The amount allocated to each state will then be assessed to the member insurers in the proportion that the member's premium income from such State for the calendar year preceding the assessment bears to all premium income of member insurers from that State in the calendar year preceding the assessment. Thus, in making the pro ration it is necessary to look to the premium income of the impaired or insolvent insurer in the last year it actually received such income, but in determining each company's assessment, the association would look to the last calendar year preceding the assessment. In any case, assessments would be made separately for each account and the amount assessed from each account will be in the proportion that the total premiums of the impaired or insolvent insurer bear to the premiums of the impaired or insolvent insurer from the kind of insurance in the account.

For example, if a total assessment of $100,000 is needed for the disability insurance account, and the domestic impaired or insolvent insurer received 50% of its premium from state X, then 50% of $100,000 or $50,000 will be allocated to state X. Member insurers receiving premium income from state X will then be assessed in proportion to their share of that state's market, as reflected in premium income. For example, if member insurers receive $30,000,000 in premium from state X and a certain member received $3,000,000 of that amount, then 3/30 of the $50,000 assessment will come from this company, that is, the company will be assessed $5,000 (3/30 = 1/10 and 1/10 of $50,000 is $5,000).

This assessment system should be relatively simple to administer. More importantly, it provides a base broad enough to meet fairly large demands on the association. Equally important, since it reflects the market share of each member in the state considered, it is an equitable method of apportioning the burden of the assessments.

The maximum assessment per year may be varied from State to State depending on the size of the base and the concentration of the business. The two percent maximum should produce an adequate amount, while at the same time, not impose an undue strain in any given year on the assessed companies and their policyholders. In order to prevent further financial difficulties caused by an assessment, Subsection (g) permits abatement of assessments when financial difficulties might result.

Subsection (h) provides some limitation on the amounts which can be assessed in any given year. If these limits are reached, to fulfill its responsibilities, ALDIGA is empowered to borrow funds which later can be repaid out of future assessments.

Subsection (j) provides that a member insurer may consider, in its premium rates and dividends scale, an amount reasonably necessary to meet its assessment obligations. This makes it clear that the cost can be ultimately passed on to the policyowners, that is, to persons who enjoy the protection provided by the act.

Subsection (k) provides that ALDIGA shall issue to assessed insurers certificates of contribution in the amount levied. The certificates may be carried by an insurer in its annual statement as an asset in such form, amount and period as may be approved by the Director. By permitting the company to carry these certificates as an asset, to the extent of their estimated value, the impact on member insurers will be lessened.

Section 21.79.080. PLAN OF OPERATION.

The NAIC has adopted a model plan of operation which is available in our office should you wish to have a copy of same. It is anticipated that ALDIGA, upon passage of this act, would substantially adopt the provisions contained in this model plan of operation.

Section 21.79.090. POWERS AND DUTIES OF THE DIRECTOR.

Subsection (b) requires that the Director give notice of an impairment to the impaired insurer, and hence to its stockholders, and serve a demand that impairment be made good. If the company and stockholders fail to raise the necessary funds, this will be a factor bearing upon the stockholders' ownership rights under Section 110(d).

Subsection (d) provides that the Director shall be appointed liquidator or rehabilitator of a domestic insurer and conservator of a foreign or alien insurer being liquidated or rehabilitated. Requiring the Insurance Director to be the receiver, it is necessary to obtain the benefits of a "reciprocal" state under the Uniform Insurers Liquidation Act, which Alaska adopted in 1966. See AS 21.78.020, .030, .130-.200 and .230(2)-(13).

Proceedings for the liquidation, rehabilitation, or conservation of insurers present several difficulties which the Uniform Insurer's Liquidation Act seeks to solve. Briefly, the difficulties have two sources. First, in some states the liquidator, rehabilitator or ancillary receiver may be a person unfamiliar with insurance regulation. Inefficient administration of the proceedings may result.

Second, the laws of more than one state may be applied to the proceedings particularly regarding ownership of assets and preferences for payment. The result is confusion and inequity in the collection and distribution of the assets. The Uniform Insurers Liquidation Act meets the first source of problems by designating the insurance Director as the receiver of a domestic insurer or the ancillary receiver of a foreign

insurer. To solve the problem of multiple laws and marshalling of assets, the Uniform Act gives the receiver title to the assets. The ancillary receiver is then required to forward all assets to the receiver. The Uniform Act also details laws under which preferences and the distribution of assets will be determined.

In drafting this model guarantee bill, the NAIC made particular effort to the extent possible, to avoid disrupting State liquidation and rehabilitation of laws.

Section 21.79.100. PREVENTION OF INSOLVENCIES.

This section basically establishes a dialogue between the Director and ALDIGA, concerning impairment and insolvency issues. It also enables ALDIGA to cause an examination of a suspect insurer, which is the primary tool in determining financial status.

Section 21.79.110. MISCELLANEOUS PROVISIONS.

Subsection (b) requires that the records be kept of the negotiations and actions by the association. ALDIGA should be held publicly accountable for its actions. On the other hand, effective handling of the rehabilitation or liquidation effort requires minimum publicity. Thus, such records will be made public only after the liquidation, rehabilitation or conservation proceeding is terminated, the impairment or insolvency is terminated or there is a prior order by a court of competent jurisdiction.

Since this act imposes obligation upon the association to continue coverage for policyholders of insolvent insurers, the assets of the insolvent insurer ought to be used, to the extent available, for the purpose of continuing such coverage. Subsection (c) is designed to accomplish this purpose.

Subsection (d), in conjunction with Section .090(b), is intended to prevent the shareholders of an impaired insurer from sitting back and doing nothing and then reaping the benefit of funds put up by the association. These stockholders should not obtain a more advantageous position than they would have occupied in the absence of this act. The court is empowered to modify and distribute the ownership rights of impaired insurers in an order to do equity as between the interested parties.

Subsection (e) is designed to recapture excessive dividend payments to affiliates that exercised control over the insolvent insurer. The NAIC Model Holding Company Regulatory Act which has been adopted in Alaska, in large measure, prevents improper distribution of dividends by an insurer to its holding company, since extraordinary dividends are subject to the prior approval of the Director, and ordinary dividends are required to be reported to the Director. If, however, dividends are

paid under circumstances that the insurer should have recently known that such payment could reasonably be expected to affect its ability to perform its contractual obligation to its policyholders, the holding company and affiliates should be required to repay such dividends subject to certain reasonable limitations.

Section 21.79.120. EXAMINATION OF THE ASSOCIATION, ANNUAL REPORT.

This section enables the Director to examine ALDIGA. ALDIGA must also provide an annual report.

Section 21.79.130. TAX EXEMPTIONS.

ALDIGA is tax exempt except for real property taxes. ALDIGA is not a profit making organization, rather, it is a guarantee mechanism thus its tax exempt status.

Section 21.79.140. IMMUNITY.

ALDIGA will be engaged in some very sensitive issues when performing its duties under this act. The immunity provides protection while performing these duties.

Section 21.79.150. STAY OF PROCEEDINGS.

See Section 5.

Section 21.79.900. DEFINITIONS.

This act covers "insolvent insurers" which are difined to include an insolvent insurer under an order of liquidation issued by a court of competent jurisdiction. An "impaired insurer" is an insurer deemed by the Director to be unable, or potentially unable, to fulfill its contractual obligations.

This model bill enables an association to become involved to the actual court order as noted in Section .060. The finding by the Director that an insurer is impaired, even though not subject to a court proceeding, serves as a triggering mechanism enabling the association to function.

Subsection 10 defines "resident" for the purposes of determining on whose behalf the association may become liable under Section .060, if a foreign or alien insurer becomes insolvent.

Section 4. Section 21.36.035. PROHIBITED ADVERTISEMENT IN INSURANCE SALES.

This section makes it a prohibited unfair trade practice for any person to make use, in any manner, of the protection afforded by this act to aid him in the sale of insurance. This would extend to a person with

an interest in a policy who uses the presence of ALDIGA to support the value of the policy as collateral in a loan transaction, which action would be prohibited. The legitimate function of advertising the existence of the act by the guarantee association and the Director, conduct which would be particularly desirable in notifying policyholders of a company found to be insolvent, or by insurers in public service institutional advertisements, would be permitted. Enforcement and penalties for violation of the section are found in the Unfair Trade Practices Act (AS 21.36).

Section 5. AMENDING CIVIL RULE 62(c).

Section 21.79.150 provides for an automatic stay of 60 days in actions involving the liquidation, rehabilitation or conservation of an insolvent insurer.

HB

304

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

Bethel, Alaska
November 3, 4, 5, 1982

RESOLUTION NO. 82-13

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

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

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

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

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

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

John Guinn - President

E. Colleen Hickman
Recording Secretary

cc: Greg Capito
Village Safe Water Program

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

Norman Gorsuch
Attorney General
Department of Law

James Souby, Director
Division of Policy Development and Planning

Representative Al Adams, Chairman
House Finance Committee

Lisa Rudd, Commissioner
Department of Administration

Ron Lehr, Director
Division of Management and Budget

MEMORANDUM State of Alaska

TO: Donald R. Wilson
Supervisor
Wage & Hour Administration
Department of Labor

DATE: October 5, 1982

FILE NO: 166-261-83

TELEPHONE NO: 276-3550

FROM: WILSON L. CONDON
ATTORNEY GENERAL

By: Robert W. Landau
Robert W. Landau
Assistant Attorney General

SUBJECT: Applicability of AS 36 to Construction Projects Administered the Community of Cantwell, Inc.

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

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

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

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

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

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

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

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

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

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

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

RWL:jg

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

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

March 11, 1983

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

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

Dear Representative Adams:

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

The grants to which you refer are commonly known as designated grants and are governed by the provisions of AS 37.05.316 (Grants to Named Recipients). Another category of designated grant which is used to construct capital improvements in unincorporated communities is an Unincorporated Community Grant under AS 37.05.317. Because an unincorporated community is not a legal entity and therefore lacks the capacity to receive and administer a grant of public funds, AS 37.05.317(2) authorizes the Department of Community and Regional Affairs to make the grant to a private non-profit corporation or federally recognized tribal council which is representative of the unincorporated community. We recently expressed our view that construction contracted out by such an organization for an unincorporated community with grant funds provided by the state under AS 37.05.317 is subject to the provisions of the Little Davis-Bacon Act. 1982 Inf. Op.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Ronald W. Lorensen
Deputy Attorney General

RWL:vrb

cc: Jim Robison
Commissioner
Department of Labor

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

#

22256 NL TDA NOME AK 72 03-02 332P·AST

PMS REP JACK FULLER

0154

JUNEAU AK

DEAR JACK:

ltr
Thanks for telegram
what the State is getting
funds for
copy -

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

BILL WEBB FOR BOARD OF DIRECTORS, NOME RECEIVING HOME

IVAN WIDOM, DENIS CAMBION, CHUCK FAGERSTROM, NOREEN DALY,

ESTHER (KOBUK) CRAFT, AND DARLENE ISABELL

Rep. John G. (Jack) Fuller

c.c. Ivan Widom

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

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

Bill Sheffield, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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

April 15, 1983

BILL ANALYSIS

RE: HB 304

SPONSOR: Representative Herrmann

Program Effects of the Bill

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

Comments

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

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

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

Mark Lewis, Commissioner

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

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

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

Sponsor did not specify.

IV. ANALYSIS: Attach a separate page for any Analysis

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

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

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

MEMORANDUM State of Alaska

TO: Norman Gorsuch
Attorney General
Department of Law

DATE: March 2, 1983

FILE NO:

TELEPHONE NO:

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

SUBJECT: Title 36

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

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

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

Attachment

cc: Gary Hayden
Greg Capito

[illegible] Cook

BRISTOL BAY NATIVE ASSOCIATION

P.O. BOX 189

DILLINGHAM, ALASKA 99576
by Executive Committee

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

Resolution No. 83 - 16

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

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

WHEREAS, village funding is very limited; and

WHEREAS, villages receive State monies for village projects; and

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

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

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

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

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

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

SIGNED: _____
PRESIDENT

CERTIFICATION:

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

SIGNED: _____
SECRETARY

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

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

January 19, 1983

Senator Bob Mulcahy
Pouch V
Juneau, Alaska 99811

Dear Senator:

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

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

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

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

Senator Mulcahy
Pouch V
Juneau, AK 99811

January 19, 1983

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

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

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

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

Your consideration of this matter would be deeply appreciated.

Yours very truly,

David F Bouker

DAVID F. BOUKER
Manager

Encls Poland "Pat" Amick - Telephone

DFB:ka

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

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

April 21, 1983

Dear Adelheid;

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

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

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

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

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

Sincerely Yours,

C.T. Seidl

C.T. Seidl
Village Administrator

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

TO: REPRESENTATIVE HERRMANN

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

SUBJECT: HB304

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

THANKS FOR YOUR FINE HELP.

**********EOM

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

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

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

SUBJECT: HB 304 AND SSSB 172

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

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

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

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

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

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

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

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

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

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

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

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

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

Signed: Robert Willard

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

BUS: (907) 586-2049
586-3301

Bristol Bay Borough
BOX 189 • NAKNEK, ALASKA 99633

JIM D. CLARK
MAYOR

TELEPHONE
(907) 246-4224

April 25, 1983

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

Dear Representative Herrmann:

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

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

Sincerely,

Jim D. Clark
Mayor

bjt

CITY OF AKUTAN

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

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

April 28,1983

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

Dear Representative Furnace:

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

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

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

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

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

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

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

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

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

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

Sincerely,

Nancy Gross

Nancy Gross
City Administrator

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

BRISTOL BAY AREA HEALTH CORPORATION

P.O. Box 10235
DILLINGHAM, ALASKA 99576

PHONE: (907) 842-5201

April 28, 1983

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

Dear Representative Herrmann:

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

Thank you

Sincerely,

Robert J. Clark
Executive Director

RJC:ksm

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

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

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

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

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

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

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

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

PWL-t1
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BUILDERS SPECIAL REPORT

DAVIS-BACON WORKS— FOR MINORITIES

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

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

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

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

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

See other side

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

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

The Navajo Nation
(Statement of Tribal
Chairman Peter MacDonald)

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

Mildred Jeffrey
National Women's Political
Caucus

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

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

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

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

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

Mexican-American Unity Council

#095

Special Report

Connecting the Job Site with the Congress

THE BUILDERS

BUILDING & CONSTRUCTION TRADES DEPT. AFL-CIO ORGD. FEB. 10, 1908

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

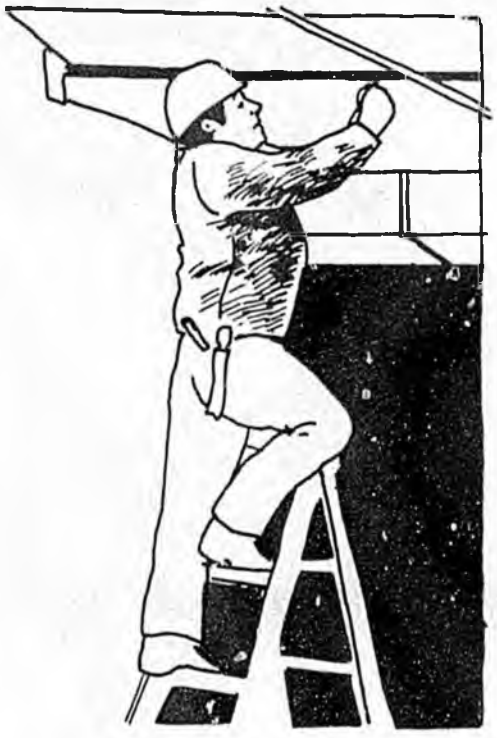
Fiction and Fact STRAIGHT TALK ABOUT DAVIS-BACON

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

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

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

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



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

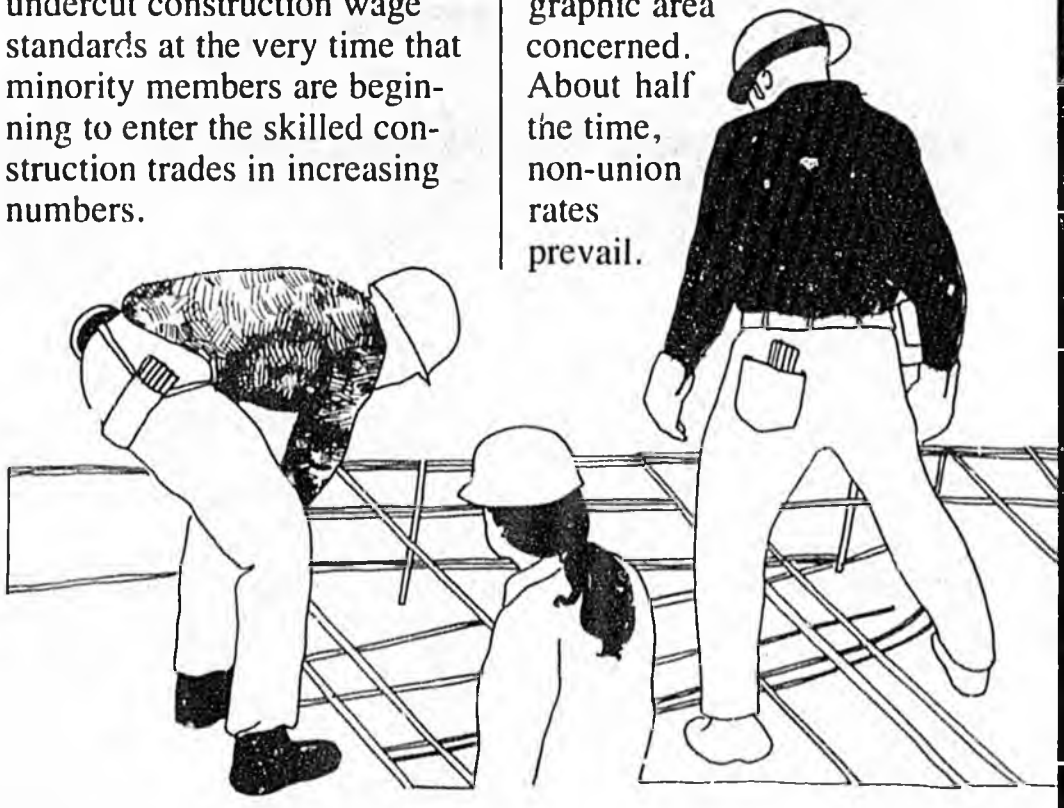
FACT: The President's Council on Wage and Price Stability found, in a recent study, that the Labor Department's wage determinations are usually a little below the collectively bargained wage rates in the area. Government figures show that, for several years, construction industry productivity has been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

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

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

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

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



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

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

FACTS ON THE

Davis-Bacon Act

BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

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

Davis-Bacon Wage Rates: Not Automatically the Union Rate

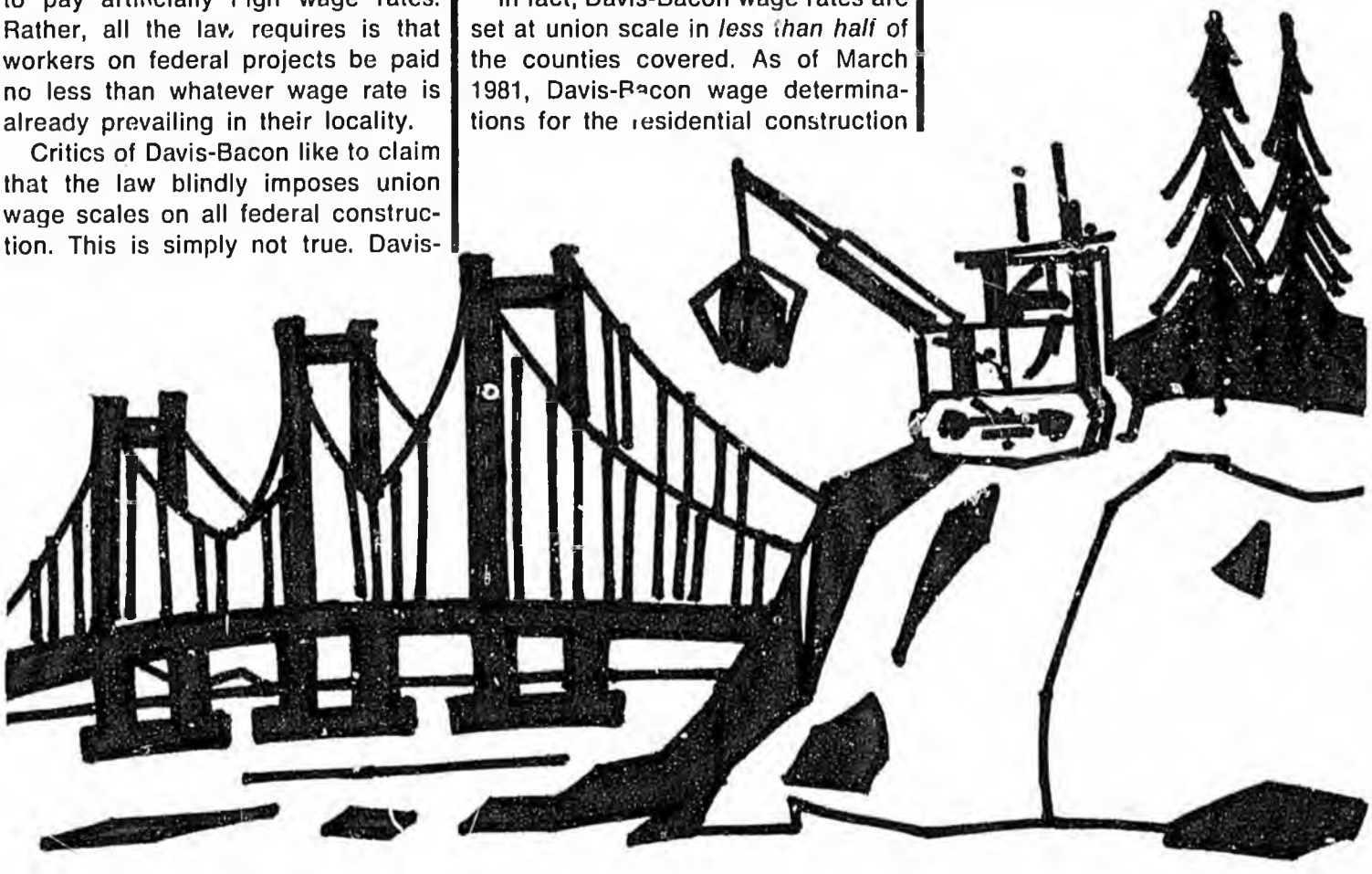
Contrary to the myths spread by its opponents, the Davis-Bacon Act does not compel government contractors to pay artificially high wage rates. Rather, all the law requires is that workers on federal projects be paid no less than whatever wage rate is already prevailing in their locality.

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

"THE DAVIS-BACON ACT IS NOT INFLATIONARY"

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

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



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

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

Substandard Wages Are Not a Good Means of Saving Money

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

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

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

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

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

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

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

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

Davis-Bacon Suspension Did Not Lead to Significant Savings

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

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

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

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

"THE GAO'S REPORT ON DAVIS-BACON: SO FLAWED AS TO BE MEANINGLESS"

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

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

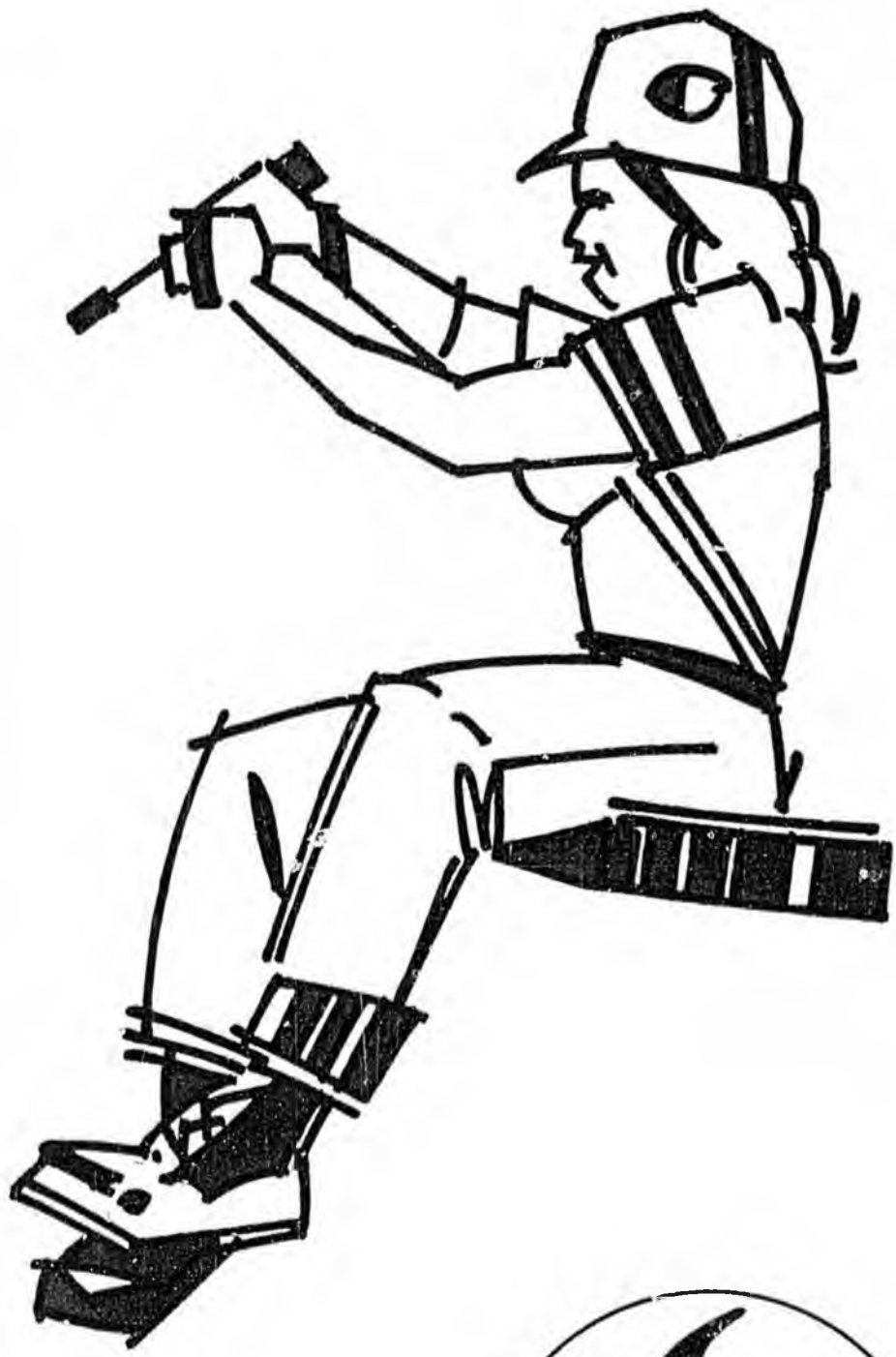
In fact, the validity of this "check" is very dubious. There are many reasons other than Labor Department error which can explain the differences between the DOL figures and the GAO figures. For example, the survey methodology used by the GAO investigators differed in important respects from that used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

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

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

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

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



BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

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Joseph F. Maloney, Secretary-Treasurer

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Washington, D.C. 20006

FACTS ON THE

Davis-Bacon Act

BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

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

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

Why a Prevailing Wage Law for Government Construction?

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

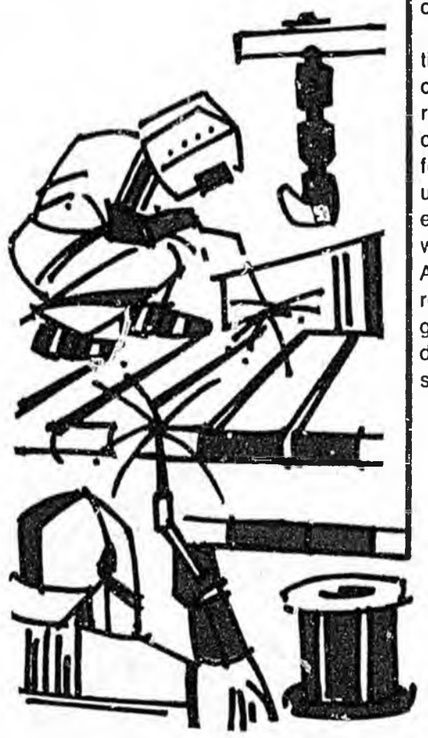
"Fair to workers, contractors & taxpayers"

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

Prevailing Wages: Fair to Workers, Contractors and Taxpayers

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

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



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

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

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

Davis-Bacon WORKS

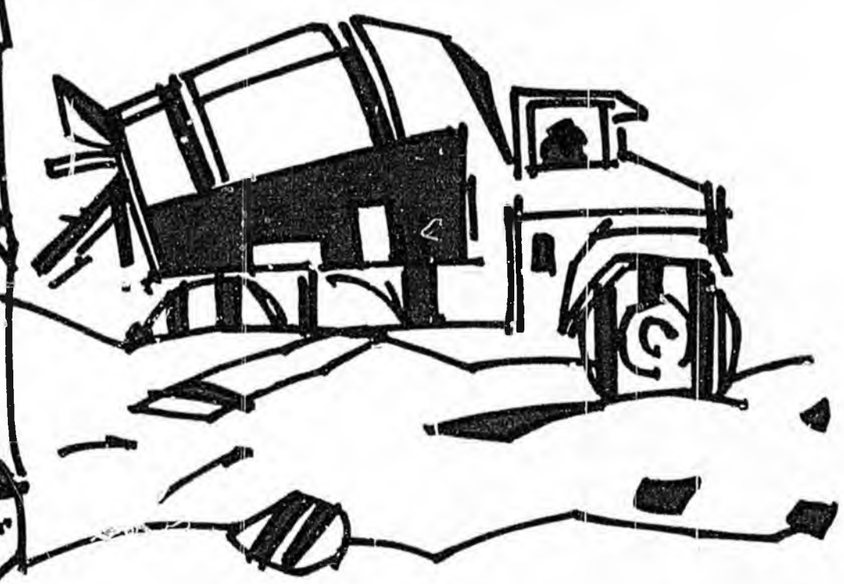
"CONTINUING ABUSES IN CONSTRUCTION SHOW THE CONTINUING NEED FOR DAVIS-BACON"

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

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

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

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



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

"How much is he getting?"

ANSWER: "$1.50 an hour."

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

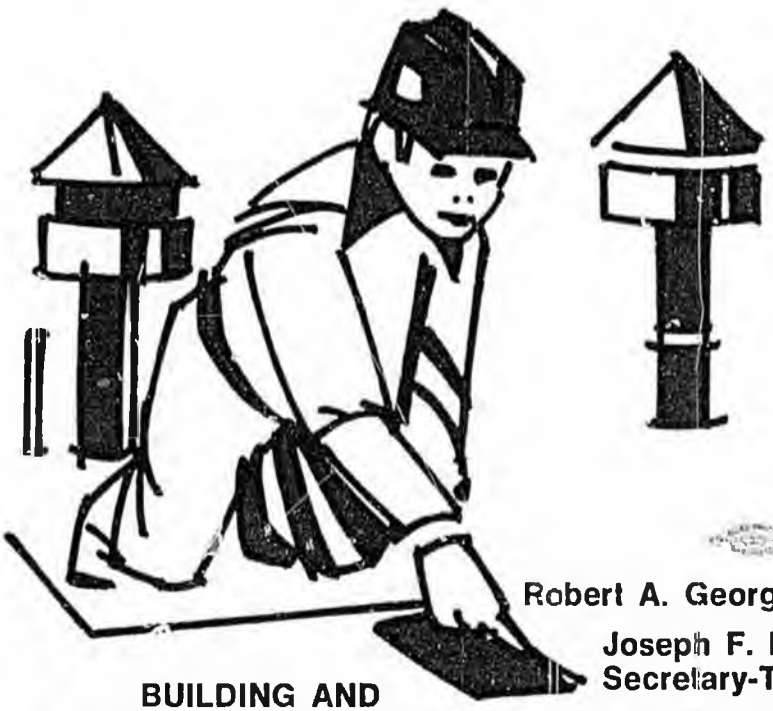
"We soon discovered that Pedro didn't live like a citizen. He lived in this unfinished home on the project, where for some time there was no water, no heat, not even basic facilities. There were more than ten workers living in this house at one time. At least eight of them, their job foreman told us,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

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

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

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

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



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Davis-Bacon WORKS

#097

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

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

II. FISCAL DETAIL

Agency Affected: Community & Regional Affai
Program Category Affected: Development
BRU, Program of Subprogram(s) Affected:
Local Government Assistance

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

Sponsor did not specify.

IV. ANALYSIS: Attach a separate page for any Analysis

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

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

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3/8/83

Bill Sheffield, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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

April 15, 1983

BILL ANALYSIS

RE: HB 304

SPONSOR: Representative Herrmann

Program Effects of the Bill

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

Comments

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

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

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

Mark Lewis, Commissioner

21-P1LH

HB

308

Alaska National
INSURANCE COMPANY

A policy of service and protection

April 6, 1983

The Honorable Walt Furness, Representative
Chair House
Labor and Commerce Committee
Alaska State Senate
Pouch Y
Juneau, Alaska 99811

Re: HB #308 An Act relating to insurance.

Dear Mr. Furness:

This measure in its current form is very much opposed by us. On the other hand, the areas of our serious concern can be easily remedied by some amendments, in which case the general thrust of the bill would be acceptable. We, therefore, urge the Committee to adopt the recommended amendments if it intends to proceed with this legislation.

BACKGROUND

For reasons, some of which may be valid, the municipal league, or at least several municipalities, have felt it desirable to have statutory authority to establish a means of exchanging insurance contracts among themselves as an alternative to purchasing insurance from commercial insurance markets. At an early stage in the legislative process when the municipality's interest in establishing their own insurance program first became known to us, we suggested using the reciprocal insurer authority already granted in the Insurance Code. They have accepted this recommendation and House Bill 308 is the result. Unfortunately in the drafting, several specific exceptions from appropriate obligations imposed on insurers were carved out for the municipal reciprocals, and we believe such is wholly inappropriate.

It is the purpose of this letter to indicate these areas and to point out the responsibilities that every other insurer currently has and ought to have in connection with sustaining the workers' compensation system in this State which even a municipal reciprocal should be required to support.

ASSIGNED RISK POOL

[AS21.39.150 (a) - HB 308 Page 1, Line 9 -10]

The proposed amendment would exempt all reciprocals from having to participate in the contributions to the assigned risk pool.

Currently, all commercial insurers writing workers' compensation in the State of Alaska are required to pay an assessment to support the assigned risk pool. The amount of the assessment is a pro-rata charge necessary to cover the extent to which losses and expenses exceed the premium collected in the pool. Assessment based on workers' compensation writings by workers' compensation carriers is a logical way to support the pool since it spreads the cost for supporting the undesirable risks among all other employers in the State. Currently, any employer insured in a commercial insurer, including all municipalities which are insured by commercial insurers, are paying indirectly the assessment to support the assigned risk pool.

To the extent that a group of employers are exempted from having to pay their pro-rata share, the burden falls on a smaller population who must then pay a higher assessment. In effect, by exempting the municipal reciprocal from having to pay the assigned risk pool, all other employers are going to have to pay a slightly higher assessment.

We find it totally inequitable and without justification that the municipalities as employers be relieved of any obligation which any other employer is obligated to pay as part of the cost of hiring employees in this State.

Furthermore, because of the way the provision was drafted, all reciprocals are excluded. As drafted, this means that the Timber Insurance Exchange, which is a private commercial reciprocal insurer owned and operated by the loggers, would also be exempted from supporting the assigned risk pool. I believe this was not intended but is the result of an error in drafting.

RECOMMENDATION

Section 1 of the proposed bill be stricken in its entirety.

ALLOWABLE FUNDING

[Section 2 AS21.75.050 (c) - HB #308 Page 1, Line 15 - 21]

This provision allows only those reciprocals which are formed by two or more muncipalities to post a bond in lieu of otherwise admissible assets to capitalize the reciprocal insurer. Frankly, we believe that places the municipalities in the position of establishing an insurance company with little or none of the capital requirements imposed upon any other commercial insurer and is to that degree inequitable. On the other hand, we recognize that municipalities

have a certain financial capability because of their taxing authority which other commercial employers do not have, and therefore, though we would prefer not to see the statutes drafted with authority to post a bond in lieu of cash, will not object to the bill on that ground alone.

On the other hand, there are two amendments that need to be made to this section in order to limit the authority to the specific concessions intended by the legislature:

A. Arguably, a reciprocal could be formed by two or more municipalities and then insure non-municipalities as part of their business operations. Such ought not to be permitted, thus, I would urge the following recommended amendment; and

B. The bond should be permitted only for the initial capital and not for any of its reserves or surplus.

To meet these points, I would urge the following change in language:

> "A domestic reciprocal insurer formed under this chapter by and insuring only, two or more municipalities shall (1) comply with (a) of this section or post a bond for an amount equal to the capital that would be required of a domestic stock insurer writing the same lines of insurance for which the reciprocal insurer seeks to be authorized, and (2) maintain a surplus in admitted assets of $250,000 or a surplus sufficient to operate the reciprocal insurer for one year, whichever is greater." [Emphasis on language to be added.]

EXEMPTION OF PUBLIC UTILITIES FROM GUARANTEE ASSOCIATION.

[Section 5 AS21.80.180 (5) - Page 2, Line 6 and Section 6 AS21.80.180 (6) - Page 2, Line 14.]

These sections deal with the Guarantee Association, which is a facility established by Alaskan law to protect workers whose employer has acquired workers' compensation insurance from an insurance facility which ultimately becomes insolvent. The protection is provided through the Guarantee Association's ability to assess all other workers' compensation insurers doing business in the State pro-rata to their workers' compensation insurance writings to provide the funds necessary to pay the claims of the insolvent insurer.

The are two sections in that law referred to in the bill define:

A. Which insurers are protected by the Insolvency Fund and,

B. Which insurers must contribute to the assessment in the event another insurer becomes insolvent.

We pointed out to the Senate Labor and Commerce Committee that either the municipal insurer must be included both as a contributor to the assessment and be protected by the Guarantee Association or excluded from both of those. The Labor and Commerce Committee agreed and elected to exclude the municipality from both the assessability and coverage provisions of the Guarantee Association. We support their choice in this regard, however, in creating the exclusion from the application of the Guarantee Association for reciprocals formed by municipalities they added reciprocals formed by public utilities.

We absolutely oppose the exclusion of a reciprocal formed by any commercial enterprise from the obligation imposed upon any other commercial insurer doing business in the State. There is no reason why a business which is operating in this State owned by stockholders who have formed a company for profit, should be excluded from sharing in the obligations that all other corporations formed for profit are obligated to support. All the insured employers of any other commercial insurer indirectly contribute to the Guarantee Association assessment by virtue of that cost being loaded into their premium. It creates a lack of competitive parity when a reciprocal can be formed by a specially defined group and be excluded from having to share in that cost.

RECOMMENDATION

We would propose that the language "or public utilites" be stricken from both line 6 and line 14 of page 2 of the bill.

As a further matter of clarity, on line 5 and line 14 the language should be modified so that it reads as follows:

"Reciprocal insuer formed by and insuring only municipalities."

We would appreciate your favorable consideration of these recommendations.

Yours cordially,

Richard Block
President

RB/krl

Alaska National
INSURANCE COMPANY

A policy of service and protection

March 22, 1983

The Honorable Dick Eliason, Senator
Alaska State Senate
Pouch Y
Juneau, Alaska 99811

Attn: Sheila Peterson, Legislative Analyst

Dear Dick:

Sheila was kind enough to send me a working draft of CSSB 66 (L&C) which is marked "Sofo 3-14-83." Shortly after receiving this draft, I was called by Wes Coyner, who indicated that there were some mistakes made in the drafting; and, in fact, numerous portions of that working draft are not intended to be included. The changes which I was given are as follows:

A. From line 10 strike "AS 23.30.075 (b)"

B. From line 16 strike "AS 23.30.075 (b) by the state or a political subdivision" and insert instead "by a municipality"

C. From page 1, line 28 to page 2, line 2 strike all of the definition and instead insert "municipality is defined as provided in AS 29.78.010 (8)"

D. From page 2, line 5 strike "or policital subdivision of the state, public utilities," and insert in line 5 "a municipality of" so that line 5 reads" reciprocal insurer formed by a municipality of the state ...".

E. Strike all of Section 6.

F. Strike all of Section 7.

My comments deal with the bill as modified.

BASIC THRUST OF THE BILL

The bill seems to permit municipalities to form a reciprocal insurer and changes the Reciprocal Law to permit two or more, as opposed to 25 or more persons, to form a reciprocal insurer. These basic policy changes are acceptable.

7001 Jewel Lake Road • Post Office Box 3440, Anchorage, Alaska 99510 • Telephone (907) 248-2642 • Telex (090) 25-456

The bill goes further, however, and makes three other changes which I find objectionable in various degrees.

1. Allowing the capital and surplus to be satisfied with a bond. Every other insuring entity in the State of Alaska is required to post cash or other admitted assets in order to do business in the State. The reason, of course, is that only cash and immediately liquidable assets can be made available to pay claims to the extent claims and expense exceed premiums. To permit the requirement to be met with a bond, is to work an utmost hardship on claimants and creditors in the event the premiums are not adequate to meet expenses for operations and claims.

   It should be noted that there is already a significant advantage afforded entities utilizing this new statute since any other carrier writing workers' compensation only in the State of Alaska, must have $250,000 more in assets than is required of the municipal reciprocal. To compound the problem, by allowing this minimal capital and surplus to be put up in the form of a bond as opposed to admitted assets, permits both an unreasonably unfair level of competition among insurers and subjects the claimant to questionable protection for their rights under the Workers' Compensation Act.

2. Section 5 attempts to exempt a municipal reciprocal from its obligations to pay an assessment to fund an insolvency by an insurance carrier formed under existing laws. There may be some argument to be made for excluding them from the obligation to pay assessments of the Guarantee Association, but only if the companion provision which is that the claims of an insolvent municipal reciprocal are not covered by the Guarantee Association, is also included.

   Note that your work draft excludes the reciprocal from AS Section 21.80.180 (6) (A), (Who Must Pay an Assessment for an Insolvency) but does not exclude them from AS 21.80.180 (5) (A) (Who's Insolvency Must Be Protected By The Guarantee Association.) It is my position that the municipal reciprocal must be included as part of the Guarantee Association both as to assessability and coverage, or excluded from the Guarantee Association both as to assessability and coverage. Because of the highly political nature of such a program and because I do not believe that the minimum criteria for forming a municipal reciprocal provides adequate protection for the long term growth and stability of such an organization, I would elect to have them not included in the Guarantee Association and exempt them from assessment.

3. For some reason <u>all</u> reciprocals are exempted from assessment to fund the assigned risk pool. I believe that drafting Section 1 to exclude all reciprocals was an inadvertant error on the part of the drafters since there are commercial workers' compensation

reciprocals in this State that certainly should not be exempted from the assigned risk pool. The more pertinent issue is should the municipal reciprocal be exempted from paying assessments for the assigned risk pool. On this point, I restate a portion of my January 21, 1983, letter to Representative Rick Uehling on a similar subject.

IT IS IMPORTANT TO MAINTAIN A PREMIUM BASIS NECESSARY TO PROVIDE SUPPORT FOR SYSTEM OBLIGATIONS

There are several components to the complete workers' compensation system which are funded by assessment of insurance companies, and those assessments are a function of the premiums written. It was recognized that since all employers were required to purchase insurance, assessing insurance companies based on their pro-rata writings of workers' compensation insurance was an equitable and efficient means for funding collateral aspects of the workers' compensation system. If significant shares of premium were allowed to "escape" the system because insurance pools were allowed to exist under the sham name of "group self-insurance", then the assessment base would be reduced placing a larger burden on those employers remaining insured through traditional insurance markets and relieving other employers of their obligation to pay their fair share of these collateral program costs.

It is, of course, true that a truly self-insured employer does escape some of these obligations, and in other states there has been a tendency to require the truly self-insured employer to be subjected to assessment to the same extent they would be had they been insured through an insurance company. Though that is not the current State of Alaska law with respect to true self-insured employers, the problem should not be exacerbated by allowing the fiction of group self-insurance to permit substantial additional premium to be removed from the premium base.

Some of these collateral programs are:

Assigned Risk Pool

Since insurance is required to be carried by all employers, but insurance companies are not legally obligated to provide insurance to a particular employer, it was necessary to create a mechanism for poor risks, or risks that underwriters chose not to write voluntarily, to obtain their workers' compensation insurance. In Alaska an assigned risk pool has been established, and any employer who cannot obtain their insurance through negotiation with an insurance company may obtain their insurance from the assigned risk pool at standard rates. The net cost of operating the assigned risk pool, that is, the amount by which losses from pool risks exceed premium from pool risks, is paid by assessment of all other insurance companies pro-rata to their writings of workers' compensation insurance. In short, the cost of underwriting pool risks is borne by the workers' compensation system.

I very much appreciate your allowing me an opportunity to comment on your work draft and hope that my comments are a value to you.

Yours cordially,

Richard L. Block
President

RB/krl

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2515

DIVISION OF INSURANCE

March 23, 1983

Honorable Richard I. Eliason
Chairman
Committee on Labor and Commerce
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

RE: Position Paper SB 66

The Administration has carefully reviewed the ramifications of SB 66 and concludes that the public would best be served by a committee substitute that deletes the content of the current bill and replaces it with the enclosed changes which are similar to those forwarded to you on March 1, 1983.

SB 66 would allow two or more municipalities to pool their workers' compensation liabilities in a self-insured pool. The terms "self-insured pool" and "group self-insured" are anomalous terms. Self-insurance for two or more entities is insurance. The insurance code would normally apply to such situations. The bill as written, however, does not treat the combination of municipalities as an insurer. It would be more consistent with the general approach of the insurance code to treat this combination of municipalities the same as other combinations of other entities.

We recommend that SB 66 be replaced with a CS that would continue the regulation of insurers (group self-insurers) in the insurance code and apply the requirements for formation of an insurer to a group of municipalities. The requirements that would apply to municipalities, as well as public utilities, can be reasonably eased in view of the nature of those entities. The recommended easing would incorporate four changes. These are:

1. Reduction of the financial requirements for municipalities by permitting the use of a bond in lieu of cash surplus and by reducing the amount of operational surplus necessary;

2. Removal of any assigned risk liabilities that might otherwise accrue to an insurer formed by a group of municipalities or public utilities;

3. Reduction of the number of entities required to form a reciprocal insurer; and,

4. Removal of any liabilities in the Alaska Guaranty Association for insolvencies of other insurers if the insurer formed by a group of municipalities or public utilities is an assessable reciprocal insurer.

We believe that this is a reasonable stance which provides adequate public protection for claimants and policyholders.

Very truly yours,

Richard A. Lyon
Commissioner

RAL/cw#2lI3

Enclosure

cc: Art Peterson
Department of Law

Summary of CSSB 66

Section 1 - This section exempts reciprocal insurers from the assigned risk pool. The rationale is that a reciprocal insurers only a specialized group of individuals with similar activities and should be responsible with their own classification of insurance.

Description of an assigned risk pool.

Assigned Risk Pool

Since insurance is required to be carried by all employers, but insurance companies are not legally obligated to provide insurance to a particular employer, it was necessary to create a mechanism for poor risks, or risks that underwriters chose not to write voluntarily, to obtain their workers' compensation insurance. In Alaska an assigned risk pool has been established, and any employer who cannot obtain their insurance through negotiation with an insurance company may obtain their insurance from the assigned risk pool at standard rates. The net cost of operating the assigned risk pool, that is, the amount by which losses from pool risks exceed premium from pool risks, is paid by assessment of all other insurance companies pro-rata to their writings of workers' compensation insurance. In short, the cost of underwriting pool risks is borne by the workers' compensation system.

Section 2 - This section states or allows a municipality to post a bond equal to the amount necessary for capitalization

minus $250,000 which must be cash. The required capital for a domestic stock insurer would be $1 million if only one form of insurance is covered, for example workers' comp, and $1.5 million if two forms of insurance are covered.

Section 3 - The number of persons needed to form a reciprocal was reduced to two.

Section 4 - The new definition of municipality is included. It was felt this definition encompassed the municipalities who could participate, ie those with taxing powers.

Section 5 - Defines "member insurer" to exclude an assessable reciprocal which in turn takes an assessable reciprocal out of the Guaranty Act.

The Guaranty Act is established to protect insurers if an insurance company folds up. An assessable reciprocal is responsible for its own insurers & therefore should not be responsible for others

AS 21.80180 (5) should probably be amended to exclude municipalities, public utilities from "insolvent insurer". If this were done then the municipalities + utilities would neither participate in the Guaranty nor would they be protected by it.

Dick Block
Ak National
Insurance
Company

Note that your work draft excludes the reciprocal from AS Section 21.80.180 (6) (A), (Who Must Pay an Assessment for an Insolvency) but does not exclude them from AS 21.80.180 (5) (A) (Who's Insolvency Must Be Protected By The Guarantee Association.) It is my position that the municipal reciprocal must be included as part of the Guarantee Association both as to assessability and coverage, or excluded from the Guarantee Association both as to assessability and coverage. Because of the highly political nature of such a program and because I do not believe that the minimum criteria for forming a municipal reciprocal provides adequate protection for the long term growth and stability of such an organization, I would elect to have them not included in the Guarantee Association and exempt them from assessment.

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

April 15, 1983

House Labor and Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Committee Members:

The purpose of this letter is to explain our support for HB 308 and provide you with background information regarding the insurance program our association provides its members.

In 1979, the Alaska Rural Electric Cooperative Association applied to the Workers' Compensation Board for a self-insurance certificate for our member utilities. The certificate was issued effective January 1, 1980, and was renewed for a year effective January 1, 1981. Our program has been completely successful in meeting its obligations to the employees of its participants and in saving the participants substantial sums of money in insurance costs. Other associations, including the Municipal League, expressed interest in adopting group self-insurance programs modeled after ours.

At the beginning of 1982, our certificate was renewed for only a few months, and we were told that the Board was "reviewing the situation." In February 1982, Ms. Jacqueline McClintock of the Department of Labor requested an Attorney General's opinion regarding the legal status of group self-insurance programs in Alaska. In April, the Attorney General's opinion declared that since group self-insurance is not specifically mentioned in the Alaska statutes and it is in some other jurisdictions, it can be interpreted that group self-insurance is not authorized in this state.

Based on this opinion from the Attorney General, the Workers' Compensation Board terminated our certificate effective September 30, 1982. We appealed this action to the Superior Court, and we were successful in obtaining a stay of the Board action pending appeal. At the present time we are self-insured as a group by order of the Superior Court.

In principle, what our program does, is to buy a group insurance policy with a large deductible, and the deductible amount is shared within the group. Our retained risk on worker's compensation claims is $200,000 per occurrence. Above that level, we are insured by an excess insurance company. Corroon & Black/Dawson & Company is our broker and has been since the beginning of our program. Each year they calculate what the commercial insurance premium would be for each of our members, including the individual experience modification for each member. Our Board of Directors then determines what discount, if any, will be allowed to the participants for that year. Discounts in our program have been: 1980-0, 1981-10%, 1982-15%, 1983-15%.

We have an active safety program for our members which is paid for as a cost of our self-insurance program. Claims are administered on a professional basis for us by Scott Wetzel Services. After paying expenses and claims (including reserves for claims not yet paid), we have finished each year with a substantial surplus which is held in trust for our members. This money is retained in the program for a few years in order to make sure we have an adequate reserve on hand, but these savings will be paid back to our members. The ultimate beneficiaries of our program are the electric consumers.

We must have a legislative resolution of our uncertain status this year. We began this session by seeking legislation to specifically authorize group self-insurance. This proposal was vigorously opposed by portions of the insurance industry. The Senate Labor and Commerce Committee fashioned a compromise which was later introduced as HB 308.

The compromise basically provides:

(1) We will give up our status as a self-insured group and become a reciprocal insurer. This will require us to establish and maintain reserves of $1,125,000 and place us under regulation of the Division of Insurance.

(2) The reciprocal insurer statutes would be amended to make it possible for us to qualify as a reciprocal, and reciprocals would be relieved of inappropriate cost factors to which they are now subjected.

Section 1 exempts reciprocals from participating in the assigned risk pool. By its very nature a reciprocal is a mutual enterprise which only serves its members. It is inappropriate that reciprocals should be forced to help provide insurance to the high risk businesses in other industries.

Sections 2 and 4 deal only with reciprocals established by municipalities, so I will make no comment on them.

Section 3 reduces the number of participants required to establish a reciprocal from 25 to 2. This is especially important to us because there are only 14 electric cooperatives in Alaska.

Sections 5 and 6 exempt assessable reciprocals organized by municipalities or public utilities from participation in the insurance company guarantee fund. The purpose of the fund is to protect policy holders against loss in case of financial failure by an insurance company. The financial responsibility of an assessable reciprocal is guaranteed by its participants.

The fund could only be called upon to pay the claims for such a reciprocal in the event of bankruptcy of all of its participants. Section 5 exempts these reciprocals from the "benefits" of the fund, and Section 6 exempts them from the costs of the fund.

We think this is a reasonable compromise, and we give it our full support. Please give this bill a "do pass" recommendation and help get it enacted.

The only change we recommend is the correction of a printing error on page 2, line 15. Only the comma should be underlined, not the word Alaska.

Sincerely,

Dave Hutchens

David Hutchens
Executive Director

HB-311

REACH POINT

HB-319 &
BASE WAGE;
BENEFITS
scheduled injury 35%
last two calendar years ÷ 100
@ 66 2/3 %
80 % SPENDABLE
BENEFITS COST
PAYROLL TAXES; SOCIAL SECURITY

(HB-308) RECIPRICAL INSURANCE COMPANY

1) BOND

2.) EXCUSED FROM PAYING GUARENTEES, ASSOCIATION
INSURANCE CODE

3 HOW MUCH CASH WOULD A MUNICIPALITY HAVE TO PUT UP TO BECOME SELF-INSURANCES

→ PAY CLAIMS TO ALL CLAIMENTS;
INSOLVENT - 3-M- ASSESSMENTS
TO OTHER COMPANIES

308
- EXEMPT FROM ASSESSMENT / GUARENTEE-
ASSOCIATION - LOOK TO TAX BASE

PUBLIC UTILITIES - EMPLOYERS
EXEMPTED FROM CHARGE

- CONTRIBUTIONS TO ASSIGNED RISK POOL
EXEMPTION FROM ASSIGNED RISK POOL

Introduced: 3/30/83
Referred: Labor & Commerce

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

HOUSE BILL NO. 308

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to insurance."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.39.155(a) is amended to read:

(a) The director may require carriers, except a reciprocal insurer formed under AS 21.75, BY A GROUP OF MUNICIPALITIES as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

* Sec. 2. AS 21.75.050 is amended by adding a new subsection to read:

(c) A domestic reciprocal insurer formed under this chapter by two or more municipalities shall (1) comply with (a) of this section or post a bond for an amount equal to the capital that would be required of a domestic stock insurer writing the same lines of insurance for which the reciprocal insurer seeks to be authorized, and (2) maintain a surplus of $250,000 or a surplus sufficient to operate the reciprocal insurer for one year, whichever is greater.

* Sec. 3. AS 21.75.060(a) is amended to read:

(a) Two [TWENTY-FIVE] or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the director for a certificate of authority to transact insurance.

* Sec. 4. AS 21.75 is amended by adding a new section to read:

Sec. 21.75.340. DEFINITIONS. In this chapter "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law

borough, or a unified municipality.

* Sec. 5. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by municipalities ~~or public utilities~~, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88.010 - 21.88.900, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 6. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by municipalities or public utilities, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88.010 - 21.88.900, who

(A) writes any kind of insurance to which AS 21.80.010 - 21.80.190 apply under AS 21.80.020 including the exchange of reciprocal or inter-insurance contracts, and

(B) is licensed to transact insurance in this state;

Honorable Walt Furnace, Chairman
Labor and Commerce Committee
House of Representatives
Pouch V
Juneau, Alaska, 99811

Re: House Bill 308

Dear Representative Furnace,

It has come to my attention that there is some misunderstanding concerning how the workers' compensation assigned risk pool operates in this State, and particularly, how the operation differs from the operation of the automobile assigned risk plan.

The automobile assigned risk plan operates as a mechanism for assigning , in rotation, to all carriers writing automobile insurance, those risks which cannot obtain auto insurance in the voluntary market. The carrier that receives the assignment charges and keeps the premium due in respect of that policy and pays the claims arising out of that policy. The carrier to which that risk is assigned lives with the fortunes of the particular risks assigned to it.

On the other hand, the workers' compensation assigned risk pool operates as a separate insuring facility that takes the premium from all risks using the facility and pays all claims arising out of those risks. The facility is operated by the National Council on Compensation Insurance, an insurance industry funded and managed rating and statistical bureau. The day to day handling of the administrative functions, such as policy issuance, claim handling, audit, collection, etc. is handled by some of the carriers in this state on a contract basis. The carriers doing that work have solicited the right to provide that service at a fee. No carrier is obligated to service workers' compensation assigned risk policies.

At the end of the year, the net difference between claims and expense on the one hand and premiums on the other, paid and received by the pool are charged or paid pro-rata to all insurers writing workers' compensation in the State.

It can thus be seen that a reciprocal insurer seeking to provide its administrative facilities only to its members, is not, by virtue of participating in the workers' compensation assigned risk pool obligated to do more than pay its pro-rata share of the net results in the pool.

It remains our firm position that the reciprocal insurers writing workers' compensation should share in the net cost

of the pool in the same way as do all other carriers doing business in this state.

Thank you for the opportunity to clarify this point.

yours cordially

Richard L. Block

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April 21, 1983

The Honorable Walter Furnace
Chair, Labor & Commerce Committee
Alaska State House
Pouch V
Juneau, Alaska 99811

Re: HB 308

Dear Representative Furnace:

This letter is submitted on behalf of the American Insurance Association.

The basic justification for regulation of the insurance industry is to protect buyers of insurance and injured parties against the insolvency or incompetency of insurers, and to assure that benefits will be there when they are needed. Thus, capitalization requirements, guaranty associations and the like are provided as means of protecting those who rely on the insurance, and assigned risk pools are set up to be sure that the insurance is available to all who need it.

The costs of these protective measures are ultimately borne by the insurance-buying public, as they are passed along by insurers as costs of doing business.

When it is suggested that these safety measures should not apply to certain insurers, we have to ask, first whether the insureds and claimants directly involved are adequately protected; and second, whether the bill is fair to the other companies, and their customers, who pay for the guaranty association, assigned risk pool, etc.

The assigned risk pool for workers' compensation does not require that participating insurers take on individual insureds as their own insureds. There is a servicing carrier for the pool, and the residual cost of the pool (the amount not picked up in premium charges) is assessed to the

other insurers. I am not sure what, if any, assessments have been made in recent years; the director of insurance would know. Given that reciprocals are not asked to take assigned risk insureds as members, or even to service them, we must ask what social policy is being served by exempting one form of insurer from the contingent liability of the pool's expense.

The bill also exempts some reciprocals, those who issue assessable policies, from the Guaranty Association. (Sections 5 and 6). To the extent that financial requirements are lessened (as in Section 2 of the bill, relating to municipal reciprocals), they should probably not be included in the Guaranty Association, since that would unfairly burden other members who have had to guard against insolvency by meeting more stringent capitalization standards. Ironically, by recognizing that assessable reciprocals are somewhat better able to stand on their own than non-assessable reciprocals, the bill puts only those who are more likely to have solvency problems on the backs of the solvent insurers. Perphaps a separate solvency mechanism for self-insureds and any others, like the proposed municipal reciprocals, who have lesser financial standards should be considered.

It may be that the special relationship of the Legislature to the municipalities, and their ultimate guarantees of solvency by taxation or state appropriation, makes it possible to allow somewhat lower financial requirements for municipal reciprocals, as is done in this bill. We do not believe it is fair for them to be exempted as well from carrying the other normal burdens of insurance in this state, however, where the result would be to increase the burden on other insureds. We also suggest that, whatever arguments exist to create special exceptions for municipalities, they do not apply to commercial organizations, including public utilities. It is a little difficult to see where the line is next to be drawn - do certificated air carriers occupy the same kind of favored position?

The policies behind the imposition of these burdens are well thought out, and the mechanisms have generally worked well. Any exception to them should stand on strong

policy grounds and be fair to other insureds in this state, and we suggest that Sections 1, 5 and 6 of this bill do not meet those standards.

Thank you for the chance to comment on this bill.

Very truly yours,

M. T. Thomas

MTT/pl

CORROON & BLACK/DAWSON & CO., INC.

4220 "B" Street
Anchorage, Alaska 99503
907-562-2266 Telex: 25-109

TESTIMONY HOUSE BILL 308

The ARECA insurance program was formed to insure member REA's for General Liability, Auto Liability, Worker's Compensation and also to develop broader coverages and stabilize pricing of their insurance coverages.

The insurance cost is limited to reinsurance cost plus claims and loss prevention services. This eliminates the REA's having to purchase insurance from a carrier at cost plus insurance company profit.

Insurance Companies will lose profit and therefore will be opposed to formation of such Reciprocal insurance companies.

Since the reciprocal insurers will be non profit such as ARECA, the savings will ultimately be passed on to consumers in the form of lower and or more stable utility rates.

While we sympathize with the insurance carrier for loss of profit we feel the public interest is best served by allowing public utilities to form a Reciprocal insurance company

By participation in the Assigned Risk Pool, a small reciprocal such as ARECA would be reducing their surplus with no great benefit to the profit structure of standard carrier's. It would appear, therefore, to be an insignificant and minimal benefit for the large participating carrier but at the same time a significant and unnecessary exposure to the reciprocal insuror. We must remember, again, that in the case of ARECA which is comprised of only 13 non-profit REA's, the passage of House Bill 308 in its present form will provide cost savings to approximately 100,000 consumers.

You may hear testimony from insurance companies who want this bill changed to require participation in the workmens compensation assigned risk pool. I submit to the committee that their reasoning is strictly from a selfish nature, and some that come to mind are as follows:

Insurance companies would lose profits because the reciprocal insuror would write business at cost and insurance companies would not have a chance to write these various accounts in the open market.

To synopsis, Insurance companies will state that they believe reciprocal insurors should participate in the Assigned Risk Pool to primarily allow for reduction of their contribution for payment of losses.

This is totally without merit, and we submit the following facts in argument:

(A) The reciprocal insuror percentage would be so small, there would be no significant benefit for their participation.

(B) The statement is meant to create doubt and uncertainty as to a contingent liability of the potential reciprocal member so that the reciprocal will not become a reality.

(C) The end result of a reciprocal not being formed would place each member back into the open market, thus the insurance companies would be able to write business at a profit. This is their ultimate goal.

I urge passage of the bill in its current form.

Respectfully Submitted,

Wayne W. Brown, Jr.
Chief Operating Officer
Corroon & Black/Dawson & Co., Inc.

WB/cmp

Alaska National
INSURANCE COMPANY

A policy of service and protection

April 6, 1983

The Honorable Walt Furness, Representative
Chair House
Labor and Commerce Committee
Alaska State Senate
Pouch Y
Juneau, Alaska 99811

Re: HB #308 An Act relating to insurance.

Dear Mr. Furness:

This measure in its current form is very much opposed by us. On the other hand, the areas of our serious concern can be easily remedied by some amendments, in which case the general thrust of the bill would be acceptable. We, therefore, urge the Committee to adopt the recommended amendments if it intends to proceed with this legislation.

BACKGROUND

For reasons, some of which may be valid, the municipal league, or at least several municipalities, have felt it desirable to have statutory authority to establish a means of exchanging insurance contracts among themselves as an alternative to purchasing insurance from commercial insurance markets. At an early stage in the legislative process when the municipality's interest in establishing their own insurance program first became known to us, we suggested using the reciprocal insurer authority already granted in the Insurance Code. They have accepted this recommendation and House Bill 308 is the result. Unfortunately in the drafting, several specific exceptions from appropriate obligations imposed on insurers were carved out for the municipal reciprocals, and we believe such is wholly inappropriate.

It is the purpose of this letter to indicate these areas and to point out the responsibilities that every other insurer currently has and ought to have in connection with sustaining the workers' compensation system in this State which even a municipal reciprocal should be required to support.

ASSIGNED RISK POOL

[AS21.39.155 (a) - HB 308 Page 1, Line 9 -10]

The proposed amendment would exempt all reciprocals from having to participate in the contributions to the assigned risk pool.

Currently, all commercial insurers writing workers' compensation in the State of Alaska are required to pay an assessment to support the assigned risk pool. The amount of the assessment is a pro-rata charge necessary to cover the extent to which losses and expenses exceed the premium collected in the pool. Assessment based on workers' compensation writings by workers' compensation carriers is a logical way to support the pool since it spreads the cost for supporting the undesirable risks among all other employers in the State. Currently, any employer insured in a commercial insurer, including all municipalities which are insured by commercial insurers, are paying indirectly the assessment to support the assigned risk pool.

To the extent that a group of employers are exempted from having to pay their pro-rata share, the burden falls on a smaller population who must then pay a higher assessment. In effect, by exempting the municipal reciprocal from having to pay the assigned risk pool, all other employers are going to have to pay a slightly higher assessment.

We find it totally inequitable and without justification that the municipalities as employers be relieved of any obligation which any other employer is obligated to pay as part of the cost of hiring employees in this State.

Furthermore, because of the way the provision was drafted, all reciprocals are excluded. As drafted, this means that the Timber Insurance Exchange, which is a private commercial reciprocal insurer owned and operated by the loggers, would also be exempted from supporting the assigned risk pool. I believe this was not intended but is the result of an error in drafting.

RECOMMENDATION

Section 1 of the proposed bill be stricken in its entirety.

ALLOWABLE FUNDING

[Section 2 AS21.75.050 (c) - HB #308 Page 1, Line 15 - 21]

This provision allows only those reciprocals which are formed by two or more muncipalities to post a bond in lieu of otherwise admissible assets to capitalize the reciprocal insurer. Frankly, we believe that places the municipalities in the position of establishing an insurance company with little or none of the capital requirements imposed upon any other commercial insurer and is to that degree inequitable. On the other hand, we recognize that municipalities

have a certain financial capability because of their taxing authority which other commercial employers do not have, and therefore, though we would prefer not to see the statutes drafted with authority to post a bond in lieu of cash, will not object to the bill on that ground alone.

On the other hand, there are two amendments that need to be made to this section in order to limit the authority to the specific concessions intended by the legislature:

A. Arguably, a reciprocal could be formed by two or more municipalities and then insure non-municipalities as part of their business operations. Such ought not to be permitted, thus, I would urge the following recommended amendment; and

B. The bond should be permitted only for the initial capital and not for any of its reserves or surplus.

To meet these points, I would urge the following change in language:

> "A domestic reciprocal insurer formed under this chapter by and insuring only, two or more municipalities shall (1) comply with (a) of this section or post a bond for an amount equal to the capital that would be required of a domestic stock insurer writing the same lines of insurance for which the reciprocal insurer seeks to be authorized, and (2) maintain a surplus in admitted assets of $250,000 or a surplus sufficient to operate the reciprocal insurer for one year, whichever is greater." [Emphasis on language to be added.]

EXEMPTION OF PUBLIC UTILITIES FROM GUARANTEE ASSOCIATION.

[Section 5 AS21.80.180 (5) - Page 2, Line 6 and Section 6 AS21.80.180 (6) - Page 2, Line 14.]

These sections deal with the Guarantee Association, which is a facility established by Alaskan law to protect workers whose employer has acquired workers' compensation insurance from an insurance facility which ultimately becomes insolvent. The protection is provided through the Guarantee Association's ability to assess all other workers' compensation insurers doing business in the State pro-rata to their workers' compensation insurance writings to provide the funds necessary to pay the claims of the insolvent insurer.

The are two sections in that law referred to in the bill define:

A. Which insurers are protected by the Insolvency Fund and,

B. Which insurers must contribute to the assessment in the event another insurer becomes insolvent.

We pointed out to the Senate Labor and Commerce Committee that either the municipal insurer must be included both as a contributor to the assessment and be protected by the Guarantee Association or excluded from both of those. The Labor and Commerce Committee agreed and elected to exclude the municipality from both the assessability and coverage provisions of the Guarantee Association. We support their choice in this regard, however, in creating the exclusion from the application of the Guarantee Association for reciprocals formed by municipalities they added reciprocals formed by public utilities.

We absolutely oppose the exclusion of a reciprocal formed by any commercial enterprise from the obligation imposed upon any other commercial insurer doing business in the State. There is no reason why a business which is operating in this State owned by stockholders who have formed a company for profit, should be excluded from sharing in the obligations that all other corporations formed for profit are obligated to support. All the insured employers of any other commercial insurer indirectly contribute to the Guarantee Association assessment by virtue of that cost being loaded into their premium. It creates a lack of competitive parity when a reciprocal can be formed by a specially defined group and be excluded from having to share in that cost.

RECOMMENDATION

We would propose that the language "or public utilites" be stricken from both line 6 and line 14 of page 2 of the bill.

As a further matter of clarity, on line 5 and line 14 the language should be modified so that it reads as follows:

"Reciprocal insuer formed by and insuring only municipalities."

We would appreciate your favorable consideration of these recommendations.

Yours cordially,

Richard Block
President

RB/krl

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

April 5, 1983

To: Representative Walt Furnace, Chairman
House Labor and Commerce Committee

From: Jefferson B. Barry
Professional Aide

Re: House Bill 308

Introductory Analysis

HB308 is the same bill as CSSB66(L&C). SB66 was introduced by the Governor and modified by the Senate Labor and Commerce Committee after public hearings and testimony. The bill is an attempt to allow municipalities and smaller employers to group together for the purpose of workers compensation and take advantage of the concept of "self-insurance". At the same time HB308 is designed to protect the workers and the public from any potential problems of inadequate reserves or improper management by the groups utilizing this approach to providing workers compensation. The present law allows for larger employer to become self-insured for the purpose of workers compensation if they meet the criteria established by the Workers Compensation Board. Smaller employers or a large employer and a number of smaller employers cannot band together and become "group self-insured" under the current law.

The concept of group self-insurance sounds good, but there are problems with it in practice. First, there is the

very real potential that one major accident could bankrupt a number of companies and that, even then, there would be inadequate resources to settle the claims of the injured worker(s) and/or their next of kin. Second, in industries like construction, which are highly competitive and require bidding against one another, if the group excluded any one individual company there is the potential claim of restraint of trade and price fixing. The group could use the workers compensation coverage as leverage against member companies for purposes not related to the insurance or even legal. Third, insurance companies object that group self-insurance allows individual companies to open an insurance company without being subject to any of the regulations, reporting, maintenance of proper reserves and excess insurance.

There is some merit in each of these arguments. The purpose of workers compensation is to provide absolute immunity to the employer from a civil suit for negligence by providing compensation (without requiring proof of negligence) to an employee injured on the job. HB308 attempts to balance the needs of the various interested parties and allow municipalities and smaller employers to take advantage of cost savings without disrupting the framework of the workers compensation system.

The major provision of HB308 is found in the change in Section 3 where the number of persons required to form a reciprocal insurance company becomes 2 instead of 25. The effect is to allow smaller employers to band together and form their own insurnace company for the purpose of workers compensation. The protection to the public, workers, and insurance industry is that they must become, in fact, a bona fide insurance company subject to the same laws, rules, and regulations that all other insurance companies must follow. This address the three objections cited above and would also provide for the reporting of accidents to national rating agencies so that proper statistics would be kept.

In addition, there is a trade off in Section 1 in that these reciprocals would be exempt from participating in the assigned risk pool. This is a compromise. The insurance companies feel that since these persons are in competition with them as an insurance company they should take some of the high risk or bad experience companies. On the other hand, the companies feel that they are not in the business to make a profit and do not hold themselves out to the general public. They believe that they are only trying to cut the cost of workers compensation and can best accomplish their goals by providing their own safety programs and administering their own claims.

The sections of HB308 which deal with municipalities recognize the constitutional provisions allowing for cooperation between local governments. It is also felt that, while they are required to comply with the provisions of being a reciprocal insurer, they can best meet their public responsibilities by posting a bond rather that the required reserves applicable to the private sector.

Finally, passage of HB308 would solve a court case that is in litigation over the issuance of a group self-insurance certificate by the Worker's Compensation Board. When it was pointed out to the Board that there was no authority at law for them to issue a group self-insurance certificate, they cancelled the one they had issued. The group has continued to operate as a group self-insured and the matter is now in court. HB308 would solve the underlying problem and give all parties an acceptable solution. There would be no group self-insured and the current group would immediately qualify (there has never been a question about, or problem with, the performance of the particular group-only the issuance of the certificate) as a reciprocal insurer so they could continue to provide the service.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 308
Title: relating to insurance
Sponsor: Labor & Commerce Comm.
Requestor: Labor & Commerce Comm.

II. FISCAL DETAIL

Agency Affected: Commerce & Ec. Dev.
Program Category Affected: Public Prot.
BRU, Program of Subprogram(s) Affected: Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kenneth C. Moore, Director
Phone: 465-2515
Division: Insurance
Date: 4/6/83

Approved by Commissioner: Richard A. Lyon
Date: 4/8/83
Department: Commerce & Economic Development

Distribution:
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Copy to Sponsor
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3/8/83

HB

311

MEMORANDUM State of Alaska

AWCD
JUNEAU APR 1 1983

TO: Jackie McClintock, Director
Workers Compensation Division

DATE: April 1, 1983

FILE NO:

Thru: John Post, Director
Administrative Services Division

TELEPHONE NO: 465-4514

Thru: Chuck Caldwell, Chief
Research and Analysis

SUBJECT: Comparison Tables for 80% of Net Spendable vs. Current Schedule of Workers Compensation

From: Elfrieda Mullin, Labor Economist
Research and Analysis

Attached are tables comparing 80 percent of spendable wage and the current schedule of weekly worker's compensation. These tables are quite similar to the ones we provided you last year except that we have used the new table of payroll deductions for income tax. The payroll deductions are in effect only until July 1, 1983. At that time further reductions in the payroll tax will occur.

Last year's comparison used 80 percent of spendable as was provided in HB 159. Since that law had a minimum of $110 and provided for 100% of spendable wages when weekly wages were less than $110, you will notice a significant difference at the low range. We have just observed the 80% of spendable declaration in this year's comparison.

These tables do not take into consideration the Alaska U.I. tax in calculating spendable wage (50 cents per $100 in payroll this year). Additionally, the lack of state income tax in Alaska put spendable wages higher in Alaska than would occur in states with income tax laws.

Compared to last year the spendable wage formula is slightly improved in relation to the comparable compensation for that gross wage under the current law. The low ranges of earnings would receive greater compensation under the spendable wage formula, particularly those with several dependents. On the other hand, the cost to insurance companies would be reduced since high wage earners would receive less than they currently do.

With the absence of state income tax and the reducing federal income taxes a person is less likely to be receiving more in Workers Compensation under the current law than in take home pay, however, it still can occur. Note that a single person with no dependents earning $800 a week or more would receive more in workers compensation than in normal take home pay. (These tables assume standard deduction. In actuality, higher wage earners tend to used itemized deductions and may use additional "dependents" to prevent having too much deducted from wages.)

Using the spendable wage formula would make it difficult for any claimant to be eligible for the maximum of $996. Continuing the attached tables, a single with no dependents would have to have weekly wages of $2,065.54 in order to receive the maximum. A married claimant with two children would have to have weekly wages of $1,966.79. Under the current program the maximum can be reached by any individual earning $1,494 per week.

Attachments

COLUMN NUMBER	HEADING	DESCRIPTION
1	AVERAGE WEEKLY WAGE	Self explanatory
2	FICA	The FICA tax rate for 1983 is 6.7%. The maximum taxable wage is $35,700, however, no adjustments are made for this maximum in these tables.
3	TAXABLE WAGE	This is the average weekly wage in column 1 reduced by $19.23 times the total number of dependents applicable. The amount $19.23 is $1,000/52 (the annual exemption per dependent).
4	1983 TAX DEDUCTION	This column is the amount of Federal income tax an employer will deduct in 1983 (first six months) using the Federal Percentage Method for weekly payroll. The Internal Revenue Service provides specific instructions in Circular E - Employer's Tax Guide - Publication 15. The rates used are in effect until July 1, 1983.
5	SPENDABLE INCOME	This is the Average Weekly Wage in column 1 reduced by FICA and the 1983 tax deduction.
6	80% of SPENDABLE WAGE	Self explanatory.
7	CURRENT LAW	Current law provides that the claimant receive compensation in the amount of two/thirds of his average weekly wage up to a maximum of twice the state average weekly wage ($498 x 2 = 996).
8	80% of SPENDABLE WAGE AS % of CURRENT	Self explanatory.

TABLE 1

MARRIED WITH TWO CHILDREN

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE	CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
							°/°
$ 100	$ 6.70	$ 23.08	$ 0.00	$ 93.30	$ 74.64	$ 66.67	111.96
150	10.05	73.08	3.80	136.15	108.92	100.00	108.92
200	13.40	123.08	10.30	176.30	141.04	133.33	105.78
250	16.75	173.08	18.30	214.95	171.96	166.67	103.18
300	20.10	223.08	26.30	253.60	202.88	200.00	101.44
350	23.45	273.08	35.70	290.85	232.68	233.33	99.72
400	26.80	323.08	45.20	328.00	262.40	266.67	98.40
450	30.15	373.08	55.80	364.05	291.24	300.00	97.08
500	33.50	423.08	67.80	398.70	318.96	333.33	95.69
550	36.85	473.08	80.50	432.65	346.12	366.67	94.40
600	40.20	523.08	94.00	465.80	372.64	400.00	93.16
650	43.55	573.08	108.60	497.85	398.28	433.33	91.91
700	46.90	623.08	124.60	528.50	422.80	466.67	90.60
750	50.25	673.08	141.70	558.05	446.44	500.00	89.29
800	53.60	723.08	160.20	586.20	468.96	533.33	87.93
850	56.95	773.08	178.70	614.35	491.48	566.67	86.73
900	60.30	823.08	195.30	644.40	515.52	600.00	85.92
950	63.65	873.08	213.80	672.55	538.04	633.33	84.95
1,000	67.00	923.08	232.30	700.70	560.56	666.67	84.08
1,100	73.70	1023.08	269.30	757.00	605.60	733.33	82.58
1,200	80.40	1123.08	306.30	813.30	650.64	800.00	81.33
1,300	87.10	1223.08	343.30	869.60	695.68	866.67	80.27
1,400	93.80	1323.08	380.30	925.90	740.72	933.33	79.36
1,500	100.50	1423.08	417.30	982.20	785.76	996.00	78.89
1,600	107.20	1523.08	454.30	1038.50	830.80	996.00	83.41

TAXABLE WAGE = AWW LESS $76.92
SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

MARRIED WITH NO CHILDREN

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE	CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
							°/°
$ 100	$ 6.70	$ 61.54	$ 2.10	$ 91.20	$ 72.96	$ 66.67	109.44
150	10.05	111.54	8.40	131.55	105.24	100.00	105.24
200	13.40	161.54	16.40	170.20	136.16	133.33	102.12
250	16.75	211.54	24.40	208.85	167.08	166.67	100.25
300	20.10	261.54	33.50	246.40	197.12	200.00	98.56
350	23.45	311.54	43.00	283.55	226.84	233.33	97.22
400	26.80	361.54	53.00	320.20	256.16	266.67	96.06
450	30.15	411.54	65.00	354.85	283.88	300.00	94.63
500	33.50	461.54	77.40	389.10	311.28	333.33	93.38
550	36.85	511.54	90.90	422.25	337.80	366.67	92.13
600	40.20	561.54	104.90	454.90	363.92	400.00	90.98
650	43.55	611.54	120.90	485.55	388.44	433.33	89.64
700	46.90	661.54	137.40	515.70	412.56	466.67	88.41
750	50.25	711.54	155.90	543.85	435.08	500.00	87.02
800	53.60	761.54	174.40	572.00	457.60	533.33	85.80
850	56.95	811.54	192.90	600.15	480.12	566.67	84.73
900	60.30	861.54	209.50	630.20	504.16	600.00	84.03
950	63.65	911.54	228.00	658.35	526.68	633.33	83.16
1,000	67.00	961.54	246.50	686.50	549.20	666.67	82.38
1,100	73.70	1061.54	283.50	742.80	594.24	733.33	81.03
1,200	80.40	1161.54	320.50	799.10	639.28	800.00	79.91
1,300	87.10	1261.54	357.50	855.40	684.32	866.67	78.96
1,400	93.80	1361.54	394.50	911.70	729.36	933.33	78.15
1,500	100.50	1461.54	431.50	968.00	774.40	996.00	77.75
1,600	107.20	1561.54	468.50	1024.30	819.44	996.00	82.27

TAXABLE WAGE = AWW LESS $38.46
SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

SINGLE WITH NO CHILDREN

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE	CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
							°/°
$ 100	$ 6.70	$ 80.77	$ 7.60	$ 85.70	$ 68.56	$ 66.67	102.84
150	10.05	130.77	16.00	123.95	99.16	100.00	99.16
200	13.40	180.77	24.60	162.00	129.60	133.33	97.20
250	16.75	230.77	34.60	198.65	158.92	166.67	95.35
300	20.10	280.77	46.40	233.50	186.80	200.00	93.40
350	23.45	330.77	59.10	267.45	213.96	233.33	91.70
400	26.80	380.77	74.10	299.10	239.28	266.67	89.73
450	30.15	430.77	89.20	330.65	264.52	300.00	88.17
500	33.50	480.77	106.20	360.30	288.24	333.33	86.47
550	36.85	530.77	123.20	389.95	311.96	366.67	85.08
600	40.20	580.77	141.70	418.10	334.48	400.00	83.62
650	43.55	630.77	160.20	446.25	357.00	433.33	82.38
700	46.90	680.77	178.70	474.40	379.52	466.67	81.33
750	50.25	730.77	195.40	504.35	403.48	500.00	80.70
800	53.60	780.77	213.90	532.50	426 00	533.33	79.88
850	56.95	830.77	232.40	560.65	448.52	566.67	79.15
900	60.30	880.77	250.90	588.80	471.04	600.00	78.51
950	63.65	930.77	269.40	616.95	493.56	633.33	77.93
1,000	67.00	980.77	287.90	645.10	516.08	666.67	77.41
1,100	73.70	1080.77	324.90	701.40	561.12	733.33	76.52
1,200	80.40	1180.77	361.90	757.70	606.16	800.00	75.77
1,300	87.10	1280.77	398.90	814.00	651.20	866.67	75.14
1,400	93.80	1380.77	435.90	870.30	696.24	933.33	74.60
1,500	100.50	1480.77	472.90	926.60	741.28	996.00	74.43
1,600	107.20	1580.77	509.90	982.90	786.32	996.00	78.95

TAXABLE WAGE = AWW LESS $19.23
SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

STATE OF ALASKA
FISCAL NOTE

Revision Date 4/6 , 1983

I. REQUEST

Bill/Resolution No.: HB 311
Title: ".. Workers' Compensation..."
Sponsor:
Requestor: Rules Committee

II. FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program of Subprogram(s) Affected:
Administration of Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		6.5	14.3	15.7	17.3	19.0
200 TRAVEL						
300 CONTRACTUAL		51.0	15.4	16.9	18.6	20.5
400 COMMODITIES		.1	.1	.1	.1	.1
500 EQUIPMENT		.7	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		58.3	29.8	32.7	36.0	39.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		58.3	29.8	32.7	36.0	39.6
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME		1	1	1	1	1
TEMPORARY						

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

Not available.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: JLM Jacquelyn L. McClintock Phone: 465-2790
Division: Workers' Compensation Date: March 21, 1983

Approved by Commissioner: JLM Jim Robison Date: March 21, 1983
Department: Labor

LEG:A:19

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

3/8/83

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE
TITLE: "An Act relating to workers' compensation, and providing for an effective date."
AGENCY AFFECTED: Department of Labor
Page 2

Data Control Clerk I (permanent halftime, 6 months first year, 12 months thereafter)

100	Personal Services	$ 6.5	
300	Contractual	1.5	
400	Supplies	.1	
500	Equipment	.7	
			$ 8.8

Other Contractual:

Redesign and printing of forms to accomodate additional questions	3.5*
Rewrite and printing of employee and employer booklets	12.0*
Composition and printing of benefit schedule booklet	7.0
Printing amendment of Act	1.0*
Design computer system and write programs (2 1/2 months x $50/hour)	22.0*
Operation costs for additional computer processing	4.0
TOTAL	$58.3

* Indicates one-time expense in FY 1984 for a total of $38.5

1.	POSITION TITLE			RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
	Data Control Clerk I			9A	G	FN			
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER / PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PPT	3			Juneau				
3.	CONTINUATION LEVEL		ADDITION XX						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 9A (1578 x 6 mos x .5)	4,734	
6.	Benefits .1587	751	
7.	Supplemental Benefits .0613	290	
8.	Fixed Benefits 240 x 3	720	
9.	TOTAL PERSONAL SERVICES 01		6.5
10.	Travel 02		
11.	Contractual 03		1.5
12.	Commodities 04		.1
13.	Equipment 05		.7
14.	Other		
15.	TOTAL COST		8.8

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.	100	General Funds 1004	8.8
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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

JUSTIFICATION

The permanent half-time Data Control Clerk I position will provide additional clerical support in the Claims Section to enter and maintain data in the Division's information handling system. This position will handle the increased workload caused by the additional data input necessary for the system to monitor the compensation rate using withholding and average weekly wage information, and the maintenance of two processing systems concurrently.

Line 11 - Contractual: Space (transfer to DOA) $ .9
Indirect (13.17 x 4734) .6

Line 12 - Commodities: General Office Supplies .1

Line 13 - Equipment: Desk and Chair .7

13 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Workers' Compensation Administration

Revised Date
LEG:A:20

FY 84

(11-1136 (7/82) - 13

Bill No. HB 311

Title "An Act relating to Workers' Compensation; and providing for an effective date."

Date April 13, 1983

Contact: J. L. McClintock
465-2790

The Department of Labor and the Alaska Workers' Compensation Board support the provisions of HB 311. This bill is the result of an agreement reached by a committee representing labor and employers in the state and reflects over three years of hearings in which testimony was provided by workers, labor groups, employers, insurers, rehabilitation and medical providers, attorneys and state agency personnel. The Workers' Compensation Board and Division worked very closely with the committee in recommending amendments that provide for a more equitable and efficient workers' compensation system for employees and employers.

The major portions of the bill will result in a redistribution of benefits which will reduce disencentives to return to work and provide long term reductions in workers' compensation costs. This is based on increases in scheduled permanent partial disabilities, the minimum compensation rate, death benefits and new methods to compute gross weekly earnings.

POSITION PAPER/Department of Labor

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April 19, 1983

Honorable Walter Furnace
Chairman, Labor & Commerce Committee
Alaska State House
Pouch V
Juneau, AK 99811

Re: HB 311

Dear Representative Furnace:

This letter is written on behalf of the American Insurance Association, a trade association of casualty and property insurers. Some of the Association's members write a substantial amount of workers' compensation insurance in Alaska.

As you know, HB 311 represents the culmination of substantial effort by representatives of employers, labor organizations, and insurers, with input from the Division of Workers' Compensation over the past two years or more. It is an important attempt to make the workers' compensation delivery system more efficient and cost effective. The AIA supports the bill and applauds the cooperative effort that went into producing it.

One of the key provisions of the bill, the change to benefit calculations based upon net spendable income, was one of the nineteen major recommendations of the National Commission in 1971. Most of the other recommendations of that commission were implemented in Alaska in 1975. The net spendable income idea is an important one, because it tends to deliver more compensation to those who need it most, and less to those who are presently overcompensated. By avoiding the possibility of paying a high-wage employee as much or more in compensation as his or her take-home pay, the new law would tend to bring those workers back to work.

The members of the Workers Compensation Committee of Alaska and others will be available to explain the sources and intended purpose of the various sections of the bill. We stand ready to try to answer any questions you may have.

The American Insurance Association urges favorable action on this bill.

Very truly yours,

Michael T. Thomas

MTT/gf

(7)

HB311

SECTION BY SECTION ANALYSIS

Section 1. This section increases the minimum compensation from $65 to $110 per week and reflects changes necessary because of the reenactment of AS 23.30.220 found in section 10 which makes the spendable weekly wage of an employee the basis of compensation.

Section 2. and 3. See comments to Section 1.

Section 4. This section changes the manner of determining compensation consistent with the repeal and reenactment of AS 23.30.220 found in section 11 which makes the employee's spendable weekly wage the basis for determining compensation.

Eighty percent of the employee's spendable weekly wage minimizes the possibility of an employee receiving more in workers' compensation than his take home pay while working. The change is consistent with recommendations of the 1972 Report of the National Commission on State Workers' Compensation Law which states at page 19:

> The decision fixing the proportion of lost wages to be replaced must balance incentives to employers to improve safety within incentives to the disabled to take full advantage of rehabilitation services and to return to work.
>
> We recommend that cash benefits for [disability compensation] be at least two-thirds of the worker's gross weekly wage. The two-thirds formulation should be used only on a transitional basis until the State adopts a provision making payments at least 80 percent of the workers' spendable weekly earnings.

Section 5. See comments to section 4.

Section 6. See comments to section 4.

Additionally, this section provides for inflationary increases in the maximum paid for "scheduled" and permanent partial disabilities.

Section 7. See comments to section 4.

Section 8. This section reflects changes consistent with the repeal and reenactment of AS 23.30.220 found in section 11.

Section 9. See comments to section 4.

Additionally, this section provides for inflationary increases in funeral expenses on death claims. The current limit for reasonable and necessary funeral expenses are not adequate and result

in a hardship to the family of the deceased or the employer for payment of the additional costs.

Section 10. This section reflects changes consistent with the repeal and reenactment of AS 23.30.220 found in section 11. Additionally, the minimum weekly compensation for a widow or widower is increased from $45 to $75 per week.

Section 11. This section adopts a new basis for computing compensation known as the "spendable weekly wage". The spendable weekly wage is the employee's gross weekly earnings, minus payroll tax deductions, which are defined in section 13. The change is consistent with the 1972 report of the National Commission on State Workers' Compensation Laws.

It is an administratively feasible procedure which can simultaneously take into account the difference between gross and spendable earnings, the virtues of dependents' allowances and the impact of the progressive income tax. This procedure first determines the worker's gross earnings prior to disability (which must be determined under the present Act) and the number of his dependents. The gross earnings and dependency data are then inserted into a formula prepared and published by the Department of Labor to determine the worker's spendable earnings. Once spendable earnings are calculated, workers' compensation benefits for all sizes of families can be calculated as a fixed proportion of spendable weekly earnings. No further allowances for dependents for tax considerations are necessary or appropriate.

This section also adopts a new basis for determining the gross earnings of an injured worker. An injured worker's gross weekly earnings are computed by dividing by 100 the gross earnings of the employee in the two calendar years immediately preceding the injury. Utilizing the preceding two years tends to eliminate the cyclical nature of many industries. Dividing by 100 instead of 104 tends to adjust previous years' earnings for inflation. This section also allows the Board to adjust the average weekly wage calculation if it is unfair to the employee or employer.

Section 12. This section reflects changes consistent with the repeal and reenactment of AS 23.30.220 found in section 11.

Section 13. This section provides for new definitions.

"Gross earnings" includes payments before any authorized or lawfully required deduction such as credit union, dues check off, social security, federal withholding, or deferred compensation which is optional to the employee at the time of his injury. Specifically, deferred compensation which is optional at the time of injury refers to those employees of government and non-profit corporations and associations which may elect to defer income from a particular pay period or pay periods but have the option of terminating the deferral of that income at any time during their employment. Excluded from gross earnings are irregular bonuses, reimbursement of expenses, expense allowances and any benefits not taxable to the employee during the pay period. "Any

benefit not taxable to the employee during the pay period" would include the general items referred to as "fringe benefits" such as: payments providing for health, welfare, retirement, vacation or annual leave and other similar benefits received by the employee for which he is not taxed other than deferred compensation which is optional to the employee at the time of this injury.

The value of room and board may be considered in gross earnings only for those injured workers whose gross weekly earnings otherwise computed are less than the Alaska average weekly wage at the time of injury. The value of room and board may be included only to raise the gross weekly earnings up to the level of the Alaska average weekly wage. The value of room and board that would raise an employee's gross weekly earnings above the Alaska average weekly wage is excluded.

"Payroll taxes" are defined to exclude the amount that would be withheld from an employee's gross weekly earnings under the Internal Revenue code as though he had claimed the maximum number of dependents per actual dependency, blindness, and old age. Also deducted is the amount of earnings subject to the Social Security Act irrespective of whether the employee may have paid the maximum Social Security for the year at the time the injury occurs.

Section 14. This section repeals provisions that are unnecessary or inconsistent with proposed legislation.

Section 15. This section provides that the Act apply only to injuries sustained after the effective date of this Act.

Section 16. This section provides that the Act takes effect January 1, 1984.

Average Weekly Wage Summary D/A 1/1/82 —

	NO. CASES	AVE.	1 100	101 150	151 200	201 250	251 300	301 350	351 400	401 450	451 500	501 550	551 600	601 650	651 700	701 750	751 800	801 850	851 900	901 950	951 1000	1001 1100	1101 1200	1201 1300	1301 1400	1401 1500	1501 1600	1601 1700	1701 1800	1801 1900	1901 2000	2001 9999
ALL (2/22/83)	4829	?	87	232	267	320	335	334	272	284	266	276	246	291	229	195	155	158	139	114	111	194	101	94	62	31	18	8	4	1	2	3
ALP (2/22/83)	60	$715	0	0	1	0	0	0	1	2	3	6	3	6	8	5	5	6	4	4	4	3	0	0	0	0	0	0	0	0	0	0
LP (2/23/83)	25	$587	0	1	0	0	0	0	1	5	1	5	2	0	2	2	3	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0
ATE (2/16/83)	129	$429	1	6	4	10	15	14	13	12	12	10	7	8	5	2	0	0	1	1	0	1	3	0	0	0	0	0	0	0	0	0
FISH DOCKESS (4/4/83	215	$262	20	28	37	41	29	13	8	15	4	6	4	4	3	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

TABLE 1

MARRIED WITH TWO CHILDREN

ALL

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE		CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
								°/°
$ 100	$ 6.70	$ 23.08	$ 0.00	$ 93.30	$ 74.64		$ 66.67	111.96
150	10.05	73.08	3.80	136.15	108.92		100.00	108.92
200	13.40	123.08	10.30	176.30	141.04		133.33	105.78
250	16.75	173.08	18.30	214.95	171.96		166.67	103.18
300	20.10	223.08	26.30	253.60	202.88		200.00	101.44
350	23.45	273.08	35.70	290.85	232.68		233.33	99.72
400	26.80	323.08	45.20	328.00	262.40		266.67	98.40
450	30.15	373.08	55.80	364.05	291.24		300.00	97.08
500	33.50	423.08	67.80	398.70	318.96		333.33	95.69
550	36.85	473.08	80.50	432.65	346.12		366.67	94.40
600	40.20	523.08	94.00	465.80	372.64		400.00	93.16
650	43.55	573.08	108.60	497.85	398.28		433.33	91.91
700	46.90	623.08	124.60	528.50	422.80		466.67	90.60
750	50.25	673.08	141.70	558.05	446.44		500.00	89.29
800	53.60	723.08	160.20	586.20	468.96		533.33	87.93
850	56.95	773.08	178.70	614.35	491.48		566.67	86.73
900	60.30	823.08	195.30	644.40	515.52		600.00	85.92
950	63.65	873.08	213.80	672.55	538.04		633.33	84.95
1,000	67.00	923.08	232.30	700.70	560.56		666.67	84.08
1,100	73.70	1023.08	269.30	757.00	605.60		733.33	82.58
1,200	80.40	1123.08	306.30	813.30	650.64		800.00	81.33
1,300	87.10	1223.08	343.30	869.60	695.68		866.67	80.27
1,400	93.80	1323.08	380.30	925.90	740.72		933.33	79.36
1,500	100.50	1423.08	417.30	982.20	785.76		996.00	78.89
1,600	107.20	1523.08	454.30	1038.50	830.80		996.00	83.41

87 $ 93.30 8117

232 × 140 = 25,520

267 141.04 37,647

330 171.96 55,027

335 202.88 67,964

334 232.68 77,715

272 262.40 71,372

254 291.24 82,712

266 318.96 84,843

276 346.12 95,529

246 372.64 91,609

291 398.28 115,899

244 422.80 96,821

195 446.44 87,055

155 468.96 72,688

158 491.48 77,655

137 515.52 71,657

114 538.04 61,336

111 560.56 62,222

194 605.60 117,486

101 650.64 65,714

97 695.68 65,392

62 740.72 45,924

21 785.76 24,3[illegible]

18 830.80 14,954

1,677,280

1,822,330

16CY - 9999 — (18)

TAXABLE WAGE = AWW LESS $76.92
SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

DIFFERENCE = 145,050

8% DECREASE

TABLE 3

ACC

SINGLE WITH NO CHILDREN

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE	CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
$ 100	$ 6.70	$ 80.77	$ 7.60	$ 85.70	$ 68.56	$ 66.67	°/° 102.84
150	10.05	130.77	16.00	123.95	99.16	100.00	99.16
200	13.40	180.77	24.60	162.00	129.60	133.33	97.20
250	16.75	230.77	34.60	198.65	158.92	166.67	95.35
300	20.10	280.77	46.40	233.50	186.80	200.00	93.40
350	23.45	330.77	59.10	267.45	213.96	233.33	91.70
400	26.80	380.77	74.10	299.10	239.28	266.67	89.73
450	30.15	430.77	89.20	330.65	264.52	300.00	88.17
500	33.50	480.77	106.20	360.30	288.24	333.33	86.47
550	36.85	530.77	123.20	389.95	311.96	366.67	85.08
600	40.20	580.77	141.70	418.10	334.48	400.00	83.62
650	43.55	630.77	160.20	446.25	357.00	433.33	82.38
700	46.90	680.77	178.70	474.40	379.52	466.67	81.33
750	50.25	730.77	195.40	504.35	403.48	500.00	80.70
800	53.60	780.77	213.90	532.50	426.00	533.33	79.88
850	56.95	830.77	232.40	560.65	448.52	566.67	79.15
900	60.30	880.77	250.90	588.80	471.04	600.00	78.51
950	63.65	930.77	269.40	616.95	493.56	633.33	77.93
1,000	67.00	980.77	287.90	645.10	516.08	666.67	77.41
1,100	73.70	1080.77	324.90	701.40	561.12	733.33	76.52
1,200	80.40	1180.77	361.90	757.70	606.16	800.00	75.77
1,300	87.10	1280.77	398.90	814.00	651.20	866.67	75.14
1,400	93.80	1380.77	435.90	870.30	696.24	933.33	74.60
1,500	100.50	1480.77	472.90	926.60	741.28	996.00	74.43
1,600	107.20	1580.77	509.90	982.90	786.32	996.00	78.95

1601 - 9999

(18) 1,590,551 1,822,320

TAXABLE WAGE = AWW LESS $19.23

SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

DIFFERENCE 231,973

13% decrease

ACP

TABLE 1

MARRIED WITH TWO CHILDREN

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE	CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
							°/°
$ 100	$ 6.70	$ 23.08	$ 0.00	$ 93.30	$ 74.64	$ 66.67	111.96
150	10.05	73.08	3.80	136.15	108.92	100.00	108.92
200	13.40	123.08	10.30	176.30	141.04 141	133.33 133	105.78
250	16.75	173.08	18.30	214.95	171.96	166.67	103.18
300	20.10	223.08	26.30	253.60	202.88	200.00	101.44
350	23.45	273.08	35.70	290.85	232.68	233.33	99.72
400	26.80	323.08	45.20	328.00	262.40 262	266.67	98.40
450	30.15	373.08	55.80	364.05	291.24 582	300.00	97.08
500	33.50	423.08	67.80	398.70	318.96 956	333.33	95.69
550	36.85	473.08	80.50	432.65	346.12 2016	366.67	94.40
600	40.20	523.08	94.00	465.80	372.64 1117	400.00	93.16
650	43.55	573.08	108.60	497.85	398.28 2389	433.33	91.91
700	46.90	623.08	124.60	528.50	422.80 3385	466.67	90.60
750	50.25	673.08	141.70	558.05	446.44 2232	500.00	89.29
800	53.60	723.08	160.20	586.20	468.96 2244	533.33	87.93
850	56.95	773.08	178.70	614.35	491.48 3718	566.67	86.73
900	60.30	823.08	195.30	644.40	515.52 2067	600.00	85.92
950	63.65	873.08	213.80	672.55	538.04 2152	633.33	84.95
1,000	67.00	923.08	232.30	700.70	560.56 2242	666.67	84.08
1,100	73.70	1023.08	269.30	757.00	605.60 5716	733.33	82.58
1,200	80.40	1123.08	306.30	813.30	650.64	800.00	81.33
1,300	87.10	1223.08	343.30	869.60	695.68 36701	866.67 30,014	80.27
1,400	93.80	1323.08	380.30	925.90	740.72	933.33	79.36
1,500	100.50	1423.08	417.30	981.20	785.76	996.00	78.89
1,600	107.20	1523.08	454.30	1038.50	830.80	996.00	83.41

TAXABLE WAGE = AWW LESS $76.92
SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

DIFFERENCE = $3,393

11% DECREASE

SINGLE WITH NO CHILDREN

ALP

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE	CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
							°/°
$ 100	$ 6.70	$ 80.77	$ 7.60	$ 85.70	$ 68.56	$ 66.67	102.84
150	10.05	130.77	16.00	123.95	99.16	100.00	99.16
200	13.40	180.77	24.60	162.00	129.60 129	133.33 133	97.20
250	16.75	230.77	34.60	198.65	158.92	166.67	95.35
300	20.10	280.77	46.40	233.50	186.80	200.00	93.40
350	23.45	330.77	59.10	267.45	213.96	233.33	91.70
400	26.80	380.77	74.10	299.10	239.28 239	266.67 266	89.73
450	30.15	430.77	89.20	330.65	264.52 539	300.00 600	88.17
500	33.50	480.77	106.20	360.30	288.24 864	333.33 999	86.47
550	36.85	530.77	123.20	389.95	311.96 1871	366.67 3200	85.08
600	40.20	580.77	141.70	418.10	334.48 1003	400.00 1200	83.62
650	43.55	630.77	160.20	446.25	357.00 3113	433.33 3597	82.38
700	46.90	680.77	178.70	474.40	379.52 3634	466.67 3733	81.33
750	50.25	730.77	195.40	504.35	403.48 2017	500.00 2500	80.70
800	53.60	780.77	213.90	532.50	426.00 2130	533.33 3666	79.88
850	56.95	830.77	232.40	560.65	448.52 2691	566.67 3400	79.15
900	60.30	880.77	250.90	588.80	471.04 1884	600.00 3160	78.51
950	63.65	930.77	269.40	616.95	493.56 1974	633.33 3533	77.93
1,000	67.00	980.77	287.90	645.10	516.08 2064	666.67 3466	77.41
1,100	73.70	1080.77	324.90	701.40	561.12 1683	733.33 2199	76.52
1,200	80.40	1180.77	361.90	757.70	606.16 24,256	800.00 30,094	75.77
1,300	87.10	1280.77	398.90	814.00	651.20	866.67	75.14
1,400	93.80	1380.77	435.90	870.30	696.24	933.33	74.60
1,500	100.50	1480.77	472.90	926.60	741.28	996.00	74.43
1,600	107.20	1580.77	509.90	982.90	786.32	996.00	28.95

TAXABLE WAGE = AWW LESS $19.23
SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

DIFFERENCE = $5,838

19% DECREASE

LP

TABLE 1

MARRIED WITH TWO CHILDREN

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE	CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
							°/°
$ 100	$ 6.70	$ 23.08	$ 0.00	0 $ 93.30	$ 74.64	$ 66.67	111.96
150	10.05	73.08	3.80	/ 136.15 110	108.92	100.00	108.92
200	13.40	123.08	10.30	176.30	0141.04	133.33	105.78
250	16.75	173.08	18.30	214.95	0171.96	166.67	103.18
300	20.10	223.08	26.30	253.60	0202.88	200.00	101.44
350	23.45	273.08	35.70	290.85	0232.68	233.33	99.72
400	26.80	323.08	45.20	328.00	/ 262.40 30	266.67	98.40
450	30.15	373.08	55.80	364.05	5 291.24 / 45	300.00	97.08
500	33.50	423.08	67.80	398.70	/ 318.96 318	333.33	95.69
550	36.85	473.08	80.50	432.65	5 346.12 1130	366.67	94.40
600	40.20	523.08	94.00	465.80	2 372.64 715	400.00	93.16
650	43.55	573.08	108.60	497.85	0398.28	433.33	91.91
700	46.90	623.08	124.60	528.50	2422.80 845	466.67	90.60
750	50.25	673.08	141.70	558.05	2446.44 892	500.00	89.29
800	53.60	723.08	160.20	586.20	3 468.96 / 400	533.33	87.93
850	56.95	773.08	178.70	614.35	0491.48	566.67	86.73
900	60.30	823.08	195.30	644.40	/ 515.52 515	600.00	85.92
950	63.65	873.08	213.80	672.55	0538.04	633.33	84.95
1,000	67.00	923.08	232.30	700.70	0560.56	666.67	84.08
1,100	73.70	1023.08	269.30	757.00	/ 605.60 605	733.33	82.58
1,200	80.40	1123.08	306.30	813.30	0650.64	800.00	81.33
1,300	87.10	1223.08	343.30	869.60	695.68 8,884	866.67 9617	80.27
1,400	93.80	1323.08	380.30	925.90	740.72	933.33	79.36
1,500	100.50	1423.08	417.30	982.20	785.76	996.00	78.89
1,600	107.20	1523.08	454.30	1038.50	830.80	996.00	83.41

TAXABLE WAGE = AWW LESS $76.92
SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

DIFFERENCE = 515

8% DECREASE

TABLE 3

SINGLE WITH NO CHILDREN

LP

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE	CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
							°/°
$ 100	$ 6.70	$ 80.77	$ 7.60	0 $ 85.70	$ 68.56	$ 66.67	102.84
150	10.05	130.77	16.00	1 123.95 110	99.16	100.00 100	99.16
200	13.40	180.77	24.60	162.00	0 129.60	133.33	97.20
250	16.75	230.77	34.60	198.65	0 158.92	166.67	95.35
300	20.10	280.77	46.40	233.50	0 186.80	200.00	93.40
350	23.45	330.77	59.10	267.45	0 213.96	233.33	91.70
400	26.80	380.77	74.10	299.10	1 239.28 239	266.67 266	89.73
450	30.15	430.77	89.20	330.65	5 264.52 322	300.00 300	88.17
500	33.50	480.77	106.20	360.30	1 288.24 288	333.33 333	86.47
550	36.85	530.77	123.20	389.95	5 311.96 559	366.67 1833	85.08
600	40.20	580.77	141.70	418.10	2 334.48 668	400.00 800	83.62
650	43.55	630.77	160.20	446.25	0 357.00	433.33	82.38
700	46.90	680.77	178.70	474.40	2 379.52 759	466.67 933	81.33
750	50.25	730.77	195.40	504.35	2 403.48 806	500.00 1000	80.70
800	53.60	780.77	213.90	532.50	3 426.00 1578	533.33 1599	79.88
850	56.95	830.77	232.40	560.65	0 448.52	566.67	79.15
900	60.30	880.77	250.90	588.80	1 471.04 471	600.00 600	78.51
950	63.65	930.77	269.40	616.95	0 493.56	633.33	77.93
1,000	67.00	980.77	287.90	645.10	0 516.08	666.67	77.41
1,100	73.70	1080.77	324.90	701.40	1 561.12 561	733.33 733	76.52
1,200	80.40	1180.77	361.90	757.70	0 606.16	800.00	75.77
1,300	87.10	1280.77	398.90	814.00	1 651.20 9041	866.67 9697	75.14
1,400	93.80	1380.77	435.90	870.30	696.24	933.33	74.60
1,500	100.50	1480.77	472.90	926.60	741.28	996.00	74.43
1,600	107.20	1580.77	509.90	982.90	786.32	996.00	78.95

TAXABLE WAGE = AWW LESS $19.23
SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

DIFFERENCE: 1636

17% DECREASE

TABLE 1

MARRIED WITH TWO CHILDREN

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE	CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
							°/°
$ 100	$ 6.70	$ 23.08	$ 0.00	1$ 93.30	$ 74.64	$ 66.67	111.96
150	10.05	73.08	3.80	6 136.15	108.92	100.00	108.92
200	13.40	123.08	10.30	176.30	4/141.04	133.33	105.78
250	16.75	173.08	18.30	214.95	10171.96	166.67	103.18
300	20.10	223.08	26.30	253.60	15202.88	200.00	101.44
350	23.45	273.08	35.70	290.85	14/232.68	233.33	99.72
400	26.80	323.08	45.20	328.00	13262.40	266.67	98.40
450	30.15	373.08	55.80	364.05	12-291.24	300.00	97.08
500	33.50	423.08	67.80	398.70	12318.96	333.33	95.69
550	36.85	473.08	80.50	432.65	10346.12	366.67	94.40
600	40.20	523.08	94.00	465.80	7372.64	400.00	93.16
650	43.55	573.08	108.60	497.85	8398.28	433.33	91.91
700	46.90	623.08	124.60	528.50	5422.80	466.67	90.60
750	50.25	673.08	141.70	558.05	2446.44	500.00	89.29
800	53.60	723.08	160.20	586.20	0468.96	533.33	87.93
850	56.95	773.08	178.70	614.35	0491.48	566.67	86.73
900	60.30	823.08	195.30	644.40	1515.52	600.00	85.92
950	63.65	873.08	213.80	672.55	1538.04	633.33	84.95
1,000	67.00	923.08	232.30	700.70	0560.56	666.67	84.08
1,100	73.70	1023.08	269.30	757.00	1605.60	733.33	82.58
1,200	80.40	1123.08	306.30	813.30	3650.64	800.00	81.33
1,300	87.10	1223.08	343.30	869.60	0695.68	866.67	80.27
1,400	93.80	1323.08	380.30	925.90	740.72	933.33	79.36
1,500	100.50	1423.08	417.30	982.20	785.76	996.00	78.89
1,600	107.20	1523.08	454.30	1038.50	830.80	996.00	83.41

TAXABLE WAGE = AWW LESS $76.92
SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

DIFFERENCE: 1,889

5% DECREASE

TABLE 3

SINGLE WITH NO CHILDREN

KATIE

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE	CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
							°/°
$ 100	$ 6.70	$ 80.77	$ 7.60	1 $ 85.70 85	$ 68.56	$ 66.67 66	102.84
150	10.05	130.77	16.00	6 123.95 660	99.16	100.00 600	99.16
200	13.40	180.77	24.60	4 162.00	129.60 518	133.33 533	97.20
250	16.75	230.77	34.60	10 198.65	158.92 1589	166.67 16666	95.35
300	20.10	280.77	46.40	15 233.50	186.80 2802	200.00 3,000	93.40
350	23.45	330.77	59.10	14 267.45	213.96 2995	233.33 3,266	91.70
400	26.80	380.77	74.10	13 299.10	239.28 3110	266.67 3,466	89.73
450	30.15	430.77	89.20	12 330.65	264.52 3174	300.00 3,600	88.17
500	33.50	480.77	106.20	12 360.30	288.24 3458	333.33 3,999	86.47
550	36.85	530.77	123.20	10 389.95	311.96 3119	366.67 3666	85.08
600	40.20	580.77	141.70	7 418.10	334.48 2411	400.00 2800	83.62
650	43.55	630.77	160.20	8 446.25	357.00 2856	433.33 3466	82.38
700	46.90	680.77	178.70	5 474.40	379.52 1897	466.67 2333	81.33
750	50.25	730.77	195.40	5 504.35	403.48 2016	500.00 1 000	80.70
800	53.60	780.77	213.90	0 532.50	426.00	533.33	79.88
850	56.95	830.77	232.40	0 560.65	448.52	566.67	79.15
900	60.30	880.77	250.90	588.80	471.04 471	600.00 600	78.51
950	63.65	930.77	269.40	616.95	493.56 493	633.33 633	77.93
1,000	67.00	980.77	287.90	645.10	516.08	666.67	77.41
1,100	73.70	1080.77	324.90	701.40	561.12 561	733.33 733	76.52
1,200	80.40	1180.77	361.90	757.70	606.16 1818	800.00 2400	75.77
1,300	87.10	1280.77	398.90	814.00	651.20 837	866.67	75.14
1,400	93.80	1380.77	435.90	870.30	696.24 32,867	933.33 37,827	74.60
1,500	100.50	1480.77	472.90	926.60	741.28	996.00	74.43
1,600	107.20	580.77	509.90	982.90	786.32	996.00	78.95

TAXABLE WAGE = AWW LESS $19.23
SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

DIFFERENCE: #5004

13% DECREASE

TABLE 1

MARRIED WITH TWO CHILDREN

FISH

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE	CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
							°/°
$ 100	$ 6.70	$ 23.08	$ 0.00	20 $ 93.30 1866	$ 74.64	$ 66.67	111.96
150	10.05	73.08	3.80	28 136.15 2800	108.92	100.00	108.92
200	13.40	123.08	10.30	176.30	37 141.04 5218	133.33	105.78
250	16.75	173.08	18.30	214.95	41 171.96 7050	166.67	103.18
300	20.10	223.08	26.30	253.60	27 202.88 5863	200.00	101.44
350	23.45	273.08	35.70	290.85	13 232.68 3034	233.33	99.72
400	26.80	323.08	45.20	328.00	8 262.40 2099	266.67	98.40
450	30.15	373.08	55.80	364.05	15 291.24 4368	300.00	97.08
500	33.50	423.08	67.80	398.70	4 318.96 1275	333.33	95.69
550	36.85	473.08	80.50	432.65	6 346.12 2076	366.67	94.40
600	40.20	523.08	94.00	465.80	4 372.64 1490	400.00	93.16
650	43.55	573.08	108.60	497.85	4 398.28 1593	433.33	91.91
700	46.90	623.08	124.60	528.50	3 422.80 1268	466.67	90.60
750	50.25	673.08	141.70	558.05	2 446.44 892	500.00	89.29
800	53.60	723.08	160.20	586.20	1 468.96 468	533.33	87.93
850	56.95	773.08	178.70	614.35	491.48	566.67	86.73
900	60.30	823.08	195.30	644.40	515.52 41,370	600.00 41,164	85.92
950	63.65	873.08	213.80	672.55	538.04	633.33	84.95
1,000	67.00	923.08	232.30	700.70	560.56	666.67	84.08
1,100	73.70	1023.08	269.30	757.00	605.60	733.33	82.58
1,200	80.40	1123.08	306.30	813.30	650.64	800.00	81.33
1,300	87.10	1223.08	343.30	869.60	695.68	866.67	80.27
1,400	93.80	1323.08	380.30	925.90	740.72	933.33	79.36
1,500	100.50	1423.08	417.30	982.20	785.76	996.00	78.89
1,600	107.20	1523.08	454.30	1038.50	830.80	996.00	83.41

TAXABLE WAGE = AWW LESS $76.92
SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

DIFFERENCE: 206

.5% INCREASE

TABLE 3

FISH

SINGLE WITH NO CHILDREN

AWW	FICA	TAXABLE WAGE	1983 TAX DED	SPENDABLE WAGE	80 °/° OF SPENDABLE WAGE	CURRENT LAW	80 °/° OF SPENDABLE AS °/° OF CURRENT
							°/°
$ 100	$ 6.70	$ 80.77	$ 7.60	205 $ 85.70 1214	$ 68.56	$ 66.67 1,333	102.84
150	10.05	130.77	16.00	28 123.95 3,080	99.16	100.00 2,800	99.16
200	13.40	180.77	24.60	162.00	3 129.60 4795	133.33 4,933	97.20
250	16.75	230.77	34.60	198.65	7 158.92 6,545	166.67 6,833	95.35
300	20.10	280.77	46.40	233.50	2 186.80 5,417	200.00 5,800	93.40
350	23.45	330.77	59.10	267.45	1 3213.96 2,781	233.33 3,033	91.70
400	26.80	380.77	74.10	299.10	8 239.28 4,944	266.67 5,133	89.73
450	30.15	430.77	89.20	330.65	15 264.52 3,967	300.00 4,500	88.17
500	33.50	480.77	106.20	360.30	4 288.24 1,152	333.33 1,333	86.47
550	36.85	530.77	123.20	389.95	6 311.96 1,841	366.67 2,200	85.08
600	40.20	580.77	141.70	418.10	4 334.48 1,337	400.00 1,600	83.62
650	43.55	630.77	160.20	446.25	4 357.00 1,428	433.33 1,733	82.38
700	46.90	680.77	178.70	474.40	3 379.52 1,139	466.67 1,400	81.33
750	50.25	730.77	195.40	504.35	2 403.48 806	500.00 1,000	80.70
800	53.60	780.77	213.90	532.50	1 426.00 426	533.33 533	79.88
850	56.95	830.77	232.40	560.65	0 448.52	566.67	79.15
900	60.30	880.77	250.90	588.80	471.04 38,341	600.00 41,164	78.51
950	63.65	930.77	269.40	616.95	493.56	633.33	77.93
1,000	67.00	980.77	287.90	645.10	516.08	666.67	77.41
1,100	73.70	1080.77	324.90	701.40	561.12	733.33	76.52
1,200	80.40	1180.77	361.90	757.70	606.16	800.00	75.77
1,300	87.10	1280.77	398.90	814.00	651.20	866.67	75.14
1,400	93.80	1380.77	435.90	870.30	696.24	933.33	74.60
1,500	100.50	1480.77	472.90	926.60	741.28	996.00	74.43
1,600	107.20	1580.77	509.90	982.90	786.32	996.00	78.95

TAXABLE WAGE = AWW LESS $19.23
SPENDABLE WAGE = AWW LESS FICA AND 1983 TAX DEDUCTION

DIFFERENCE 2,823

7% DECREASE

HB

319

Introduced: 4/4/83
Referred: Labor & Commerce

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 319

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Municipal Bond Bank Authority; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 39.25.110(12) is amended to read:

(12) the executive secretary [AND LEGAL COUNSEL] of the Alaska Municipal Bond Bank Authority;

* Sec. 2. AS 39.25.120 is amended by adding a new paragraph to read:

(19) employees and agents, other than the executive secretary, of the Alaska Municipal Bond Bank Authority.

* Sec. 3. AS 44.85.040 is amended to read:

Sec. 44.85.040. OFFICERS, [AND] QUORUM, AND MEETINGS. (a) The directors shall elect one of their number as chairman. The directors shall elect a secretary and a treasurer who need not be directors, and the same person may be elected to serve both as secretary and treasurer. The powers of the bond bank authority are vested in the directors, and three directors of the bond bank authority constitute a quorum. Action may be taken and motions and resolutions adopted by the bond bank authority at any meeting by the affirmative vote of at least three directors. A vacancy in the directorship of the bond bank authority does not impair the right of a quorum to exercise all the powers and perform all the duties of the bond bank authority.

(b) The bond bank authority may meet and transact business by an electronic medium if (1) public notice of the time and locations where the meeting will be held by an electronic medium has been given in the

same manner as if the meeting were held in a single location; (2) participants and members of the public in attendance can hear and have the same right to participate in the meeting as if the meeting were conducted in person; and (3) copies of pertinent reference materials, statutes, regulations, and audio-visual materials are reasonably available to participants and to the public. A meeting by an electronic medium as provided in this subsection has the same legal effect as a meeting in person.

* Sec. 4. AS 44.85.070 is amended to read:

Sec. 44.85.070. STAFF. The bond bank authority shall employ an executive secretary who may with the approval of the bond bank authority select and employ additional staff as necessary. Employees and agents of the bond bank authority other than [LEGAL COUNSEL AND] the executive secretary are in the partially exempt [CLASSIFIED] service under AS 39.25. In addition to its staff of regular employees, the bond bank authority may contract for and engage the services of the bond counsel, consultants, experts, and financial advisors the bond bank authority considers necessary for the purpose of developing information, or conducting studies, investigations, hearings or other proceedings.

* Sec. 5. AS 44.85.100(b) is amended to read:

(b) The bond bank authority shall include in the report required by (a) of this section an estimate of the amount of revenue bonds of the bond bank authority to be issued during the fiscal year following the fiscal year in which the report is submitted [12-month period]. The bond bank authority may not issue revenue bonds, other than refunding bonds during any fiscal year [12 month period] beginning after June 30, 1981, unless the legislature, by law, approves the estimate required by this subsection for that fiscal year [12-month period].

* Sec. 6. AS 44.85.180(c) is amended to read:

(c) Notwithstanding the provisions of (a) and (b) of this section, the total amount of bond bank authority bonds and notes outstanding at any one time, except bonds or notes issued to fund or refund bonds or notes, may not exceed <u>$200,000,000</u> [$150,000,000].

* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

BILL SHEFFIELD
GOVERNOR

HB 319

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 31, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Alaska Municipal Bond Bank Authority.

The bill amends AS 39.25.110(12), 39.25.120 and AS 44.85 by deleting the words "legal counsel" and moving the authority's employees, other than the executive secretary (who is in the exempt service, under AS 39.25.110(12)), from the classified service to the partially exempt service (secs. 1, 2, and 4 of the bill), authorizing the authority to hold meetings by an electronic medium (sec. 3), and increasing bonding authorization from $150,000,000 to $200,000,000 (sec. 6).

AS 44.85.100(b) currently requires an estimate of the amount of bonds to be issued for the "following 12-month period." The amendment to that section, in sec. 5 of the bill, makes it clear that the estimate is for the fiscal year following the fiscal year in which the estimate is submitted and not for the 12-month period following the submission of the estimate.

Section 6 of the bill increases the limit on the total amount of outstanding bonds and notes from $150,000,000 to $200,000,000. The authority currently has only $18,000,000 left under its present statutory limitation, and it estimates that at least $60,000,000 worth of issues are now being developed. The increase to a $200,000,000 limit would allow the authority to operate for at least another year without the necessity for an additional adjustment to the statutory limit.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

SB 172

I. REQUEST

Bill/Resolution No.: HB 319
Title: Alaska Municipal Bond Bank Authority
Sponsor: Governor
Requestor: Office of Management & Budget

II. FISCAL DETAIL

Agency Affected: Revenue
Program Category Affected:
ERU, Program or Subprogram(s) Affected: Alaska Bond Bank Authority

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Mary Rehfeld
Division: Commissioner's Office
Phone: 465-2301
Date: 3/3/83

Approved by Commissioner: [signature]
Department: Revenue
Date: 3/3/83

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

HB 319

IV. ANALYSIS:

Page 272

Additional increase in bonding authority from $150 million to $200 million in Section 6 will require an appropriation for funds leveraging. Ten percent of the FY 84 borrowings must be backed up by leveraging reserves. A $30 million bond sale program will require $3.0 million in appropriations.

We have asked for $3.0 million in the Governor's Capital Budget to provide the reserve account for the $30.0 million worth of bonds.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

50 - MILLION AUTHORIZATION
RESERVE FUND
15 - MILLION

HOUSE LABOR AND COMMERCE COMMITTEE

April 19, 1983

-A-RATING
MUNICIPAL
BOND BANK
G.O. BONDS
REVENUE BONDS
- FOR UTILITIES
- 3 - MILLION
30 - MILLION DOLLARS
- 150 - MILLION IN
BONDS

To: Representative Walt Furnace, Chairman
House Labor & Commerce Committee

From: Jefferson B. Barry
Professional Aide

Re: House Bill 319

Introductory Analysis

House Bill 319 was introduced by the Governor and relates to the Muncicipal Bond Bank. The bill increases the bonding authorization by $50 million to $200 million, allow meetings to be conducted electronically, clarify reporting, and placing the employees of the authority in the partially exempt service.

*Section 1 of the bill deletes the words AND LEGAL COUNSEL from the current law. This means that if the authority were to hire (as staff) legal counsel that they would not be in the exempt service, but would be in the partially exempt service of the State Personnel Act.

*Section 2 of the bill places the employees in the partially exempt service.

*Section 3 of the bill provides a new section, AS 44.85.040 (b) which would allow the authority to meet and transact business by an electronic medium. This method of conducting meetings has been used by other agencies,

including Legislative Council, and potentially could be a cost effective and timely method of conducting meetings.

*Section 4 of the bill relates to staff. Last year, the authority requested to have these employee classifications placed in the partially exempt service through HB694. The testimony of the authority was that there were only employees of the authority (executive director and executive secretary) and there was no anticipation by the authority of hiring more employees in the next year. Legal work, financial advising, etc. was all done on contract and the authority was planning on continuing this method.

The legislature did not place the employee classifications in the partially exempt service for three main reasons. First, if employees are performing work which is of a nature to legitimately place them in the partially exempt service there is a mechanism for classifying them partially exempt under AS 39.25.130. Article XII, Section 7 of the Alaska Constitution requires the state to have a personnel system based on merit. Second, in view of declining state revenues, it was felt the authority should not, or have the potential to, become political in nature and scope. It was perceived that if all employees served at the pleasure of the Governor, then <u>all</u> employees would report, analyze, recommend, and testify consistent with the Governor's <u>policy</u> rather than on a sound fiduciary basis. The potential was that if the fiscal experts under contract made recommendations or advised action contrary to the Governor's policy, they could be replaced by in-house employees who serve at the pleasure of the Governor. Third, since there were no employees in these classifications and no stated intent to hire any, the legislature did not want to encourage additions to the bureauacracy, especially by providing positions which could be filled by political patronage.

*Section 5 of the bill is clarifying language which makes it clear that the estimate contained in the required report is for the following fiscal year.

*Section 6 of the bill increases the limit on the total of outstanding bonds and notes to $200,000,000 from $150,000,000.

HB

331

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

March 11, 1983

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

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

Dear Representative Adams:

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

The grants to which you refer are commonly known as designated grants and are governed by the provisions of AS 37.05.316 (Grants to Named Recipients). Another category of designated grant which is used to construct capital improvements in unincorporated communities is an Unincorporated Community Grant under AS 37.05.317. Because an unincorporated community is not a legal entity and therefore lacks the capacity to receive and administer a grant of public funds, AS 37.05.317(2) authorizes the Department of Community and Regional Affairs to make the grant to a private non-profit corporation or federally recognized tribal council which is representative of the unincorporated community. We recently expressed our view that construction contracted out by such an organization for an unincorporated community with grant funds provided by the state under AS 37.05.317 is subject to the provisions of the Little Davis-Bacon Act. 1982 Inf. Op.

03-C5LH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Ronald W. Lorensen
Deputy Attorney General

RWL:vrb

cc: Jim Robison
Commissioner
Department of Labor

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

THE ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.

SKILL
RESPONSIBILITY
INTEGRITY

BOX 4-2500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 276-5354
TELEX 25-394

3201 SPENARD ROAD
ANCHORAGE
RICHARD M. PITTENGER
MANAGER

April 22, 1983

The Honorable Walter R. Furnace
Chairman, House Labor and Commerce Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

RE: HB 331

Dear Representative Furnace:

The Alaska Chapter, Associated General Contractors of America, Inc., strongly supports the passage of HB 331. HB 331 clarifies existing law to assure that recipients of State public funds utilize procedures aimed at preserving the free enterprise system.

The proposed amendment to AS 37.05 is quite simple. Section (a) insures that recipients of public funds for the construction or repair of any public facility must advertise these projects and make an award to the lowest responsible bidder. Two unhealthy situations are avoided by utilizing competitive bids: (1) bias in the selection and award process and (2) force account work.

Bias or the appearance of bias in public contract awards should be avoided. The universally accepted method of assuring that no collusion exists between the contracting entity and the contractor is the competitive sealed bid process.

"Force Account" or "day labor" refers to public works construction done by a governmental body using public employees with equipment purchased or rented by that body, as opposed to a "hard dollar" contract.

Alaska Chapter, A.G.C., contends that the public interest is best served by the contract method of construction.

Private industry is ready and willing to provide the public sector with the services it needs, and will do so at a competitive price. Taxpayers will benefit from this healthy competition because their main interest is to save tax dollars, and to get the maximum return for every tax dollar invested. When government decides to produce its own goods and services, it not only prevents the private sector from earning government dollars, but it also denies itself revenue from the taxes private enterprise must pay.

The contract method of construction has numerous advantges. It establishes definite costs before construction begins; it prescribes a date for completion of the work; it ensures quality workmanship and material; and it provides centralized responsibility for the work.

The quality of workmanship and materials is guaranteed by the contract system. The materials which go into the project are prescribed in detail in the specifications and are subject to the approval of the owner. If, in the owner's opinion, the workmanship or the materials are not as specified, the owner can reject the work and order it redone at the contractor's expense.

It is also a practice of many owners to require that the contractor maintain the project in good condition for a period of time after completion. It is, therefore, to the contractor's economic interest -- and to the maintenance of his reputation -- that the quality of his work measure up to the prescribed standards.

Not only does the public receive higher quality construction projects when they are contracted out, but the public also receives more for its money. Through long experience, contractors become specialists in one or more particular fields of construction. They know their sources of supply; they know the capacity of their machines and the capability of their personnel. When preparing a bid, a contractor's competitive incentive requires that he give considerable thought to the problem of devising the best and most economical manner of doing the work. His specialized knowledge and experience obtained in the marketplace have been sharpened and are instrumental in saving the taxpayer money on the project.

The contract provides that the project be completed on a prescribed date. The contractor cannot receive final payment or the release of money that is retained while the work is progressing until the job has been completed and accepted -- all to the satisfaction of the owner. This factor, plus his own economic need to finish and get on to the next project, gives assurance to the public that the job will be completed on time and within contract price. Many times the contract (bid) price is lower than what the government expects to pay.

In addition to providing the most efficient and economical means of producing public works construction, contracting out provides a variety of other benefits to the public in the form of risk shifting, which cannot be obtained under in-house performance. Some of these risks which are allocated when construction is done by contract are:

- The public only pays for what it receives; work actually performed is the basis of payment.

- The price is firm and guaranteed by the contract, and the public has no risk of cost increases. All of the variables of the market place, such as increases in material prices, wages and shortages are borne by the private contractor.

- Timely completion is assured by a liquidated damage provision.

- Faithful performance is backed by performance and payment bonds.

- Risk of damage during construction is borne by the contractor, not the public.

- The contractor must "defend and hold harmless" the public against claims and must provide the public with insurance coverage.

- Quality inspection is at "arm's length" by independent inspectors.

- The final work is warranted and defects must be corrected at no expense to the public.

To take the risks away from the taxpayers and put them on a private contractor who, through his payment and performance bond, guarantees the job will be finished according to the terms of the contract, is worth a great deal in dollars. None of this protection of the public's interest exists when work is performed by a public agency with public equipment and personnel -- all of the risks are on the taxpayer.

Section (b) of HB 331 prohibits a recipient of State public funds from providing for preference to any local bidder unless that preference is established under AS 37.05.230(5). This provision eliminates local preference ordinances that provide preferences to contractors at the ity, city or borough level; however, a preference can be given to an bidders".

e above mentioned reasons, we urge your support of this Bill.

Sincerely,

ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS

Richard M. Pittenger
Manager

/bj

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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

☐ 225 CORDOVA STREET - BLDG B
ANCHORAGE, ALASKA 99501
PHONE: (907) 264-2294

April 20, 1983

POSITION PAPER

RE: HB 331

SPONSOR: House Labor and Commerce Committee

Program Effects of the Bill

This bill would make it mandatory that the recipients of all state grants for construction projects solicit bids for construction. It also allows those same recipients to give preference to in-state contractors.

Comments

The Department is concerned that this bill imposes a set of guidelines designed specifically for State Grants upon Municipal Government. In many cases these governments already have appropriate procedures in place.

Additionally, many municipalities currently use municipal employees on construction projects. This enables these municipalities to stretch State grant dollars. This bill would appear to prohibit that practice.

Mark Lewis, Commissioner

21-P1LH

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 331
Title: State Grants...bidding rqrmnts
Sponsor: HLC
Requestor: HLC

II. FISCAL DETAIL

Agency Affected: DCRA
Program Category Affected: Development
BRU, Program of Subprogram(s) Affected: LGAD, DCP

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard Rainey
Phone: 465-4703
Division: Commissioner's Office
Date: 4/21/83

Approved by Commissioner:
Date: 4/22/83
Department: DCRA

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

3/8/83

HB

338

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM January 27, 1983

SUBJECT: Payment of overtime
(HB 338)

TO: House Labor and Commerce Committee
Attn: Ken Johnson

FROM: Thomas A. Sofo
Legislative Counsel

You have asked this office for an analysis of HB 338.

Section 1 of the bill adds a new paragraph to AS 23.10.060, the Alaska statute which addresses the payment for overtime in this state. The numbered paragraphs currently in AS 23.-10.060 contain exemptions for certain employees or types of work from the general overtime law that requires work in excess of 40 hours a week or 8 hours a day to be compensated at one and one-half times the regular rate of pay. HB 338 would add one more exception to the list by exempting work performed by an employee under a trade work plan. Although I am not completely familiar with how these plans work, it is my understanding that employees are able to trade hours, or possibly days worked with one another for their personal convenience. The trading of hours or days under the bill would require the approval of the employer so that work operations were not unnecessarily disrupted. The result of some of these informal "trades" might be that certain employees would be working more than 8 hours in a given day or more than 40 hours in a calendar work week. These extra work days or hours be balanced off by time off on other days or weeks when the subject employee wanted to maximize his nonwork time. In theory the total number of hours worked by two employees who normally work 40 hours a week would not be greater than 80 hours a week, although one of the employees in a given week might have worked 48 of those hours while the other employee with whom he has traded a work day may have worked only 32 hours. As the hypothetical illustrates, the application of this plan has the potential to make an employer liable for overtime payment in a given day or week

even though the cumulative hours worked by the employees involved would not otherwise subject the employer to overtime liability. It is for that reason that an exception to the overtime provisions of AS 23.10.060 was necessary.

This statute would apply to those employees covered by AS 23.10.060. Apparently, the Department of Labor has decided to oppose HB 338 based on their understanding that it was requested by a business identified as Seair. Although the backup material is somewhat confusing on this point, the department believes that this bill would be in violation of the federal Railway Labor Act while at the same time also apparently recognizing that Seair is not necessarily covered by that Act. Because of this confusion you have requested an opinion concerning the relationship of this amendment to the Railway Labor Act, 45 U.S.C. 151 - 188. A good treatment of that subject is contained in the Opinion of the Attorney General, No. 7, April 15, 1980 which is cited following AS 23.10.060. As the opinion states, federal statutes do not expressly preempt the state in the subject matter area of overtime pay for air transportation employees. The federal Fair Labor Standards Act 29 U.S.C. 201 - 219, exempts from the operation of the mandatory overtime provisions of that act air carrier employees subject to the provisions the Railway Labor Act. The question before the attorney general was whether Alaska could pose its own mandatory overtime provisions on employees who were otherwise exempt from the federal mandatory overtime provisions.

As the Alaska Supreme Court has already recognized, provisions of the Alaska Wage and Hour Act which are more favorable to employees than federal law are not preempted by the Fair Labor Standards Act. Webster v. Bechtel, Inc., 621 P.2d 890. However, since 42 U.S.C. 213(b)(3) explicitly exempted employees which were covered by the federal Railway Labor Act, a specific analysis of that Act is necessary. As to the extension of the Alaska mandatory overtime provisions to air transportation employees, I am in agreement with the conclusions reached by the Attorney General in the opinion cited above. Those conclusions are as follows:

> "1. In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substantially related to the transportation activities of the carrier, and who are covered by a valid existing collective bargaining agreement or

agreements with the carrier, the State is precluded from applying its overtime laws due to the preemptive nature of the Railway Labor Act.

"2. In instances where no collective bargaining agreements apply, crews of interestate air carriers are nonetheless beyond the jurisdiction of state overtime law because of the commerce clause implications discussed above.

"3. Non-flight personnel of interstate carriers who are not covered by valid existing collective bargaining agreements are not exempt from state law. As to those individuals the provisions of state overtime law apply.

"4. Air carriers operating solely intrastate would not seem to fall under the exclusionary scope of either the Railway Labor Act or of the Commerce Clause absent unusual fact situations. Accordingly, the protections of the Alaska Wage and Hour Act dealing with overtime extend to those individuals."

Based on the above analysis, certain air transportation employees would be covered by the Alaska law regarding the payment of overtime, as well as the exceptions to that law. Those persons would be ground employees of interstate carriers who are not covered by collective bargaining agreements and all employees of air carriers operating solely intrastate. However, there remains one important issue. Although the above analysis has identified the scope of coverage of the Alaska Wage and Hour Act as it pertains to certain air transportation employees, it has not addressed the basic issue of whether trade work programs are preempted by the federal Fair Labor Standards Act. The Fair Labor Standards Act only requires the payment of overtime for time worked in excess of 40 hours in a work week, 29 U.S.C. 207, while the Alaska statute requires overtime pay for time worked in excess of 40 hours a week or 8 hours a day. To the extent that the state has a higher minimum standard as to hours per day, it is free to tailor an exception to that standard based on trade work plans. However, if under a situation such as the hypothetical above, see page 2, the result of the trade work plan is that an employee works more than 40 hours in a given week without receiving overtime, the plan would violate the federal law as to those workers covered by the federal statute. Guaranteed weekly pay and fluctuating work week plans must meet the standards set

forth in the federal statute and are inapplicable in this instance. 29 C.F.R. 402-778.414 and 29 C.F.R 778.114.

The trade work plan is not preempted by federal law if in its application certain employees work more than 8 hours in a day. The plan is possibly preempted by federal law only to the extent certain employees might work more than 40 hours in a given week without receiving overtime compensation for those hours in excess of 40.

TAS:ojb
J3/011

1

1984 JAN 31 PM 2 19

IPNRFUB AHQ

4-047102E031 01/31/84

ICS IPNRNCZ CSP

SUSPECTED DUPLICATE

CLARCOR, INC.
PHONE: 278-3306
JUNEAU, AK 99802

3U84-40133 TDRN SACRAMENTO CA 61 01-31 0552P EST

PMS DWIGHT PERKINS, RUSH

245 MARINE WAY NO.7

JUNEAU AK 99801

THIS IS YOUR COPY OF MESSAGE SENT TO REPRESENTATIVE JOHN J CONDERY

REQUEST YOU HOLD OPEN THE RECORD REGARDING TESTIMONY OF I.A.P.M.O.
OFFICIAL ON PERMANENT LEGISLATION FOR UNIFORM PLUMBING CODE AND
RESEARCH DIRECTORY CONCERNING THE USE OF PLASTIC PIPE FOR DRINKING
WATER.

LOS ANGELES SUPERIOR COURT EXTENDED AND MADE PERMANENT THE
INJUNCTION. COURT ORDER TO FOLLOW

RAYMOND J. LEONARDINI, GENERAL COUNSEL CALIFORNIA PIPE TRADES
COUNCIL OF THE UNITED ASSOCIATION

1314 EST

IPNRFUB AHQ

Bill No. House Bill 338

Date January 27, 1984

Title "An Act relating to the payment of overtime; and providing for an effective date."

Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

This legislation amends the law relating to the payment of overtime to exclude work performed by an employee under a trade work plan from the law requiring the payment of overtime for more than 40 hours of work a week. A trade work plan allows an employee to trade hours or days worked with another employee with the approval of the employer.

This bill does not take into consideration a number of factors. One of the basic principles of premium pay for overtime is to inhibit employees from working excess hours. The federal government, in order to set the standard, enforces the Safety Law, the Eight Hour Law, and the Workweek Law on all government contracts whether they be for construction, service, or manufacturing. These laws are intended to deter the employer from attempting to circumvent the laws designed to protect the employees' rights to healthy and profitable employment.

Even if this law were passed, any employer who attempted to practice a "trade work plan" would find himself in violation of federal law the first time an employee worked more than forty hours in one week, unless overtime were paid or otherwise exempted. If this legislation is intended to permit employees to trade shifts or workdays in the fashion of let's say, "I'll work for you on Tuesday, which is my day off, if you will work for me on Monday, which is your day off," then there is no need for such legislation. If, however, the intent is to allow me to work your shift for you after I have already worked mine on any given day of the week, then we have a situation where an employer can use any number of forms of economic leverage to make an employee work beyond the statutorily permitted number of hours, to the determent of the employee while enriching the employer. Keep in mind that the basic philosophy of the overtime law was to penalize the employer each time he permitted an employee to work past the regular workday or workweek.

Such a scheme has long been recognized as generally detrimental to the work force. The overtime laws were intended as a remedial labor legislation specifically to preclude such schemes in the workplace.

The department is opposed to this legislation. A zero fiscal note has been prepared.

APPROVED:

Jeri Robinson
Commissioner

POSITION PAPER/Department of Labor

OPINION NO. 7

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

420 "L" STREET, SUITE 300
ANCHORAGE, ALASKA 99501
(907) 276-3550

April 15, 1980

The Honorable Edmund Orbeck
Commissioner
Department of Labor
P.O. Box 1149
Juneau, AK 99811

Re: Enforcement of Alaska Overtime Laws with Respect to Air Carriers in Alaska
AS 23.10.060
A66-102-80

Dear Commissioner Orbeck:

You have inquired whether the Department of Labor may enforce the mandatory overtime provision of the Alaska Wage and Hour Act (AS 23.10.060-150) with respect to employees of air carriers operating within the State of Alaska. The answer to your question depends upon the nature of the employer's business, the nature of work performed by the individual employee, the existence or nonexistence of a valid collective bargaining agreement between the employer and its employees, whether the air carrier operates intrastate or interstate, and finally, whether the application of state law would create a burden upon interstate commerce.1/

1/ Specifically not addressed in this memorandum is the question of whether by the use of "flex-time contracts", an employer may avoid the mandatory payment of overtime to those employees who work irregular weekly or daily hours. That issue is currently before the Supreme Court of Alaska in the case of State of Alaska v. Bechtel, Inc., Supreme Court No. 4139. See also, Attorney General's Opinion dated February 10, 1978.

I

THE RELATIONSHIP BETWEEN THE FEDERAL FAIR LABOR STANDARDS ACT AND THE ALASKA WAGE AND HOUR ACT

The Federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219, specifically exempts from the operation of the mandatory overtime provision (§ 207) "any employee of a carrier by air subject to the provisions of §§ 181-188 of Title 45" 29 U.S.C. § 213(b)(3). The Alaska Wage and Hour Act, AS 23.10.050 et seq. contains no such exemption.2/

In passing the Fair Labor Standards Act Congress did not intend to foreclose all attempts by the individual states to regulate wages and hours. The Act itself states that none of its maximum hours provisions operates to excuse noncompliance by employers with any state law which establishes a higher standard. It is only where the standards set by the FLSA are higher than the comparative state standards that the Act serves to preempt the state activity. H.R. Rep. No. 2182 at 15 (75th Cong.). See also Eastern Sugar Associates v. Pena, 222 F.2d 934 (1st Cir. 1955); Rivera v. Div. of Industrial Welfare, 71 Cal. Rptr. 739 (1968); 29 C.F.R. § 778.5. Thus, merely because the federal law exempts airline employees

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2/ The Alaska Act, which is based upon the Federal Fair Labor Standards Act, McGinnis v. Stevens, 543 P.2d 1221, 1238 (Alaska 1975), originally contained the airline exemption. (Sec. 3, ch. 171 SLA 1959.) However, the Act was amended in 1970 to eliminate that exemption. (Sec. 1, ch. 243 SLA 1970, effective October 31, 1970.)

from mandatory overtime entitlement, it does not follow automatically that the state law must do likewise. Here, the State seeks to compel air carriers to pay overtime to those employees who have worked in excess of eight hours per day or 40 hours per week. Clearly, the State act has set a standard which is considerably higher than the comparative federal provision since the federal law does not contain an eight hour work day limitation.

Accordingly, in light of the authority recited above, and consistent with the State of Alaska's current position in State of Alaska v. Bechtel, Inc. Supreme Court No. 4139, presently pending before the Alaska Supreme Court, we feel that the Fair Labor Standards Act does not expressly preempt the Alaska Wage and Hour Act on the question of whether airline employees are excluded from the mandatory overtime directive of AS 23.10.060. A substantial question remains, however, as to whether the State Act has been nonetheless preempted through enactment and operation of the Federal Railway Labor Act, 45 U.S.C. §§ 151-188.

II

THE RELATIONSHIP OF THE RAILWAY LABOR ACT TO THE ALASKA WAGE AND HOUR ACT

There are two conflicting lines of reasoning concerning the impact of the Railway Labor Act upon attempted state regulation of wages and hours in industries subject

Railroad Co., 372 U.S. 284 (1963); Baltimore & Ohio Railroad Co. v. Commonwealth of Pennsylvania, 334 A.2d 636 (Pa. 1975), app. dism'd for want of subs. fed. ques., 423 U.S. 806 (1975); Gibbons v. Kansas City Southern Railway Co., 34 CCH Labor Cases, ¶ 71,276, 100 So.2d 319 (La. 1957).

In 1957, the United States Supreme Court had occasion to again examine the relationship between the Railway Labor Act and the regulation by states of working conditions in affected industries. California v. Taylor, 353 U.S. 553 (1957) involved the question of whether the Railway Labor Act operated to require that the terms of a collective bargaining agreement between a state-owned and operated railroad and its employees would prevail over conflicting provisions of state civil service law. The Court held that it did. Terminal Railroad Association v. Brotherhood of Railroad Trainmen, supra, was definitively distinguished. The Court stated that the state regulation in Terminal had withstood challenge because it was directed at the establishment of regulations governing safety and health and was not concerned with the right secured by federally protected collective bargaining. 353 U.S. at 560. Accordingly, it was outside of the scope of the Railway Labor Act. In Taylor, on the other hand, the state was attempting to regulate working conditions not specifically or directly connected to the maintenance of health or safety, in contra-

vention of an express collective bargaining agreement. That practice was not permissible, said the Court, since by means of the Railway Labor Act, Congress had preempted the field of employer-employee bargaining agreements in all "affected industries". The key factor is the existence of a valid collective bargaining agreement. Where such an agreement exists, its terms must prevail over inconsistent state legislation. See also United Airlines, Inc. v. Industrial Welfare Commission, 28 Cal. Rptr. 238 (1963); Railway Employees' Department v. Hanson, 351 U.S. 225 (1951); Pan American World Airways v. Division of Labor Law Enforcement, 203 F. Supp. 324 (N.D. Cal. 1962).

It would seem to us that the Taylor line of cases is more clearly controlling in this instance. In attempting to compel the payment of overtime by interstate air carriers to employees covered by collective bargaining agreements which provide otherwise the State is interfering with an agreement which has "the imprimatur of federal law upon it". Railway Employees' Department v. Hanson, 351 U.S. at 232. In doing so, the State has run afoul of the preemptive provisions of the Railway Labor Act. Insofar as the Alaska Wage and Hour Act operates to require the payment of overtime to affected employees of interstate air carriers covered by valid collective bargaining agreements, that Act is invalid since it

has been preempted by the Railway Labor Act. We must still ascertain, however, which employees are "affected" so as to be exempt from the operation of state law.

III

ACTIVITIES WHICH FALL
WITHIN THE AIR CARRIERS EXEMPTION

The inclusion of air carriers (and their employees) within the scope of the Railway Labor Act is found in subch. II of that Act, 45 U.S.C. §§ 181-188. Section 181 provides:

> All of the provisions of subchapter I of this chapter except section 153 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

Clearly, any commercial airline operating into or out of Alaska falls within the language of the Railway Labor Act. Equally clearly, pilots (expressly) and other members of the flight crew (by implication) are covered by the air carrier provisions of the Railway Labor Act and thus fall outside the purview of the Alaska Wage and Hour Act, at least insofar as the payment of overtime is concerned. However, application of the Railway Labor Act to any other employees of an air carrier depends upon an analysis of sec. 181 of the federal act and specifically upon the definition of the term "employee"

contained therein.

The Railway Labor Act was enacted for the purpose of avoiding the interruption of commerce caused by labor disputes and of assuring unimpeded continuity of transportation operations. Williams v. Jacksonville Terminal Co., 315 U.S. 586 (1942), reh. denied, 315 U.S. 830 (1942); National Airlines, Inc. v. International Association of Machinists & Aerospace Workers, 308 F. Supp. 179 (S.D. Fla. 1970), rev'd on other grounds 430 F.2d 957 (5th Cir. 1970), cert. denied 400 U.S. 992 (1971); Pan Am World Airways, Inc. v. United Brotherhood of Carpenters & Joiners of America, 324 F.2d 217 (9th Cir. 1963), cert. denied 376 U.S. 964 (1964). To that end the Railway Labor Act has direct application only to those employees of the carrier whose work bears a direct relationship to the transportation activities of the carrier. International Longshoremen's Association, AFL-CIO v. North Carolina State Port Authority, 370 F. Supp. 33 (E.D.N.C. 1974), aff'd, 511 F.2d 1007 (4th Cir. 1974); Roland v. United Airlines, Inc., 75 F. Supp. 25 (N.D. Ill. 1947). The mere fact that some of an employer's activities are related to transportation does not automatically subject all of that employer's activities to the Railway Labor Act. Instead, each activity must be scrutinized individually to see if the specific activity bears the necessary relation to transportaion. Jackson v. Northwest

Airlines, 70 F. Supp. 501 (M.D. Minn. 1947), aff'd 185 F.2d 74 (8th Cir. 1950), cert. denied 342 U.S. 812 (1951). Whether a particular employment situation satisfies the requisite nexus test is a question of fact which must be separately examined in each case. Edwards v. Southern Railway Co., 258 F. Supp. 212 (E.D. N.C. 1966).

Therefore, the Department of Labor is well advised to closely investigate and analyze each employee's activity in order to ascertain whether the activity bears a substantial and direct relationship to the transportation activities of the employer. Any employment activities which fail to satisfy this requirement fall outside of the coverage of sec. 181 of the Railway Labor Act and thus are subject to state regulation unless the attempted regulation is otherwise barred by operation of the Commerce Clause of the United States Constitution.

IV

COMMERCE CLAUSE RAMIFICATIONS

Art. I, sec. 8, cl.3 of the United States Constitution confers upon Congress the power "to regulate commerce with foreign nations, and among several states, and with the Indian tribes." Since there is a national interest in the free flow of interstate commerce, Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824); Bibb v. Navaho Freight Lines, Inc., 359 U.S. 520 (1959), the Supreme Court, under the auspices of the Commerce Clause, will strike down any state law which serves to substantially

impede that national interest. Southern Pacific Company v. Arizona, 325 U.S. 761 (1945). Under the Commerce Clause states have full unbridled regulatory authority over intrastate systems. Gibbons v. Ogden, supra. Interstate, however, a state has no regulatory authority except when exercised for the purpose of advancing a judicially recognized legitimate local interest and only so long as the regulation does not unduly burden interstate commerce. The paramount recognized legitimate state interest is the state's management of the health and safety of its citizens. Smith v. Alabama, 124 U.S. 165 (1888). However, in cases where an impediment to the free flow of commerce results from the state's enforcement of its own laws, the monetary or economic interests of the state of her citizens are not recognized legitimate local interests sufficient to withstand Commerce Clause challenges. Hood & Sons v. Dumond, 336 U.S. 525 (1949).

The impact upon interstate commerce of the regulation of the working hours of pilots and flight crews by individual states is obvious. Since the planes themselves move interstate competing or conflicting state laws governing work hours could result in substantial administrative and operational difficulties. Such problems, in turn, could jeopardize the smooth flow of interstate air carriage. State regulation of support personnel (that is to say employees other than flight

crews), however, would not appear to have such a direct and potentially burdensome impact upon commerce. In situations where the states are not preempted from exercising regulatory authority, the state's interest in the welfare of its citizens is entitled to greater weight. Southern Pacific Company v. Arizona, 325 U.S. at 767. In such a case courts traditionally have balanced the strength of the local interest against the impact upon interstate commerce. Pike v. Bruce Church, Inc., 397 U.S. 137 (1970). Where the state interest is substantial, attempted regulation does not interfere with the national commerce, and no less restrictive alternative exists, the state law may be upheld. Southern Pacific Company v. Arizona, supra; Dean Milk Co. v. City of Madison, 340 U.S. 349 (1951). Such would seem to be the case where non-flight personnel are concerned. For the State to apply the protections of its wage and hour laws to such employees would not appear to result in any undue burden upon interstate commerce.

V.

CONCLUSION

In summary the following principles appear to be valid with respect to the authority of the Alaska Department of Labor to enforce the mandatory overtime provisions of the Alaska Wage & Hour Act in favor of employees of airlines and air carriers operating within the State of Alaska.

1. In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substantially related to the transportation activities of the carrier, and who are covered by a valid existing collective bargaining agreement or agreements with the carrier, the State is precluded from applying its overtime laws due to the preemptive nature of the Railway Labor Act.

2. In instances where no collective bargaining agreements apply, crews of interstate air carriers are nonetheless beyond the jurisdiction of state overtime law because of the commerce clause implications discussed above.

3. Non-flight personnel of interstate carriers who are not covered by valid existing collective bargaining agreements are not exempt from state law. As to those individuals the provisions of state overtime law apply.

4. Air carriers operating solely intrastate would not seem to fall under the exclusionary scope of either the Railway Labor Act or of the Commerce Clause absent unusual fact situations. Accordingly, the protections of the Alaska Wage and Hour Act dealing with overtime extend to those individuals.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Eric Olson
Assistant Attorney General

ems

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: November 30, 1983

REQUEST
Bill/Resolution No.: HB 338
Title: "...Payment of overtime..."

Sponsor: Representative Fritz
Requestor: Judiciary, Labor, & Comm.
Date of Request: April 25, 1983

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Worker Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: NB Robert J. Bacolas by bs — Robert J. Bacolas, Sr. — Phone: 465-4870
Division: Labor Standards & Safety — Date:

Approved by Commissioner: NB Jim Robison — Jim Robison — Date: 12/13/83
Agency: Labor

LEG:A:9
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HB

341

HB 341 #9
SB 244

ALASKA STATE LEGISLATURE
FOUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

MEMORANDUM

TO: Chairman, Alaska Legislative Council

FROM: John W. Abbott, Chairman
Alaska Code Revision Commission

DATE: March 17, 1983

RE: Bill on security interests in real property

Pursuant to the authority granted in AS 24.20.075(c), the Alaska Code Revision Commission has prepared the attached bill on security interests in real property. It was introduced in the legislature through the Legislative Council in 1981 as House Bill 403. That bill did not move out of the House Judiciary Committee, its first committee of reference, and no committee hearings were scheduled on it. The apparent reason was opposition to proposed AS 34.21.060, a section that is deleted from the attached bill. That section dealt with clauses in home purchase contracts that permit the entire balance of purchase price to be declared due when the home is sold. During the commission's work on the draft this "due-on-sale" section of the bill took various forms and received much comment, especially from financial interests. Controversy over the section diverted attention from the main substance of the bill. Without it, the bill should receive consideration from legislative committees on its merits.

The bill covers the relationship, rights, and remedies of debtor and creditor in secured real property transactions. It resulted from the commission's general review of real property law in Title 34 and a conviction that some revision is desirable.

The main sources drawn upon in preparing the bill are the existing Alaska law on deeds of trust, the Uniform Commercial Code, the Washington law on nonjudicial foreclosure, and the Uniform Land Transfers Act. That Act has not been adopted as a whole in any state.

A commentary on the bill as revised is attached also.

JWA:chw
Attachments
cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

SB 477

MARCH 1983

ALASKA CODE REVISION COMMISSION

COMMENTARY TO ACCOMPANY

DRAFT BILL ON SECURITY INTERESTS IN REAL PROPERTY

BILL NO.

General Features of the Bill

The attached bill prepared by the Alaska Code Revision Commission is an effort to bring into secured real property transactions some of the same principles that govern secured personal property transactions under the Uniform Commercial Code. The bill covers the broad area of relationships, rights, and remedies of debtor and secured creditor. The state law on summary foreclosure of deeds of trust would be superseded, but not drastically changed. In cases where foreclosure under a power of sale is required, the bill makes possible a commercially reasonable resale by listing and sale through a real estate agent, in order to avoid the disasterous forced-sale prices often received at public auction.

The bill was introduced in the Twelfth Legislature as HB 403. Action was not taken on it. All attention focused on a relatively minor part of the bill, a section limiting the use of "due-on-sale" clauses in security agreements for the purchase of a home. That controversial section, readily separable from the body of the bill, is not included in the present form of the bill and has largely been preempted by recent federal and state statutes and regulations (sec. 341, Garn-St. Germain Depository Act of 1982, P.L. 97-320, 12 U.S.C., § 1701 j-3; 12 U.S.C. § 371(g); 12 C.F.R. § 548.8-4(f); AS 06.01.020; AS 18.56.098(e); 15 AAC 118.267).

Persons familiar with the present Alaska law on both

real and personal property should find the bill a natural development. The vast majority of real property sales are now financed by deeds of trust. Most departures in the bill from present practices under deeds of trust are not great. The main changes occur where needed to permit additional kinds of sales of collateral in cases of default. The bill makes deed of trust foreclosure procedures applicable to mortgages and contracts of sale. Under present law mortgages are more difficult to foreclose than deeds of trust, for no logical reason, and there are no statutory guidelines for foreclosing contracts of sale, which has resulted in substantial litigation at both the superior court and supreme court level (e.g., Lonas v. Metropolitan Mortgage and Securities Co., 432 P.2d 603 (1967); Moran v. Holman, 501 P.2d 769 (1972); Curry v. Tucker, 616 P.2d 8 (1980); Wickwire v. McFadden, 633 P.2d (1981); Strack v. Miller, 645 P.2d 184 (1982); additional cases are summarized in Department of Revenue v. Baxter, 486 P.2d 360 365 n.10).

A bill of this kind must specify procedures to be followed and forms to be used in carrying out the procedures. The procedures to be followed before sale in a summary foreclosure are set out in the bill in AS 34.21.110--34.21.150. These sections are followed by AS 34.21.160--34.21.170 which specify the content of forms that are to be used. Since the forms are designed to advise the defaulting debtor of his rights and to inform him of the procedures that will be followed, they cover some of the same material that is set out in the preceding substantive sections. AS 34.21.100 in the bill explains this relationship between the sections.

A contents page and a comparison of time elements and steps from default to sale under existing law and under the bill are attached here for ready reference. (See next 3 pages)

CHAPTER 21. SECURITY INTERESTS IN REAL PROPERTY

Sec. 34.21.010. POLICY AND SCOPE
Sec. 34.21.020. TRANSACTIONS EXCLUDED
Sec. 34.21.030. WHERE COLLATERAL NOT OWNED BY DEBTOR
Sec. 34.21.040. REQUEST FOR STATEMENT OF ACCOUNT
Sec. 34.21.050. ALIENABILITY OF DEBTOR'S RIGHTS
Sec. 34.21.060. NOTIFICATION OF ASSIGNMENT
Sec. 34.21.070. RELEASE OF SECURITY INTEREST
Sec. 34.21.080. REMEDIES OF SECURED PARTY
Sec. 34.21.090. REQUIREMENTS FOR SUMMARY FORECLOSURE
Sec. 34.21.100. PROCEDURE BEFORE SALE
Sec. 34.21.110. TRANSMITTING AND POSTING NOTICE OF DEFAULT
Sec. 34.21.120. RECORDING NOTICE OF INTENT TO SELL
Sec. 34.21.130. TRANSMITTING, POSTING, AND PUBLISHING NOTICE OF INTENT TO SELL
Sec. 34.21.140. TRANSMITTING FURTHER INFORMATION ABOUT SALE
Sec. 34.21.150. MANNER OF TRANSMITTING NOTICE
Sec. 34.21.160. CONTENT OF NOTICE OF DEFAULT
Sec. 34.21.170. CONTENT OF NOTICE OF INTENT TO SELL
Sec. 34.21.180. CURING DEFAULT BEFORE SALE; EXTINCTION OF DEBTOR'S RIGHT TO CURE
Sec. 34.21.190. MANNER OF SALE
Sec. 34.21.200. PURCHASE OF COLLATERAL BY LIENHOLDER
Sec. 34.21.210. PROCEDURE AFTER SALE
Sec. 34.21.220. EFFECT OF SALE
Sec. 34.21.230. DISPOSITION OF PROCEEDS OF SALE
Sec. 34.21.240. SECURED PARTY'S LIABILITY FOR FAILURE TO COMPLY; ENJOINING SALE
Sec. 34.21.250. GENERAL VALIDITY OF SECURITY AGREEMENT
Sec. 34.21.260. WAIVER OF RIGHTS
Sec. 34.21.270. DEFINITIONS

Other Amendments:

Sec. 06.05.175. DEPOSITOR AND CUSTOMER RECORDS CONFIDENTIAL
Sec. 09.45.170. JUDGMENT ON FORECLOSURE OF LIEN

Repeal of AS 09.45.200 and AS 34.20.010--34.20.135

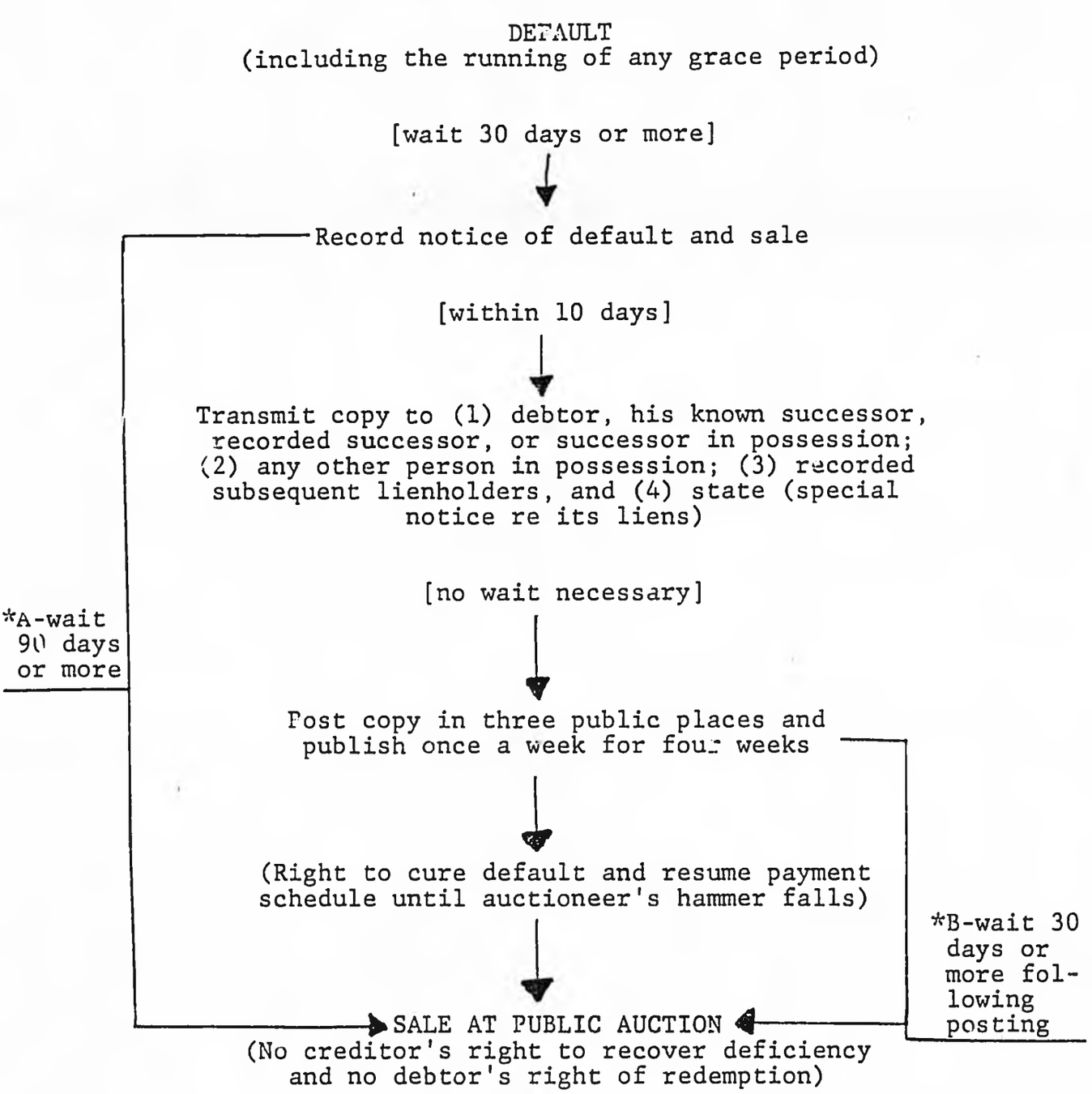
Transitional provisions

Effective date

STEPS IN SUMMARY FORECLOSURE

UNDER EXISTING SECTIONS 34.20.070 - 34.20.135

(Deeds of Trust)



Minimum time between the end of a grace period for receipt of payments and the date of sale: 120 days.

* A and B time lapse is used depending upon which brings one to a later sale date.

STEPS IN SUMMARY FORECLOSURE
UNDER PROPOSED SECTIONS 34.21.090 - 34.21.280

(Any security agreement containing a power of sale)

DEFAULT

[wait 30 days or more]

↓

Transmit notice of default
[to (1) debtor or his successor
and (2) occupants]

[wait 30 days or more]

↓

Record notice of intent to sell

[no wait necessary]

↓

Transmit notice of intent to sell [to (1) debtor and any other person with known or recorded interest in the collateral; (2) an attorney shown in a lis pendens, and (3) the Attorney General with special notice re state liens], post it on the collateral and start publication of it once a week for 3 weeks

*A-wait 60 days or more

[no wait necessary]

↓

Notice of time and place of public sale or time after which private sale will be made (this separate notice is not necessary if it was included in notice of intent to sell)

*B-wait 45 days or more following transmittal posting and start of publication

[wait 10 days or more]

↓

SALE

(No creditor's right to recover deficiency and no debtor's right of redemption)

Minimum time between the end of a grace period for receipt of payments and the date of sale: 120 days.

* A and B time lapse is used depending upon which brings one to a later "sale" date.

The date for "sale" shown here is also the last date for curing a default and resuming the regular payment schedule (a "simple" cure). The sale may be held later as a public sale or a "commercially reasonable" private sale, but after the final date for a simple cure, the sale can be stopped only by paying the full principal, interest and costs.

Section Analysis

Following are source notes and brief comments on the sections, where appropriate. In the source notes and comments the Uniform Commercial Code, AS 45.01--45.09, is referred to as the UCC. The Uniform Land Transactions Act is referred to as the ULTA and the Uniform Simplification of Land Transfers Act is referred to as the USLTA. The Revised Code of Washington Annotated is referred to as RCWA.

Section 1

COMMENT: This section states the general purposes of the Act.

Section 2

AS 34.21.010

SOURCE: (a) is from AS 45.09.102; (b) is from AS 45.09.202; (c) is part of the ULTA § 3-103(7) and USLTA § 1-201.

COMMENT: (a) is intended to allow a court to find a transaction subject to this chapter even though there is no documentary evidence of the parties' intent. The Supreme Court of Alaska has made it clear this is our present law. Brand v. First Fed. Sav. and Loan, 478 P.2d 820 (1970); Dept. of Revenue v. Baxter, 486 P.2d 360, 365 (1971).

The material in (c) was included as part of the definition of "security interest" in the referenced uniform acts. The general subject matter of .010 is covered in ULTA § 3-102.

AS 34.21.020

SOURCE: AS 45.09.104(8).

COMMENT: The exclusion in this section is consistent

with the definition of "security interest" as a "consensual" interest.

AS 34.21.030

SOURCE: AS 45.09.112.

COMMENT: This section is designed to protect the real party in interest. Its effect is similar to that of existing law, which requires the trustee to send a notice of sale "where the trustee or beneficiary has actual notice of the lien or interest." AS 34.20.070(c)(3).

AS 34.21.040

SOURCE: This section was taken from ULTA § 3-209 which is based upon § 9-208 of the UCC (AS 45.09.208). Language is added to allow a debtor to request statements from the bank to which he actually makes his payments.

COMMENT: Existing law makes no provision for such a statement, although the common practice is for statements to be sent even though not requested.

Liability is imposed on the person failing to comply with the request only if he lacks a "reasonable excuse."

The bill gives the holder of a subordinate security interest like a second deed of trust the right to get from the trustee or beneficiary on a first deed of trust a statement of account on the obligation secured by the first deed of trust. The duty placed on the secured party or his agent bank to provide information would create an exception to the strict confidentiality of bank records under AS 06.05.175. Section 3 near the end of the bill specifically amends that section.

AS 34.21.050

SOURCE: AS 45.09.311.

COMMENT: This section is verbatim from the UCC. It is to make clear that in all secured real property transactions the debtor has an interest which the debtor can dispose of and which the creditors of the debtor can reach.

The section does not preclude a security agreement provision which makes a transfer a default but merely prevents such a provision from having the effect of prohibiting transfer. The transfer would be subject to the security interest.

AS 34.21.060

SOURCE: AS 45.09.405(c).

COMMENT: Existing law deals with the subject of this section only by providing that recording an assignment of a mortgage is not in itself notice to the debtor of the assignment. AS 34.20.010. In contrast, AS 34.20.130 provides that recording an assignment of the beneficial interest in a deed of trust is "constructive notice to all persons." (When the assignor acts as the assignee's agent to receive payments following the assignment, this section could be ignored.)

AS 34.21.070

SOURCE: The section is based upon AS 45.09.404(a), § 9-404(1) of the UCC.

COMMENT: The section requires the secured party to pay the debtor both a fixed sum of $500 and his actual damages if he fails to provide the statement within 15 days after demand. This is the UCC provision, substantially, except the UCC requires the statement within 10 days and the dollar penalty is $100.

AS 34.21.080

SOURCE: AS 45.09.501(a), with major changes.

COMMENT: The commission saw no reason to restrict the secured party from proceeding with judicial and nonjudicial remedies simultaneously. The section follows generally UCC sec. 9-501(1) which provides that remedies shall be cumulative.

The section is subject to the court's authority to consolidate actions and to require marshaling of assets. As with existing law on nonjudicial foreclosure, AS 34.21.220(d) in the bill provides that there is no right to recover a deficiency after sale in a nonjudicial foreclosure.

AS 34.21.090

SOURCE: RCWA 61.24.030.

COMMENT: The last phrase, "or another person," in subparagraph (1) is intended to insure that deeds of trust continue to be summarily foreclosed.

All of the requirements of this section are also in existing law. AS 34.20.070(a) and (b).

AS 34.21.100

SOURCE: Original drafting.

COMMENT: This section is a guide to the balance of the chapter. It is to make clear that secs. 110 through 150 cover the pre-sale procedures and time elements for power-of-sale foreclosure, and that secs. 160 and 170 only establish the content of the principal notices, i.e., the notice of default and the notice of intent to sell.

AS 34.21.110

SOURCE: RCWA 61.24.030.

COMMENT: This section repeats the present rule that proceedings cannot begin until 30 days after the default.

As under existing law, notice is sent to the debtor. The requirement of service on an occupant is new to Alaska Statutes, but almost certainly required by common law.

AS 34.21.120

SOURCE: RCWA 61.24.040(1)(a).

COMMENT: Existing law requires a notice of default which includes a notice of time and place of sale. The proposed section requires a simple notice of default followed, if necessary, by a formal notice of intent to sell which is recorded. If a sale becomes necessary, sec. 150 requires that an informal notice giving further information as to the sale be provided to interested parties.

AS 34.21.130

SOURCE: (1)(A) is from RCWA 61.24.040(b); (1)(B) is from RCWA 61.24.040(c); (2) is from AS 34.20.070(d); (3) is from RCWA 61.24.030; and (4) is from AS 09.35.140(2). There are changes from the original forms.

COMMENT: The initial notice of default should be relatively inexpensive for the secured party to send out, unlike the currently used notice of default which requires a record search. The more expensive notice of intent to sell goes out only if the debtor fails to cure within 30 days of the first notice. Since the debtor pays costs and attorneys fees when he cures under both present law and the proposed section, this provision should save the debtor considerable money.

Subparagraph (2) continues the present rule requiring that the state be given particular information as to the liens it has on the collateral.

Posting on the collateral of notice of intent to sell is required.

Subparagraph (d)(3) changes the present publishing requirement which is hidden in AS 09.45.180 and 09.35.140(2) from four to three weeks. But the time between the first publication and the sale must be at least 45 days.

AS 34.21.140

SOURCE: Original drafting.

COMMENT: This section includes provision for giving notice of time and place or manner of sale to all those who received the notice of intent to sell and to all those who have asked to be notified.

AS 34.21.150

SOURCE: Original drafting.

COMMENT: The section clarifies intent.

AS 34.21.160

SOURCE: Paraphrased from RCWA 61.24.030(6).

COMMENT: This section requires that when a secured party declares a debtor in default, he fully informs him the basis of the default, what he must do to cure the default and the consequences if he fails to cure it. It requires a clear warning to the debtor that his rights in the collateral will be cut off under sec. 180(g) if he fails to cure within the required time.

AS 34.21.170

SOURCE: RCWA 61.24.040(f), with many changes.

COMMENT: The notice set out in this section corresponds to the existing notice of sale, except that this notice need not contain the time, place, and manner of the sale. When it does not contain this information, the debtor and interested parties will be advised of specifics as to the sale by a later notice. The later notice will also go

out to all other persons who have written to the person designated in the notice expressing an interest and providing a mailing address.

AS 34.21.180

SOURCE: (a) is from RCWA 61.24.090(b)(1); (b) and (c) are paraphrased from AS 34.20.070(b); (d) is original drafting; (e) is from RCWA 61.24.090(b)(2) and (4); (f) is from RCWA 61.24.090(b)(5); (g) and (h) are original drafting.

COMMENT: Subsection (a) essentially restates existing law, except that it explicitly allows cure by persons other than the debtor.

Subsection (b) sets a time limit within which cure must be made. After the expiration of that time period, cure can only be made by tendering the full amount of indebtedness under (d).

Subsection (c) limits to two the number of times the debtor will be permitted to cure after the second step toward foreclosure has been reached. By subsection (c) the debtor is limited in the number of times he can reinstate the security agreement after defaulting and permitting foreclosure to reach the last stage before sale.

Subsection (d) is intended to ameliorate the harshness of (g), which cuts off the debtor's right to cure in order to maximize the purchase price at the foreclosure sale. The debtor may rescue his home at any time before the sale by paying the entire default, including the accelerated amount.

Subsection (e) applies to cures the rule currently applicable to post-sale redemption, which is that a creditor who rescues the debtor acquires a lien for the amount spent on the rescue.

Subsection (f) is designed to provide a clear record for the title searcher. If the secured party's failure to record the required notice after cure causes a debtor to lose a sale, the debtor may sue for damages under sec. 240.

Subsection (g) is a radical departure from existing law, which allows cure until the auctioneer's hammer falls. The proposed section cuts off the debtor's right to a simple cure so that the collateral can be listed and sold. While the proposed section appears on its face to treat the debtor harshly, it is intended to protect his equity from the usual sacrifice sale. No other state has been found which has eliminated the requirement of a public auction.

Subsection (h) assures that any payment made which stops default proceedings will not be a bogus payment.

AS 34.21.190

SOURCE: (a) is from AS 45.09.904; (b) is original drafting; (c) is on the subject of AS 45.09.904(c); (d) is from AS 45.09.904(c); (e) is from AS 45.09.507(b); and (f) is from AS 45.09.507(b).

COMMENT: Subsection (a) provides for sale following expiration of the cure period.

Subsections (d) and (e) incorporate the UCC standard of the commercially reasonable sale. To insure a high purchase price, a commercially unreasonable sale transfers good title to the buyer (see sec. 220). However, an aggrieved debtor may sue the secured party for damages under sec. 240.

The concept of this section is basic to the UCC and basic to this bill.

AS 34.21.200

SOURCE: Original drafting.

COMMENT: Offset bidding at a sale of collateral at public auction is the norm at present, and continues to be provided for in this section.

This bill permits negotiated sales of the collateral as well as sales at public auction. Subsection (a) prohibits the foreclosing secured party from being a purchaser at a sale that he negotiates as seller.

Subsection (b) authorizes a junior lienholder to set off the amount of his lien if he is a purchaser of the collateral and first pays off or secures the release of superior liens.

AS 34.21.210

SOURCE: AS 34.20.080(c) and (d).

COMMENT: This section requires that there be included in, or attached to, the deed issued by the secured party (1) an affidavit of the manner of giving the required notices and (2) an affidavit of publication of the notice of intent to sell. Existing AS 34.10.080(d) calls for recording of these affidavits by the secured party after the sale.

AS 34.21.220

SOURCE: (a) is from AS 34.20.090(a); (b) is from AS 34.20.090(b); (c) is from AS 34.20.090(c); and (d) is from AS 34.20.100.

COMMENT: This section is little changed from existing law.

Subsection (d) restates the present rule which allows nonjudicial foreclosure only where no deficiency judgment is permitted.

AS 34.21.230

SOURCE: (a) is from AS 45.09.504(a); (b) is original drafting; and (c) is from AS 45.09.504(b).

COMMENT: Subsection (a) is taken from the UCC. The priorities among various types of liens and security interests are left by (a)(3) to case law. Although it is not spelled out in the bill, it is intended that the secured party retains a right to file an interpleader action when priorities are in doubt.

AS 34.21.240

SOURCE: AS 45.09.507.

COMMENT: This section allows for an injunction before sale or damages after sale for failure to comply with this chapter.

AS 34.21.250

SOURCE: AS 45.09.201.

COMMENT: This section is taken from the UCC, and is included principally to contrast with AS 34.21.260.

AS 34.21.260

SOURCE: This section is from AS 45.09.501(c), but is more inclusive.

COMMENT: This section protects debtors from being asked to waive various rights guaranteed by this chapter.

AS 34.21.290

SOURCE: (1) is from AS 45.09.105(3); (2) is from AS 45.09.105(4); (3) is from USLTA § 1-201(19); (4) is from AS 45.09.105(8); (5) is from USLTA § 1-201(25) and ULTA § 3-103(7); and (6) is from AS 45.09.105(9).

COMMENT: All definitions are paraphrased from the UCC or the USLTA, as noted. The terms "governmental agency,"

"receiver," and "trustee in bankruptcy" are added in (6) to clarify intent.

Section 3

AS 06.05.175

COMMENT: This subsection is added to meet the possible reluctance of a financial institution to provide information to the holder of a subordinate security interest.

Section 4

AS 09.45.170

COMMENT: This section substitutes the broader term "security interest" for the term "mortgage" in the long-standing section on judicial foreclosure in the Code of Civil Procedure. No change is made in the judicial foreclosure procedure, but it is made clear by statute that the procedure is available broadly for foreclosure of all security interests.

Section 5

Repeal of AS 09.45.200 and AS 34.20.010--34.20.135

COMMENT: AS 09.45.200, here repealed, provides that an action for foreclosure cannot be maintained while an action is pending for the debt. Reference AS 34.21.080 in the bill.

The other sections repealed are the existing law on deeds of trust.

Section 6

COMMENT: This transitional section takes the conservative approach that the law in effect when a security agreement is entered into shall be the law used in enforcing the security agreement. However, since this Act follows more closely the existing law on deeds of trust than it does the existing law on other security agreements, an exception is made as to deeds of trust. The person foreclosing a deed of trust

is given an option to proceed with foreclosure under this Act if he should wish to.

This transitional section will make it necessary that the statutes repealed or amended by this Act be retained in Alaska Statutes volumes for several years after this Act goes into effect.

Section 7

The effective date of the Act should be several months following enactment to allow time for becoming familiar with its terms.

HB

342

MARCH 22, 1984

TO: JOHN

FROM: KEN

RE: HB 342 "RELATING TO FILING AND RECORDING AND TO RECORDABLE DOCUMENTS"

THE MAIN PURPOSE OF HB 342 IS TO CLARIFY EXISTING ALASKA STATUTES ON FILING AND RECORDING AND TO CENTRALIZE THE THE RECORDING PROCESSES WITHIN STATE GOVERNMENT. THE BILL WOULD CREATE A NEW SECTION UNDER TITLE 40 OF THE ALASKA STATUTES ENTITLED RECORDING IN PUBLIC RECORDS, WHICH LAYS OUT IN DETAIL THIS PROPOSED RECORDING SYSTEM.

QUESTIONS:

1. WHY WAS TITLE 40 CHOSEN AS THE SPOT FOR THIS NEW SECTION ON RECORDING ?

2. WHY HAS THE DEPARTMENT OF NATURAL RESOURCES BEEN MANDATED TO PROVIDE THESE SERVICES IN THIS BILL ?

3. WHAT WOULD THE INITIAL EXPENSE BE TO IMPLEMENT THIS PROGRAM ?

4. DID THE ALASKA CODE REVISION COMMISSION WORK WITH THE DEPARTMENT OF NATURAL RESOURCES IN WRITING THIS BILL ?

5. IS THERE A PROJECTED COST SAVINGS FOR THE STATE AS A RESULT OF THIS BECOMING LAW ?

6. HOW MANY NEW POSITIONS WOULD BE CREATED BY THIS LEGISLATION ?

7. WHAT IS THE ANTICIPATED PAY LEVEL FOR THOSE PEOPLE ? WHAT WOULD BE THE JOB REQUIREMENTS FOR THESE POSITIONS ?

8. HOW DID THE ALASKA CODE REVISION COMMISSION COME TO DECIDE TO UNDERTAKE THIS PROJECT ? WHAT WAS THE IMPETUS FOR THIS BILL ?

9. WHAT ARE THE FEELINGS OF THE DEPARTMENT OF NATURAL RESOURCES ON THIS BILL ? DOES THE DEPARTMENT FEEL IT NECESSARY ?

10. UNDER CURRENT STATUTES, RECORDING COMES UNDER TITLE 34. WHY MOVE IT TO CHAPTER 40 ?

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

MEMORANDUM

TO: Representative John Cowdery, Chairman
House Labor and Commerce Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: March 22, 1984

RE: HB 342 on Recording

I pencil this memorandum late at night and will have little chance to review it with representatives of the Department of Natural Resources before the scheduled hearing at 8:15 a.m. in the morning.

However, I believe the attached amendments may satisfy questions asked by DNR about HB 342. They are my effort to reach an accord in the hope that the bill can move out of the Labor and Commerce Committee.

The two definitions drafted for insertion on page 23 I affirmatively support.

The balance of the drafted amendments I do not affirmatively support but propose for form. I believe that adopting them would constitute a reasonable compromise and would not seriously conflict with the code revision commission's concepts as expressed in the bill.

A great effort has been made to satisfy all parties on this bill. I hope the appropriate representatives of DNR will join me in offering the attached amendments as a reasonable compromise of the few minor questions DNR has raised about the bill in its present form.

DR:chw

#5

A M E N D M E N T

Offered in the HOUSE By:

TO: HB 342

Page 10, lines 8 and 9:

Delete all material and insert:

"that is in the custody of the department or the United States Bureau of Land Management but has not been recorded in the records of a recording district, or that has been recorded in a public recorder's office in another state, may be".

Page 10, following line 13:

Insert "(c) When a certified copy is recorded under this section, it must be accompanied by an affidavit explaining why the original conveyance cannot be recorded instead of the copy."

Page 11, following line 7:

Delete "A signature," and insert "An".

Page 23, following line 11:

Insert "(3) 'conformed copy' means an exact image of a document or a true copy of a document on which has been written an explanation of things that could not be copied exactly, such as "/s/" followed by a printed copy of a signature;". Renumber the following paragraphs accordingly.

Page 23, following line 19:

Insert "(7) 'file' means deposit into custody;". Renumber the following paragraphs accordingly.

Page 28, line 3:

Delete "January 1, 1984" and insert "January 1, 1986".

Amendments offered by Ted Farquhar D.N.R. #6 HB 342

neither presumption applies.

Sec. 40.17.100. RECORDING A RECONVEYANCE. When the parties to a recorded conveyance absolute in its terms intend it to serve only as security for repayment of a debt, the conveyance is absolute as to all persons who rely upon it in good faith and for value before a reconveyance is recorded.

Sec. 40.17.110. CLASSES OF DOCUMENTS ELIGIBLE FOR RECORDING. (a) A signed document listed in (b) of this section or included under (c) of this section that meets the requisites for recording under AS 40.17.030 may be recorded as a class A document. The recorder may not record as a class B document a document that would be a class A document except for a technical defect in the document. A document that meets the requisites for recording under AS 40.17.030 and that is not a conveyance or a defective class A document, is a class B document the recording of which is permitted for the safekeeping of a record copy of the document. The effect on title and rights of recording class A and class B documents is set out in AS 40.17.080.

(b) The recorder [~~may~~ shall] record as a class A document only

(1) a conveyance acknowledged or proven under AS 34.15.-150 - 34.15.250 or a certified copy of the conveyance if recording the copy is permitted by AS 40.17.020;

(2) an acknowledged or proven power of attorney or other instrument granting or revoking a power to act as agent or attorney for another person;

(3) a contract for the sale or purchase of real property when acknowledged or proven by all parties to the contract;

(4) an option for the purchase of real property when it is acknowledged by the person granting the option;

(5) a certificate of a public official or an affidavit of

any person that may affect the title to or any interest in real property in the state that is described in the certificate or affidavit, stating facts relating to age, sex, birth, death, capacity, relationship, family history, heirship, names, identity of parties, marital status, possession or adverse possession, adverse use, residence, service in the armed forces, conflicts and ambiguities in description of land in recorded instruments, and the happening of any condition or event that may terminate an estate or interest; a certificate or affidavit recorded under this section must contain the recording information of a recorded document referred to in it;

(6) an instrument by which a real property security agreement is subordinated or waived as to priority;

(7) a document creating a condition, covenant, restriction, or reservation relating to rights in real property;

(8) an assignment of all or part of a security interest in real property;

(9) a release of lien or security interest in real property;

(10) a conformed copy of a ~~document~~ lease, contract, or option to purchase real property that is otherwise recordable as a class A document under this section, when the person offering the document attaches to it an affidavit that

(A) the conformed copy was received by the person in the course of the transaction;

(B) the original is not in the person's possession; and

(C) the instrument offered for recordation is a conformed copy;

(11) a conveyance from the United States of an interest in real property in the state;

executed by the same parties who executed the original document; or and

(57) a master form that can be incorporated by reference in documents later recorded.

(c) A document specifically permitted or required to be recorded by another law of the state or made recordable as a class A document by regulation of the department may be recorded as a class A document.

Sec. 40.17.120. RECORDING MEMORANDUM OF LEASE. (a) Recording a memorandum of lease substantially complying with (b) of this section has the same effect as recording the lease.

(b) A memorandum of lease is a document signed by the lessor and lessee and containing a reference to an unrecorded lease, sublease, or agreement to lease or sublease, and supplying at least the following information:

(1) the names of the parties;

(2) any addresses of the parties set out in the lease;

(3) the date of the lease;

(4) a description of the real property leased or subleased;

(5) the commencement and termination dates of the lease if fixed and, if not fixed, the method by which the dates are to be fixed; and

(6) a statement of the conditions upon which a party may exercise a right to extend or renew the lease or to exercise a right to purchase or refuse to purchase the real property or part of it.

Sec. 40.17.130. ACTIONS AGAINST RECORDER AND STATE. (a) If the recorder fails to record and index a document properly, the recorder may be compelled to record and index the document properly by an action filed in the superior court.

(b) The state is liable to a person injured by the failure of the recorder to perform duties under this chapter. Neither the

Offrd by Dept of Nat. Resource #2 CSS

neither presumption applies.

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(4) an option for the purchase of real property when it is acknowledged by the person granting the option;

(5) a certificate of a public official or an affidavit of

any person that may affect the title to or any interest in real property in the state that is described in the certificate or affidavit, stating facts relating to age, sex, birth, death, capacity, relationship, family history, heirship, names, identity of parties, marital status, possession or adverse possession, adverse use, residence, service in the armed forces, conflicts and ambiguities in description of land in recorded instruments, and the happening of any condition or event that may terminate an estate or interest; a certificate or affidavit recorded under this section must contain the recording information of a recorded document referred to in it;

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(9) a release of lien or security interest in real property;

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executed by the same parties who executed the original document; ~~and~~ or

(57) a master form that can be incorporated by reference in documents later recorded.

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(1) the names of the parties;

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(b) The state is liable to a person injured by the failure of the recorder to perform duties under this chapter. Neither the

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/15/84

REQUEST
Bill/Resolution No.: SB 245 HB 342
Title: Recording Bill

Sponsor: Legislative Council
Requestor: Code Revision Committee
Date of Request: 4/8/83

FISCAL DETAIL
Agency Affected: Dept. of Natural Resources
Program Category Affected: Management and Administration
BRU, Program or Subprogram(s) Affected: Information/Records Management
Recorders Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	26.0	27.3	28.6	30.1
200 TRAVEL	-0-	-0-	5.0	3.0	3.0	3.0
300 CONTRACTUAL	-0-	150.0	25.0	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	8.0	8.0	8.0	8.0
500 EQUIPMENT	-0-	-0-	5.0	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	150.0	69.0	38.3	39.6	41.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	150.0	69.0	38.3	39.6	41.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Based on 5000 class B documents (2% of total documents now being recorded) being recorded during first year of operation at already established fees $50.0 additional income would be generated which would certainly increase in future years as public becomes aware of program.

ANALYSIS: Attach a separate page for analysis

Prepared By: Warner T. May W.T.M. JCB Phone: 786-2296
Division: Technical Services Date: 2/15/84

Approved by Commissioner: Norman D Arnell, Deputy Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

SB 245 and HB 342, FISCAL ANALYSIS

Assumptions

1. As stated in the memo from the Code Revision Commission, dated February 22, 1983 and Journal Supplement #10, dated April 8, 1983, the general purpose of the bill is to gather and clarify provisions on recording that are scattered throughout the Alaska Statutes, and lays a suitable framework for future use of technological advances in a centralized recording system. It also establishes two classes of documents, Class A for constructive notice recording and Class B for other documents for safekeeping.

2. Based on a feasibility report, the current recording system, which is computerized in a batch mode system, does not allow for anticipated growth in the workload. The current computerized recording system is in desperate need of having its program rewritten to correct current problems.

3. A new computer program, whether written for the current recording system or the new recording system, would be approximately the same cost and would provide cost savings to the State by reducing data entry, processing, systems maintenance, manhour and paper costs.

4. A new system must have a centrally located data base with on-line access from the three copy centers in Anchorage, Fairbanks, and Juneau.

5. In the forseeable future, the outlying offices will not have this capability due to their remote locations and will continue with the current manual procedures to send the manually written data to one of the three copy centers for entry into the system.

6. The three copy centers will have in-house printers for hard-copy printout, which is required daily. This will eliminate the manual system presently used which, based on manhours, is quite time consuming and costly. These hard-copy printouts are needed and used by title companies, lending institutions, numerous agencies and the public for up-to-date filing and recording information.

7. All assumptions are based on the passage of the bill in FY 84 with an effective date one-and-a-half years after passage of the bill on January 1st. If the bill was passed in FY 84, the effective date of the bill will be January 1, 1986. This would allow funding for implementation to be spread over three fiscal years. Additionally, it would allow timely and quality implementation of the new recording system. Mandated and proper design of separate computer programs for Class A and Class B documents, writing of comprehensive regulations and procedural manuals followed by training of all personnel and users is time consuming.

8. A revised schedule of fees for the department now being considered will generate additional income of $600.0 per year for the Recorder's Office. This does not include fees for Class B documents as none are now recorded. Assuming that 5000 Class B documents, which is only 2% of the total documents now recorded, will be recorded in the first year of operation an additional $50.0 in fees would be generated. As the public becomes familiar with the program, the number of documents recorded will most certainly increase resulting in additional fee income. Over the years the increase in existing fees and fees for Class B documents will offset initial costs of the system.

9. All information presently available in the existing system also must be made available in the new system and data conversion costs as distinct from design costs must be separately considered.

Relationship to FY 85 Budget Presentations and Further Assumptions

1. The Recorder's Office workload has increased approximately 13% per year and is seriously backlogged in most offices. The Governor's FY 85 budget submission requests an increase in operating funds of $494.0 with ten positions statewide. Not included in this figure is a $50.0 one-time cost for writing of comprehensive regulations. On the capital side, with a department priority ranking of 7 out of 13, $350.0 has been requested for study, design, update and expansion of existing or a new computer system whichever is cost effective. Data conversion dollars are not included.

2. Analysis of SB 245 and HB 342 in relationship to FY 85 budget submissions, which appear to be reasonable for approval, indicate there are several areas where the bills will additionally impact the department.

A.	One Time Costs:	
a)	Computer program for Class B documents	$ 50.0
b)	Data conversion, regulation and procedural manual writing, training, reproduction, advertising and associated travel costs	127.0
c)	Equipment costs	5.0
	Total	$ 182.0
	($150.0 FY 85 - $32.0 FY 86)	
B.	Continuing Costs Starting FY 86:	
a)	One permanent full-time position to handle Class B document recording	$ 26.0
b)	Miscellaneous additional supplies	8.0
c)	Travel costs	3.0
	Total	$ 37.0

STATE OF ALASKA 1984 LEGISLATIVE SESSION
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OPERATING						
100 PERSONAL SERVICES	-0-	-0-	26.0	27.3	28.6	30.1
200 TRAVEL	-0-	-0-	5.0	3.0	3.0	3.0
300 CONTRACTUAL	-0-	150.0	25.0	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	8.0	8.0	8.0	8.0
500 EQUIPMENT	-0-	-0-	5.0	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	150.0	69.0	38.3	39.6	41.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	150.0	69.0	38.3	39.6	41.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Based on 5000 class B documents (2% of total documents now being recorded) being recorded during first year of operation at already established fees $50.0 additional income would be generated which would certainly increase in future years as public becomes aware of program.

ANALYSIS: Attach a separate page for analysis

Prepared By: Warner T. May W.T.M. Phone: 786-2296
Division: Technical Services Date: 2/15/84

Approved by Commissioner: Norman D Arnell, Deputy Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

SB 245 and HB 342, FISCAL ANALYSIS

Assumptions

1. As stated in the memo from the Code Revision Commission, dated February 22, 1983 and Journal Supplement #10, dated April 8, 1983, the general purpose of the bill is to gather and clarify provisions on recording that are scattered throughout the Alaska Statutes, and lays a suitable framework for future use of technological advances in a centralized recording system. It also establishes two classes of documents, Class A for constructive notice recording and Class B for other documents for safekeeping.

2. Based on a feasibility report, the current recording system, which is computerized in a batch mode system, does not allow for anticipated growth in the workload. The current computerized recording system is in desperate need of having its program rewritten to correct current problems.

3. A new computer program, whether written for the current recording system or the new recording system, would be approximately the same cost and would provide cost savings to the State by reducing data entry, processing, systems maintenance, manhour and paper costs.

4. A new system must have a centrally located data base with on-line access from the three copy centers in Anchorage, Fairbanks, and Juneau.

5. In the forseeable future, the outlying offices will not have this capability due to their remote locations and will continue with the current manual procedures to send the manually written data to one of the three copy centers for entry into the system.

6. The three copy centers will have in-house printers for hard-copy printout, which is required daily. This will eliminate the manual system presently used which, based on manhours, is quite time consuming and costly. These hard-copy printouts are needed and used by title companies, lending institutions, numerous agencies and the public for up-to-date filing and recording information.

7. All assumptions are based on the passage of the bill in FY 84 with an effective date one-and-a-half years after passage of the bill on January 1st. If the bill was passed in FY 84, the effective date of the bill will be January 1, 1986. This would allow funding for implementation to be spread over three fiscal years. Additionally, it would allow timely and quality implementation of the new recording system. Mandated and proper design of separate computer programs for Class A and Class B documents, writing of comprehensive regulations and procedural manuals followed by training of all personnel and users is time consuming.

8. A revised schedule of fees for the department now being considered will generate additional income of $600.0 per year for the Recorder's Office. This does not include fees for Class B documents as none are now recorded. Assuming that 5000 Class B documents, which is only 2% of the total documents now recorded, will be recorded in the first year of operation an additional $50.0 in fees would be generated. As the public becomes familiar with the program, the number of documents recorded will most certainly increase resulting in additional fee income. Over the years the increase in existing fees and fees for Class B documents will offset initial costs of the system.

9. All information presently available in the existing system also must be made available in the new system and data conversion costs as distinct from design costs must be separately considered.

Relationship to FY 85 Budget Presentations and Further Assumptions

1. The Recorder's Office workload has increased approximately 13% per year and is seriously backlogged in most offices. The Governor's FY 85 budget submission requests an increase in operating funds of $494.0 with ten positions statewide. Not included in this figure is a $50.0 one-time cost for writing of comprehensive regulations. On the capital side, with a department priority ranking of 7 out of 13, $350.0 has been requested for study, design, update and expansion of existing or a new computer system whichever is cost effective. Data conversion dollars are not included.

2. Analysis of SB 245 and HB 342 in relationship to FY 85 budget submissions, which appear to be reasonable for approval, indicate there are several areas where the bills will additionally impact the department.

A. One Time Costs:

a)	Computer program for Class B documents	$ 50.0
b)	Data conversion, regulation and procedural manual writing, training, reproduction, advertising and associated travel costs	127.0
c)	Equipment costs	5.0
	Total	$ 182.0

($150.0 FY 85 - $32.0 FY 86)

B. Continuing Costs Starting FY 86:

a)	One permanent full-time position to handle Class B document recording	$ 26.0
b)	Miscellaneous additional supplies	8.0
c)	Travel costs	3.0
	Total	$ 37.0

neither presumption applies.

Sec. 40.17.100. RECORDING A RECONVEYANCE. When the parties to a recorded conveyance absolute in its terms intend it to serve only as security for repayment of a debt, the conveyance is absolute as to all persons who rely upon it in good faith and for value before a reconveyance is recorded.

Sec. 40.17.110. CLASSES OF DOCUMENTS ELIGIBLE FOR RECORDING. (a) A signed document listed in (b) of this section or included under (c) of this section that meets the requisites for recording under AS 40.17.030 may be recorded as a class A document. The recorder may not record as a class B document a document that would be a class A document except for a technical defect in the document. A document that meets the requisites for recording under AS 40.17.030 and that is not a conveyance or a defective class A document, is a class B document the recording of which is permitted for the safekeeping of a record copy of the document. The effect on title and rights of recording class A and class B documents is set out in AS 40.17.080.

(b) The recorder [~~may~~ shall] record as a class A document only

(1) a conveyance acknowledged or proven under AS 34.15.150 - 34.15.250 or a certified copy of the conveyance if recording the copy is permitted by AS 40.17.020;

(2) an acknowledged or proven power of attorney or other instrument granting or revoking a power to act as agent or attorney for another person;

(3) a contract for the sale or purchase of real property, when acknowledged or proven by all parties to the contract;

(4) an option for the purchase of real property when it is acknowledged by the person granting the option;

(5) a certificate of a public official or an affidavit of

any person that may affect the title to or any interest in real property in the state that is described in the certificate or affidavit, stating facts relating to age, sex, birth, death, capacity, relationship, family history, heirship, names, identity of parties, marital status, possession or adverse possession, adverse use, residence, service in the armed forces, conflicts and ambiguities in description of land in recorded instruments, and the happening of any condition or event that may terminate an estate or interest; a certificate or affidavit recorded under this section must contain the recording information of a recorded document referred to in it;

(6) an instrument by which a real property security agreement is subordinated or waived as to priority;

(7) a document creating a condition, covenant, restriction, or reservation relating to rights in real property;

(8) an assignment of all or part of a security interest in real property;

(9) a release of lien or security interest in real property;

(10) a conformed copy of a [~~document~~ lease, contract, or option to purchase real property] that is otherwise recordable as a class A document under this section, wher the person offering the document attaches to it an affidavit that

(A) the conformed copy was received by the person in the course of the transaction;

(B) the original is not in the person's possession; and

(C) the instrument offered for recordation is a conformed copy;

(11) a conveyance from the United States of an interest in real property in the state;

executed by the same parties who executed the original document; or

(57) a master form that can be incorporated by reference in documents later recorded.

(c) A document specifically permitted or required to be recorded by another law of the state or made recordable as a class A document by regulation of the department may be recorded as a class A document.

Sec. 40.17.120. RECORDING MEMORANDUM OF LEASE. (a) Recording a memorandum of lease substantially complying with (b) of this section has the same effect as recording the lease.

(b) A memorandum of lease is a document signed by the lessor and lessee and containing a reference to an unrecorded lease, sublease, or agreement to lease or sublease, and supplying at least the following information:

(1) the names of the parties;

(2) any addresses of the parties set out in the lease;

(3) the date of the lease;

(4) a description of the real property leased or subleased;

(5) the commencement and termination dates of the lease if fixed and, if not fixed, the method by which the dates are to be fixed; and

(6) a statement of the conditions upon which a party may exercise a right to extend or renew the lease or to exercise a right to purchase or refuse to purchase the real property or part of it.

Sec. 40.17.130. ACTIONS AGAINST RECORDER AND STATE. (a) If the recorder fails to record and index a document properly, the recorder may be compelled to record and index the document properly by an action filed in the superior court.

(b) The state is liable to a person injured by the failure of the recorder to perform duties under this chapter. Neither the

342

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

MEMORANDUM

TO: Representative John Cowdery, Chairman
House Labor and Commerce Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: March 22, 1984

RE: HB 342 on Recording

I pencil this memorandum late at night and will have little chance to review it with representatives of the Department of Natural Resources before the scheduled hearing at 8:15 a.m. in the morning.

However, I believe the attached amendments may satisfy questions asked by DNR about HB 342. They are my effort to reach an accord in the hope that the bill can move out of the Labor and Commerce Committee.

The two definitions drafted for insertion on page 23 I affirmatively support.

The balance of the drafted amendments I do not affirmatively support but propose for form. I believe that adopting them would constitute a reasonable compromise and would not seriously conflict with the code revision commission's concepts as expressed in the bill.

A great effort has been made to satisfy all parties on this bill. I hope the appropriate representatives of DNR will join me in offering the attached amendments as a reasonable compromise of the few minor questions DNR has raised about the bill in its present form.

DR:chw

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DR:chw

A M E N D M E N T

Offered in the HOUSE By:

TO: HB 342

Page 10, lines 8 and 9:

Delete all material and insert:

"that is in the custody of the department or the United States Bureau of Land Management but has not been recorded in the records of a recording district, or that has been recorded in a public recorder's office in another state, may be".

Page 10, following line 13:

Insert "(c) When a certified copy is recorded under this section, it must be accompanied by an affidavit explaining why the original conveyance cannot be recorded instead of the copy."

Page 11, following line 7:

Delete "A signature," and insert "An".

Page 23, following line 11:

Insert "(3) 'conformed copy' means an exact image of a document or a true copy of a document on which has been written an explanation of things that could not be copied exactly, such as "/s/" followed by a printed copy of a signature;". Renumber the following paragraphs accordingly.

Page 23, following line 19:

Insert "(7) 'file' means deposit into custody;". Renumber the following paragraphs accordingly.

Page 28, line 3:

Delete "January 1, 1984" and insert "January 1, 1986".

Fa 342

BRIEF HISTORY AND ORGANIZATION OF ALASKA RECORDERS OFFICE

State of Alaska

Dept. of Natural Resources

Division of Technical Services

Prepared By
ROSE E. FARREN,
State Recorder
LINDA PLUMB,
Acting Assistant State Recorder

FEBRUARY 1983

PREFACE

The recordation/filing[1]/ of real property and other documents for the purpose of serving constructive notice to the public has had a long and varied history. It is the purpose of this "Brief History and Organization of Alaska Recorder's Office" to acquaint the reader with how it all started, developed over the years and, to some extent, what it all means. There is no attempt to discuss any legal issues.

Credit for some of the material in this paper is given to a document entitled "Recordation and Recording Procedures in Alaska" prepared in 1966 by E.Z. Rehbock, Legal Assistant for the Alaska Court System.

1/ The words "record" and "file" and sometimes the phrase "file for record" are sometimes erroneously used interchangeably. There is a basic difference in the words and they should not be used interchangeably. A recorded document is one that is copied into the records in some manner and returned to the owner. A filed document is placed on file, becomes the property of the State and is not returned to the original owner. The recorder's office handles both types of documents.

Under the territorial form of government in Alaska, the recordation of conveyances, filing of tax liens and recordation of mining claims and other mining instruments was a duty of the United States Commissioners in their respective precincts. The beginning of recording activities in Alaska can be traced to the establishment of civil government for Alaska in 1884 when the Congress provided that Alaska should be governed by the laws of Oregon. Oregon statutes contained copious provision for the recordation of instruments and the commissioners were charged with the administration of these laws. In 1900 Congress enacted a code of laws based mainly on Oregon law and containing detailed and specific rules for a recording system, which is basically still in force and comports with the principles of recordation as used in the majority of jurisdictions.

The early records of Alaska, as found in the various districts, contained meager information on fee title to real property, although this is one of the important types of information desired. The old records contain mining or quitclaim deeds of property (usually unsurveyed) of which there is no pretense of a legal estate. This condition must not be ascribed to "loss" of old records (although in some precincts it unfortunately happened that they were destroyed by fire), but to the fact that the Congress had for a time long neglected to enact legislation for the acquisition of fee titles in Alaska. Legislation authorizing townsite entry was first enacted in 1891. The homestead laws were extended to Alaska only in 1898. The U.S. Survey system was not extended to Alaska until as late as 1899.

An important statute provides that persons "actually in use or occupation" of lands in Alaska at the beginning of civil government on May 17, 1884 shall not be disturbed therein, but that the acquisition of such land is reserved to future legislation of the Congress. This act was intended as a preliminary to the enactment of future legislation by the Congress for the acquisition of land. It served as a temporary protection.

The functions assigned to recorders in Alaska were augmented in the early 1900's by congressional legislation on mining on the federal public domain and by enactment of territorial laws on mechanic's liens, conditional sales and chattel mortgages. The body of territorial law relating to the filing in the

recorder's office of conditional sales, bulk sales, chattel mortgages and other chattel security became obsolete in 1962 when Alaska adopted the chattel filing provisions of Title 9, UCC.

At the time of transition from the territorial U.S. District Court to the integrated Alaska Court System, there existed a great variety of functions concerned with recording. The difficulty of transition was alleviated because the present boundaries of recording districts are essentially oriented by the boundaries of the former recording precincts, and the commissioners were replaced by magistrates upon whom the recording duties evolved.

Under territorial government, instruments submitted for recordation were originally copied into the record book by longhand. The use of typewriters was established around 1915. A photostatic copying method was introduced in the larger cities, mainly in Anchorage and Fairbanks, around 1950. At that time it was a practice of the territorial U.S. District Court, which had jurisdiction over recording, to enter into reproduction contracts with commercial title insurance companies. The companies furnished the cameras, were responsible for adequate reproductions and furnished a copy of each instrument to the court under the terms of the contract. Since these arrangments were on a local basis, the size of the copies and the quality of the product varied from place to place. At that time the functions of the recorders were regulated by statute, but their activity lacked central supervision. The statute had made some provision for maintenance of books, for indexing, for fees and general duties of recorders.

Pursuant to the Session Laws of Alaska of 1959 and effective in 1960, the Alaska Supreme Court, by Order No. 12, established the recording districts and designated District and Deputy Magistrates to act as Recorders. There are fourteen (14) amendments to Order No. 12 which correct descriptions, change places of record and combine recording districts. The last major changes took place on July 1, 1975. Order No. 12 was revised to combine the geographical boundaries of:

McCarthy and Chitina Recording Districts to be known as the Chitina Recording District.
Hyder and Ketchikan Recording Districts to be known as the Ketchikan Recording District.
Whittier and Anchorage Recording Districts to be known as the Anchorage Recording District.
Fairhaven and Cape Nome Recording Districts to be known as the Cape Nome Recording District.
The Barrow Recording District was established.
The Kotzebue Recording District was established.

The Noatak-Kobuk Recording District was merged with the Fairbanks Recording District in 1969. A portion of the Noatak-Kobuk Recording District/Fairbanks Recording District above the 68°N latitude is now the Barrow Recording District and a portion of the Noatak-Kobuk Recording District/Fairbanks Recording District below the 68°N latitude is now the Kotzebue Recording District.

On August 3, 1971, the court created the position of District (State) Recorder with the responsibility for overseeing the operation of recording throughout the state.

On January 1, 1977, the Recording System was transferred to the Department of Administration, Division of General Services and Supply.

On July 1, 1979, the Recording System was transferred to the Department of Commerce and Economic Development, Division of Banking and Securities.

On July 1, 1980, the Recording System was transferred to the Department of Natural Resources, Division of Technical Services, which agency and division now has the responsibility for operation of the recorder's offices.

With each transfer, the department was given authority to establish regulations for establishing, modifying or discontinuing recording districts.

From 1960 until June 16, 1967, the geographical description for each recording district was the offical description of that recording district. Amendment No. 8 of Order No. 12, dated June 16, 1967 changed that by designating the "Alaska Recording Districts' Portfolio", dated September 1, 1964 as the official maps describing the boundaries of all recording districts. The maps and legal descritions were intended to complement each other, but if there were a discrepancy, the boundary as shown on the offical maps would govern. A full set of these maps, as amended, may be found in Anchorage, Fairbanks and Juneau. Each place of recording for the other areas has sets for the recording districts for which they are the place of record. There is also a large Recording District Map in each office, showing boundaries of all recording districts in relation to one another.

Since the last major changes to recording districts on July 1, 1975, there have been thirty-four (34) recording districts serviced through fourteen (14) different offices. Nine (9) of these offices are staffed and managed by the Department of Natural Resources, Division of Technical Services personnel. The remaining five (5) offices are administered through the Alaska Court System personnel on a part or full time basis.

Due to the great expanse of real estate within the State of Alaska and the infrequency of population centers, the functions and scope of separate recording offices will vary. In some instances the volume of recording is not sufficient to warrant an office and full time employee. In five (5) recording districts (Chitina, Kodiak, Seward, Sitka and Valdez) the situation is handled by employing Court System personnel on a part time basis. In other recording districts the volume is so low that part time employment of court employees is not feasible. These areas are handled by larger recording district offices with maintenance of grantor and grantee indices and paper copies of documents supplied to court offices within those districts. Recording districts administered in this manner include: Aleutian Islands, Bristol Bay, Cordova, Haines, Kuskokwim, Kvichak, Nenana, Petersburg, Skagway and Wrangell. Still other small populus districts are administered and maintained in larger offices with no local offices maintained. These districts include: Barrow, Ft. Gibbon, Iliamna, Kotzebue, Manley Hot Springs, Mt. McKinley, Nulato, Rampart, Seldovia and Talkeetna.

After the initial processes of checking for statuatory compliance, clocking in and indexing, all documents must be forwarded to one of the three (3) copy centers for microfilming of the original documents. After microfilming, all documents are returned to their place of reception for proper dispersal. The copy centers are:

ANCHORAGE for: Aleutian Islands, Anchorage, Bethel, Bristol Bay, Chitina, Cordova, Homer, Iliamna, Kenai, Kodiak, Kuskokwim, Kvichak, Palmer, Seldovia, Seward, Talkeetna and Valdez Recording Districts.

FAIRBANKS for: Barrow, Fairbanks, Ft. Gibbon, Kotzebue, Manley Hot Springs, Mt. McKinley, Nenana, Cape Nome, Nulato and Rampart Recording Districts.

JUNEAU for: Haines, Juneau, Ketchikan, Petersburg, Skagway, Sitka and Wrangell Recording Districts.

Photostatic copying was introduced in the larger cities (Anchorage and Fairbanks) around 1950. In 1971 microfilming techniques were instituted and have been refined to the present day use of microfilm reader/printers and 16 and 35mm microfiche and roll microfilm, cataloged through the use of computerized alphabetic grantor, grantee and real property legal description indices. The Anchorage Recording District was the first district with computerized indices. This was started June 22, 1971. The Palmer Recording District began November 1, 1971. Talkeetna, Fairbanks, Kodiak, Kenai and Cape Nome Recording Districts began January 2, 1972, Juneau Recording District began July 1, 1972, Ketchikan and Sitka Recording Districts began August 1, 1972, Homer Recording District began July 1, 1974, Kvichak, Cordova, Aleutian Islands, Nenana, Rampart, Nulato, Mt. McKinley, Manley Hot Springs, Kuskokwim, Bethel, Chitina, Valdez and Seward Recording Districts began January 2, 1975, Petersburg, Wrangell, Seldovia and Bristol Bay Recording Districts began July 1, 1975, Haines and Skagway Recording Districts began January 2, 1976. There are also computerized indices for Fairhaven Recording District from January 2, 1972 until it was merged with Cape Nome July 1, 1975. There are also computerized indices for McCarthy Recording District from January 2, 1972 until it was merged with the Chitina Recording District July 1, 1975. There are computerized indices for the Hyder Recording District from January 2, 1973

until it was merged with Ketchikan Recording District July 1, 1975. All the computerized information is dispersed to the appropriate offices through the Anchorage Recording District office.

The purpose of the Recorder's Offices has always been to provide a secure, impartial place of record for real property documents. In most cases these records are irreplaceable and yet necessary to maintain a chain of title to all real estate within the State of Alaska. The Recorder's Offices also provide a mechanism by which liens, Deeds of Trust and other encumbrances against specific properties may be brought to the public notice.

Illustrations attached indicate the complexity and type of documents filed or recorded. Statistical data has been supplied for years 1975 through 1932. Also a skeleton organizational chart depicting the present day structure of the fourteen State Recorder's Offices.

XIV. TABLE OF COMMON DOCUMENTS

This is a compiled list of legal documents that are most frequently recorded of record: (Must use Book & Page Numbers)

DOCUMENTS RECORDED IN THE DEED BOOK:	INDEX CODE - D
Warranty Deed	AS 34.15.030
Quitclaim Deed	AS 34.15.040
State Police Deed	
Guardian's, Administrator's or Executor's Deed	AS 34.25.050
Trustee's Deed	AS 34.20.080
Patents	
Clerks Deed	
Bill of Sale (when conveyance of real property and requires a full acknowledgement)	
Tax Deed	AS 34.25.080

DOCUMENTS RECORDED IN THE LIEN BOOK:	INDEX CODE - LI
Notice of Right To Lien	AS 34.35.064
Acknowledgement of Right to Lien	AS 34.35.069
Verified Mechanics or Materialmen Lien	AS 34.35.070
Bond	AS 34.35.072
Extension Notice	AS 34.35.080
Release of Lien	AS 34.35.485
Certified Copy of Judgement or Decree of a Court of This State or the United States	AS 09.30.010
Satisfaction of Judgement	AS 09.30.310
Certificate of Attachment or an Order or Proceeding of Record Discharging attachment	AS 09.40.050
Employees Lien for Failure to Make Payments to a Benefit Fund	AS 23.10.047
Verfied Workmen's Compensation Lien	AS 23.30.165
Timber and Lumber Liens	AS 34.35.230 - 240
Landowner's Lien For Timber	AS 34.35.245
Manufacturing Lien Claim	AS 34.35.305
Packers & Processor's Lien	AS 34.35.320 - 330
Child Support Lien	AS 47.23.230
Watchmen's Lien	AS 34.35.395 - 415

DOCUMENTS RECORDED IN THE MINING BOOK	INDEX CODE - MI
Mining Location	AS 38.05.195 & 27.10.050
Amended Location	AS 38.05.200 & 27.10.070
Mining Lease	AS 38.05.205
Annual Labor	AS 38.05.210 & 27.10.160
Surveys May Qualify as Annual Labor	AS 27.10.230
Notice to Contribute & Affidavits	AS 38.05.220 & 27.10.190
Liens on Mines & Oil Wells	AS 34.35.125 - 165
Lien for Performance of Annual Labor	AS 38.05.230
Prospecting Site Location	AS 38.05.245
Grubstake Contract	AS 27.10.020 & 27.15.010

TAKEN FROM THE MANUAL OF RECORDING PROCEDURE FOR THE ALASKA LAND RECORDING OFFICE DATED JULY 1, 1980

DOCUMENTS RECORDED IN THE MISCELLANEOUS BOOK: INDEX CODE - MS

CONTRACT OR OPTION FOR THE SALE OR PURCHASE OF REAL PROPERTY WHEN ACKNOWLEDGED BY ALL PARTIES	
RESTRICTIONS & COVENANTS ON REAL PROPERTY	
LIS PENDENS (containing description of property) (must contain the case number assigned by the court, no requirement to be notarized)	AS 09.45.790
FINAL ORDER OF CONDEMNATION	AS 09.55.370
DECLARATION OF TAKING	AS 09.55.420
LETTER OF CONSERVATORSHIP & ORDERS TERMINATING CONSERVATORSHIP	AS 13.26.265
CONDOMINIUM DECLARATION & AMENDMENTS	AS 34.07.020 - 07
WATER APPROPRIATION OR CERTIFIED COPY BY COMMISSIONER OF DEPT. OF NATURAL RESOURCES	AS 46.15.160
LEASES, SUB-LEASES, ASSIGNMENTS & TERMINATIONS	
DISCHARGE PAPERS	
UTILITY, SEWER & RIGHT OF WAY EASEMENTS	
ASSIGNMENTS OF RENT & RELEASES THEREOF	
JUDGEMENTS QUIETING TITLE	
DECREES OF DIVORCE	
ATTESTED OR NOTARIZED COPY OF A NOTICE OF NONRESPONSIBILITY	AS 34.35.065
VERIFIED NOTICE OF COMPLETION	AS 34.35.071
PARTY WALL AGREEMENTS	
CERTIFICATE OF REDEMPTION	AS 29.53.320
CERTIFICATE OF SALE	
CONTRACT FOR THE SALE OF TIMER, MINERALS, OR THE LIKE OR A STRUCTURE OR ITS MATERIALS TO BE REMOVED FROM REALTY IS A CONTRACT FOR THE SALE OF GOODS. EFFECTIVE AS A TRANSFER OF AN INTEREST IN LAND.	AS 45.02.107
OIL & GAS LEASES & ASSIGNMENTS	
EARNEST MONEY RECEIPT (acceptable only if signature of seller and buyer is acknowledged)	

TAKEN FROM THE MANUAL OF RECORDING PROCEDURE FOR THE ALASKA LAND RECORDING OFFICE DATED JULY 1, 1980

DOCUMENTS RECORDED IN THE MORTGAGE BOOK:	INDEX CODE - M
REAL MORTGAGE	AS 34.20
RELEASE OF MORTGAGE	AS 34.20
DEED OF TRUST & ASSIGNMENTS	AS 34.20.110
PROMISSORY NOTE (acceptable only if attached to a deed of trust or if separate document original signature must be acknowledged and must contain the legal description of property)	
SUBSTITUTION OF TRUSTEE	AS 34.20.120
ASSIGNMENT OF BENEFICIAL INTEREST	AS 34.20.130
SUBORDINATION OR WAIVER AS TO PRIORITY	AS 34.20.130
NOTICE LIMITING FUTURE ADVANCES	AS 06.30.560
NOTICE OF DEFAULT	AS 34.20.070
AFFIDAVIT OF PUBLICATION OF NOTICE OF SALE	AS 34.20.080
AFFIDAVIT OF MAILING THE NOTICE OF DEFAULT	AS 34.20.080
DEED OF RECONVEYANCE	

DOCUMENTS RECORDED IN THE POWER OF ATTORNEY BOOK:	INDEX CODE - PA
POWER OF ATTORNEY & REVOCATION THEREOF	AS 34.15.320 - 330

TAKEN FROM THE MANUAL OF RECORDING PROCEDURE FOR THE ALASKA LAND RECORDING OFFICE DATED JULY 1, 1980

This is a compiled list of legal documents that are most frequently filed of record: (No Book & Page Number is used)

DOCUMENTS FILED:

BULK SALE TRANSFER	AS 45.05.516	INDEX CODE - BS
COPY OF RECORD OF MEETING OF CEMETARY ASSOCIATION	AS 10.30.020	INDEX CODE - CM
FINANCING STATEMENTS, SECURITY AGREEMENTS - U.C.C. Amendments & Continuations	AS 45.05.768	INDEX CODE - FS
ASSIGNMENTS OF F. S.	AS 45.05.776	INDEX CODE - FS
TERMINATION STATEMENTS & PARTIAL RELEASES - U.C.C.	AS 45.05.774	INDEX CODE - TS
COOPERATIVE CONTRACTS & TERMINATIONS	AS 10.15.230 - 255	INDEX CODE - FS
LIST OF TERMINATED CONTRACTS	AS 10.15.260	INDEX CODE - FS
PLATS	AS 40.15.010	INDEX CODE - PL
PLAT WAIVERS	AS 29.33.170	INDEX CODE - PL
CONDOMINIUM SURVEYS	AS 34.07.030	INDEX CODE - PL
BOUNDARY SURVEYS		INDEX CODE - PL
LIMITED PARTNERSHIP	AS 32.10.010	INDEX CODE - PR
MISCELLANEOUS LIENS		INDEX CODE - FL
LIEN NOTICE ON CHATTELS	AS 34.35.175 - 190	
HOSPITAL & NURSES LIEN	AS 34.35.450 - 480	
VERIFIED WAGE LIEN	AS 34.35.440	
TAX LIENS & RELEASES		INDEX CODE - TL
STATE TAX LIEN	AS 43.20.240	
FEDERAL TAX LIEN	AS 43.10.090 - 150	
EMPLOYMENT SECURITY CONTRIBUTION	AS 23.20.200	
REAL PROPERTY OWNERSHIPS (Repealed 7/19/78 - Only ones stamped by the Dept. of Natural Resources Filed)	AS 34.10.040	INDEX CODE - PO
LOG BRANDS (Amended - Now filed with the Dept. of Natural Resources, Forest Land & Water Management "Forestry").	AS 45.50.250	INDEX CODE - LB

TAKEN FROM THE MANUAL OF RECORDING PROCEDURE FOR THE ALASKA LAND RECORDING OFFICE DATED JULY 1, 1980

TOTAL NUMBER OF DOCUMENTS FILED AND/OR RECORDED
COMPARATIVE STATISTICAL REPORT
BY RECORDING DISTRICTS
FOR CALENDAR YEARS

DISTRICT	1975	1976	1977	1978	1979	1980	1981	1982	1983	% Increase (Decrease) Over Previous Year	% Increase (Decrease) Since 1975
ANCHORAGE*	56669	62218	72702	77619	68812	61602	82011	86793	111651	29	97
Aleutian Is.	213	213	283	323	321	725	1006	815	1127	38	429
Bristol Bay	473	533	472	499	855	576	701	720	704	(2)	49
Cordova	741	733	793	820	718	810	1765	1276	900	(30)	22
Iliamna	99	148	296	261	155	151	268	540	348	(36)	252
Kuskokwim	131	141	199	287	659	1268	1697	743	789	6	502
Kvichak	187	188	176	250	301	271	285	374	418	12	124
TOTAL	58513	64174	74921	80059	71821	65403	87733	91261	115937	27	98
BETHEL	669	737	993	1427	972	905	1362	2155	2030	(6)	203
CHITINA** (Glennallen)	1228	1206	1612	1418	1303	1582	1198	1287	1449	13	18
FAIRBANKS*	23916	25766	29458	31618	26184	28625	34847	32903	40294	23	69
Barrow	351	2425	7607	3360	661	1251	2510	1071	1436	34	309
Ft. Gibbon	46	38	654	174	329	217	981	66	181	174	294
Kotzebue	2073	1618	854	1988	1990	2149	3501	817	1228	50	(41)
Manley Hot Sp.	75	89	111	315	656	942	592	333	323	(3)	331
Mt. McKinley	141	205	268	452	362	748	1967	1160	1889	63	1240
Nenana	1751	1414	1198	1252	935	831	1163	941	1041	11	(41)
Nulato	60	408	309	194	553	1011	619	1273	1843	45	2972
Rampart	25	41	58	67	112	58	174	84	69	(18)	176
TOTAL	28438	32004	40517	39420	31782	35832	46374	38648	48304	25	70
HOMER	2916	3578	5201	5628	5306	4634	5328	5313	7236	36	148
Seldovia		245	232	285	609	433	498	321	479	49	96
TOTAL	2916	3823	5433	5913	5915	5067	5826	5634	7715	37	165

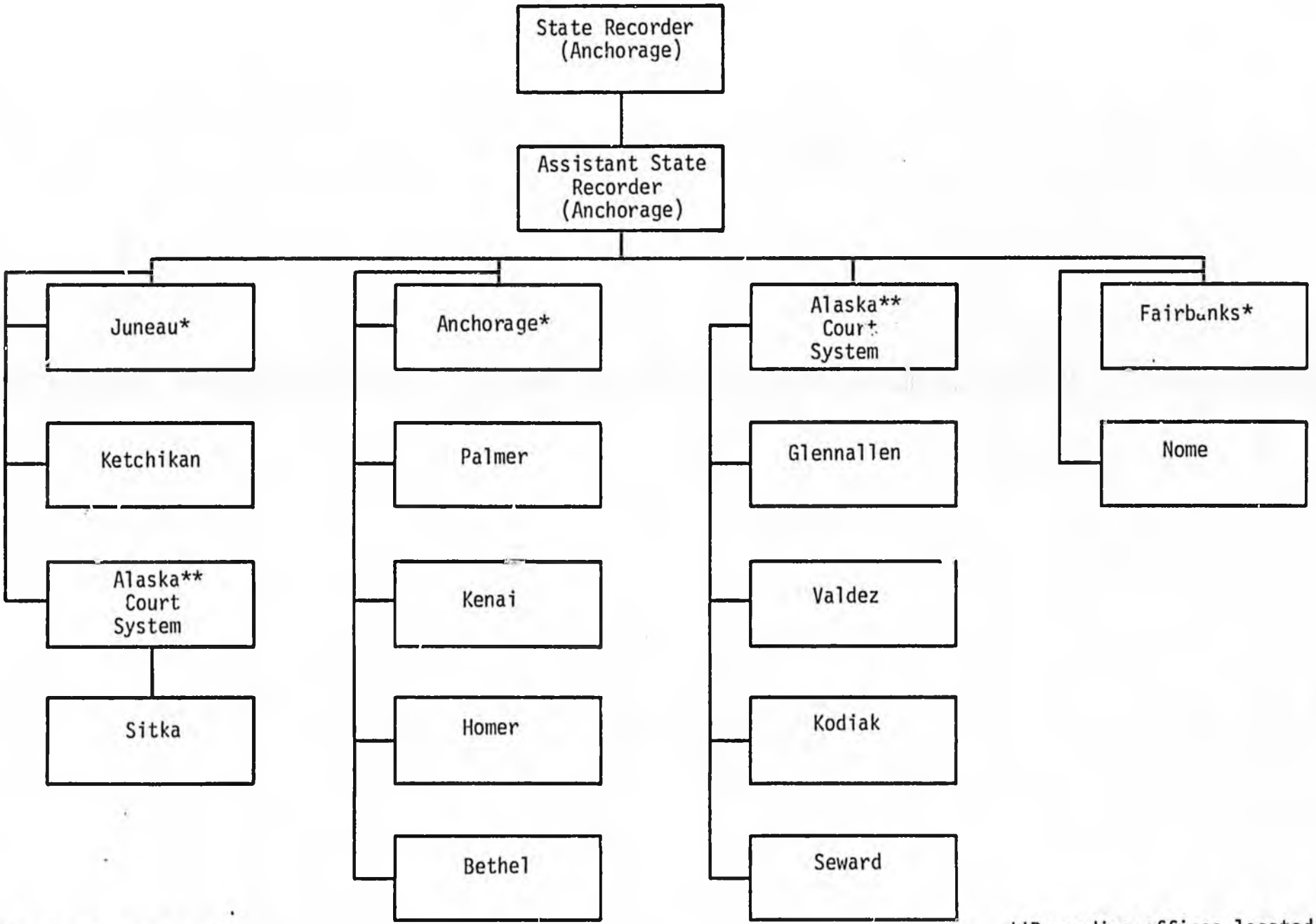
DISTRICT	1975	1976	1977	1978	1979	1980	1981	1982	1983	% Increase/(Decrease) Previous Year	% Increase/(Decrease) Since 1975
KENAI	7042	7959	11009	12364	11067	9367	10803	12020	17291	44	146
KETCHIKAN	4491	5963	5886	5495	5286	4448	5681	5306	6985	32	56
Petersburg	1209	814	1148	2439	951	1308	1320	1155	1534	33	27
Wrangell	523	607	720	1484	531	336	439	577	725	26	39
TOTAL	6223	7384	7754	9418	6768	6092	7440	7038	9244	31	49
JUNEAU*	4772	6083	7460	9336	7801	8483	10638	10634	15184	43	218
Haines	448	485	496	595	497	506	650	678	1020	50	128
Skagway	288	334	345	249	225	168	211	222	161	(28)	(44)
TOTAL	5508	6902	8301	10180	8523	9157	11499	11534	16365	42	197
KODIAK**	2149	2481	2653	2580	2693	2415	3116	3124	4126	32	118
NOME	1681	2768	2021	6978	3479	3514	3071	2843	2986	5	78
PALMER	12034	14573	17678	19189	18180	14409	19186	23410	33708	44	180
Talkeetna	2009	3448	2412	2269	3105	4105	3746	3348	3744	12	86
TOTAL	14043	18021	20090	21458	21285	18514	22932	26758	37452	40	167
SEWARD**	1378	1359	1690	1864	1[illegible]	1430	2695	2491	3221	29	134
SITKA	1501	1896	2377	2956	2283	2221	2916	2505	2985	19	99
VALDEZ**	1633	1207	1363	1488	2104	1808	1731	1725	1795	4	10
Combined Statistics	132922	151921	180734	197523	171726	163307	208696	209023	270900	30	104

NOTES

*Copy Center — These offices not only serve as the place of recording for the districts named but also serve as copy centers for a designated number of smaller offices which do not have adequate copy, micrographic and reproduction capabilities.

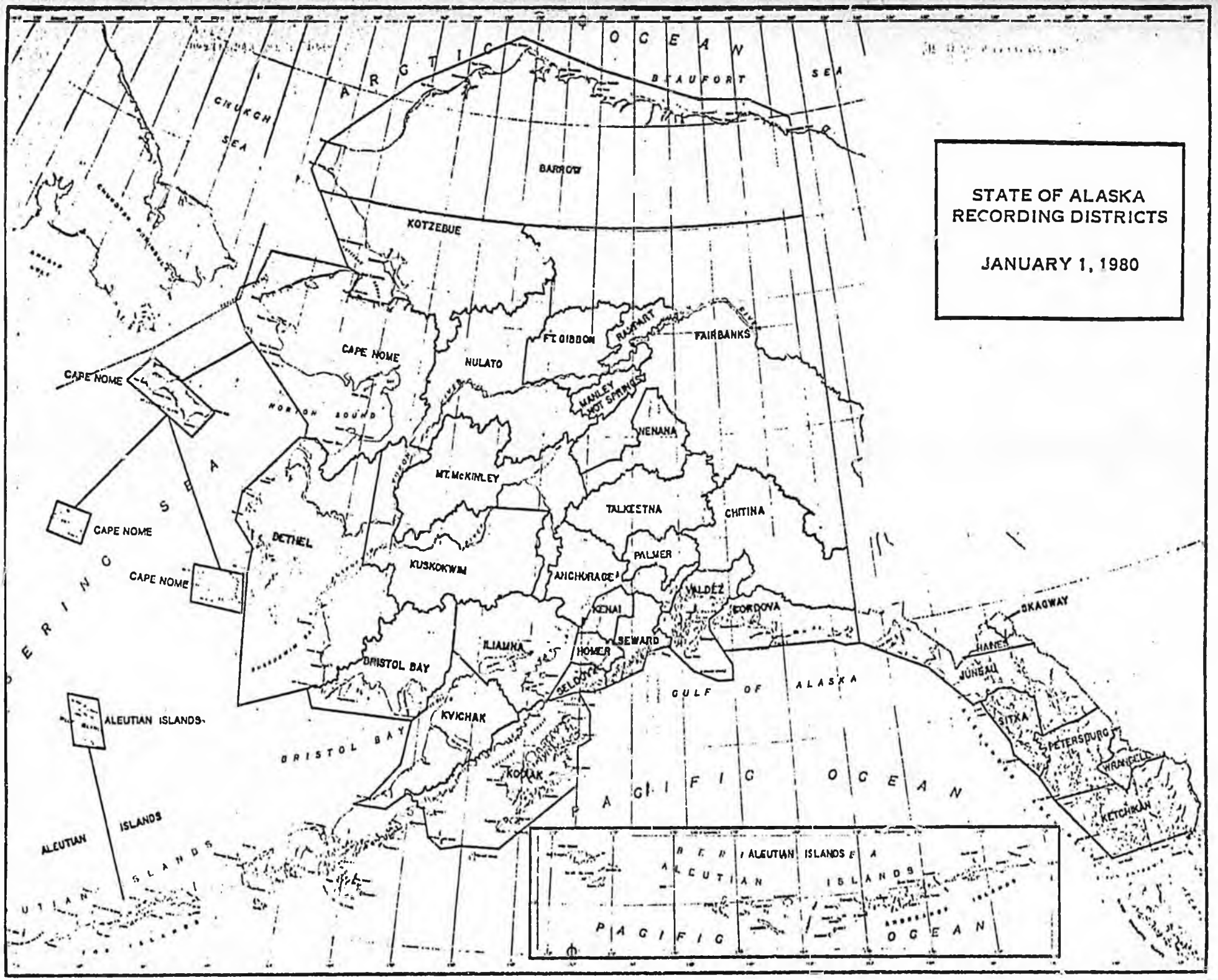
**Court Offices — These Recording Offices are located within the Court facilities and are staffed by part-time or full-time court employees.

Chart Showing Structure and Physical Location of Alaska State Recorder's Offices (1983). For Names of Geographical Areas Services by Each Office Refer to Statistical Chart Attached



*Serves as copy center for offices shown below.

**Recording offices located within Court System


STATE OF ALASKA
RECORDING DISTRICTS
JANUARY 1, 1980
ARCTIC OCEAN
BEAUFORT SEA
CHUKCHI SEA
BARROW
KOTZEBUE
CAPE NOME
NULATO
FT. GIBBON
RAMPART
FAIRBANKS
MANLEY HOT SPRINGS
NORTON SOUND
WENANA
MT. McKINLEY
TALKEETNA
CHITINA
BETHEL
PALMER
KUSKOKWIM
ANCHORAGE
VALDEZ
CORDOVA
KENAI
SKAGWAY
HAINES
SEWARD
HOMER
ILIAMNA
JUNEAU
BERING SEA
BRISTOL BAY
GULF OF ALASKA
ALEUTIAN ISLANDS
KVICHAK
SITKA
PETERSBURG
WRANGELL
KODIAK
KETCHIKAN
ALEUTIAN ISLANDS
PACIFIC OCEAN

January 13, 1984

STATE RECORDER'S OFFICE
TITLE ADMINISTRATION & RECORDS
DIVISION OF TECHNICAL SERVICES
DEPARTMENT OF NATURAL RESOURCES

STATE RECORDER'S OFFICE:

PROGRAM MANAGER: Rose E. Farren

MAJOR PROGRAM: The Recording program is a continuous one and provides constructive notice for real and personal property transactions to the public, which requirement is basic to the American system of land transfer and financial responsibility.

MAJOR RESPONSIBILITIES: In compliance with statutory requirements, maintain in a timely and accurate manner, making same easily useable, properly indexed and readily available to the public and industry, a reliable set of public records of all transfers of real and personal property interests, financial responsibility connected therewith and related documents so as to constitute constructive notice to all.

ACCOMPLISHMENTS FY 84: Based on past statistics, we projected an increase in workload of 13% statewide. This appears to no longer be a viable percentage, as the workload statewide has increased 25% in the first half of FY84 as compared to the first half of FY83. FY83 budget was $1,563,200.00, FY84 budget was $1,592,800.00. $76,000.00 of FY84 budget was appropriated for establishing a new Recording Office in Kotzebue. Target date for opening this office is April 1, 1984.

One employee was added to the Palmer, Talkeetna Recording District office. With the additional employee, this office has brought the indexing (retrieval) system for all recorded or filed real and personal property documents for these two districts, to an acceptable level of one (1) to two (2) days. However, if the workload continues to increase at the rate of 25%, two (2) additional employees will be required to keep the Palmer, Talkeetna office at this level in FY84. Sitka Recording District is now staffed by a Department of Natural Resources employee rather than a Court System employee.

EMPHASIS PLANNED FOR FY85: Develop and maintain new computer program, to reduce data entry time, processing, system maintenance, manhours and paper cost. Present program is obsolete and expensive to maintain.

Move Fairbanks Recorder's Office from Court System building to larger, more adequate space.

Re-establish normal business hours to the public in Anchorage and Kenai offices. Limit the present 60 day delay in creating indexes for title search function for the Anchorage office to 30 days (acceptable time frame is 1 to 2 days). In various other district offices, this process is presently from 10 to 45 days behind. Limit the present 276 days in returning original recorded documents in the Anchorage office to 120 days (acceptable time frame is 14 to 21 days).

FUTURE PROGRAM NEEDS:

There are at least 13 statutes that the recording function operates under on a regular basis. Regulations have needed to be developed and implemented for many years.A fireproof vault for the Statewide Recording Records has also been needed for many years. If these records were damaged or destroyed, many would be irreplaceable and would create insoluable legal problems with respect to re-establishing accurate chain of title for the Anchorage and Iliamna Recording Districts.
The uncontrollable increase in workload makes it difficult to adequately fulfill recording responsibilities and maintain an acceptable level of service to the public without a corresponding increase in resources. There has to be a proportional growth in the number of staff positions and improvements in automation capabilities to maintain the public services required by statute.

STATISTICS:

There are 34 Recording Districts Statewide that are processed through 14 recording offices, four of which are maintained by part time Court System employees. In FY84, four new positions were allocated for nine (9) Department of Natural Resources Recording Offices and one was added to bring the Sitka Recording District under the administration of DNR (Sitka was previously staffed by a Court employee). The establishment of a Kotzebue recording District Office, presently processed through the Fairbanks Recording Office, will bring the total number of Recording Offices statewide to 15, staffed by 43 DNR employees and 4 part time Court System employees.
From FY75 through FY83 there were no increases in staffing levels to accommodate for the growth in the real and personal property transaction volume. In CY75 there were 132,922 real and personal property transactions processed through 14 recording offices, in CY83 there were 271,370 real and personal property transactions an increase of 51%. Until November 1983, these were processed by 38 DNR Recording Office employees and 5 part time Court System employees.

STATE RECORDER'S OFFICE 1/

FUNCTION	BENEFITS
1. Record and/or file a multitude of documents and plats 2/ placing them of record so as to constitute constructive notice.	1. Provides constructive notice to the public which requirement is basic to the American system of land transfer and financial responsibility.
2. Index and cross index and photograph or copy all documents and plats and maintain them in a manner so as to allow public viewing and use and for archival purposes.	2. Allows the public, lending institutions and title companies to readily check chain of title, encumbrances and financial responsibility with limited or incomplete information to begin with and be self serving.
3. Supply copies of documents to public, other state agencies and lesser units of government. Furnish certified copies to the court and/or parties to litigation.	3. Allows for greater geographic distribution and use of record data without forcing public to travel great distances and/or request information in writing. Allows municipalities, boroughs and other taxing entities to maintain current tax roles. Certified copies are acceptable as evidence in a court of law.
4. File and provide searches of documents under the Uniform Commercial Code system involving real and personal property.	4. Provides the business and financial community with informaton that allows them to identify financial responsibility necessary in the conduct of day to day business.

1/ Presently organized with section status within the Division of Technical Services, Department of Natural Resources. Network consists of thirty four (34) recording districts serviced through fourteen (14) different offices. For a brief history and organization of the Alaska Recorder's Office see attached information pamphlet.

2/ For list of documents see appropriate pages in pamphlet attached.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department	Sponsor (Principal)	Bill Number
Natural Resources	Legislative Council	SB-245 & HB-342

Department Position

Recommend enactment if proposed changes in this bill analysis incorporated.

Division Director	Date	Commissioner's Signature	Date
James R. Barker	2/22/84		

GOVERNOR'S OFFICE USE

Comments:

☐ Position Noted	By	Date

SUMMARY

1. a) Related Bills (Similar or Conflicting	1. b) Other Agencies Affected by Bill
None known	DOT/PF and local government
2. a) Organizational Support for Bill	**2. b) Organizational Opposition to Bill**
It is assumed title, mortgage and banking industry support bill.	None known

3. Program Effects of Bill

Will gather together and clarify provisions on recording that are now scattered throughout the Alaska Statutes and will lay a suitable framework for future use of technological advances in a centralized recording system. When fully implemented and automated will allow for a more cost effective operation of the Recorder's Office.

4. Fiscal Impact: ☐ Non- ☐ Fiscal Note Attached

5. Amendments Proposed:

See detail of bill analysis attached.

6. Comments:

See detail of bill analysis attached.

SB 245 and HB 342 Bill Analysis

General Comments:

1. As stated in the memo from the Code Revision Commission, dated February 22, 1983 and Journal Supplement #10, dated April 8, 1983, the general purpose of the bill is to gather together and clarify provisions on recording that are scattered throughout the Alaska Statutes, and lays a suitable framework for future use of technological advances in a centralized recording system. It also establishes two classes of documents, Class A for constructive notice recording and Class B for other documents to be placed of record for safekeeping.

2. Sections 1-19 deal with plats and maps [illegible]ence to "filing" and "recording" them. The most common disti[illegible]tween the two words or processes with reference to the record[illegible] is that a "filed" document becomes the property of the St[illegible]s not returned to the original owner. A "recorded" document do[illegible] become the property of the State and is returned to the owner. In both instances they are "placed of record" and microfilm copies are available. In the case of plats the original is kept as it is often needed to determine detail not ascertainable on the microfilm copy. Originally they were kept because a plat could not be hand copied into the record book as other types of written documents could be and were. The manner in which they are assigned a retrieval number is different. A recorded document is given a book and page number, i.e., Book 90 Page 225. A filed document such as a plat is given the next sequential number in the series preceded by the last two digits of the year in which filed, i.e. 84-26.

It should be noted that probably because of an inconsistent use of the words "file" and "record" in statutory language other documents have been historically filed and not returned to the owner. Among them are some liens, some lien releases, limited partnership agreements, etc. Like plats, they are numbered within their own series and kept as property of the State. Though not originally done to facilitate retrieval, the system has benefited the retrieval process and is accepted by the industry.

After the consideration of the impacts of Sections 1-19 upon the State Recorder's Office it is the consensus of opinion that there are no objections to Section 1-19 so long as it is clear that filed plats become the property of the State and the legislative history reflects the basic difference between a filed and recorded document. As the new system is implemented all other documents now processed as "filed" and kept will be processed as "recorded" and returned to the owner as provided for in this bill.

Chapter 17 Section by Section Comments

Sec. 40.17.010. Acceptable, no comment.

Sec. 40.17.020(a). Acceptable, no comment.

February ??, 1984

Sec. 40.17.020(b). We have some concern because what we like to think of as two separate subjects are covered here and we believe a third should be added. The three subjects are 1) accepting a certified copy of a conveyance document recorded or filed in another state, 2) accepting a certified copy of a conveyance document filed or recorded with the United States Bureau of Land Management and 3) the proposed addition, accepting a certified copy of certain conveyance documents originating with and of record with the Department of Natural Resources.

1) Comment. This is a desirable feature even to using the broad term "conveyance" as defined in the bill.

2) Comment. This is a desirable feature but should be separated from above with more restrictive language than the word "conveyance". It should be limited to Patents, Quitclaim Deeds, Warranty Deeds, Certificates of Allotment, Clearlists, Tentative Approvals and Interim Conveyances. An affidavit should accompany the certified copy for recording with it setting forth the facts as to why the original is not available for recording. The Recorder's Office now reluctantly accepts certified copies of these documents without an affidavit under the weak authority of an informal opinion in letter form issued by a former legal assistant for the Alaska Court System.

3) Comment. The Department of Natural Resource's system for maintaining copies and records of conveyances under its land disposal program is much the same as that of the Bureau of Land Management's. There is occasionally a bonafide reason why an individual no longer has in his/her possession the original conveyance document it having been lost or destroyed prior to recording. The Recorder's Office does not now accept certified copies of conveyance documents issued by the Department of Natural Resources. As with conveyances issued by the BLM this provision should use more restrictive language than the word conveyance and be limited to Patents, Warranty Deeds, Quitclaim Deeds and Deeds of Title.

It is suggested that sub-section (b) be amended as follows and sub-section (c) and (d) be added.

(b) A certified copy of a conveyance that is eligible for recording as a class A document under A.S. 40.17.030 and 40.17.110 and that has been recorded or filed in a public recorder's office in another state may be recorded only as a class A document, and only in the records of a recording district where land affected by the conveyance is located. When so recorded, it has the same effect from the time it is recorded as though it were the original land conveyance.

(c) A certified copy of a conveyance restricted to a Patent, Quitclaim Deed, Warranty Deed, Certificate of Allotment, Clearlist, Tentative Approval and Interim Conveyance accompanied by an affidavit stating that the original was not recorded and setting forth the fact as to why the original is not available for recording originally issued by the Bureau of Land Management that is eligible for recording as a class A document under AS 40.17.030 and 40.17.110 and that has been recorded, filed or true copies maintained in offices of the Bureau of Land Management may be recorded only as a class A document, and only in the records of a recording where land affected by the conveyance is located.

When so recorded, it has the same effect from the time it is recorded as though it were the original conveyance. (Note: Though concerned generally with the proposal to accept any copies, the State Recorder agrees to this proposed amendment so long as it is restricted to named documents and accompanied by an affidavit as proposed.)

(d) A certified copy of a conveyance restricted to a Patent, Warranty Deed, Deed of Title and Quitclaim Deed accompanied by an affidavit stating that the original was not recorded and setting forth the facts as to why the original is not available for recording originally issued by the Department of Natural Resources that is eligible for recording as a class A document under AS 40.17.030 and 40.17.110 and that has been recorded, filed or true copies maintained in offices of the Department of Natural Resources may be recorded only as a class A document, and only in the records of a recording district where land affected by the conveyance is located. When so recorded, it has the same effect from the time it is recorded as though it were the original conveyance. (Note: The State Recorder has the same concerns here as noted under (c) above.)

Sec. 40.17.030(a)(b). As it now reads the document shall be accompanied by or include the mailing addresses of all persons named in the document who grant or acquire an interest.... The addresses of persons who grant are not necessary but the addresses of persons who acquire are necessary as lesser units of government use this information to post and keep tax roles and other records current.

We suggest the two words "grant or" on line 1 page 11 be deleted.

Sec. 40.17.030(c). For clarification purposes we suggest the word "only" on line 9 be deleted and the following added to the sentence after the last word law, "or by regulation to comply with accepted legal practice."

All other sub-sections acceptable and no comment.

Sec. 40.17.040. Acceptable, no comment.

Sec. 40.17.050. Acceptable, no comment.

Sec. 40.17.060. Acceptable, no comment.

Sec. 40.17.070(d). We have concern with the words "...and a citation of the statute requiring rejection." on lines 3 and 4 page 13. These words place a higher degree of adjudicative responsibility upon the District Recorder's than they now have, however we feel that the process can be adequately covered in regulations.

All other sub-sections acceptable and no comment.

Sec. 40.17.080. Acceptable, no comment.

Sec. 40.17.090. Acceptable, no comment.

Sec. 40.17.100. Acceptable, no comment.

Sec. 40.17.110(10). We have two concerns with (10). There is no definition of "conformed copy" and one or perhaps two are required. See comments under Sec. 40.17.140.

We assume (10) relates to existing Sec. 34.15.340(6) and if it does, it is not definitive enough in that it does not name the documents as named in Sec. 34.15.340(6). They are, lease, contract or option to purchase real property. We object to the fact that (10) as now written includes all documents and feel it should be restricted as Sec. 34.15.340(6) is. Further, wherever used the word "conformed" should be replaced with the word "true". The use of the word confromed in (10) is not consistant with the common definition of the word as it relates to the Recorder's Office. See proposed definition under 40.17.140.

All other sub-sections acceptable and no comment.

Sec. 40.17.120. Acceptable, no comment.

Sec. 40.17.130. Acceptable, no comment.

Sec. 40.17.140(7) to be compatible with the definition of "file", which we will propose be added, the following words should be added to the definition of "record." "After recording a recorded document is returned to the owner or other person so designated."

We suggest the addition of the following definitions to be appropriately arranged in numerical sequence.

(11) "conformed copy" means a true copy of a document upon which the recorder places recording information, usually done at the time the original document is presented for recording or filing. A copy made of a previously recorded document would not need to be conformed as it already contains to the recording information.

(12) "file" means the acceptance of a document for recording otherwise meeting statutory requirements when the document will become the property of the State, such as a plat and is not returned to owner.

Sec. 40.19.010. Acceptable, no comment.

Sec. 40.19.020. Acceptable, no comment.

Sec. 40.19.030. Acceptable, no comment.

Sec. 40.19.040. Acceptable, no comment.

Sec. 40.19.050. Acceptable, no comment.

Sec. 34.15.015. Acceptable, no comment.

Sec. 34.10.041. Acceptable, no comment.

Sec. 43.10.042. Acceptable, no comment.

Sec. 44.37.025. Acceptable, however we agree with the Revisior of Statutes that it should be placed in Title 40.

Sec. 25 of proposed bill. Acceptable, no commment.

Sec. 26 of proposed bill. Acceptable, no comment.

Sec. 27 of proposed bill. For reasons explained in fiscal note the effective date of the Act should be January 1, 1986.

MEMORANDUM State of Alaska

TO: Bud May
Deputy Director
Division of Technical Services

DATE: March 16, 1984

FILE NO:

TELEPHONE NO:

FROM: Edward G. Barber, Jr.
Head, Contract Administration

SUBJECT: SB-245 & HB-342 - Recordation of Certified Copies of State Title Conveyances

HB-245 and HB-342 have been reviewed and we certainly agree that the Department must, through some mechanism provide the periodic recording of State Title Conveyances, when the original document has been lost or destroyed.

The mechanism should be extremely strict and only permitted when there are no other alternatives. Such an action should require the signature of a Director.

One might argue that an individual requesting such an action be required to proceed through Action to Quiet Title , but in many situations it is a subsequent "title" holder that initiates such a request. If we permit recordation of certified copies of title conveyances, but only under very strict guidelines, we may prevent legislation that could quite possibly jeopardize the entire recording system.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/15/84

REQUEST
Bill/Resolution No.: SB 245 HB 342
Title: Recording Bill
Sponsor: Legislative Council
Requestor: Code Revision Committee
Date of Request: 4/8/83

FISCAL DETAIL
Agency Affected: Dept. of Natural Resources
Program Category Affected: Management and Administration
BRU, Program or Subprogram(s) Affected: Information/Records Management
Recorders Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	26.0	27.3	28.6	30.1
200 TRAVEL	-0-	-0-	5.0	3.0	3.0	3.0
300 CONTRACTUAL	-0-	150.0	25.0	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	8.0	8.0	8.0	8.0
500 EQUIPMENT	-0-	-0-	5.0	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	150.0	69.0	38.3	39.6	41.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	150.0	69.0	38.3	39.6	41.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Based on 5000 class B documents (2% of total documents now being recorded) being recorded during first year of operation at already established fees $50.0 additional income would be generated which would certainly increase in future years as public becomes aware of program.

ANALYSIS: Attach a separate page for analysis

Prepared By: Warner T. May W.T.M. JCB Phone: 786-2296
Division: Technical Services Date: 2/15/84

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

SB 245 and HB 342, FISCAL ANALYSIS

Assumptions

1. As stated in the memo from the Code Revision Commission, dated February 22, 1983 and Journal Supplement #10, dated April 8, 1983, the general purpose of the bill is to gather and clarify provisions on recording that are scattered throughout the Alaska Statutes, and lays a suitable framework for future use of technological advances in a centralized recording system. It also establishes two classes of documents, Class A for constructive notice recording and Class B for other documents for safekeeping.

2. Based on a feasibility report, the current recording system, which is computerized in a batch mode system, does not allow f anticipated growth in the workload. The current computerized recording stem is in desperate need of having its program rewritten to corr t current problems.

3. A new computer program, whether written for the current recording system or the new recording system, would be approximately the same cost and ould provide cost savings to the State by reducing data entry, processing, systems maintenance, manhour and paper costs.

4. A new system must have a centrally located data base with on-line access from the three copy centers in Anchorage, Fairbanks, and Juneau.

5. In the forseeable future, the outlying offices will not have this capability due to their remote locations and will continue with the current manual procedures to send the manually written data to one of the three copy centers for entry into the system.

6. The three copy centers will have in-house printers for hard-copy printout, which is required daily. This will eliminate the manual system presently used which, based on manhours, is quite time consuming and costly. These hard-copy printouts are needed and used by title companies, lending institutions, numerous agencies and the public for up-to-date filing and recording information.

7. All assumptions are based on the passage of the bill in FY 84 with an effective date one-and-a-half years after passage of the bill on January 1st. If the bill was passed in FY 84, the effective date of the bill will be January 1, 1986. This would allow funding for implementation to be spread over three fiscal years. Additionally, it would allow timely and quality implementation of the new recording system. Mandated and proper design of separate computer programs for Class A and Class B documents, writing of comprehensive regulations and procedural manuals followed by training of all personnel and users is time consuming.

8. A revised schedule of fees for the department now being considered will generate additional income of $600.0 per year for the Recorder's Office. This does not include fees for Class B documents as none are now recorded. Assuming that 5000 Class B documents, which is only 2% of the total documents now recorded, will be recorded in the first year of operation an additional $50.0 in fees would be generated. As the public becomes familiar with the program, the number of documents recorded will most certainly increase resulting in additional fee income. Over the years the increase in existing fees and fees for Class B documents will offset initial costs of the system.

9. All information presently available in the existing system also must be made available in the new system and data conversion costs as distinct from design costs must be separately considered.

Relationship to FY 85 Budget Presentations and Further Assumptions

1. The Recorder's Office workload has increased approximately 13% per year and is seriously backlogged in most offices. The Governor's FY 85 budget submission requests an increase in operating funds of $494.0 with seven reclassed and three new positions statewide. Not included in this figure is a $50.0 one-time cost for writing of comprehensive regulations. On the capital side, with a department priority ranking of 8 out of 21, $350.0 has been requested for study, design, update and expansion of existing or a new computer system whichever is cost effective. Data conversion dollars are not included. In addition, another capital project with a department ranking of 15 out of 21 provides for skeleton network terminals.

2. Analysis of SB 245 and HB 342 in relationship to FY 85 budget submissions, which appear to be reasonable for approval, indicate there are several areas where the bills will additionally impact the department.

A. One Time Costs:

a)	Computer program for Class B documents	$ 50.0
b)	Data conversion, regulation and procedural manual writing, training, reproduction, advertising and associated travel costs	127.0
c)	Equipment costs	5.0
	Total	$ 182.0
	($150.0 FY 85 - $32.0 FY 86)	

B. Continuing Costs Starting FY 86:

a)	One permanent full-time position to handle Class B document recording	$ 26.0
b)	Miscellaneous additional supplies	8.0
c)	Travel costs	3.0
	Total	$ 37.0

PROJECT NUMBER:	PROJECT TITLE:	LOCATION:	PROJECT MANAGER:	PHONE:
5	Recorder's Office	Statewide	Rose Farren	265-4333

	FY 83 ACTUAL	FY 84 AUTHORIZED	FY 85 BUDGET YEAR				
			SERVICE LEVEL 1	SERVICE LEVEL 2	SERVICE LEVEL 3	SERVICE LEVEL 4	GOVERNOR
01 PERSONAL SERVICES	1,151.5	1,358.6	1,358.6	1,383.5	1,432.7	1,857.7	1695.0
02 TRAVEL	3.3	9.1	9.1	9.1	9.1	12.2	12.2
03 CONTRACTUAL	371.3	145.0	145.0	145.0	152.5	310.3	245.0
04 SUPPLIES	37.1	47.5	47.5	47.5	48.0	60.0	60.0
05 EQUIPMENT	0	20.0	20.0	20.0	13.1	72.0	62.0
06 LANDS/BUILDINGS							
07 GRANTS, CLAIMS							
08 MISCELLANEOUS							
TOTAL	1,563.2	1,580.2	1,580.2	1,605.1	1,660.4	2312.2	2074.2
1002 FEDERAL RECEIPTS							
1004 GENERAL FUNDS	1,563.2	1,580.2	1,580.2	1,605.1	1,660.4	2312.2	2074.2
OTHER FUNDS							
15 FULL-TIME	37	42	42	42	45	59	53
16 PART-TIME/SEASONAL		1	1	1		1	
17 NONPERMANENT							

PROJECT NEED, DESCRIPTION, AND EXPLANATION OF MAJOR DIFFERENCES BETWEEN SERVICE LEVELS:

Recorders Office:

The Recording Section has the statutory responsibility of receiving & recording or filing for the public all documents pertaining to real and/or personal property transactions. Copies of these documents & indexes thereto must be maintained permanently. These records provide constructive notice to the public which requirement is basic to the American system of land transfer & financial responsibility. They allow the public, lending institutions & title companies to readily check chain of title, encumbrances & financial responsibility with initially limited or incomplete information. These records provide the business & financial community with information that allows them to identify financial responsibility necessary to conduct day to day business.

P-2 PROJECT DETAIL

Project Number 5

Title Recorder's Office

AGENCY Department of Natural Resources

PROGRAM Management & Administration

BRU Information/Records Mgmt.

COMPONENT Information/Records Mgmt.

Page 1 of 8

Revised Date

FY85

CD1198

SL 1 Will allow for 67% of the functions required by statute to be completed and discontinue services provided but not required by statute to the public. Limit business hours to the public to five hours. Limit the return of documents to 136 days, limit the indexing process for title search function used to establish marketable record title to one month.

SL 2 Will allow for 67% of the functions required by statute to be completed and discontinue services provided but not required by statute to the public. Limit business hours to the public to five hours. Limit the return of documents to 136 days, limit the indexing process for title search function used to establish marketable record title to one month.

SL 3 Will allow for 72% of the functions required by statute to be completed and continue to not provide services to the public that are needed but not required by statute. Limit business hours to the public to five hours. Limit return of documents to the public to four months, limit the indexing process for title search function used to establish marketable title to one month.

SL 4 Will allow for the recording function to return to an acceptable level of proficiency and provide the citizens of Alaska with the quality of service they pay for but presently do not receive. This allows for additional office space, and the creation of DNR recording offices out of the four court offices. (All services required by statute and those not required by statute are stated in the statewide District Recorder's office functions statement). Adverse public reaction to the discontinuance of services provided that are not required by statute is documented. Will establish 1 Recorders Office in Valdez with 2 new positions & 2 microfilm equipment operators positions, 1 for Fairbanks copy Center, 1 for Juneau Copy Center. Establish DNR Recorder's Office in Kodiak with 1 new full-time position & ½ time new position. Establish 2 new recording positions for Kenai office to handle Seward Recording District function and the increased workload in Kenai. Establish seven new recording clerk positions in the Anchorage office to re-establish normal business hours and return the recording process to an acceptable standard of performance. The Statewide recording function generates revenue comparable to SL 4 & could be self supporting if placed on program receipts. Will allow the Kenai & Fairbanks Recorders Office to move from Alaska Court System Buildings & provide additional required office space of 800 square feet for Kenai & 3,000 to 3,500 for Fairbanks Office.

P-2 ADDITIONAL EXPLANATION FORM Recorder's Office #3

AGENCY Department of Natural Resources

CATEGORY Management & Administration

PROGRAM Information/Records Mgmt.

TITLE Information/Records Mgmt.

Revised Date 12/30/83

FY85

STATEWIDE DISTRICT RECORDERS OFFICE FUNCTION:

Services Required by Statute: (At current budget level of $1,500,000 80% of required statute work will be completed by eliminating all non-statute as identified below):

1. Record and/or file a multitude of documents, placing them of record so as to constitute constructive notice.

2. Index and cross index and photograph or copy all documents and maintain them in manner so as to allow public viewing and use and for archival purposes.

3. Supply copies of documents to public, other state agencies and lessor units of government. Furnish certified copies to the court and/or parties to litigation. (See attached draft memo dated 7/26/83).

4. File and provide searches of documents under the Uniform Commercial Code System involving real and personal property.

5. Prepare monthly reports and furnish copies of Non-Resident Alien Conveyances, Mining documents, Armed Forces report of separation and Change of Ownership documents.

6. Original recorded/filed documents are reviewed, compared to the computer indexes and returned to requestor.
(Quality Control Function).
Benefit: This ensures that all information is accurate and complete before original documents are returned to the requesting party(s).

SERVICES PROVIDED BUT NOT REQUIRED BY STATUTE:

1. Provide copies of all recorded documents, indexes and cross indexes to ten (10) court offices located throughout the state. (See attached Aniak letter dated 6/29/83. - No fee charged - 5% of total workload).

P-2 ADDITIONAL EXPLANATION FORM

Recorder's Office

AGENCY Department of Natural Resources

PROGRAM Management & Administration

BRU Information/Records Mgmt.

COMPONENT Information/Records Mgmt.

Revised Date

FY85

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Benefit: This allows for greater geographic distribution and use of record data without forcing public to travel great distances and/or request information in writing. It allows municipalities, boroughs and other taxing entities to maintain current tax roles.

2. Compile copies of the hand written reception and location indexes for private companies who publish financial reports. (Fee charged - 3% of total workload.
   Benefit: This information is used by lending institutions, attorneys, builders and numerous other businesses nationwide.

3. Prepare location indexes which describes the real property associated with a particular document. No fee charged - 12% of total workload.
   Benefit: These indexes provide the information necessary to obtain name(s) of the owner(s) of record, if only the real property description is known to the interested party(s) searching the records.

4. Assist and instruct the public in gathering information from the public records. No fee charged - 5% of total workload.
   Benefit: The general public is less knowledgeable in searching these records than those in the title industry. They must be instructed in the method of retrieving the information required by them.

Listed below are priority projects required to provide a more concise and uniform recording system statewide.

1. Establish ten new positions to handle the forecasted 140,000 documents, at full funding which will include their essential equipment (chair, desk, etc.) and an additional 2,000 square feet of office space. The office space to be contiguous to the existing 5,000 square feet. $480K Yearly.

2. Develop and implement regulations for the present recording function and to enact new legislation. Statutes are not specific in nature and are confusing to both the constituents and the recording section. $50K One-Time Cost.

3. Place the recording function on program receipts and allocate additional funds from the general fund to accommodate the free services provided by this section to other state agencies. $150K Yearly.

P-2 ADDITIONAL EXPLANATION FORM

Recorder's Office 41

AGENCY Department of Natural Resources

PROGRAM Management & Administration

BRU Information/Records Mgmt.

COMPONENT Information/Records Mgmt.

Page 4 of 8

Revised Date

FY85

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4. Create DNR Recorder offices out of the four Court offices, combine offices to decrease the number of one person offices to provide better services to the public. $240K Yearly.

5. Establish three (3) regional Assistant State Recorders positions, reducing cost for administrative travel, better management of remote offices and provide a concise and uniform system. $100K Yearly.

P-2 ADDITIONAL EXPLANATION FORM
Recorder's Office

AGENCY Department of Natural Resources
PROGRAM Management & Administration
BRU Information/Records Mgmt.
COMPONENT Information/Records Mgmt.

FY85

MEMORANDUM State of Alaska

TO: Esther Wunnicke, Commissioner
Department of Natural Resources

DATE: October 28, 1983

FILE NO:

TELEPHONE NO: 274-3528

FROM: Jim Leonard, Manager
Anchorage Office of Management and Budget

SUBJECT: Management Review of State Recorder's Office

Attached are the Executive Summary and Final Report on our review concerning the operation of the State of Alaska Recorder's Office. The review was conducted by Jim Leonard and Phil Weber. Questions should be directed to either myself or Phil at 274-3528.

Attachments

cc: Bob Arnold, Department of Natural Resources
Jim Barnett, Department of Natural Resources
Jim Anderson, Department of Natural Resources
Frank Wheeler, Office of Management and Budget
Lennie Boston, Office of the Governor
Sana Efird, Office of Management and Budget
Glen Price, Legislative Audit

EXECUTIVE SUMMARY

A Management Analysis of the Operation of the State of Alaska Recorder's Office

Purpose and Scope

From August 29, through September 9, 1983, the Office of Management and Budget conducted a review of the State of Alaska Recorder's Office. The purpose of the review was to:

1. Improve the operational effectiveness of the Recorder's Office.
2. Identify what steps are needed to reduce an excessive workload backlog.

Background

The recording function is a primary activity of government. The Recorder's Office provides a secure place to accurately record real property documents to insure the security and certainty of title.

The Recorder's Office charges recording fees which are returned to the General Fund. In recent years, these receipts have been more than operational costs. However, the Recorder's Office does not have access to these excess receipts as a means to improving operations.

Between 1979 and 1983, the Recorder's Office document processing volume has grown by 24 percent; however, there has not been any proportional growth in the number of staff positions or improvements in automation capabilities. The current automated system cannot be supported.

Findings

1. Workload bottlenecks -

   We found two steps in the processing of recorded documents which create substantial workload backlog. Both are labor intensive steps:

   Indexing -- this process involves transferring information and preparing it for computer data entry. In various district offices, this process was from 20 to 60 days behind.

   Validation -- This process includes comparing computer reports to source documents to insure accuracy. This process was up to five months behind at one office. Because original source documents must be kept for

validation, the public often must forfeit documents for up to five months or have duplicate copies made.

2. Responsiveness -

The Recorder's Office workload is controlled externally by the public demand for recording; however, the ability to manage the workload is controlled internally as a function of the State's operating budget and the authorized staffing levels.

The Office has little, if any, flexibility to respond quickly to the volume of transactions received from the public. Unless action is soon taken to add staff for the backlog described above, the backlog will continue to grow.

3. Storage -

The Recorder's Office archives storage area is not fire proof. If the Anchorage public records were destroyed, there is a high probability that the archives would also be destroyed. This would create insoluable legal problems with respect to re-establishing accurate chain of title for the Anchorage Recording District.

Conclusions

1. Within the current budget and staffing level constraints, all practical steps have been taken to increase the efficiency of indexing and validation.

2. If the State Recorder's Office could use more of the funds generated by recording public documents, the Office could more easily staff for increased levels of activity. The inability to provide an adequate level of service costs the public about $9 million per year. Under this concept, increased recording fees may be necessary if it is desired that the Recorder's Office contribute a fixed amount of surplus funds to the General Fund.

3. The lack of a fire proof storage area for archival documents presents an unnecessary risk which could have a devastating effect upon the continuity and security of future land title recording activities.

Recommendations

1. Increase the number of full time permanent employees to handle the projected increase in transaction volumes. The estimated cost is $226,000 per year.

2. Hire part time, temporary employees to reduce the current indexing and validation backlog. The one time estimated cost is $4,200 to $13,500.

3. Automate the indexing portion of the document processing workload by using optical scanning equipment or a computer system capable of online data entry or both. The estimated one time cost is $350,000 plus annual maintenance.

4. Use program receipts to fund the suggested automation and staff increases. This would enable the Recorder's Office to better meet the service level demands imposed by the public.

5. Identify two fire proof locations for archive storage. One would serve as the primary storage for archives. The second location would serve as a backup in the event the first archival site was destroyed.

MANAGEMENT ANALYSIS OF THE OPERATION OF THE STATE OF ALASKA RECORDER'S OFFICE

At the request of the Department of Natural Resources, Division of Technical Services, the Office of Management and Budget conducted a management review of the State Recorder's Office from August 29 through September 9, 1983.

The purpose of the review was to determine what actions are needed to improve overall operations of the office and to reduce the workload backlog, dating up to five months. The methodology used to conduct the review involved:

a. reviewing Alaska Statutes regarding Recorder's Office duties;

b. reviewing history and functions;

c. observing operations in the offices at Anchorage, Kenai and Palmer;

d. interviewing title companies and Recorder's Office employees.

BACKGROUND

The Recorder's Office has been affiliated with many State entities. First with the Alaska Court System until transfer to the Department of Administration in January 1977. It next came under the control of the Department of Commerce and Economic Development in July, 1979. In July, 1980 it was finally transferred to the Department of Natural Resources.

The transfers have likely contributed to inadequate support, funding or management attention. These factors could be the causes of the operational problems which currently exist.

In the four year period from 1979 to 1983, there was a 24 percent increase in the number of documents processed by the Recorder's Office. Although the budget for the office increased, there were no increases in staffing levels to account for the growth in transaction volume. The past inadequate staffing has contributed to the backlog, the untimely processing of source documents which belong to the public, and to additional costs for those who are financing land purchases and sales.

There are three areas which require immediate attention.

WORKLOAD BACKLOG

We identified two steps in the document processing cycle which create backlogs. Both of these steps are very labor intensive.

Indexing

The indexing process occurs prior to computer data entry, microfilming and report preparation. This involves transferring information from source documents to data entry forms. This manual transfer of "index information" re-

quires about two minutes per document; however, because of the volume of documents received which require indexing, it may take two staff days to index one day's volume of documents. This condition occurred during our review on September 1, when 550 documents were received.

Because of processing activities which occur before indexing, the past inadequate staff levels, and the high volume of documents received, a three week processing delay now exists. For example, on September 1, 1983 the Anchorage office was indexing documents received August 10. At the Kenai office, the documents being indexed that day included those received during July.

This delay impacts the availability of current reference materials for the public. For example, title companies refer to unvalidated reports to determine if there are liens on property. As a result, the accuracy of their assessments is in doubt.

Validation

Validation is necessary to insure that reports available to the public are accurate. The process involves the comparison of the source document to the computer report. Because the public needs current information, unvalidated reports are placed in the library for public use. On September 1, 1983 the most current report in the Anchorage office was dated August 9. In Kenai, the last validated report was December 16, 1982.

Original source documents cannot be returned until validation is accomplished. During our review, original documents dating back to April 12, 1983 were not yet mailed.

RESPONSIVENESS

The Recorder's Office has no control over the workload it must handle. The workload is controlled externally by public demand for the recording of documents. In contrast, the ability to handle the workload is controlled internally by operating budget and staffing constraints.

Because of the conflict between internal constraints and external demands, the Recorder's Office cannot quickly react to increased public requirements. As a result, backlogs occur causing degraded service to the public.

The time needed to conduct title searches has increased from 1 to 10 days. This delay creates a financial burden to the general public through increased interest charges on every transfer of real estate involving security interest. Based on the number of mortgages being processed in Anchorage, the increased time needed to conduct title searches costs the public about $9 million per year. (See Attachment 1)

ARCHIVE STORAGE IS NOT FIRE PROOF

The Anchorage Recorder's Office maintains the State archives which are kept in a room that is not fire proof. The archives provide the only source of information in the event the public records are lost or destroyed. If the

district records in Fairbanks were destroyed, the archives in Anchorage would be used to replace them. However, if the archives and public records in Anchorage were destroyed, there would be no means to replace the Anchorage records and they would be lost forever.

The archive storage room is also used to store original documents until the computer reports are validated and the originals returned to the public. A fire in the archives room could also destroy these very valuable documents.

CONCLUSIONS

--All possible management efforts have been taken to increase the efficiency of processing documents. These efforts include:

- The dual qualification of personnel to insure that personnel are fully utilized;
- reducing the amount of handling of the documents;
- borrowing personnel from other Department of Natural Resource activities and other state agencies on a short-term basis.

--The Recorder's Office cannot quickly respond to increased public demands for service. The ability to provide an increased level of service to the public is constrained by the operating budget and staff levels. Failure to provide increased service to the public creates a backlog of documents waiting to be processed. This causes public records to be out-of-date which increases the time required for title searches. Costs to the public, in Anchorage alone, are about $9 million per year.

--The lack of a fire proof archive storage area is an unwarranted risk. The loss of archival documents would create untenable legal problems concerning certainty and continuity of title.

RECOMMENDATIONS

Increased Permanent Staff

The Department of Natural Resources should increase the staffing levels in the State Recorder's Office. This increase should include the addition of permanent full time employees to handle projected increases in the workload. The following are our estimates of permanent position requirements.

- Anchorage - 5.0
- Kenai - 1.5
- Palmer - 1.5

It is estimated that personnel, equipment and space rental costs would be about $226,000 per year.

The total number of new full time positions which are required might be reduced through the consolidation of remote Recorder's Offices which DNR considers not cost efficient. A workload analysis of these offices might lead to the transfer of positions to those recording districts where new positions are needed.

Temporary Staff

Temporary part time employees should be hired to work on eliminating the current backlog. These employees could be obtained from temporary employment agencies, students or handicapped personnel. It is estimated this would cost from $4,200 to $13,500.

Automation

The Department of Natural Resources should automate the document recording process as much as possible. Considerations, at a minimum, should include:

- The use of an optical scanner for indexing and validation activities;
- The use of an on-line date entry system; or
- A combination of optical scanner and on-line capabilities.

The advantages of automation are:

- An optical scanner would reduce the time required to enter indexing information by 60-70 percent.
- On-line data entry would be much faster than manually transcribing indexing information.
- On-line entry could automatically compute fees, record book and page data and enter serial number, date and time information.
- Both an optical scanner and on-line system could be tied directly to a computer for data entry purposes. The capabilities of these systems would eliminate much of the manual data entry requirements and improve accuracy.

Development of an automated system should be accomplished using a structured methodology. Department of Natural Resources studies estimates that automation would cost $350,000.

Administration and Use of Program Receipts

Consider establishing a board of directors to manage the State Recorder's Office. The board could represent a cross section of the state and private functions to which services are provided. This board could approve or disapprove all actions relating to the operation of the Recorder's Office. Administrative control should remain under the Department of Natural Resources.

The State Recorder's Office should be provided with the capability to use program receipts for staffing and automation requirements. This would allow the office to more quickly react to public demand for increased service levels without the constraints of the normal budget and staff acquisition processes. In FY 1983, the Recorder's office program receipts were $1.2 million more than the operating budget. This surplus could fund the costs for all previous recommendations. If it is desired to have a fixed amount of surplus receipts deposited to the general fund, then consideration should be given to increasing recording fees.

Archive Storage

The Department of Natural Resources should take immediate action to obtain a fire proof area for the storage of archive documents. In addition, a second fire proof archive repository should be obtained to store second copies of archival documents. This second repository should be located so that any catastrophic event which might destroy one facility would not destroy the second.

ATTACHMENT 1

The estimate of the financial impact to the general public is based upon the delay in processing recorded documents. A real estate purchase is not considered officially closed until it has been recorded. At the closing meeting, all documents are signed and then forwarded for recording. Any delay in recording will mean the seller will not receive the purchase price money until the transaction has been officially closed. During the delay, the seller has lost the interest which could be earned if the purchase price money had been received and invested on the day of the closing meeting.

Mortgages in the Anchorage area are estimated to number at least 30,000 per year. The mortgages average about $100,000 each. At a 12 percent interest rate the daily interest lost is about $1,000,000. A nine-day delay would mean about $9,000,000 lost.

30,000 mortgages x $100,000 per mortgage = $3,000,000,000.

$3,000,000,000 x 12%/360 days = $1,000,000 per day.

$1,000,000 per day x 9 day recording delay = $9,000,000.

HB

343

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March 30, 1984

Honorable John J. Cowdery
House Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: Report of the Task Force of the Business Law Section of the Alaska Bar Association regarding HB 343 and SB 246, Corporate Code Revision.

Dear Representative Cowdery:

Enclosed please find the report of the Task Group of the Business Law Section of the Alaska Bar Association. The report is the result of significant efforts by members of the task group who took time out of their busy practices to serve without compensation in providing their expertise on a subject of great importance to the Alaska business community. Each member on the task group has significant experience as a business law practioner.

Admittedly, the accompanying report is a brief review of a lengthy piece of legislation. The drafters have attempted to highlight certain areas of concern and hope that this report will aid the legislature. Listed below are the members who participated in the task group and their addresses and phone numbers. Please feel free to contact the group if we can be of any further assistance.

Very truly yours,

Paul D. Kelly

Paul D. Kelly
Chairman,
Business Law Section
of the Alaska Bar Association

PDK/pj
enclosure

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ALASKA BAR ASSOCIATION

P.O. BOX 279, ANCHORAGE, ALASKA 99510, (907) 272-7469

BUSINESS LAW SECTION

March 30, 1984

Honorable John J. Cowdery
House Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: Report of the Task Force of the Business Law Section of the Alaska Bar Association regarding HB 343 and SB 246, Corporate Code Revision.

Dear Sir:

Enclosed is a review by the Task Force of the Business Law Section of the Alaska Bar Association of Senate Bill 246 and House Bill 343, the Corporate Code Revision.

The Review represents a time-limited study of the bills and was performed for the limited purpose of bringing to your attention some of the possible legal and economic consequences to the business community and the Alaska public that could arise if the bill were adopted in its present form. We urge you, then to consider this only as such and not an exhaustive section by section analysis of proposed amendments or a scholarly attem, opposition or rebuttal to the work product of the Code Revisi Commission.

In our deliberations, we met, both in subcommittees and as a whole Task Force with John Abbott, Chairman of the Code Revision Commission. At some of those meetings, Jerry Kurtz, another member of the Commission, was also present. At these meetings there was candid exchanges of views on the bills. In addition, we were advised that Professor Dan Fessler was available to meet with us, although at a date too late to assist us with this report given the time constraints put on our work by your Committees.

Individual sections of the bills are commented upon in the attached review, but considering the bills as a whole, we would make the following observations:

1. Any major revision of a comprehensive body of law, such as the Corporate Code should include as one of its objectives, making the practice of law and business operations under the Code easier and more explicit.

We believe the proposed bill goes a long way to make the law more explicit than our current Code in many aspects, but not necessarily easier under which to practice or conduct business. For an Alaskan practioner, far more work needs to be done in carefully drafting Articles, By-laws and other documents than is currently the case. While it may be the intent to encourage the preventive practice of law and reduce remedial litigation, in the vast majority of cases, we think it will merely raise the cost of going into business in the corporate form.

For the out-of-state practioner, the problem is compounded, because as more states adopt the revised Model Act, Alaska's unique departures will require special time and study to assure compliance.

2. The Bills contain very material departures from current law in substantive rights and liabilities among corporate management, shareholders, creditors, secondary acquirers of shares and third parties doing business with Alaskan and even foreign corporations in Alaska.

We have two concerns about these departures. First, some substantive changes, such as the proposed limitations on distributions and the proposed direct liability of Officers and Directors to creditors are significant barriers to stimulation of commercial activity in the state and ought not to be adopted as this state's public policy. Second, we believe that passing a law this session with a July 1, 1984, effective date that contains such significant changes will prove to be an unwarranted shock on the practicing bar, the affected business community and the public.

3. Many provisions of the current Alaska Corporations Code merit attention and any thorough revision of the Code should analyze these special provisions to test their current value. Many of these provisions, such as registration of controlling out-of-state shareholders and disclosure of alien ownership, are ripe for elimination.

We found numerous occasions in the bills and the accompanying comments where these provisions were restated in the revision without explanations to their continuing value.

4. In March, 1983, a final exposure draft of the revised Model Business Corporation Act drafted after much careful study, under the auspices of the American Bar Association was released. The revised Model Act is the product of top legal and business professionals from across the nation.

We recognize that Professor Fessler has drawn liberally, in his proposals to the Code Revision Commission version, from the Model Business Corporation Act before its 1983 revision. Submitted herewith for your reference is a copy of the March 1983 Model Act draft. The final version is due to be published in the summer of 1984, with minor changes.

Some members of the Task Force have reviewed the revised Model Act and the accompanying commentary had the benefit of nationwide consideration by practioners and academicians and, to the extent adopted in other states, will enhance interstate corporate commerce. In our opinion if a comprehensive revision is deemed necessary, the revised Model Act is the appropriate vehicle for Alaska to utilize.

Furthermore, we urge consideration of the Model Act because its adoption in many states will provide a body of decisional law upon which Alaskans may draw for guidance in interpreting the Act, something a very unique Act would not have available. In addition, an extensive legal commentary accompanies the Model Act aiding the reader in a clear understanding of the provisions. Finally, as is the case with the old Model Act, the draftmen of the revised Model Act will provide model bylaws and official corporate forms to assist the public. This should significantly reduce legal costs.

We hope that this rather hurried review is useful to your committees in your own deliberations on the bills.

It is our view that there are numerous questions about specific provisions in the that the Committees should require more study.

Since the HB 343 carries such important consequences and there has been no showing of urgency to change the law, nothing is lost by deferring action on a new comprehensive code for Alaska until next session. By so doing, the legislature could accomplish the following:

a. give the Legislature, Code Revision Commission, and the public a meaningful opportunity to fully consider the revised Model Act;

b. give all sectors of the business community an opportunity to consider and propose specific amendments;

c. explain to the non-lawyer business community the Legislature's interest in revising the Code and seek an expression of support or concern from affected economic sectors.

The Task Force is willing to continue working with your Committees and with the Code Revision Commission towards a bill that is the best possible statute for Alaskans.

Yours cordially,

Richard Block
Task Group Chairman

RB/pj
enclosures

February 8, 1984

To: John

From: Ken

RE: HB 343--RELATING TO THE REVISION OF THE CORPORATIONS CODE

COMMENTS:

This bill of course has been in the works for several years and was first introduced in to the legislative process by the code revision commission in 1982. The bill would revise the states statutes regulating corporations; replacing statutes drafted in the 1950's.

Today in the committee meeting the plan, as we talked about it, is to go over the amendments made by the code revision commission and the Dept. of Commerce. These amendments are rather minor in the overall scope of the bill.

Dick Regan of the commission will be here to answer questions, Senator Rodey will also answer questions and

discuss the Senate's action on the bill. Prof. Fesler has class until 9am. We hope to hook up with him at about 9:15 via the telephone.

QUESTIONS:

CONCERNING THE LIABILITY OF DIRECTORS

1. Can review this section and shed some light to the committee on the liability of directors ?

2. How does the section covering the liability of directors differ from current statutes which covers this liability question ?

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February 22, 1984

Hon. John J. Cowdery
Alaska House of Representatives
Pouch "V" - Mail Stop 3100
Juneau, AK 99811

Re: House Bill 343
An Act Revising the Alaska Corporations Code

Dear Representative Cowdery:

We are writing to provide you with a summary of our comments regarding H.B. 343, which is an Act revising the Alaska Corporations Code. We are impressed with the thoroughness and thoughtfulness of the proposed revisions. Although lengthy and complex, these revisions will add a great deal of certainty to the law of corporations in the State of Alaska. The present statute is not as detailed as the proposed revisions. Alaska courts have not resolved many of the legal issues which confront corporations.

The official comments accompanying this proposed revision and statements made at public hearings properly summarize the major features of these revisions. For the most part, we are in agreement with those comments. However, as noted herein, the provisions relating to liabilities of officers, directors, and shareholders; the provisions relating to derivative suits; and the provisions relating to dissolution deserve special attention. In addition to our comments on these portions of the proposed revision, we also suggest some technical changes which occurred to us during our review of the proposed bill.

I. Liability of Directors, Officers, and Shareholders to Creditors of a Corporations

In general terms, under existing law in the State of Alaska, officers, directors, and shareholders are not liable to creditors of a corporation. The creditor's claims against a corporation are limited to claims against the assets of the

corporation. Officers and directors are liable to corporations for their wrongful acts which harm the corporation. Shareholders are liable to the corporation to pay for their shares, and are liable to directors to contribute to a director's liability to the corporation in the event a dividend is paid improperly to shareholders.

H. B. 343 continues the liability of officers and directors to the corporation for their wrongful acts. Section 488 of the Bill expands directors' and officers' liability to include liability to creditors for materials, labor and services, up to an amount of Twenty-Five Thousand Dollars ($25,000.00) per creditor. Section 675 of the Bill makes directors liable to the corporation and its creditors for improper distribution of assets during dissolution and winding up.

Section 378 of the Bill creates shareholder liability to creditors in the name of the corporation for their knowing receipt of improper dividend payments. Directors are also liable to the corporation for the same transaction. See, § 480(a).

The expansions of liability contained in §675 and 378 are good. Liability of the directors and shareholders in these provisions is directly related to the wrongful or improper acts. Section 480(a)(1) of the Bill should be amended at page 64, line 15, to read:

> A director who votes for or assents to a distribution to the corporation's shareholders contrary to the provisions of A.S. 10.06.358, 10.06.360, 10.06.363, and 10.06.365, or contrary to a restriction in the articles of the corporation, is liable to the corporation and to creditors in the name of the corporation, jointly and severally with all other directors voting for or assenting to the distribution....

This addition will expand the liability of the directors in these to specifically include liability to creditors. Under the bill as written this liability exists pursuant to Section 488. However, the change to Section 480 is appropriate so that the liability continues even if Section 488 is deleted by the legislature or invalidated by an Alaska court.

Section 488 of H. B. 343 creates secondary liability of directors and officers to creditors of the corporation up to an amount of $25,000 per creditor in the event assets of the corporation prove insufficient. The liability exists only for materials, supplies, inventory or services furnished in Alaska during the period of an officer's or director's service. This provision of the Bill is new and is experimental. It is not based on the concept of wrongdoing by an officer or a director. The provision has the potential of creating conflicts of interest within a corporation and spawning complicated litigation. We believe that the section should be deleted or that alternatives should be considered by the legislature.

If you consider alternatives, these alternatives should be based on the simple principle that liability should not be created unless an officer or director does something wrong. For example, an officer or director should be liable for entering into or authorizing contracts for the provision of services or materials when the officer or director knew or should have known that the corporation would be unable to pay for those services or materials. As presently written, Section 488 creates liability even if a corporation is solvent while receiving material and services. An example illustrates the inequity which may result. Assume that a vice president authorizes a contractor to provide materials to a corporation. At the time the corporation is solvent and intends to pay for the materials. When the materials are delivered, the corporation is not satisfied, believing that the contractor has breached his obligation. A lawsuit results, taking 3 years to resolve, in favor of the contractor. During the interim time, the vice president leaves the corporation and the corporation, as a result of other problems, is unable to pay the contractor's judgment against it. The vice president,

without doing anything improper, would be personally liable to the contractor.

The following is a list of specific problems which you should consider in evaluating the propriety of Section 488.

Many small corporations in Alaska have titular officers and directors in order to meet the statutory requirements of three directors and that there be a separate president and secretary for the corporation. These individuals usually do not take a direct involvement in the activities of the corporation. Arguably, these individuals should not have liability to creditors for acts that they did not participate in.

Secondary liability under Section 488 arises "to the extent that the assets of the corporate entity prove insufficient...." It is not clear from this language whether a creditor is required to sue and obtain judgment against a corporation and unsuccessfully attempt to execute on that judgment against corporate property prior to asserting liability of officers and directors. As Section 488 is presently written, it is likely that if a plaintiff is suing a financially troubled corporation, that plaintiff will include all officers and directors of the corporation as defendants so that he will have judgment against them in the event the corporate assets are not available to satisfy the judgment. If this inclusion of defendants becomes standard practice, it has the potential of complicating lawsuits and increasing the burden on the courts of those lawsuits. Also this practice will harass officers and directors and may discourage their future participation in corporate matters.

A corporation may seek protection of the bankruptcy laws. When a corporation files for bankruptcy a court enters a stay prohibiting further action by creditors against corporate assets. Arguably, at that point in time, corporate assets would prove "insufficient" to satisfy creditors' debts. The question arises whether or not a creditor would then be permitted to proceed against officers and directors pursuant to Section 488.

Chapter 11 bankruptcy proceedings allow corporations to rearrange and delay payment of debts. Sometimes the bankruptcy court will order payment of part but not all of debts. If corporate finances deteriorate to the point where Chapter 11 reorganization is a potential solution for financial problems, officers and directors will be faced with a conflict of interest in that filing Chapter 11 bankruptcy will help the corporation but will potentially affect their own financial liabilities. While the corporation benefits by the rearrangement of its debts, the officers and directors will be required under Section 488 to assume obligation for those debts.

Foreign corporations will enjoy some advantage over domestic corporations in the application of Section 488. In all probability, most of the officers and directors of foreign corporations will not be subject to the jurisdiction of the Alaska courts. Thus, even though the section is intended to apply to foreign corporations, as a practical matter it will be very difficult to sue foreign directors and officers in Alaska.

If an officer of the corporation enters into a contract without corporate authority, the other directors and officers of the corporation should not be personally liable for that act.

Directors do not participate in day to day management of a corporation. They might not be aware of the types of contracts which would create personal liability for them. Section 488 would force directors to participate more directly in day to day management of the corporation.

Even if an officer or director dissents from a decision to enter into a contract, that officer or director would have liability under Section 488.

In addition to the type of conflict of interest previously noted, Section 488 could create conflict when an officer or director personally guaranteed an obligation of the corporation. For example, assume the president of the corporation personally guaranteed a loan from a bank and the corporation ran into finan-

cial trouble. The president would want the corporation to pay the loan he guaranteed. Other officers and the directors would want the corporation to pay creditors protected by Section 488, prior to paying the bank loan.

Subsection (b) permits modification of statutory provision in a written contract. This section would be better if it required this modification to be in bold face type set out from the body of the contract so that it would be clearly visible to anyone reviewing the contract.

Section 488 does not apply to directors appointed by the court pursuant to Section 640 of the Bill to break a deadlock in the board of directors. However, Section 488 does apply to other directors appointed during dissolution and winding up of the corporation pursuant to the court's authority granted in Section 650 of the Bill. If Section 488 remains in the legislation, it should not apply to those individuals appointed by the court pursuant to Section 650.

During dissolution and winding up of a corporation, the corporation may obtain assistance from the courts. See §673. If a creditor fails to appear in a court-ordered dissolution proceeding, that creditor's claims against the corporation are waived. See §653. That section should also provide that the creditor's claims against officers and directors pursuant to Section 488 is waived.

The procedures established for judicial dissolution of a corporation insure that at the time of the distribution of assets all known claimants are bound by the terms of the dissolution. Those claimants are not bound by a non-judicial dissolution. They potentially have a claim against present and prior officers and directors pursuant to Section 488. If the situation arose where creditors made a claim after dissolution against prior officers and directors, those officers and directors could sue the dissolution officers and directors claiming they were negligent in failing to protect them from liability to those creditors. To avoid this potential liability, corporate officers should routinely use the court to supervise dissolution. This would unnecessarily crowd court dockets.

Section 960 exempts officers and directors of Native corporations from the provisions of Section 488. We believe that both corporations and individual officers and directors will be able to challenge this exclusion, arguing that it denies them equal protection of the law. The Fourteenth Amendment to the United State Constitution requires states to treat persons and corporations similarly situated in a similar fashion. A statutory classification which treats people differently based on race or alienage is suspect and will be upheld by a court only if there is a compelling state reason for the classification. If an officer or a director of a non-Native corporation were sued under Section 488, it is probable that individual would contest the constitutionality of Section 488 and Section 960 by arguing that the state has placed greater liability on him than on others who are similarly situated as directors and officers of Native corporations. The individual would argue that the distinction is based on alienage or race and that there is no compelling state reason for the different classification of liability. The official comment to Section 960 does not explain why officers and directors of Native corporations are excluded. We do not know whether there is sufficient justification for this exclusion. Even if the exclusion is justified at present times, its justification might terminate in 1991 when shares of the Native corporations become available to the public.

II. Derivative Actions:

Section 435 of H.B. 343 establishes the right of and procedure for shareholders to maintain a derivative action against the management of a corporation. Unless a majority of the directors of a corporation are implicated in the alleged injury to that corporation, a shareholder must demand corrective action from the board prior to initiating a derivative action. If after a demand is made on the board of directors, the board finds that in its business judgment litigation is not in the best interest of the corporation, the shareholder does not have the right to maintain a derivative suit. The shareholder is barred in this instance unless the shareholder is able to prove to the court that a majority of the directors is implicated in the injury or if the court rejects the board's decision as inconsistent with the directors' duties of care and loyalty to the corporation.

Once a derivative action is properly begun, a court may dismiss it if a disinterested board of directors petitions the court for dismissal and the court agrees that dismissal is in the best interests of the corporation and consistent with public interest.

This procedure makes it more difficult than present to maintain a derivative action in the State of Alaska. The procedure favors management of a corporation which has the authority, so long as it is not implicated in injury to the corporation, to decide whether or not a derivative action shall be maintained. Since the statute allows a disinterested board to petition the court for dismissal of a derivative action, plaintiffs in a derivative action will be forced to undertake two trials. The first trial would be to convince the court that the petition for dismissal should not be granted. Plaintiff in the action would be entitled to an evidentiary hearing to present its information to the court regarding the problem. If the plaintiff succeeded in that evidentiary hearing in avoiding dismissal, the plaintiff would then incur the additional expense of the second evidentiary hearing at trial on the merits.

Subsection (f) of Section 435 (H. B. 343, page 50, lines 17 and 18) allows the directors of the corporation to "petition" a court to dismiss a derivative action. To be consistent with Alaska Rules of Civil Procedure, the statute should require the directors to appear in the derivative action by a third party complaint against the plaintiff shareholders. The plaintiff shareholders would be third party defendants in the action. Subsection (f) could be amended as follows beginning at line 16:

> "Notwithstanding (c) or (e) of this section, disinterested, not involved directors acting as the board or a duly charged board committee may ~~petition~~ intervene in the derivative action as third party plaintiffs against the shareholders and request the court to dismiss the plaintiff's actior on grounds that in their independent, informed business judgment the action is not in the best interest of the corporation.

Section 435(h) (H.B. 343, page 51, line 6) provides that if the plaintiffs in a derivative action represent less than five percent (5%) of the outstanding shares of any class of the corporation, the court may require the plaintiffs to give security

for reasonable expense including attorney fees that may be incurred by the defendant corporation in the action. This section may be unenforceable. A.S. 09.60.060 requires non-resident plaintiffs or foreign corporations to post security as a prerequisite to appearing in Alaska courts. The Alaska Superior Court routinely refuses to apply this statutory prerequisite to a non-resident's or foreign corporation's right to appear as plaintiff in Alaska courts. The Alaska Supreme Court has refused to reverse this position by the Superior Court. The prerequisite to a lawsuit is not enforced because right to appear in court is a fundamental right and there is no sufficient rationale for the distinction which condititions that right against non-resident plaintiffs and foreign corporations.

The requirement in Section 435(h) that a derivative action on behalf of less than 5% of the shareholders of the corporation be conditioned upon those shareholders' ability and willingness to pay a bond for costs likewise interferes with the fundamental right of those individuals to have access to the courts. There is no correlation between the size of the group maintaining the derivative action and the merits of their claim. As a result it is unlikely that a court would enforce this condition for maintaining a lawsuit.

III. Dissolution:

Section 628 (H. B. 343, page 101) allows shareholders representing one-third of the total number of outstanding shares to petition for dissolution on the grounds that those in control of the corporation have been guilty of "persistent unfairness towards shareholders...." This language is new to Alaska statutes. We believe that it is too broad and too vague, allowing too much room for judicial interpretation of what consistutes persistent unfairness to shareholders.

Section 628(b)(5) appears to allow a petition for involuntary dissolution of a corporation having 35 or fewer shareholders of record by a single shareholder on the basis that "liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder or shareholders." (H.

B. 343, page 102, lines 10 and 11.) We believe this language may also be too broad, allowing too much room for judicial interpretation.

It is not clear from the comments whether or not the code revision committee considered requiring that suits for involuntary dissolution include all shareholders, or a representative of their interests, as defendants to the action. We believe this alternative should be considered so that the interest of other shareholders will be adequately represented in a suit for involuntary dissolution.

Section 630 specifies how a corporation may avoid involuntary dissolution by purchasing the shares of those plaintiffs seeking involuntary dissolution. The corporation is permitted to appear in the lawsuit for involuntary dissolution and offer to purchase the plaintiffs' shares at fair market value. Section 630 would be improved if it required the corporation to make this purchase offer within 90 days of the date the lawsuit was instituted.

Section 630 provides that if the corporation and the plaintiffs cannot agree on the fair value for the shares, the court may appoint three appraisers to determine that fair value. Subsection (c) of §630 would be improved if it specifies that the date of filing the complaint will be the date of valuation for the shares. In its present form, the date of valuation is not clearly stated.

In passing, we would note that in our copy of the official comments there is no official comment for Section 630. The official comment for Section 633 is erroneously printed as the official comment for Section 630. If the legislature intends to adopt the official comment by reference, this typographical error should be corrected.

Under H. B. 343, if a court is directing winding up of a corporation after its dissolution, creditors and claimants may be barred from participation of general assets of the corporation if they fail to make or present claims and proofs within the time ordered by the court. If Section 488 remains in H. B. 343, Section 653 should be amended to also bar creditors' claims against directors and officers if they fail to appear in the winding up proceedings. The amendment may be accomplished as follows:

> "In a court-directed winding up of a corporation (A.S. 10.06.618, 10.06.635(b) and 10.06.645) creditors and claimants may be barred from participation in a distribution of the general assets of the corporation, and shall be barred from asserting claims against officers and directors of the corporation pursuant to A.S. 10.06.488 if they fail to make or present claims and proofs within the time the court may order.

Section 655 (H. B. 343, page 114) describes the order the court may enter declaring that the affairs of the corporation are completely wound up. Subsection (c) of §655 states:

> "The directors or the persons appointed under A.S. 10.06.648 shall be discharged from their duties and liabilities, except as may be established under A.S. 10.06.488 or except as needed to complete the winding up."

Section 648 allows the court to appoint directors to resolve a deadlock in a board of directors. This provision excepting Section 488 liability for appointed directors should also apply to directors appointed by the court pursuant to its authority under Section 640 and Section 653 of the Bill. We do not believe that any individual appointed by the court to serve as a director or officer for a corporation during dissolution or winding up of the corporation should have personal financial liability for contracts entered into by the corporation during that period of time.

Whenever the Bill permits creditors in the name of the corporation to sue shareholders or directors for improper distribution of dividends (A.S. 10.06.378) or assets (A.S. 10.06.675), the statute should specifically provide that the shareholders and directors may assert any defense to the action available to the corporation.

IV. Miscellaneous Comments:

Section 460 of the Bill permits removal of directors without cause by vote of shareholders. H. B. 343, page 57, line 4. Subsection (a)(2) describes the number of shares which must vote in favor of removal of the director if the corporation has cumulative voting. Subsection 3 describes the number of shares

within a class which must vote in favor of removal if a director is elected by a class. Subsection 460 should be amended to describe the minimum percentage of shares which must vote in favor of removal of a director without cause if the director was not elected by class and the corporation does not have cumulative voting. This may be accomplished by an amendment to H. B. 343, page 57, line 6 and 7 as follows:

> "At a regular or special meeting for which notice is given under A.S. 10.06.410 and this section, any or all of the directors may be removed without reason if the removal is approved by a vote of the majority of the outstanding shares and...."

The Alaska Federation of Natives has proposed an amendment to H. B. 343, page 149 at line 12, as follows:

> "Notwithstanding the provisions of A.S. 10.06.574-586, a plan of merger, consolidation or exchange qualified under this section prior to December 19, 1991 shall not include the right of shareholders to dissent."

This amendment should be improved by the addition of the phrase:

> ".... plan of merger, consolidation or exchange qualified under this section and approved by the proper corporations prior to December 19, 1991 shall not include the right of shareholders to dissent."

This amendement will specify that the merger plan must be approved prior to the specified date; otherwise shareholders will have a right to dissent.

Section 546 provides that a plan of merger, consolidation or exchange for an Alaska corporation must receive approval by a vote of two-thirds of the outstanding shares of each corporation affected. A lower voting requirement applies to corporations established under the Alaska Native Claims Settlement Act. Section 960(c) provides that a plan of merger, consolidation or exchange of ANCSA corporations may be approved by an affirmative vote of holders of a majority of the outstanding shares of each corporation. The official comments do not explain the different

requirements for these corporations. The different requirements are probably permissible. It would be well to explain the different requirements to avoid confusion in future.

We appreciate this opportunity to comment on H. B. 343.

Sincerely yours,

SMITH, ROBINSON & GRUENING

for James T. Robinson

RIS:ljd

cc: Mr. Ken Johnson
Mr. Merrill Sikorsky

Opinion

1996

"The Olympics is a huge investment over a 12- or 14-year period. But for Anchorage it wouldn't be so much a big financial investment as a human investment. It would take a lot of time and energy." Reyn Bowman, executive director, Anchorage Convention & Visitors Bureau.

Anchorage and the Winter Olympics are a perfect fit.

On the one hand, Anchorage is the right size — not too big, not too small. It has the financial resources, both public and private, to make the venture a success. It's becoming adept at hosting world-class competitions with alpine skiing events at Alyeska Resort, Nordic skiing at Kincaid Park and even the Great Alaska Shootout at Sullivan Arena.

Its lodging accommodations are adequate today and are growing by leaps and bounds. The climate is ideal for winter sports competition. Anchorage is ideally situated for air access both from North America and from Europe and Russia, which provide the vast majority of the athletes participating in Winter Games.

Anchorage would add a new dimension to the cultural aspects of the Olympic Games, and in a state where the number of visitors and tourists annually doubles and triples the population, playing host has become an art more than a chore.

Those are just a few of the things Anchorage has to offer the Winter Olympics. The other side of the question — what does the Olympics have to offer Anchorage, and the entire state of Alaska, for that matter — is equally compelling. And the facts are equally one-sided.

The Winter Games would give Anchorage worldwide exposure and a massive economic boost at the time of year when it needs it most. Tourism, one of the mainstays of the Alaskan economy, always has sagged during the winter; nothing could turn that situation around faster than the Olympics. Officials from the Lake Placid area in New York say that area still is on a high from the 1980 Winter Games, and in the words of one economist, "We don't know how long it will take for that to wear off or if it ever will."

Most important is what would be left behind after the Olympics are gone: world-class winter sports facilities that would establish Anchorage as a winter sports mecca and benefit everyone in Southcentral Alaska who would have easy access to those facilities for years to come.

Unquestionably, construction of some of those facilities would be an expensive proposition. Most notably, those

From Courtroom to Board Room

By TONY SMITH

Senior partner, Smith, Robinson & Gruening

House Bill 343, pending before the Alaska House of Representatives, is "An act revising the corporation code." This bill was prepared by the Alaska code Revision Commission, and it proposes sweeping changes in Alaska's corporate law.

Rep. John Cowdery has been taking a hard look at the proposed bill. The Alaska Code Revision Commission held extensive hearings and spent a great deal of time and money preparing the revisions.

My review of the proposed revisions indicates they did a good job. Cowdery, however, has quite correctly realized that the revisions are very expansive and may have long-range side effects.

The bill is lengthy and complex. While the proposed revisions may add a degree of certainty to Alaska's Corporation Law, there are some areas of real concern.

For example, the proposed revisions extend personal liability of directors and officers to certain creditors of the corporation up to the amount of $25,000 per officer or director.

Thus if the corporation lacks the assets to pay bills the officers and directors are liable.

The exposure of the directors and officers is irrespective of any wrongdoing, irrespective of the degree of involvement in the affairs of the corporation and irrespective of whether the individual dissented from incurring the debt.

In addition, not all creditors have the same right as the commission decided to only protect the "little guys."

There also is a serious question as to whether the effect of the revisions will be to prefer foreign corporations.

While the code attempts to impose liability on foreign corporations, as a practical matter the corporate codes of the other states will apply to the internal affairs of corporations incorporated in their jurisdictions.

Thus some of the more novel concepts may very well disadvantage Alaska corporations in the long run.

There are other aspects of the proposed bill which have wide-range effects. The Alaska Code Revision Commission has stated it attempted to find a middle ground between pro management and pro shareholder states. In so doing it has developed some rather esoteric concepts.

For example, the bill allows minority shareholders to petition a court to dissolve a corporation on the grounds that those in control have been guilty of "persistent unfairness towards shareholders."

That language may become one of the principal sources of litigation in the State of Alaska.

It is evident that a great deal of thought has been devoted to the proposed revisions. However, Cowdery and others have focused on the danger of attempting to legislate in a broad sweeping manner problems which may or may not exist.

There are some advantages to trying out ideal solutions but I question whether this is the right time or place.

A critical review of House Bill 343 is a real service. The effort to solve all Alaska's potential corporate problems in one piece of legislation appears to open up a Pandora's box.

It would be well if those involved in the business community took the time to familiarize themselves with this important piece of legislation.

Perhaps no other legislation effects the rules of the game as much as Alaska's Corporation Code.

STATE OF ALASKA Committee Secy.

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

M E M O

TO: HOUSE LABOR & COMMERCE COMMITTEE MEMBERS
HOUSE JUDICIARY COMMITTEE MEMBERS

FROM: HOUSE LABOR & COMMERCE STAFF

RE: JOINT HOUSE LABOR & COMMERCE AND JUDICIARY COMMITTEE HEARING ON HB 343-REVISE THE CORPORATION CODE VERBATIM TESTIMONY

DATE: MARCH 7, 1984

ATTACHED FOR YOUR INFORMATION AND REVIEW YOU WILL FIND THE VERBATIM TESTIMONY ON HB 343. THIS WAS THE LAST HEARING HELD IN ANCHORAGE, FEBRUARY 24, 1984.

THIS TRANSCRIPT IS PROVIDED FOR US COMPLIMENTS OF THE CODE REVISION COMMISSION AND WAS TYPED BY CATHERINE WALSH OF THE COMMISSION.

JOINT HOUSE LABOR AND COMMERCE AND JUDICIARY
COMMITTEE HEARING ON HB 343/SB 246--FOR PROFIT CORPORATIONS
FEBRUARY 24, 1984 - LEGISLATIVE INFORMATION OFFICE, ANCHORAGE
10:00 a.m.

COWDERY: Will the meeting please come to order. It's 10:07 a.m., February 24th. We are in Anchorage, the Labor and Commerce Committee joining with the House Judiciary Committee. I'd like to make note of those present here in Anchorage is Representative Wendte, Representative Pestinger, Representative Furnace, Representative Uehling and also Representative Koponen is in Fairbanks on the teleconference network and Representative Ringstad is in Juneau. I'd like to check in and make sure that Representative Koponen and Ringstad, first in Fairbanks and then to Juneau. Representative Koponen.

KOPONEN: This is Representative Koponen right here. We have two people in the audience at this time.

COWDERY: Representative Ringstad.

MODERATOR: This is the moderator in Juneau and Representative Ringstad has stepped out for a moment. Can you come back to us?

COWDERY: Yes. O.K. We have a quorum and I would like to maybe turn it over to Representative of the Judiciary Committee to establish his quorum. Representative Bussell.

BUSSELL: Thank you, Mr. Chairman. The Judiciary Committee does have a quorum. Representative Wendte is present with us, Representative Hayes, Representative Liska, Represenative Malone, and Representative Barnes is someplace on her way here.

WENDTE: Mr. Chairman.

COWDERY/BUSSELL: Representative Wendte.

WENDTE: I just want to know as a matter of deference to my dear friend the Chairman of the Judiciary Committee, I've been placed on this side of the table. It's not that I don't care to join the Judiciary Committee today. But since I am the only member of both committees, maybe I should run back and forth.

BUSSELL: You are sitting in the witness chair.

COWDERY: The House Labor Committee meets in the morning and so at noon you can move to the other side. The Judiciary meets . . .

WENDTE: It's probably a good way to do it, Mr. Chairman. Thank you.

COWDERY: We are here this morning to hear HB 343 to revise the corporate code. And we have had a joint hearing on this with the Senate Labor and Commerce in Juneau and we've got quite lengthy testimony, had quite lengthy testimony to review, and it is the intent of this committee to not be critical of the code or the bill, but to bring some areas that are not clear, perhaps help clarify some of the areas and to discuss some of the areas that seem appropriate now that we clear up rather than later if it ever comes to a court decision that perhaps we can by clarifying some of the areas of concern we can maybe keep that later court date to a minimum. I was wondering, I know that Mr. Dick Black of the Alaska Bar Association, or Block. Would you care to comment or have comments. Or I could go on an overview of some of the areas of concern . . .

BLOCK: Mr. Chairman, it's your pleasure. I am prepared to testify if you like or any order you that you would like. Good morning to the Chairmans of both committees. My name is Richard Block. I actually come before you I suppose more officially as a representative of one of the sections of the Alaska Bar Association. And I will refer back to that in a moment. I would also like to say, however, I am an attorney admitted to practice in the State of Alaska and have to only a small or modest degree done corporate work for clients. I also am an owner and investor in a business enterprise in the State of Alaska which is in corporate form, and we have in our corporation five separate corporations. So I believe that from the standpoint of its practical application as well as its legal concerns, I do have some familiarity with what the impact of the bills before us might have in this Alaska community. And I also said from a more official standpoint, I am representing one of the sections of the Alaska Bar Association. About a week and a half ago, I was asked by the chairman of the business law section of the Alaska Bar Association, the chairman of the executive committee, to chair a task force which has just recently been appointed to study and undertake a review of these bills and the work that has been done by the code revision commission and by Professor Fessler. It is the charge of our task force not to engage in an extensive, shall we say academic type review or even a legal analysis of the bill, since we believe that has been extensively done and well done by Professor Fessler and by the code revision commission and by the staffs of the legislature. But we do believe that in the interest of better understanding, the impact that such a bill would have on the business community and on the practice of business and corporate law, that you might say kind of a business impact report is deserving. Exactly what will be, or not exactly but at least to the extent that we can

foresee it, what are some of the economic interests and factors in the state that could be affected by what this bill contains that may not have been brought before your committees. And when I am through here in a few moments, I am going to ask or suggest that the committee in its deliberations at least not move so quickly that our task force would not be given the time to present to you what we regard as our you might say economic legal impact report of this bill. We do not believe it will take a lot of time, we'd like, say, about 30 days to finish our work and present it to you. As I indicated, I think we can do that because we are not going to reinvent the fine work done by those that have gone before us. A very brief review of the bills and the commentary that accompanies the bills would indicate that one of the things you typically find in a significant revision of a law of this type, that is to say that it is a technical revision, it is a language revision, that it is a modernization of tone or tenor is certainly a part of this bill. But this bill really has substantial substantive changes in it, and I think that one of the things that is unfortunate, and I have to say that for myself I take upon myself the responsibility for making some of the same assumptions I am going to charge to a larger class of people and that is I think a lot of people thought that the revision of the law was going to be a revision of the words and not a lot of substantive change. And as you get into it, there are some signficant changes in this bill, and I don't think the business community broadly based is widely aware of it. And I think they need to be and you need to be aware of what that means to them. I think, for example, that my brief reading of the analysis and the bill would seem to change the character of the articles of incorporation from a simple organic document that kind of brings the corporation into existence, which is now and would in the future if this bill were adopted, be its function. But the articles become in addition more or less a disclosure statement, a rather complete disclosure statement to anyone who becomes involved in the corporation. And I gather that notion from the fact that an awful lot of things which today are kind of put into articles by a one line reference or by absence of any reference and then incorporating statutory provisions to the requirement that if certain things are going to be ever done in a corporation, it needs to be specifically allowed for disclosed in the articles of incorporation. Now I am not here nor do I think our section takes a view that that's good or bad, but only that it becomes a fact that's contained in this law and if a lawyer is going to do an adequate job of protecting a corporate client, they are going to have to do a more careful analysis and a more careful job of drafting to make sure the corporation is permitted by its articles of incorporation, or in this disclosure document if you will, to do those things which it now intends to do or might in the future wish to do. And I suggest that one of the things that we would like to measure in our impact report is how much additional legal work is going to be required by lawyers

asked by their clients to form a corporation and what's going to have to be done in order to make sure that they never get into a situation which under this bill would become an ultra vires or an act outside the ambit of their agreed authority. Another significant aspect of this bill is that it clearly seeks to change the relative protections among classes of people involved in a business relationship. I think it's fair to say that the code revision commission and Professor Fessler recognizes that current Alaska law is, if you want to assign an appellation to it, is a vested, corporate ownership protection approach. And I think it is clear that the approach taken in this bill is to move away from that and to provide some protections for creditors and for outside stockholders. Now again, I don't think this is the responsibility of the bar association, or do we wish to take a view that that's good or bad, but only that it is in fact a significant change in our law. It is a substantive change, and the way in which that's done, and the fact that it is being done, I think needs to be recognized by a broader base of the business community and the effect of that, if any, presented to your committee. There are a number of impacts that we see this potentially having. One I've alluded to and that's simply the cost effectiveness. We think there is going to be some significant changes in just legal costs informing the corporation, because I think lawyers are going to have to be a lot more careful and a lot more explicit in what they do. That may not be that, that may be public policy desire that the cost of that needs to be thought out. I suppose there are going to be some changes in trade costs. By trade costs, I mean that if you are going to change the respective protections of creditors and the protections of superiorly postured investors, then there may be changes in interest rates or rates of return to stockholders and to officers and directors and creditors in view of the changing positions. And I would imagine that one of the things that's going to have to be considered by any officer or director of a corporation, that because of one of the provisions in the law subject it to potential personal liability in the event of the failure of the corporation is the possibility of additional indemnification costs in order to attract people to be officers and directors of complex business operations. I think we also want to suggest to the committee the need to evaluate the impact, what I would call the business impacts. For example, would the potential exposure of many, potentially millions of dollars to an individual officer or director, and as I read this there is a right to go against certain officers and directors for up to $25,000 per creditor. So the $25,000 is mulitiplied by as many of these trade creditors as there may be in a corporation. What is it going to take to attract a person to become an officer or director of a corporation when he's got that potential exposure. Now I don't think anyone can quarrel with the proposition advanced by the advocates of this bill that you are trying to encourage responsible action by corporate officers, and the

threat that they may by dissipation in corporate assets or inappropriate business actions leave creditors unprotected and they should be aware of that. That may be a valid public policy. But I do think we need to think out if that is going to chill business entrepreneurship in the State of Alaska or freeze out or preclude access to the most qualified executives to come in and operate corporations because of this concern. And I would be even more particularly concerned if it were necessary to attract a highly qualified person to come in and run a troubled corporation. And if you have a corporation that is salvageable but in financial difficulty and you want to attract someone to come in and involve himself with that enterprise, is he doing so at such a great peril that you cannot attract that kind of individual to your company. Finally, I think I would want to suggest to the committee that one needs to consider the broad based economic impacts. I don't think it, I realize we may be focusing an unwarranted amount of attention on one section of a bill that contains several hundred sections, but nonetheless, when you start getting in to where the dollars go and whose pocketbook is exposed, it becomes important. And the question I would raise with respect to economic impact is we are trying in this state, and I believe it's the professed posture of the legislature, that we are trying to encourage investment in economic activities in the state which so far have proven to be less certain than other types of investments. We don't need to encourage people to get involved in the oil industry. It's a rather certain profitable return on that investment. But what about business enterprises around the fishing industry, around the timber industry, around the agricultural industry, and other industries where we are trying to encourage investment, but where the opportunites for absolute certainty of return are less known to us. Are we going to chill business entrepreneurship because the person is unwilling to commit $100,000 and put that into a corporation and see if I can may a go of it in one of these marginal industries. But if I have to further expose my resources beyond that investment because through circumstances that I may control or may be beyond my control, I expose myself to liability beyond what I am prepared to commit, I am not willing to do it and thus, preclude the type of access, the type of business enterprise that you're trying to encourage in these marginal industries. Those are the kinds of things we need to think about. Again, I know that there is a great amount of good in this bill. Not only do I know it because of the caliber of people who have worked on it, I've gone through it and I know having worked in the existing corporation code, that there is room for improvement and the desirability, just the general advisability of getting into the corporations code and cleaning it up I think is meritorious. But I would urge the committees to move with great caution when you start making substantive changes that aren't well understood by the business community but could have a tremendous economic impact on them, on the economy

generally and on businesses specifically. It is the request of our task force which is just created that you would give us time to more particularly analyze the bill from those kinds of aspects and submit, you might call it our impact report to you for your consideration. Thank you.

COWDERY: Thank you, Mr. Block. It is our intention to hear testimony on this and maybe ask questions and then possibly development some amendments for a substitute bill for review by another committee I think or maybe two more committees to be referred to before final action. I would like to ask one question. In your capacity as knowledge, it is my understanding that many small corporations, particularly small ones, have honorary directors or maybe family members appointed for one reason or another, if I understand some of the language in this bill, that it could possibly maybe even attorneys I understand are noted in some corporations, but I think the attorneys probably have insurance to cover any liability, but some of the other areas I've mentioned may not be aware of this insurance. But it's my understanding the bill reads that even these people could be liable at a later date for some of the liabilities of a corporation that went bad.

BLOCK: Representative Cowdery, I think that's one of the points I am trying to make is that I think there is a lot of people who are maybe sleeping in bliss with respect to this and will some day wake up to the fact that they have exposures they didn't know they had. But that may not be bad. I am not saying that the proposition that officers and directors shouldn't stand behind their actions. That maybe a valid public policy. I am not saying it is or is not. What I am saying is I don't think too many people are aware that that's what you're talking about. Number one. And number two I think we need to go beyond just the consideration of do we need more protection for creditors and less protection for the corporate entrepreneurs and consider what could be the impact once everybody understands this and getting people to go into business and involve themselves in business enterprise. Let me add one further point, since you I think, perhaps, somewhat accidentally touched me in a soft spot when you mentioned insurance. I do not believe at the present time, certainly under most officers and directors policies, and once this bill were changed I am certain there would be amendments to the policies to talk about the exposure of this particular type of exposure. That's not to say that I can tell you we can make anything insurable. Some of the more, I am looking around I think Joe you were the only one who was here in those days, we made a lot of uninsurable things insurable. And this might be one of them. But as a general proposition, I don't think it's contemplated in the risk that for E & O protection for officers and directors.

UEHLING: Thank you, Mr. Chairman. In going back to the liability question on the directors of the corporation and you mentioned another party, the directors and . . .

BLOCK: And certain named officers.

UEHLING: And certain named officers. What about in the case where you have a situation where a corporation is purposely bankrupt and goes down the tubes, and then where is the liability in present law right now? Who holds the liability on that? Then they set up another corporation and then go on and do this as a chain reaction.

BLOCK: Rep. Ueling, you made a comment and I'm not quite sure what you meant by it. I'll try to interpret it when you said deliberately bankrupt, purposely bankrupt. If you are talking about people who with intent to defraud creditors forms a corporation and either fails to properly capitalize it, or capitalizes it incurs the obligations and strips the capital or the assets out of it. There are already remedies, the deliberate fraud of a creditor is already actionable. An improperly capitalized corporation subjects the stockholders of that corporation to the doctrine of piercing the corporate veil to reach behind a corporate shell and get at the individuals. So, if you're really talking about a malicious act to try and fraud the creditors, you have already got existing case and statutory law to protect you. I think the concern here is that this goes beyond that, and we are talking about what happens if you have a properly capitalized, legitimately run operation and either at some point down the road there are some stripping out of assets or maybe not but simply the corporation is just unsuccessful because of economic conditions or for whatever other reason. That's the new impact of this bill.

UEHLING: And then, also, a follow up question. The $25,000 liability question, what about in that case, how does that relate to what we presently have in law right now. There is not a $25,000 per creditor liability right now, is that correct?

BLOCK: Well, as I indicated I think current law does provide that if there is a deliberate or fraudulent, you know, fraud against the creditors, there is a protection, but, of course, then it is unlimited as to amount. You go after them for the full amount of your obligation. For the circumstances that I am concerned about, I don't believe there is anything in the statute. This would be the new provision. It says that these particularly specified officers and directors are exposed for up to $25,000 per creditor in the event the corporation. You have got to, according to the statute that's proposed here, exhaust the assets of the corporation. So it is not relevant if you have a successful corporation. But if the thing, the liabilities

exceed the assets and you paid out all of the assets proratably or whatever other way to creditors and there are moneys left due and owing, then each creditor would be entitled to go against these individuals up to $25,000 as I read the statute.

COWDERY: Rep. Furnace.

FURNACE: Thank you, Mr. Chairman. I have three questions. The first has to do with the secondary liability. In your opinion, should that be an average of $25,0000 rather than a per creditor, is that an alternative?

BLOCK: Well, Rep. Furnace, I think the point I'm making is that I am not sure the concept is valid, and I think that's what we want to look at is whether there should be any statutory exposure for officers and directors beyond obviously in the case that Rep. Uehling talked about, fraud, or the investment that the entrepreneurs put into the corporation. Once you get over that, once you say it is to be the public policy and whatever it may cost in business impact that we are going to make officers and directors responsible, then you are only talking about how much. I haven't really thought out the right way to do that, this may be as good as any.

FURNACE: The second question, often times we say if it's not broke, don't fix it. In your opinion, is the present code broke?

BLOCK: I've got two answers to that. Guess that's why I am a lawyer. One answer is no, it's not broke in the sense that if you look outside you can see the State of Alaska is filled with business enterprises that are operating successfully. Corporations are being formed and business going on all in the context of our existing code. So in that sense I don't see a burning need to jump in and change the law. I do have to acknowledge, however, that our law is like so many of our codes, we just kind of lifted out of another state and plunked it in here without a whole lot of thought as to what it means in the State of Alaska. There are a lot of things in our code that, you know, having worked with it, I find are difficult to interpret and work with. And I would say that it is appropriate that our code be reviewed, modernized, made relevant to the economic conditions in our state, so I certainly don't oppose the effort going forward. My concern isn't that we not review our code, only that we consider what the substantive changes mean to the business community.

FURNACE: The last question, Mr. Chairman, and asking an opinion. I agree that this code revision has a significant impact, philosophically, on commerce in the State of Alaska. In that light, in your opinion, how to we better involve the

business community in understanding the various implications of this bill?

BLOCK: Well, that's perhaps the most fair question and most difficult to answer. I do know there has been a very affirmative effort by the code revision commission and particularly Professor Fessler to reach out and explain the bill. I know that he has given a number of seminars and continuing legal education presentations to the bar, so that most lawyers ought to be aware of it, and hopefully lawyers representing business clients will be passing that information back to their clients. I do not know that there has been an equal effort in the non-bar business community. Now, I am aware, for example, I saw a bulletin issued by the Alaska State Chamber of Commerce very recently bringing the attention of its membership to the existence of this bill. But as far as a lot of education, I am really not sure what's going on. I have to say, Rep. Furnace, the responsibility of the chambers of commerce and the business groups, and the, you might say, the special trade associations to dig in and learn these things. I don't know how much more the legislature can do. I know you've run ads and one thing and another letting people know of this going on, but nonetheless, I still think you may have to reach out a little more and make sure you are getting a true study of what the impact is on the business community. Beyond that I'm not sure I can give you a definitive answer.

FURNACE: Good. Thank you, Mr. Block. Mr. Chairman, I think Mr. Block has made a very valid point. Perhaps what we should do is hold a teleconference specifically with chambers of commerce throughout the State of Alaska. That's probably one of the most direct ways that we can involve the business persons. I am concerned about this here today.

COWDERY: I have one question to touch on and then I'll, Rep. Russell has some questions too. You touched on an area there it seems to me that directors, present day directors or past directors, could obligate a company and then to a point where maybe it proved to be a financial, real difficult for the company, and then the directors could leave and new directors come in. It is my understanding that this bill would, the new directors would assume liabilities, is that your interepretation?

BLOCK: I'm not sure that that's the correct interpretation. I am not sure I could tell you what the correct interpretation is as I read the statute. It says is liable for materials, goods and services provided to the corporation at the time they were in office. I think, it's not the exact wording, but essentially the thrust. How that would be interpreted in practical fact when generally cash flow goes to pay the oldest

debts. I'm not too sure. But, again, that's one of the things that needs to be thought out.

COWDERY: A question that possibly a director could order something that wouldn't be delivered for a year or two or later, and I was wondering that at the time of the delivery if the liability was, the commitment was made earlier, but the time of delivery would the liability incur at that time, and I was just wondering if that would be a grey area in your opinion?

BLOCK: Well, the most I could say to that, Rep. Cowdery, is it would be a grey area. Probably it's more grey in my mind than it may be in Professor Fessler's or in the code commission's mind. They may be able to specifically address that. I'm not sure I know the answer.

COWDERY: Thank you. Rep. Bussell.

BUSSELL: Thank you, Mr. Chairman. Are there members of the Judiciary Committee that wish to ask Mr. Block a question? Rep. Wendte.

WENDTE: Thank you, Mr. Chairman. I gather from your testimony you seem to emphasize two main points in terms of what you call significant or substantive changes in legislation. One being that there will be substantial additional legal work in terms of impact on any corporation and secondly, you particularly focused on the liability between classes of people, particularly the impact on directors. Those are the only two significant changes in this document?

BLOCK: Oh, no, sir. They are not. What I tried to do was sort of classify the changes, but not to delineate them, give some examples. There are other changes. Another very significant area of change is the authority to pay dividends, to distribute corporate assets to the stockholders. There is a significant change in that. There is also a significant change which, incidentally, may be an appropriate and beneficial change, I don't know, but it needs to be thought out. In bringing the corporation code provisions for classification of equity accounts more up to the way that the generally accepted accounting procedures would choose to have those equity accounts relected. And as I say there may be a beneficial change in the code to do that, but it is a significant and substantive change and in so doing, it changes to some degree the permissible opportunities in which to distribute assets or profits to stockholders. So there is a substantive change there. I'd have to tell you that I have not completely analyzed this to exactly see what the true impact is, because I think in order to understand it I need to sit down with an accountant and understand how they interpret it, which I haven't done and one of the things I think would be part of our

study in understanding the economic impact of this. But I think that's a substantive area I didn't mention before.

WENDTE: In the area of director and officer liability, are there major problems in litigation in the state right now that has either not been accommodated by the court or indicate there is need to correct statutes? Are there major changes or volumes of those types of cases within the court system in Alaska right now? I guess what I am trying to get at is it broken . . .

BLOCK: Are you asking me are there a plethora of E & O cases against officers and directors in the State of Alaska? I guess I'd have to say I don't know whether there are or are not. I am not aware of them, but there could well be some that I am unfamiliar with.

WENDTE: The bar through your task force indicates that they need more time to . . . when do you expect to complete that.

BLOCK: It is my expectation we have scheduled our work activities so we could have our impact report back to you in about 30 days.

WENDTE: You are aware, of course, this bill was introduced ten months ago in April of last year. Given the responsibility of the bar to their clients and I guess the relationship between the bar and the state, that has not provided enough time for review?

BLOCK: I am not, I don't wish to try to either explain or try to apologize for the responsiveness of the bar. I would have hoped that the bar association would have taken a more early look at this, and indeed tried to get a better understanding of it by inviting Professor Fessler to conduct continuing legal education program for the business law section I guess it's about a year ago. So we have been studying it, but certainly not directing it toward legislative action, and perhaps we should have been. As far as our task force is concerned, our task force only came into existence as I say about a week, week and a half ago, in response to recognition that the legislature was just now becoming concerned with the bill.

WENDTE: You seem to endorse the concept of the code revision process in terms of reviewing the statutes to bring them into conformity with the reality of the state. One other action to this bill may be to just dump this whole thing and then try and crack individual problems, piecemeal . . . Would you suggest that?

BLOCK: Well, I neither endorse nor oppose or unendorse the code revision concept. That is a way to make a comprehensive revision of a major statute such as the corporation code. I am of the view that it is probably an appropriate time for the corporations code as well as other codes in our statutes to receive a wholesale review, and I am not suggesting that we ought to just scrap this bill. There is a tremendous amount of work involved in putting this together. A lot of very careful thought and ball corporationof ideas from numerous other states which have studied a lot of these other issues and I don't think that should be wasted. And I am not arguing that we ought to scrap the bill, nor am I suggesting let's take out the important points and piecemeal changes throughout the existing corporations code. It may be appropriate to start over. My only suggestion to this committee is that this goes beyond just language and organizational changes and modernization, it makes some significant substantive changes, and we need to be careful that we know what those are and what the impact of that is before we adopt them. That's my only point.

WENDTE: In regard to process and need for additional review, Should we suppose that I pick up my chamber of commerce bulletin Ind it mentions a page, a bill of this magnitude, 150, 160 pages, is it likely that that businessman is going to call his attorney to review? Is it the normal businessman corporate businessman to sit down and then rely on his attorney to address this issue?

BLOCK: My suspicion is, Rep. Wendte, he would probably do neither. He would be overawed by the number of pages and say somebody else must be taking care of this. I think that's unfortunate, but I think it's the fact. I don't think you can expect nor do you really, would it be appropriate for the people engaged in business enterprises say to sit down and do a careful analysis of this bill. I do think it's important that they understand what the significant, substantive impact is on their business, and perhaps address that in a general way. Beyond that, I think you are going to have to look to the technicians for guidance.

WENDTE: With your background, for the most part are small corporations in this state able to get errors and omissions insurance?

BLOCK: I would venture to say that the small the corporation the less necessity there is for it. 1 would imagine few corporations few corporations even try to get it, a few

small corporations try to get it. It is very expensive and really its predominant functions is to protect officers, primarily directors, officers and directors from actions brought by dissident stockholders, and generally where you have a family held or modest size corporation, or a corporation with people who know one another, you generally just assume that risk.

WENDTE: In your judgment, would most of the corporations in the state other than the major corporations be able to obtain coverage to cover the type of liability you have addressed to this legislature?

BLOCK: Would most of them be able to? Well, I am trying to find an analogy to another coverage that may be useful here. I would suppose what you are talking about here is the kind of exposure, probably the most analogous exposure would be surety and performance bonding of contractors. Really what you are talking about is a management and credit risk. And you are indemnifying whoever provides the insurance is indemnifying the insured that all of the bills are going to get paid. And I guess the most analogous existing insurance would be performance and payment bonding. And you should be pretty familiar with who has that, its availability and its costs and complications. And it's not readily available and only certain people can get it and only after a very lengthy qualification process.

WENDTE: I have a number of other questions and I think we are probably going to find, Mr. Chairman, that with all these witnesses we are going to cover them today . . .

BUSSELL: Thank you, Rep. Wendte. Particularly in light of Mr. Block's statement that he's heading the task force that's going to give a report here in a few days, I think it's unfair to grill him too much on what the task force may or may not decide to talk to us about the bill. Rep. Liska.

LISKA: Mr. Block, a lot of the questions I had were partially answered by the other committee. As you know, normally when a piece of legislation has started.

VOICE: We can't hear Rep. Liska here in Fairbanks.

BUSSELL: Turn your mike on.

LISKA: Now, Mr. Block, normally when a piece of legislation is submitted for study, a lot of different people have input into it. Now the way I read into this here, this apparently is directed to the small business. You know there is a $25,000 liability on the insurance and so forth . . . My basic question to you is, you made a statement that we'd have to change the articles of incorporation, and I am not going to ask you what's wrong with it because any attorney can change the law of a corporation if it has to be. Disclosure statement is another

subject atogether, but usually a public or businessman plays a major part in introducing or changing any new piece of legislation.

In your opinion, what does this piece of legislation actually do? I mean is it changing that much to the radical side where it's going to make it inoperative, or are we so far off, for example, from other states. A lot of laws are based on Oregon law. A lot of them have been put on us up here, and we more or less have copied them. Are these other states working under concepts this bill addresses, any ways near it?

BLOCK: Rep. Liska, I really think that I would urge you to put that question to Professor Fessler who is here this morning, because that is his profession is analyzing what's going on in all the states, and he can better answer the degree to which this is a departure from the norm in the other states, the degree to which other states are working on making modifications. And he studies it and I don't. So he's the better expert on that. My brief reading of his commentary, however, is that this is a substantive departure from the current state of law in most other states. There may be two other states, New York and California, which he suggests are rethinking and changing. But, yes, this is a substantive departure from where we are in Alaska and a substantive departure from where the law seems to be currently in most other states, as near as I can tell.

BUSSELL: Are there questions from other Judiciary Committee members of Mr. Block? If not, all right . . . Rep. Koponen.

KOPONEN: Thank you, Mr. Chairman. One question or suggestion. If the task force were to examine the problem with current statutes to see what sort of economic chilling effect it has on investments by passive investors or people who are going to be minority stockholders, I know there is a tendency for people to invest capital that has been created in Alaska and invest them in what are considered more stable . . .[TAPE CHANGE] into that and that's the protection of the minority stockholder, the dispersion of their assets in this city where stockholders up to 49 have been wiped out by the majority under procedures which are legal under the current code and which they felt don't give them sufficient protection.

BUSSELL: Is that a question or statement?

BLOCK: Well, Mr. Chairman, I think Rep. Koponen's points are well taken, and it's not the position of the task force that we want to show you all the negative impacts. We want to show you what the economic impacts are both ways, and I think the points raised by him are very valid.

BUSSELL: Are there other questions of Judiciary Committee members of Mr. Block? If not, Mr. Block, I'd like to ask you just one or two questions in a complete and other vein if I could, although they pertain to this. Are you aware of the membership of the Alaska Code Review Commission?

BLOCK: I can't recite it now. I reviewed it at one time. I know that one of its esteemed members is here, but beyond that I am not sure I know the total composition of it.

BUSSELL: My reasoning for asking you is that you are an active member of the Alaska Bar Association, and this commission does do a variety of things. Are you aware of other work that they have in hand right now that they are doing?

BLOCK: I was led to believe that there was another project that they were considering getting into, but I am not sure they are actually working on it. Beyond this I really don't have a specific knowledge of the activities they are engage in.

BUSSELL: Well, again because of your unique position associated with the bar association, I would think that it would be one of the responsibilities of the code review commission, and since I am a member of that group and we haven't done a very good job of reaching out and telling you and others what they are doing. They do have a . . . in fact, almost everything they do seriously affects the bar association. And I'm somewhat ashamed, at least on my part, of not telling you about it. What connection, or how does the Alaska Bar Association connect with other states' bar associations? Obviously, this present review, or this present portion of the review, affects attorneys that practice in other states. Does the Alaska Bar Association or the Anchorage Bar Association have any connection with bar associations in other states who would be intimately involved in enforcement or work with the code?

BLOCK: I know of no official connection that the Alaska Bar Association would have with the bar associations in other states. Perhaps the most effective interstate communication would be that you would expect most of the lawyers that are in the business law section, for example, which is perhaps the section most affected by this. The business law section of the Alaska Bar are undoubtedly also members of the business or corporate law section of the American Bar Association. And in that way could communicate back and forth with their counterparts in other states.

Now I actually would ask that you address that to Mr. Kelly who is chairman of the business law section this year. He may know of more connections with other states than I am familiar with.

BUSSELL: Thank you. I didn't mean to put you on the

spot there, I just wanted to know because as you were speaking it came to my mind. And that's what happens, of course, when you get sections of state government like the code review commission that are off on a tangent of their own, largely removed not only from you folks, but removed from the legislature too. And I personally am opposed to that kind of thing and think this should have been a matter done by you folks with legislators instead of the way is was handled. And I will immediately as the Judiciary chairman embark on a program of letting other bar associations across the country know what's happened here so we can get their very valuable input.

COWDERY: Rep. Ringstad.

RINGSTAD: I've got a question for Mr. Block if I could, please.

COWDERY: Yes, John, we have about ten witnesses so if you could keep that in mind.

RINGSTAD: Mr. Block, if I understand you correctly in your saying that you feel that most of this isn't a real imminent problem and we should proceed slowly to make sure we get it right rather than having parts of this that need to be done immediately?

BLOCK: Well, I would, I think Rep. Bussell said correctly, I hate to prejudge the outcome of the task force. I would say at least for the next 30 days, I'd adopt that view, yes, sir.

RINGSTAD: Thank you.

COWDERY: Thank you, Mr. Block. Rep. Wendte.

WENDTE: Another question for the witness, but I would have a question for you, Mr. Chairman. We have been requested by the code revision commission and since the topic of other works of the commission has come up, is it your intent to not pursue the nonprofit code revision?

COWDERY: That is true. We have been asked to give our attention to this and that's our primary goal.

VOICE: For information of those present, we do have another document similar to this on nonprofit corporations. We've had hearings throughout the state and they subsequently recommended that we drop that consideration. But I assume we can serve notice that it comes back, we have made the decision apparently to not pursue that, that's it's likely to raise its head again at some point in time. I assume that document would be a working document again, and it might behoove everyone here that deal in that area to begin to look at that as well.

COWDERY: I don't believe it's been referred to at least my committee yet. Thank you. I'd like to ask Mr. Paul Kelly to come forward.

VOICE: We have Commissioner Brown here.

COWDERY: Commissioner Brown.

BROWN: Yes, Mr. Chairman.

COWDERY: Does he want to testify, or observe or what?

BROWN: Yes, Mr. Chairman, this is Fred Brown. I'm here just as an observer as a member of the Alaska Code Revision Commission. If anyone wishes to address any questions to me, may I assume Professor Fessler is also available?

COWDERY: Yes, they are in the audience. Craig Stowers and John Abbott and Dan Fessler in the audience here.

BROWN: They are physically in Juneau?

COWDERY: We're in Anchorage.

BROWN: Well, I'll figure out all these different places in Alaska.

COWDERY: Mr. Paul Kelly.

KELLY: I was considering the number of witnesses, could we go ahead and take two witnesses at this time?

COWDERY: Yes, sure, please come.

KELLY: This is Bruce Frenzel from ARCO.

BUSSELL: Since we are recording electronically, this thing is being done by teleconference, could you state you name for the record and for the committees information prior to proceeding with remarks on the subject.

KELLY: My name is Paul Kelly, speaking this morning on behalf of the, I'm chairman of the business law section of the Alaska Bar Association, and the views I'm expressing are on behalf of that section.

FRENZEL: My name is Bruce Frenzel, and I am an attorney with ARCO Alaska, Inc., here in Anchorage, representing ARCO Alaska, Inc.

KELLY: The first point, just with regard to the history of the bill right here, I do recognize the fact that we are

addressing the issue in February of 1984, ten months after the bill was introduced, and acknowledge that maybe we should have been involved earlier. But the point is that we are trying to provide this body here with the input from the clients we represent, the small corporations mainly the mom and pop corporations are a lot of the ones I represent who are going to be significantly affected who don't have an in-house attorney or attorney on staff as a consultant on a regular basis. And I am trying to work with them right now and explain to them what's going on. But these are the people who do not have that daily input from an attorney to explain to them what's happening, what this code is going to do to them. And there are many more out there who will have that problem, I think.

Secondly, the bill as it's proposed is an excellent, very well thought out obviously bill, and it represents many important changes I think to the code. And many of them are beneficial, and we don't want to represent to the committee today that we are opposed to the bill. The primary purpose of the business law section anyway in appearing here today is to request that we be given a period of time to complete a quick review and an impact report so that you could have that in your file and you can refer to that when decisions are being made at a later time. We are not here this morning to debate the merits and demerits of the proposed code. We are not in a position at this point until we have completed our study. But I think we should address just a couple of points to explain why we have this concern, and why we need this extra time.

With regard to this section 488, section which I think was proposed primarily to deal with the collapsible corporation problem for people who are setting up corporations, conducting a business and then absconding leaving the laborers, materialmen, suppliers without any funds. That is an important aspect which I think needs to be addressed, but I don't think it necessarily needs to be addressed when we are dealing with the broad spectrum of corporations. We're dealing not only with ARCO but Continental Airlines that they're doing business in Alaska, and the corner grocery store and the Native corporations or at least their subsidiary corporations, which are not Native corporations. They are business making corporations and so all of the Native corporations have certain provisions applicable to them, their profit making ventures are going to come under this code. And they are still going to have the officers and directors being liable for activities of their subsidiaries.

Another point that needs to be made is the commentary is the case law on this code right here, and comprises the amalgamation of California case law, Model Business Corporation Act, New York case law and the New York Act. The one point I'd like to make as we've developed it, under the present code that we've got, we've got very few cases since statehood that have explained what a lot of the problems in that law mean. There has

been a very slight development of the case law under the present Business Corporation Act. I doubt if there is going to be any significant expansion of case law development of this new proposed act when it's finally enacted.

So the point is we are developing under this new proposed code a new body of law that's not going to have any concurrently developing case law in other jurisdictions, which you do have, at least we are able to refer to Oregon or Washington as having some similar case law development. And if we were to adopt the Model Business Corporation Act revisions, which are being done at this time, if we were to adopt those we would then have a concurrently developing case law in other jurisdictions. What we are doing here is we are going to have unique case law development in Alaska which is, there has been very little development in Alaska under the present Act anyway.

And finally, one issue that was addressed on sec. 488 as I recall, this was sold as an idea that would protect fishermen and other people dealing say with fish purchasers. And I do a lot of work out in the Bay and I understand that problem. The problem is that I also know there is a contract provision that allows your corporation to contract out of liability by having an exculpation clause that says we are not liable. You are not going to hold us liable, the officers and directors, for the debts of the corporation. You can contract out of the liability, and I can assure you when you've got an unequal bargaining power, like the fisherman versus a fish purchaser. Every contract is going to have an exculpation clause in it.

The problem is that I think the issues put forth probably would be, or the issue more properly addressed, may be in terms of a fisheries bond that we have readily available. We do have a present fisheries tax bond that buyers have to post, and that could be expanded if that's felt to be the solution. So there are other ways of possibly dealing with this issue that would not affect all the corporations from ARCO down to the corner grocery store. And I think that that's something that also should be looked at.

But finally, I guess the bottom line is we would just like to have another 30 days to complete our study and make some report to the committee.

FRENZEL: Good morning, my name is Bruce Frenzel. I am an attorney with ARCO Alaska, Inc. I am also a member of the corporate code revision task force referred to here previously with the business law committee of the Alaska Bar Association. I am speaking today on behalf of ARCO Alaska, Inc., a wholly owned subsidiary of Atlantic Richfield Company.

Proposed HB 343 envisions a completely new corporate code. As noted in the House and Senate Joint Journal Supplement

No. 11, dated April 8, 1983, major portions of this bill are "without major precedent in Alaska law." Any such major changes deserve adequate time for persons affected by this bill to review and comment. We recognize that the bill was introduced last April, but has layed dormant until now.

We especially appreciate the hard work of the Alaska Code Revision Committee which has gone into the preparation of this bill, but are strongly opposed to certain portions of it and are uncomfortable with others. ARCO respectfully requests that consideration of this bill be deferred for 30 days so that specific, constructive comment on the precedent-setting portions of this bill can be made. With constructive changes to the bill, ARCO may be able to support it.

As currently drafted, one specific objectionable provision allows individual liability for corporate officers which destroys the basic purpose of incorporation which is to limit liability for corporate officers and shareholders. For a large corporation such as ours, the proposed provision combined with the very large number of creditors, would amount to completely unlimited liability for a few of our high level employees. Such a provision is also likely to be the more onerous for small or closely held corporations.

We will commit ourselves to recommend specific language changes to make the bill acceptable. Unless consideration is deferred, however, we must strongly oppose the bill as drafted.

COWDERY: Thank you. If that's prepared testimony, could you make that available for the committee. Any questions of the witness? I would like to touch on Paul's area of fishermen, or in the fishing industry it would seem to me that a corporation could have many very quick liabilities and if the runs are heavy could create some problems, if that was what you were alluding to, the $25,000 limit could get very small. The aggregate of limits could actually get very large, if I understood what you were saying. Basically, that possibility . . .

KELLY: Well, under the present bill right now it's $25,000 per creditor so it's an unlimited liability in the sense that one company I dealt with, we have 200 fishermen delivering. I was representing the fishermen on that joint venture. So it's 200 times $25,000, if they caught that much. But speaking of salmon season, that would not be that unusual.

It's an uninsurable risk, I think. According to Mr. Block, he was alluding to it as a performance bond, his analogy. To me it would be an uninsurable risk. I cannot imagine an insurance company unless they put limits on the risk. Obviously, they'd have to. You would have an uninsurable risk because you would have an unknown liability, depending on how large your

company is. An electric company which has a lot of contracts, an engineering company which has tremendous potential liability regarding the projects they are dealing with.

So to me I think it would be technically an uninsurable risk. And it would affect the mom and pop businesses all the way up to ARCO. And, again, when you've got this unequal bargaining power, when you've got a big company that can tell its suppliers you're going to deal with us, we're not going to have liability. But the people on the other end, the suppliers are going to get stuck for the people further down the line because they are not in the same bargaining position. They cannot impose these conditions because they need the business to continue in business.

So these are all problems that need to be dealt with, and I hate to get side tracked by this one issue because I think there are a lot of other issues in the bill, too.

COWDERY: I just wanted to bring that one point up. Rep. Furnace.

FURNACE: Thank you, Mr. Chairman. In your opinion, should the secondary liability be $25,000 aggregate as opposed to per creditor?

KELLY: If that was the only position left, I'd say yes. I think, you know, what I'm looking at right now is what essentially you'd be doing if your corporate officers and directors would be sureties for the corporation debt of $25,000. Maybe the possibility would be to require a minimum funding of $25,000. Minimal capitalization. That might be another possibility. So at least you would have a corporation with a minimum capitalization of $25,000. Maybe that's an issue, would that affect your small mom and pop corporations that are trying to start up and they just want to start a little printing business down the road, or they want to.

There's a lot of small businesses with liability, initial liability, that wouldn't seem to be that much. And they want to start a minimal investment program to see, you know it's an entrepreneurship that Mr. Block was alluding to earlier.

FURNACE: You indicated perhaps a minimum capitalization of the corporation at $25,000. It doesn't appear to properly address the question. The question is, heretofore, we have considered there being a limited liability of corporate officers. And you're indicating that under the present bill, the liability is uncertain. There is no limit on it. It appears there should be some effort to at least cap that in come way. Put a dollar figure so as to make it predictable. Or, if no more, at least make it insurable. That's why my thinking was to have at least an aggregate amount of secondary liability that is

certain and predictable as opposed to having it unlimited all the way through. That would be the major concern.

KELLY: I'd say, yes, you know, that again if the public policy is going to be adopted that we are going to make corporate officers and directors liable for corporate activities. If that's the public policy change we want at this point beyond what our present case law says, there is a present case law liability that goes through the courts. It's going to take extensive lititgation, and I'm aware of all those problems. But aside from that, if our public policy change is going to be we are going to have a $25,000 surety bond by the officers and directors from now on then, yes, that would be much more palatable than an unlimited, unknown liability.

COWDERY: Rep. Uehling.

UEHLING: Thank you, Mr. Chairman. I know you talked about California case law and also New York case law. And if this code revision were passed and becomes part of the statutes, how do you feel, don't you feel that you can take precedent on other states as far as how they followed the same sort of approach that we have in Alaska, as far as other case law in other states. You said you had to have a new, this would be a new precedent, and it would be awfully difficult to be able to guage it because you never had this kind of new effect.

KELLY: Yes, definitely you would be able to refer to other jurisdictions who have a similar statute and try an analogize there and say, well, look what they did over here in California. Yes, there would be that capability all the time. But I am saying that again Alaska is amalgamating this case law from at least three bodies of case law. California, New York and the Model Act. And I am saying that maybe we ought to look, a possibility we are going to explore is maybe adopting the provisions of the Model Act, which has its own commentary and which will be developing in other jurisdictions that are adopting the Model Act at the same time. I am saying you'd have a greater developing case law along those lines.

VOICE: Can you hear me, Anchorage?

COWDERY: Yes, we can hear you. Go ahead.

UEHLING: Another follow up question. If, in fact, we were to clean up this liability section, and considering that the present code is in many people's terms, ambiguous, do you feel that if this particular section was cleaned up that you would have no problem with the rest of the code?

KELLY: You ask a lawyer a question like that? We just need our 30 days. And to be honest with you, I've read through the Act. I've tried to understand a lot of the provisions. I see

some excellent changes, really well thought out changes. And I think we should adopte them today, but there are other things that definitely we need to have further consideration and input from a larger segment of th community.

We have attorneys here representing insurance companies, banks, mom and pop grocery stores, fishermen, oil companies, and to get the input from this broader base might be helpful at this point.

COWDERY: Any more questions of the House Committee? Rep. Bussell.

BUSSELL: Thank you, Mr. Chairman. Are there questions of Judiciary Committee members? Rep. Malone.

MALONE: Thank you, Mr. Chairman. So far it seems like most of the testimony we've heard has focused on two points. One of which is this 30 days, and I'd like to ask of people who are testifying now, is 30 days, when do you envision the starting and when do you envision it ending? As Mr. Wendte pointed out, the bill has been introduced in the legislature for, well, he said ten months. I'd say close to a year, but I can understand it because the committee is seriously getting work on it, it's getting people's attention. When do you envision this 30 days would be completed and this task force report would be finished? Is there a specific date we are looking at, or 30 days from whenever you start on it?

KELLY: Well, we've already started. We had our organizational meeting yesterday morning at seven, in fact. Mr. Block called it. I'd say by the end of March we'll have the report in your hands. That's our goal. We wanted to give the committee a palatable, you know, something they could accept. And I think 30 days, by the end of March, you'll have a written report in your hands. And I hope that doesn't cause any problems with your concerns about this bill, getting it passed this year.

MALONE: I think that with the additional 30 day delay that the likelihood of the legislation be adopted by the legislature this year is, starts to become very remote. Nonetheless, I'd still like to have the information, and if we could have it by the end of March, it might well be worth waiting for.

BUSSELL: Are there other questions or comments by other Judiciary Committee membership?

KOPONEN: Question from Fairbanks, one question. ARCO Alaska. Where is ARCO Alaska and its affiliate corporation organized? What state?

FRENZEL: ARCO Alaska, Inc. is a Delaware corporation,

and Atlantic Richfield Company is a Pennsylvania corporation.

BUSSELL: Are there further questions of other people wanting to talk on the network that are here today. If not, I would like to ask both of you just a brief question. How long have each of you been in Alaska?

FRENZEL: I've been in Alaska almost three years.

KELLY: Continuously since '76.

BUSSELL: Have either of you asked or had conversations with anybody in the legislature to bring about this type of change in the corporation law, or ask any member of the legislature to submit legislation changing corporate law?

KELLY: I, myself, no.

FRENZEL: No, we have not.

BUSSELL: Have either one of you been aware of the code review commission's work on this document, or on this or any other work that the code review commission does?

KELLY: I heard about it last year on this particular bill right here. And then in February I got a call explaining that there was a goal this year I guess to pass this bill. And since that time, in other words, I'm explaining my understanding anyway of what happened. And that's when I called Mr. Block and said we have an obligation I think to provide the commission itself with some type of input right away if they are going to pass this thing this year.

FRENZEL: I was aware last year that the revision of the corporate code was proposed. I was not aware of the director/officer liability issues.

BUSSELL: Do either or both of you know about the other work that the code review commission is doing right now with regard to other corporate law that is contained in statute, i.e., the nonprofit part and the cooperative corporations.

KELLY: I am generally aware that there are proposed code revisions to both of those areas.

FRENZEL: And I was not.

BUSSELL: Thank you, gentlemen. I almost have to apologize to both of you, too. I've been very inactive for this last year. I don't personally attend any of the meetings, but I do have staff that goes to them. As a legislative member, if I don't have any other part of the thing I should be telling people about what they're doing. I am ashamed of my part of it. Thank

you.

KELLY: Let's hope we can also catch up and assist you in providing input on this.

WENDTE: Mr. Chairman.

COWDERY: Rep. Wendte.

WENDTE: Again, to clarify the point on the other work of the commission. The Labor and Commerce Committee does have HB 437 in it dealing with the nonprofit code revision. And it has gone from the commission to the legislature. It was introduced eight months ago, in June of last year. And that's the bill I was referring to, although the chairman didn't seem to recall we had that committee. But that is another piece of legislation, and I would ask, although it's clearly not going to go anywhere this year, it probably would be good for you to keep in contact with with commission or get a copy of that bill. Again it's 437 in the House, and begin a review of that, so we're not caught in a similar situation next year.

KELLY: I'd like to thank the respective committees for their interest, and we hope to be able to be a better source of information and cooperate better with you in the future. Thank you.

COWDERY: The next one, witness up, Mr. Jack Thompson.

THOMPSON: Yes, my name is Jack Thompson. I'm the vice president of Air Van Lines and the secretary-treasurer of Craftsman Associates, Inc. One of the few people here today that's probably not an attorney, so I'll try to keep my remarks short. I'm involved with two companies. One is a fairly good sized moving company and the other is a small furniture repair business. So contrary to what somebody said, I read the whole bill, and being a nonattorney, I didn't understand most of it.

However, I did read carefully sec. 488 because some friends of mine had mentioned it to me. And I guess I'd have to agree with Mr. Block in one respect that this would be a public policy philosophy position. It's either going to be or it's not going to be. I personally believe that officers of corporations should have some kind of responsibility, fiscal responsibilty for their corporations.

In Europe you've got, in some countries, you've got two kinds of limited liability corporations. Some where you have no liability like we do here and some where you have some liability. So I'm not sure how to address the idea that Mr. Furnace has mentioned about the, as an aggregate. That might be an idea. But I certainly think that there should be something in there to make people think twice before they do certain things

with their corporation.

I'd like to remind everybody what happened when the pipeline ended. There was a number of trucking companies that went bankrupt. I guess everybody got stuck with a certain amount of money. I remember one of them that was in the process of selling their assets on the side right here in town, and the courts and the creditors couldn't do anything about it because of the time consumed. Mr. Block alluded to the fact that there are avenues one can go after people if they pirate their corporation. You know, if somebody does something by fraud, trying to prosecute fraud is an exercise in futility I think. If one can get the A.G. to prosecute to start with, which is also doubtful, I'm not trying to denegrate the A.G., but it's just a matter of fact you're not going to get anybody to . . . prosecutorial discretion I guess is the phrase and that stops a lot of things.

I've been involved in workers' comp for the last few years. And I recall three years ago there was a commission set up by Governor Hammond. And I went to all of those meetings. And I recall an individual that worked in a cafe up in Glenallen. And he had injured himself. And after he injured himself, it turned out that that corporation did not have workers' compensation. And his concern now, what happened to him because he couldn't get any money from anybody. There wasn't any. But that he thought it was wrong that this should happen to a working man, and there should be some kind of avenue that it wouldn't happen again.

Two weeks after his testimony, that restaurant went into bankruptcy. Senator Stimson at the time promised that individual that the state would pierce the corporate veil and try to get those people. I don't know if in fact that is a fact. My involvement in workers' comp leads me to the one thing, though, that there are people that form corporations here that either through ignorance or through a nonknowledge of the economics of their business, they don't do certain things. For instance, the procuring of workers' comp.

I'd like to mention my furniture repair business. I have a partner in it that is a young fellow that doesn't understand a lot of these things. And when I told him we had to have workers' comp, and I wouldn't be a party to it unless we were and because I am a partner that's the way it goes, and it is a corporation, we bought workers' comp. I found out that most other people in that business don't even have it, because when I went to find a rating for furniture repairman, it turned out they didn't have one in this state. And the reason they didn't have one in this state is because apparently nobody had ever bought it for this particular profession. Which meant that everybody that practiced that business in the state does not have workers' comp.

So there are a number of people who form corporations for the purpose of tax avoidance. There's all kinds of reasons that I think that corporations, and maybe small ones more than the big ones, should have some form of liability. And I have no idea what the dollar amount should be. I hear a lot of talk today about liability, liability of directors being a problem. I think that the responsibility of directors and officers is equally important. And for me personally I take it personally that any corporation that I'm involved with, that I am going to try and run it ethically and honestly. And if things get bad financially, I'd just better decide to cut my losses and get out of business, and not dump as much as I can on other businessmen around. That's all that I've got.

COWDERY: Thank you. I understand what you said when it was a very complex one hundred and some page bill and a lot of things wasn't understood. And that's what we're trying to make it understandable. It's not that we are trying to cut the bill up, we are just trying to clarify some of the areas that might save some legal problems later on. And you touched on foreign corporations. I was wondering maybe what some of the other witnesses might think about this. That a foreign corporation that operates here, I was wondering if we could penetrate the corporate shield for liability, that's a question that maybe should be thought about, too. You not being an attorney, maybe don't have an answer to that.

THOMPSON: I could probably give you the right answer, but I'll leave it to the attorneys.

COWDERY: Rep. Wendte.

WENDTE: Thank you. This is not a question. I would like to commend you for your attitude in business. It appears to me the Judiciary Committee, it seems to me we deal with a lot of things where you hear a lot, particularly in the crime area, a lot of the horrible things in Alaska and attitudes and things that we have to deal with directly. It's pleasing to have comments such as yours.

COWDERY: Any other questions? Thank you. Representative, Jack.

WENDTE: How did you hear about this bill?

THOMPSON: I have lunch every Wednesday with a number of attorneys because they are friends of mine. And three others of us that pursue honest endeavors. And we talk about a lot of things and this happened to come up. And I also know John Abbott. I don't know about Professor Fessler's background, but I know that he makes the best spaghetti and meatballs in the world. And that's basically, I found out about it some time ago and got a copy of the bill and read it. But I know John Abbott,

and it's just based on conversations with John and other friends that talk together.

WENDTE: You certainly weren't implying that those three attorneys you have lunch with weren't the only honest attorneys in the state.

THOMPSON: There is nine of them.

COWDERY: Thank you. I was hoping that, Rep. Wendte, we have advertised this and we were hoping that some of the people had noticed some of the advertisement in the newspapers.

THOMPSON: I did notice the ad. As a matter of fact, it's probably the largest ad I ever saw and . . .I was looking for the word starring.

COWDERY: Rep. Malone.

MALONE: Mr. Chairman, I also appreciate the testimony, but I wanted to ask a question that hasn't anything to do with this legislation and that is, I would be interested to know, not necessarily now, could get the information later, as to the name of the person involved in this, the worker who was injured in this insurance case . . . sometime I'd like . . .

THOMPSON: It would be a matter of public record because it was in the hearings. And the name of the cafe, the Hub Cafe was the name of the cafe. And this is '84, so it must have been in January or February of '81. It was when Mr. Hammond was still the governor. It was in February of that last year that the hearings were being held because he appointed the commission. And Senator Stimson and Brian Rogers chaired that meeting, and they were both present, as well as Dennis Maloney who was on the committee and Tom O'Keefe of Industrial Indemnity. And the man came in from Glenallen. There was a lot of allegations including the fact that the local magistrate knew about all of this. I mean it was a very serious thing, it sure would leave one with that it's an important thing to make sure that there are no disadvantaged persons that one may not think about. And workers' comp that hit my particular mind because that's my particular advocation bent in that direction.

COWDERY: Thank you. Any more questions? Mr. Henderson, Roger Henderson.

HENDERSON: Ladies and gentlemen. I have spoken before some of you before last year on another matter. I am an attorney in private practice here in Anchorage. And I represent a number of small corporations as general counsel in a wide range of corporate and business activities. And over the years I have also represented hundreds of suppliers outside the state who are on one end of some of this legislation. So I feel that I've got

a rather broad background from both aspects, both creditors and small corporations.

Initially, I would like to say one thing. There has been interest shown by these two committees and the questions asked about the possiblity of insurance. And the two attorneys who testified before me have both analogized any insurance which might be available for this corporate liability to payment and performance bond. Well, as a practical matter, I agree with them, incidentally, that if there were any insurance available to cover this kind of liability for general creditors, it would be in that nature. But as a practical matter, as some of you already know, in order to get a payment and performance bond you've got to pledge personal liability to the bonding company. So you're looking at a full of the wisp. I think this kind of liability as a practical matter not insurable.

I would agree that this proposed legislation does call for substantive changes in both social and economic philosophy. Those changes, not just in Alaska, but changes from the accepted social and economic philosophies that prevail in other states throughout the nation. Now, I'm not going to necessarily criticize all the aspects of this particular legislation. Some of it is very good and probably has been needed for a long time. But I think it is important that you be aware of the potential impact and changes that this bill is likely to bring about should it pass in its present form.

I am going to touch on just a few brief examples that I'll bring to your attention now. I am sure that the committee who is going to be working on this will do a much more, a very thorough job of analyzing this bill in total. For example [TAPE CHANGE] . . . bill would impose an additional requirement for the service of process in the event the registered agent cannot be located or if there is no registered office. Now, I submit that that is an additional imposition upon the creditors of a corporation which I question whether is necessary given the fact that the corporation is the one who is required by law as a condition to coming into existence. To establish a named person as a registered agent and an office where he can be located.

Sec. 310 for example, requires, this has already been mentioned incidentally, requires items to be contained in the articles of incorporation which are presently contained in the bylaws. Here, again, you've heard other witnesses testify as to the increase in costs to start up a corporation. And my estimation is that it probably would increase the initial legal fees either two or three fold.

And one observation I would like to make, and I think it's necessary you keep this in perspective, I have not done a statistical analysis. But it is my opinion that the majority of corporations in this state consist of three or fewer

stockholders. And that the majority of those corporations have a commonality of stockholders, directors and the managers or the officers.

Sec. 230, frankly, I find too complicated for the average person to understand. I read it lightly myself last night. I'm not saying that I couldn't thoroughly comprehend it if I spent the time and went through it line by line. But, sec. 230. There, for example, I suspect that that section if it every raised any issues, that would be resolved by litigation. That the courts would spend quite some time and probably a number of cases would have to be taken up before that could be decided. At the present time the statute is very simple, I don't find anything unworkable about it. It allows the number of directors if less than three to be equal to the number of shareholders in the corporation. The formula is straightforward, and I am not aware of any particular problems with it, at least in the class that I've represented.

Sec. 233, for example, I find that too burdensome. Many corporations at the present time maintain one set of books and records, and it's in the registered agent's office. For about half of the corporations that I represent, I keep the books and records in my office. As a matter of present law, the records are required to be available to any shareholder upon request. If they request the president or the registered agent for a copy or permission to review the corporate records, the person at this time if he doesn't have them is required to tell him where they are. For example, any shareholder who calls my office and says I want to see the records of so and so, is entitled to do so as a matter of law, and he can come in my conference room and do it.

Secs. 358 through 383 are extremely complicated. In my opinion if those sections were enacted, they are basically going to open the door to countless lawsuits as compared to the present law. I am not one of those persons who advocates anything which will cause attorneys to have more work and earn more money from their clients. I like to see the least complicated statutes as possible, and the least amount of litigation. I think these sections are going to open the door to litigation for years to come.

Sec. 450, for example, is another one that is a radical from the existing financial and legal philosophy. Sec. 450, in my interpretation, would impose liability on directors for negligence in judgment. Traditionally, the corporate directors have always been shielded from misjudgment, from mismanagement even, as long as it was not done in bad faith. And I submit that this is going to change the philosophy within the business community and also it's going to open the door for a large number of lawsuits.

Sec. 488, which, of course, is the one that probably has gotten the most attention, the secondary liability allowing the piercing of the corporate veil. I think that the effect of this particular section would be to definitely dampen entrepreneurism. The way it works at the present time is if a small, risky venture started, and many small ventures are risky, and the stockholders are willing to put a certain amount of money into this. As an example, a service that is needed or at least as people perceive is being needed in the community, might require an investment initially of $50,000. Two people who want to start this business are each willing to put up $25,000. But they are certainly not willing to put up any more because they don't know whether the business is going to fly or not. The only way they are going to find out is to get in really and try. But they are willing to make that much of a risk. The business could get started up, for example, and it might do extremely well. It's good for the people who started it, it's good for the community, and it's good for the suppliers that these people deal with. At the present time, if, in fact, it turns out for whatever reason that the business was not there or it was a bad gamble, the risk of that failure is spread among, for example, creditors, many of whom probably include outside suppliers. The type of people who I represent. And just because I represent that type of people, doesn't mean that I'm advocating their position. What I am telling you is that in my opinion you are going to be shifting the risk of failure from the people who supply this operation, and who in fact know the risk they are taking at the present time when they extend credit to a small corporation, to the directors or the managers. And then the question, I think, this group has to ask is whether or not you want to make that radical a change in present philosophies.

So basically, that's all I have to say. I just want members to be aware of the radical changes. In my opinion they are radical departures from existing statutes and philosophies.

COWDERY: Thank you. Rep. Wendte.

WENDTE: You indicated going into your testimony that you've represented both sides of that equasion . . .

HENDERSON: Both the creditors and the small business corporations.

WENDTE: In your judgment, should we make that shift of risk in relation to the creditors.

HENDERSON: In my personal judgment? No.

WENDTE: Your judgment is that the risk should remain with the creditors.

HENDERSON: With some exceptions. Now the workers' comp

problem has been brought out. I would treat that not as a shifting of responsibility, but I think the appropriate place to look at the workers' comp situation is a change in the workers' comp law. It's entirely possible that that is one area where liability should be imposed on directors and managers. But that's a special instance. That's an instance where a form of insurance is required by law to be obtained, and there you would be having a specific sanction for failure to do something that's already required. I see that as a different situation than protection of general creditors.

COWDERY: On my question I asked about the corporate shield of some foreign corporations, do you think that could be penetrated, stockholders of foreign corporations under this?

HENDERSON: Yes, I do. There again this is not based on a thorough reading and a thorough analysis of the bill. The question that should be addressed, in my opinion, is whether or not there is any reason or any need to treat foreign corporations or stockholders of foreign corporations differently from domestic corporations.

FURNACE: Thank you, Mr. Chairman. One of the concerns is that officers and directors of some foreign corporations may be outside of the jurisdiction of the Alaska courts, can you see this as posing a potential problem?

HENDERSON: Not really. They are subject, the foreign corporation is subject to jurisdiction of this court if the corporation is doing business in Alaska.

FURNACE: Excuse me, I'm sorry, I should have referred specifically to the secondary liability in being able to hold the officers and directors of a foreign corporation who may not be subject to the jurisdiction of Alaska courts, I should clarify that.

HENDERSON: Now you are asking a lawyer to do something that he never likes to do, which is to give a legal opinion off the top of his head. My opinion, my initial opinion, is that probably should this statute be passed, Alaska would have jurisdiction over the directors or people personally through our long-arm statute. There again that's going to take some case law to determine specifically, and I'm sure that it would be challenged. And the State Supreme Court ultimately would rule on whether there was personal jurisdiction or not.

COWDERY: Are there further questions? Rep. Liska.

LISKA: Thank you, Mr. Chairman. Mr. Henderson, I sure thank you for your input on this. It's very thorough. The way I read what you're trying to tell us is that this is so radical, this piece of legislation, that we'll have no case law to back it

up. That we're going to end up with a lot, we're inviting a lot of lawsuits. Is the way I'm reading you?

HENDERSON: There again, like my predecessors, I don't claim to be an expert on the corporate codes of the other states. But from reading the comments and the letter of transmittal from the code revision commission to the chairman, I get the impression that even though New York and California are considering revisions to their corporate code, they haven't adopted this statute or this code at the present time. And nobody knows whether they will or not. So at the present time it is my understanding that if this were adopted, many of the exceptions would be new law and would be standing out there for the first time.

COWDERY: Are there other quick questions of the other teleconference sites or other committee members?

KOPONEN: Yes, Mr. Chairman, this is Rep. Koponen in Fairbanks. Does the witness have a copy, or has he read the House and Senate Joint Journal Supplement, dated April 8, 1983, the official commentary of the Alaska Code Revision Commission.

HENDERSON: Not that I am aware of. I've read a lot of things recently, but I don't believe that's one of them.

KOPONEN: I believe there will be a copy there. Page 64. And I'll comment on the statutory restraints and the evasion of corporate assets, which is, of course, you mentioned . . . We've had information about a number of having statutes to govern that is perhaps desirable, whether these are the desirable ones or not. But the absence of this kind of information seems to create just as many suits.

HENDERSON: Well, I think the point that I am trying to make and some of the witnesses before me have been making without coming right out and saying it, is that anytime that you have a statute, certain portions of it are going to be subject to interpretation in the courts.

KOPONEN: Absence in the statutes seems to do the same thing.

HENDERSON: That's true. But case law is, or what we call common law, is basically pretty well established and has been evolved over several hundred years. In a case like this, you're changing what is referred to as the common law, and you're not simply codifying or immortalizing by the legislature existing common law. You are creating law which is contrary to existing common law. And whenever you do that, you create potential court cases where the specific language and the interpretation of the statutes is a matter for the courts to determine.

KOPONEN: Have you read the Western California statutes?

HENDERSON: No, I have not.

KOPONEN: These do seem to be drawn in part from the statutes that we've been . . .

HENDERSON: There again I don't claim to be an expert in the matter, but it's my understanding from reading this single document that portions of the California statute are included in this, but that this does go farther in some respects that the California code as it now exists.

BUSSELL: Are there further questions from any people on the teleconference network or other committee members? If not, just before you leave, Mr. Henderson, can I ask you just a couple of questions? How long have you lived in Alaska and practiced law here?

HENDERSON: I've lived in Alaska 23 years. I've practiced law since 1975.

BUSSELL: And one more question, Roger. Out of all of these, you mentioned you represent a number of corporations. How many of those corporations do you sit on as a board member? And generally, that's the practice of an awful lot of attorneys here.

HENDERSON: It is. It's one that I try to avoid. I give counsel to the board of directors frequently, as a board and individually. And I give legal counsel to the managers and officers. As a matter of my personal practice, I attempt to avoid becoming a board member myself.

BUSSELL: That answer was anticipated. Out of all of these folks that you represent, how many of them, what kind of a percentage would you say have members that carry O & E insurance?

HENDERSON: You mean for the personal liability of officers and directors to creditors?

BUSSELL: No, no. A lot of these, I don't know, you said you represented middle of the road clients, are there a number of these corporations that you represent where O & E insurance is carried?

HENDERSON: I'm not aware of any.

BUSSELL: I think that's an important statement to be made here. And if you represent a large block of what you consider middle corporate, and no one presently carries O & E

insurance?

HENDERSON: Not to my knowledge. There again you must remember the majority of the corporations which I do represent have three or fewer shareholders.

BUSSELL: Where, in your opinion because you've practiced law here so long, is the line generally drawn for O & E insurance? Is it because of the activity of the corporation that it is involved in, or the size of the corporation?

HENDERSON: Generally, the size of the corporation, would be my opinion. I believe that would be more of a determining factor than the nature. The larger corporations would be much more likely to obtain that for their officers and directors than the smaller ones.

BUSSELL: I don't know how far into tax law you go, but is O & E insurance when it's carried by a corporation a tax deductible item?

HENDERSON: Well, I do not have a specialty in taxes, and I think I'd better decline to answer that if you don't mind, Charlie.

BUSSELL: Mr. Henderson, I certainly thank you for taking the time out of your Friday to come down here and share those comments so openly with the committee. I've a lot of questions I could probably ask, but there are an awful lot of people to go. Once again, I really appreciate you coming down.

HENDERSON: Well, I appreciate your members for the opportunity to speak.

COWDERY: Rep. Wendte.

WENDTE: I request that the committee staff get in touch with the Department of Commerce and get the data in terms of the size of corporations. I think that'll be an important aspect of judging the impact of this statute. But I suspect as he said, as a matter fact he was probably conservative when he said just a majority of them are just these three or four people. And I would expect the Department of Commerce would be able to crank that out for us.

COWDERY: We will make that effort. I'm not certain that they have that. . .before, but I'll make that effort. The next person on the list is Mr. John Abbott.

ABBOTT: If I could defer to Professor Daniel Fessler and ask him to make some comments on some of the issues that have been raised.

WENDTE: If we are going to talk time available, I thought the principal purpose of this was to hear the people in Anchorage that wanted to comment essentially on his work. And it might be good to ask if those, I notice people walking out as we've gone through the morning, there may be those who might not be able to testify.

COWDERY: I was just trying to go through the list as it was written down. I didn't mean to preempt anyone. I would leave that discretion to, I think that is true that Mr. Fessler and Mr. Abbott have both been involved, and they're hear to listen as much as [illegible].

ABBOTT: [illegible], Rep. Wendte, we ask to let everybody else testify first [illegible]n . . .

COWDERY: [illegible] just going down through the list, I appreciate your . . .

ABBOTT: We'd like to testify when everybody else has had an opportunity to testify, Mr. Chairman.

VOICE: Any attorney wants the last word, Mr. Chairman.

COWDERY: The next one, Richard Retson.

ROSTEN: Thank you, Mr. Chairman. The name is Richard, Dick Rosten, I'm on the task force for the business law section in the bar also, and have been in private practice here for approximately seven years, representing both large and small corporations, and individuals and partnerships and joint ventures. I think it's a good thing that the code revision commission took a look at our statutes and made several recommendations. There are things which they had recommended which I think should be adopted, and there are other things which I think should at least be thought about some more before a decision is made. So I would join the other members of the task force who have asked for an additional 30 days. There are some things which we've had a chance to focus, and there are some things which we haven't.

I had lunch with one client yesterday and dinner with another client last night and was discussing some of these provisions. And the big one which hits them is this secondary liability issue. I think it potentially has a chilling effect on economic development in the state. People are willing to put up so much capital but perhaps no more. And they are going at risk by putting up that capital to start with. And in some situations if they go to a bank, they probably are going to have to put a personal guarantee down in addition. So they are at risk there. There is risk, different parties are going to have to take the risk. It's a public policy decision just where you want to place the risk. If you put a $25,000 minimum capitalization

requirement into the corporation code, you're effectively denying people who don't have $25,000 the opportunity to utilize a corporation. And I'm not saying it's good or bad necessarily. I just want you to be aware of the impact of that.

The Department of Commerce was mentioned a few minutes ago. I was curious whether anyone on the code revision commission asked the Department of Commerce as to what their thoughts as to what was needed. On the secondary liability, it seems to hit on protecting creditors. Were creditors asked if they felt, where did the initiative come from for that? The body of law, I think it's very good that Alaska be able to draw on a body of case law elsewhere. We are a young state. A lot of the issues that we face have been faced in other states. A lot of people devote a lot of time and money to those, and it's senseless to reinvent the wheel up here. So if we can draw on the law of other states with similar statutory provisions, I think that's far the better.

Some of the people on our task force referred to this thing as the lawyers relief act. Well, we are not looking for ways to make, have more business make more money under this. I think a lot of us, if they are sensible changes, that's fine. But we don't want to make work for ourselves and have our clients spend money on us. That's not what we view our world as a commercial lawyer.

The questions was raised earlier about piercing the corporate veil of a foreign corporation. You can pierce the corporate veil of any corporation if the proper facts are there regardless of whether it's domestic. As a practical matter, it may be more difficult to find out some of the facts and be more expensive to get at the facts. And even if you get a judgment against somebody else and forcing a judgment to another jurisdiction, it can be more difficult, if not impossible. And if you have a $25,000 judgment, for instance, you may or may not be able to find somebody who is going to go chase after their assets in a different state.

Also mentioned earlier was where records, corporate records of the corporations are kept. Some clients I have are very good about keeping up the corporation and they have good record keeping. They keep their corporate books. Other clients of mine say that's what I hire you for, I want you to do it because at least I know where it is. You're organized for that and I've got other things to worry about. I think that's something that should be left in the discretion of the individual client.

I think a lot of the issues as I've looked at this, I first became aware of the bill, by the way, at the bar convention where Professor Fessler made a presentation and quite frankly I think when we heard it wasn't going anywhere last year in the

legislature, we didn't pay that much attention to it. Not unlike the revolutionaries during the American war, until it starts to affect your pocketbook. You don't pay that much attention to change coming down the road. It's here now. I think it does deserve attention, and I think it does deserve the report of the task force so that you have the opportunity to consider that.

There are a number of issues that the code brings to light and leaves up the decision of the individuals involved in the corporation, which I think is a good thing. It says these are issues that need to be considered and under our present statutory scheme, they not, you don't have to consider them. It leaves the option to go one way or the other. I think that's a good thing. On the other hand, I've been in practice here seven years. I represent businesses, and I've not run into insurmountable problems under the present code. But I do think there is a lot of, a lot lacking in the present code, and I would certainly hope that at least some of these provisions would be adopted.

Lastly, I'd just like to mention that as far as the advertisement in the newspaper, I thought that was exceptionally well done as oppose to a tiny legal ad this is something that people would really look at and notice. I commend you for that.

COWDERY: Thank you. Rep. Wendte.

WENDTE: Listening to your comments, you mentioned you met your client at lunch yesterday, I have to acknowledge that some of my corporate records are on dinner napkins, and not particularly well kept. I'd ask the question though, how many are on the task force? How large is the task force?

ROSTEN: We have, I think ten. We've broken it down into different subcommittees to look at different sections. Again, as Dick Block mentioned earlier hitting the economic impact as much as anything else. A scholarly review has already been done. We don't pretend to want to do that again. I think also that two of them would put everyone asleep. One is necessary, two of them would be too much. The particular task force that I'm on is meeting at 7:00 a.m. next Monday morning to go over this. I've asked people to make sure they review this statute before then, all statutes.

WENDTE: Are all ten members from the Anchorage area?

ROSTEN: I believe so.

KELLY: Yes, they are considering the time involved. We had to get a group that would get together immediately . . .

ROSTEN: We talked also about hopefully getting input from the chamber of commerce. At least drawing that to your

attention, I'll recommend that also. We can speak for our client's interests or come to ask questions, but I think it also would be very good if you can get some direct input from business people without having to go through lawyers.

COWDERY: Yes, I had planned, in fact, was going to may contract or had been scheduled to contact the chamber about this matter today, but we will. My intention to hold this, continue this meeting on until 1:00 p.m., and we're going to break for lunch and then come back if we have more people to testify. But we do intend to get a hold of the chamber. Rep. Uehling.

UEHLING: Thank you, Mr. Chairman. Just going over the Journal Supplement here, and a letter that was to Bill Ray from John Abbott, it was stated here that the proposed Alaska Corporations Code is what they call a middle of the road attempt here. Maybe you could comment on that, you had said that there was some problems in what you saw that they had put forward. Maybe you could comment on that.

ROSTEN: I'm not quite sure that I fully understand. It's middle of the road in the sense that it's not all shareholder oriented and it's not all management oriented. I believe that was the intent. And that I think is a good approach. It's a more detailed statute than many states, which may be a good or bad thing from the amount of litigation which may or may not ensue. This means to say, that in the absence of a precise statute sometimes issues don't come to light and you can rely on the common law which has been developed over a couple hundred years. On the other hand, when you put things down in statutes, sometimes they're answered precisely and there is not need to go to the courts. Other times you get a very detailed constitution as it were, and then you worry about well what if something wasn't in there. Was it left out on purpose. Unless I think you're talking about another concept, middle of the road. This is certainly more detailed than a lot of corporation code statutes. But it's hard to predict at this point, whether it's going to mean more or less litigation in the future.

UEHLING: Thank you, Mr. Chairman. And a follow up question, we talked a bit about corporations that were more venture capital intensive, and we also talked about entrepreneurs and getting the more risky ventures. In your opinion do you feel that the proposed changes in the code are really going to limit the venture capitalists, the entrepreneurs and that kind of thing?

ROSTEN: I do think it will as presently constituted. I'm also concerned about the large corporations who are coming in here to do mineral development, who will be subject to these, it may have an impact on them. I'm sensitive to the point where people can track a corporation, they should be paid. One of the risks you have. That's a risk they are generally aware of is

that it is a corporation and you can issue. It depends on the muscle power you have in bargaining. A bank has enough muscle power when you go in to get a loan and make you personally guarantee the loan. Whether you have that capacity when you're making your own contract with a corporation is up to the particular circumstances. So there is no magic answer which is going to protect everybody all the time. My own feeling is one particular issue, and I don't want to place too much emphasis on it, but it is the eyecatcher for everyone, is that it is going to have a chilling effect and it perhaps goes too far in that direction.

COWDERY: Thank you very much. Sec. 960 of the bill exempts officers and directors of many corporations under the provisions of sec. 488. Do you feel that constitution could be, it would seem to me that corporations and officers would certainly challenged that section in a court, if it ever got to court under the Fourteenth Amendment, do you think that could be good job security for attorneys, or how do you look at that?

ROSTEN: Well, I'd say very likely that would be challenged and yes it would created work for attorneys. And no, I don't know how it would come out.

COWDERY: Thank you. Any more, Rep. Bussell.

BUSSELL: Thank you, Mr. Chairman. Are there questions of, if there are none, I'd like to just ask you the same question I've asked most everyone else. How long have you been in Alaska, sir?

ROSTEN: Seven years.

BUSSELL: Seven years. And during your testimony you mentioned that under present statute if you really got a legitimate claim or if a corporation in your opinion has acted improperly, you can pierce the corporate veil and go after it if there is enough money involved in it . . . depending on the action the corporation is involved in.

ROSTEN: Yes, it's a sad fact of life that often times justice is what you can afford. And whether you can pierce the corporate veil, it takes more work than if you have just the individual out there on their own. But if you get a judgment against somebody, it's not worth much unless that person has money too. And the other thing you have to consider is if you pierce the corporate veil, sometimes the person's going to be run on assets and sometimes that person's going to form a coup anyway.

BUSSELL: I've done a little bit of business in Alaska over the years as I've been here too. And oft times as a businessman you have to look at who you're going after and decide

whether it's a risk of continuing your business just how much fuss you stir up. You may lose your shirt going after . . . I've . . . this piece of legislation we've got here, I don't really see changing that, do you?

ROSTEN: No. I think the basic, when clients come into my office and are upset and want to chase after somebody. I warn them that litigation is very expensive, it's a headache to live with no matter which side you're on, and you ought to think very carefully before you pursue that course. Those basic decisions, rules, still need to be made. And I recommend, I do some bankruptcy law also and one of the first questions I ask people is make sure you're not throwing good money after bad. Those sorts of decisions will still need to be made if this code were adopted.

BUSSELL: I don't see anyone on this list from the court system, but being as you've practiced law here seven years, I presume you practiced law . . .can you just give me an estimate from your prospective of what this would do, this piece of legislation's going to do to the case load at the courts, as opposed to present statute?

ROSTEN: It will increase it. It will increase it because any time you adopt a new statute, there is more uncertainty, there is going to be more litigation which will ensue. Whether in five years time there would be more or less case load in the courts is hard to predict because after a certain number of years when things have worked all the way up to the supreme court, decisions have come down, things become clarified, and this code does spell out a lot of things which are not mentioned or otherwise ambiguous under the present code. It's a necessary part of change, and I think if the code overall is a thing worthwhile adopting, that's the price society pays. I'm chuckling because who's going to make money during that. Well, we all know who makes money during that. That is just a price, and that's something you need to consider going into that.

BUSSELL: That answer's about like I thought it would come out, too. But you know I try to avoid saying that this piece of legislation is a a lawyers relief act, although . . .

ROSTEN: Well, this, one of the attorneys in our firm has a cartoon in his office which I find very apt. It shows two farmers arguing over a cow and a lawyer in the middle milking the cow.

BUSSELL: Let me ask you one more question about this $25,000. I don't know exactly how that $25,000 was reached at, whether it was with aid of a dart board or what. After this five years period, let's just say we make up a scenario here, that this thing is adopted tomorrow and we begin this five years. Is

that $25,000 in your opinion going to be $100,000 in five years?

ROSTEN: I think, because it would be increased simply because of inflation or for whatever reason . . .

BUSSELL: Increased as a result of these cases that are going to come forward out of this . . .

ROSTEN: I should say that the five year period, and I guess one exception to that is if this code were adopted in its present form, the number of cases would not decrease after five years under the $25,000. If they can go after somebody for $25,000, you're going to do. And increasing it to $100,000 would increase slightly the number of cases.

BUSSELL: I'm trying to think of the future impact, or impact on future legislatures. If you do this, obviously, or at least if I was out there trying to whack somebody, I would be putting pressure on legislators to increase that amount. And if I were a member of the bar association, I'd be putting pressure on them to increase that turkey so I could get some dough to . . .

ROSTEN: Well, no, not necessarily. I mean I take exception . . . Certainly, speaking as commercial lawyer, my job is to protect my clients. And I represent clients on both sides. And what I think is reasonable is just that. Look at the policy behind the statute, that's a social, philosophical decision to reach what amount, and I think there would be just as many attorneys trying to keep the limit to $25,000 or to decrease it to better protect the corporate clients as there would be on the other side. I think that if you do pass this piece of legislation or something that comes out of this, then it behooves the legislature to stay very closely tuned over the next several years to the good things and the bad things about the legislation as they prove out and to be very willing to take a second look at it. And not say that, well, we've spent a lot of time and effort, now our job is done, and we don't have to worry. And I'm sure there'll be people lobbying you one way or the other.

BUSSELL: Thank you, sir. I don't have any further questions. I do thank you for coming down here and sharing your comments with us. Rep. Wendte.

WENDTE: I just, given the one question that, Rep. Furnace I believe this morning distributed a letter from the court system . . .

BUSSELL: Yes, I have it. And that's the court system's opinion. I'd like an attorney's opinion, practicing here for seven years, and it goes right along with mine. I think that the number of cases would probably quadruple, and I think in five years they would probably double again.

ROSTEN: I don't know that that would necessarily be true in five years.

VOICE: I'm sure Mr. Snowden would not hestitate to point out additional case loads in consideration of his budget, so, they're not known to be too conservative in their budget requests.

BUSSELL: He may want to revise his fiscal note after this . . .

COWDERY: Thank you. Next person up, Mr. Reitman.

VOICE: A question here from Commissioner Brown.

COWDERY: Yes, Mr. Brown.

BROWN: Yes, thank you, Mr. Chairman. What I want to ask Mr. Rosten was one question. Also I would just hope that members of the task force will be in touch both with John Abbott who lives in Anchorage and also Commissioner Jerry Kurtz, because Jerry is the designee of the Alaska Bar Association. In fact, he is their representative on the code revision commission. Mr. Rosten, I hope you know that. You may know Jerry very well. I just wanted to ask about this mention of problems of a burden of requirement of inspection at the place of business. Are you referring to sec. 233 which requires the copy of bylaws to be at the place of business?

ROSTEN: I was referring to what Roger Henderson was referring to. And I don't have the section number right at hand. That would be one instance, yes.

BROWN: O.K. That was the section that he referred to. I'm not really sure how burdensome it is to have a few dozen places for a document has its headquarters office. The other thing, maybe as a footnote either for committee staff or for Professor Fessler or something. I suggest that maybe the response or comment on the Native corporations in 960 might have a different answer after 1991. I don't know if anybody's looked into that. That's all I have, Mr. Chairman.

COWDERY: O.K. Thank you, Mr. Brown. I'm sure the task force will be in contact with the code revision board.

ROSTEN: Yes, we will, and thank you for bringing that to our attention, again.

COWDERY: Stan, is it, it looks like a doctor, no.

REITMAN: My name is Stan Reitman, and I'm an attorney in Anchorage. And I've been here some twenty odd years, and I

have practiced in this area for some length and for some time. I'd just like to make a couple of general observations, if I may, without getting too much in the specifics.

Number one, the existing statute is not broke. It ain't. I think any implication that Alaska picked up something off the shelf that was some sort of absurdity, or some sort of half-baked corporation code is just not true. The genesis of the existing statute was developed in the '50s and has been kept up to date by a series of amendments over the years, which Alaska hasn't kept up with unfortunately. And the people who worked on that statute were, came from a pretty diverse group. There were academics, there were practitioners, there were people in the business world, there were financial types, there were governmental people. And the statute received widespread approval and was picked up by Alaska. [TAPE CHANGE] . . . inovation's sake. You don't want to be different just because you're in Alaska. You want to be like the other jurisdictions. If anything, we want to encourage capital to come in here. We want to encourage lenders to come in. We want entrepreneurs to come in. We don't want to have some special statute in Alaska because we ostensibly have special needs. We have some special needs, but they're not that different than they are in Oregon, or New York, or California. Now admittedly in those two large states, particularly New York and California where there are literally thousands and thousands of competing forces, they have tinkered or developed their own philosophy. But they can do it. They can go it alone to some extent. Alaska doesn't necessarily want to do that. If you've ever dealt with an outside concern that wanted to invest in Alaska, and they want to know something about the climate in which they're going to operate, they want predictibility. That's one of the goals of any law writer or law giver or law academic, or what have you is predictibility. And we want to be able to move freely across state lines.

Now whenever you've had a question or inquiry from somebody in another jurisdiction, whether it was a bank or whether it was an investor, or what have you, we were able to say we have the Model Corporation Act in Alaska. That was recognized and stood us well, in good stead as I say. So just get over the myth that we don't have something that's working because it's not true. It has worked. Now, there are people who, particularly in the last few years, and in regard, I know with the Native corporations who have found some areas which probably need some beefing up or some change or some clarification. And I know that a number of the practitioners who work for the Native corporations have participated in this code, but there are many other people who haven't unfortunately.

Now the second thing that I think is worthy of note is that there definitely has not been adequate consideration to the small corporations or the small group, the ma and pa as it was referred to here. In fact I see in addition to this liability

matter which has been talked about this morning which I think is definitely going to discourage anybody from using a corporation. Just to give you a quick example. If I was going to start an enterprise tomorrow, and I want to hire some talent. And one of the inducements for hiring talent is to make that person an official, an officer, or to give that person some stock in the corporation, you'd be a chump, you'd be a fool, you say, to accept that assignment. I mean you've got to have your head examined. And that's what you'd be foisting on unsuspecting people that are going to go into assisting entrepreneurs. You know the creditors are big boys. If you are in the business of extending credit, whether you're a bank or a materialman or whether you're a lawyer or a lumberman or what have you, you know what it is to grant credit. You're supposed to investigate, you're supposed monitor, you're taking a risk, and that's part of the ball game. So all this great concern about the creditors who are being cheated here in Alaska, I think is just so much poppycock. They're not. We have adequate tools to get at them. And as indicated this morning, if there is any fraud involved, middle-v there is a road to take, that it's dueable. Again, in the small corporation area, or small investor area, one of the tools that's frequently used and very effectively used is a shareholder's agreement. It's a treaty as referred to in the commentary, a treaty if you will. Well, I don't know what's wrong with a treaty. And the treaty, if you will, if there is unanimity among the shareholders is designed to in effect create an operational form that's akin to a partnership, which is very beneficial to the small organization. We are going to have much more difficulty with that. We are going to have a lot more trouble with it that we've got to work through the articles of incorporation as was alluded to this morning.

For example, there has been a swing towards more informality in that if you have less than three shareholders under existing statute, you can have fewer number of directors. In other words, you got two shareholders, you can have two directors. If you have one shareholder, you can have one director. Well, that's been knocked out. And that's symptomatic of what I think is the failure to deal with the small ma and pa corporations, if you will. I think this statute as it stands is going to do a great deal to discourage the use of corporations. If that's what you want to do fine. The movement in the tax law is definitely towards the partnership. I mean, nowadays it isn't as important to use corporations for tax purposes as it used to be. Because to a great extent there is what we call parity now in the law. And many of the advantages that you could procure from a tax standpoint at the corporate level is now available at the unincorporated level. And as also as you know, that for tax purposes now the corporation in the form they call the S corporation is in effect a partnership for all practical purposes. But what you're doing here is you're taking away the corporation in its traditional form as a means of limiting liabity for the investor. And I might add the corporation is a

very useful tool for bringing people in and out of ownership and bringing them in and out of management.

At any rate, I think that the statute does have a number of beneficial provisions in there. But they could have accomplished very much the same thing, ladies and gentlemen, by simply taking the Model Act, which we do have, comparing it with the Model Act as amended at the national level, all right, and seeing those areas where there are deficiencies, and then curing them without sweeping this thing away with one big swoop. And I realize if I were a law writer and I was a law giver, I might want to put my stamp of approval or my name on an auspicious pigce of legislation, but whether or not the public is going to be served is another question.

And I wouldn't be too concerned about this business of the creditors getting put upon. I don't think that's true. I think what you're doing is you're foisting on us without an opportunity for a lot of folk who really work and need the tools that are presently available to have a chance to digest the darn thing. Thank you.

COWDERY: Could you spell your last name.

REITMAN: Yes. R-e-i-t-m-a-n.

COWDERY: Rep. Pestinger.

PESTINGER: Thank you, Mr. Reitman. It looks like we have the opportunity to try to identify the best of the proposed provisions. While we have a practical opportunity which you suggested which is to take our original model act and compare it to how it's been amended on the national level. Can you characterize what kind of a job we would be facing if we took our existing law and compared it to how it's been amended on the national level? Could you characterize what kind of an effort that would be? And could you characterize any particular or identify any particular areas where you d. think we do need to supplement our existing act?

REITMAN: No, well, I wouldn't want to ask a lot of questions. No, I prefer not to get into the detail on that. I think the comparison I'm sure has been done. I'm sure logically and hopefully the revision code committee and Professor Fessler have done this. As to what would be involved in that comparison, I don't think it would be a tremendous undertaking in terms of scholarship or in terms of man days. No, I imagine it could be done in you know less than a week in terms of, less than five days, or something if somebody did it.

PESTINGER: Well, we have this 30 day problem of the task force from the business law section of the Alaska Bar. And I wonder if that task force would be interested in making that

comparison. Now I can't speak for the task force, they're already volunteering as it is. They're taking on a tremendous work load, but I wonder if that may be is a very practical comparison.

REITMAN: I think that's a good suggestion.

COWDERY: Rep. Furnace.

FURNACE: I believe Rep. Pestinger was reading my notes here. No, I appreciate that, I had a question along those same lines. I think you have answered it.

COWDERY: Rep. Bussell.

BUSSELL: Thank you, Mr. Chairman. Mr. Reitman, how long have you been in Alaska?

REITMAN: Twenty-five years.

BUSSELL: I guess I should probably put that on the sheet when everybody signs up so I don't have to ask that question. Thank you.

COWDERY: Thank you. Next person to testify, Mr. Bob Vasquez.

VASQUEZ: Mr. Vasquez. Thank you, Mr. Chairman. Most of the comments, all of the comments, in fact, that I was going to make this morning have already been addressed by the previous witnesses. And in the interests of the committee's valuable time, I will let the comments stay . . .

VOICE: Moderator in Juneau, we have lost the Anchorage transmission for now.

COWDERY: O.K. Fine, we're back on now. Thank you. Mr. David Bendell. State your name and spell your last name for the record, please.

BENDELL: David Bendell, B-e-n-d-e-l-l. And I'm also a member of the Alaska Bar Association's task force. I guess my comments primarily are directed as Mr. Kelly's were, that it is simply difficult, if not impossible, for those members of the task force who at the present time give really any sort of opinion as to the efficacy fo the bill, since we really haven't had that much time to study it. Our organizational meeting was very recently, the other morning. And we're just now in the process of parceling out portions of the bill to be analyzed by various of the volunteers. I'd just like to make a few comments.

The first one is, I guess, a couple of comments have

been made here today that this might be a lawyers relief act. Well, in my case I think that's really quite on point because I'm a bankruptcy lawyer and this is really going to be a relief act for me if this thing gets passed because all these directors and all these officers are going to come knocking on my door. And they're going to say, well, you know I've got all these debts and I've got to get out from under and I'm going to put them under. As to whose benefit that's going to be, I'm not entirely sure. All they're going to say is I'm not really looking for that kind of relief.

The second point, I mentioned I'm practicing in the bankruptcy act, actually practicing in bankruptcy securities. The second concern I have and it's something that we most particularly analyze during the 30 day period, which is why we think it's essential, is the effect that this type of bill is going to have on public offerings of stock in the State of Alaska. As I'm sure many of you are aware, whenever there is a public offering of stock, there has to be a document prepared, a very lengthy document, as an offering statement. And that has to elucidate what is know as risk factors. Risks associated with the offering. I would assume that any offering of any stock of any corporation that's going to operate and do business in the State of Alaska is going to have to have listed as a risk factor for potential stockholders the fact that we have this rather peculiar law in the State of Alaska that in essence does away with limited liability. And my concern is, as I said, my opportunity to review the bill has been minimal. My concern is is what effect this is going to have on the ability to sell such stock. We talk about getting input from the Department of Commerce and from the task force. I think we ought to get some input from people who are securities dealers and find out if they can sell anything from the State of Alaska if we are going to do this. Are the people in New York when they see an offer from the State of Alaska to develop oil and gas or fisheries or anything that's going to make jobs in this state, are they going to say well, we can't sell this, we're not going to touch anything from Alaska because we're concerned that we're going to get sued by investors or stockholders because they end up getting tagged with this liability problems. I think it's an area of concern. I think we'll all have to look at.

And I think the one final comment I was going to make has to do with experience. The people who are affiliated with the business law section are people who work in business all the time. We go into shootouts involving lien priorities and tax liens and adversary proceedings in bankruptcy. And I think the joint experience of the committee will be invaluable to this committee in deciding whether this is a good bill and deciding what type of bill. I think that Mr. Kelly's comment of the essentialness of the 30 days is very valid, and it's something we humbly request.

COWDERY: Thank you. We have, we intend to extend that time. Any questions.

KOPONEN: From Fairbanks.

COWDERY: Rep. Koponen.

KOPONEN: Thank you. Do you think that New York or California corporations have any difficulty in selling stock?

BENDELL: Well, it's my understanding that they have not yet adopted this type of act, and it's something they are talking about . . .

KOPONEN: They are in the statutes.

BENDELL: I'm not entirely sure . . .

KOPONEN: The 1977 revision of the California Code and in New York it goes back to the Dutch . . . and even though . . . did not surrender their limitation on limited liability which most other states did.

BENDELL: I'd like an opportunity to examine that. I'd like to examine what type of effect this has had on public offerings, specifically to the extent limited liability is being done away with respect to shareholders, and that's something I'm not entirely sure of. Like I said, it's difficult for us to comment at this point because I think the business law section was alerted to this just a very short time ago. I got a call from Paul Kelly around two weeks ago. He was very concerned. He was making a flurry of phone calls to various persons who over the years have been involved in the business law committee and our CLE programs. And I just very recently got a copy of the Act, and as to what the effect has been in New York and so forth, I guess that's a real good question. And maybe the best way to answer that question is to call some underwriters in New York and some lawyers in New York and find out what their Act says, and what effect it has had on their offerings, and see if this is something we want to do. You mentioned New York and California, and I haven't seen their enactments, but I think the key thing we have to keep in mind is this is a developing state. This is a frontier. Our needs to have new money and new people to come in here and build this state are much more important than say a state like New York, which is immensely populated and already has very substantial development.

KOPONEN: Can I ask Professor Dessler for the background, I understand he's there. I also understand that he did give a presentation to the bar association. I wonder of the members of the task force, have you been designated by the society of governors, or a part of the business law section of the Anchorage Bar or the State Bar?

BENDELL: We are an ad hoc committee of the business law section of the Alaska Bar Association, which is a, as you may be aware, most bar associations have sections which are committees of lawyers which deal with new developments in the law and put together educational programs for lawyers to educate them in new developments in the law.

KOPONEN: Thank you. That's an ad hoc section of the Anchorage business law section, or is this statewide?

BENDELL: It's statewide. I think Mr. Kelly is the statewide coordinator of the Alaska Bar Association business law section.

KOPONEN: Thank you.

COWDERY: Thank you. Rep. Bussell.

BUSSELL: I have that same question, Mr. Bendell, how long have you lived in Alaska.

BENDELL: I've been here for six years, practicing for five.

BUSSELL: And where did you come from?

BENDELL: New Jersey.

BUSSELL: Did you practice in New Jersey?

BENDELL: No, I didn't.

BUSSELL: Where did you go to law school?

BENDELL: Rutgers.

BUSSELL: Thank you, sir.

BENDELL: Thank you. Thank you for your time.

COWDERY: Next witness up, Mr. Brian Brundin.

BRUNDIN: Thank you, Mr. Chairman. Members of the committee, my name is Brian Brundin and I'm a lawyer with the firm of Huges, Thorsness, Gantz, Powell & Brundin. We practice law in Alaska in Anchorage, Fairbanks, Juneau and Valdez offices. I've been in Alaska 33 years, and I've practiced law for 18 years. I'm a CPA lawyer, and I involve myself primarily in the area you're dealing with today.

I have as I grow older, I have less inhibitions against expressing my own opinions. So I'll do that for you today. Mr.

Reitman said it, I second it. The corporate law of Alaska is not broke. I really didn't know that it needed any particular fixing. My own personal bias for law is this: That if something needs to be done, and there is a public request for it, then there is a reason to do it. And there have been over the years public requests for some changes in our corporate law. But when you come down with a whole brand new one, I'll tell you what the result will be. And that is, and I represent by the way, national, international corporations down to the mom and pop's, the whole range. And the experience will be this, that the national and international ones will hire me and others like them to fix whatever problems exist in here for them. The mom and pop's will get it in the you know where. Because they'll get caught with things that they are not aware of. They don't have lawyers they go to, except when they get in trouble. And when they're in trouble, it'll be too late. Well, didn't you know the law changed and what you were used to is no longer so. Whoops, no I didn't.

I, and many of them, the in betweens, we have in Alaska's business community a lot more in betweens, no mom and pops, no national or international, lots of in betweens. And many of the in betweens have in these recent years found that the wholesale changing of laws costs a lot of money. I'll give you one example that some of you may have experienced. Congress has changed the laws regarding pension/profit sharing plans two or three times in the last five or six years, under URESA, you've heard of that, and so forth. Tax laws have changed constantly, you know that. Every time one of these changes happens, I've clients who have pension and profit sharing plans that had to amend them twice for no good reason. They never were doing anything wrong to begin with, but the law required they amend them. Every corporation will have to be changed if this becomes law. And for those who will have to do the changing, most of them haven't done anything wrong, don't want to do anything different, have never cheated anyone out of anything, and won't. But they will have to incur the cost or run into one of the traps, one of the speed traps down the highway, if they don't change their laws. That's practically what'll happen.

And that goes as well for this one that seems to gather more comment today, and that's the secondary liability. I suspect the other provisions in here are going to cause much more trouble over the years, for the reasons stated that many of them are new. And I think if you stay with model acts you are much better off. But on the liability matter, there really is no difference in my view from saying if a president of a corporation or a secretary is going to be liable, why not a manager of a partnership who is not a partner. Why shouldn't he be liable. Why not the manager of a sole proprietorship. If the reason for making liability is an assumption on your part that the president is the owner and can determine how much money the corporation has to pay its creditors, that's an error, isn't it, because he

doesn't. He doesn't run the corporation. He's hired. Several others, the manager of the grocery store that is not incorporated is hired. He really can't control what the owner does, how much money is in the business. If he's going to be liable because of management decisions, instead of how much money is there, why then I guess any employee of any organization ought to be liable for any of his decisions up to $25,000 to every creditor. It makes just as much sense to me, if that's the reason for it. So I think that passing a law that supposedly fixes this social problem that concentrates on corporations must have some basis other than someone's thought that this is one way to fix something. It goes far more than that, if the reason for it is if you're going to be responsible for your decisions, then everyone in every organization who makes decisions should be responsible. Not just corporate officers.

If I were in your place, I'd put the law aside until someone says section so and so is troubling me, I'd like that changed. And I'd look at section so and so. What you do if you adopt this completely is that the sections that won't raise points today, I expect before this would get passed if it were passed as is, there would be some changes to this liability sections. But there's five or six or seven sections back here that no one's excited about today. They're going to cause someone an awful lot of trouble next year or the year after that nobody thought about or talked about today, or in the next couple of weeks or in the next 30 days for this task force, that weren't broken to begin with and didn't need to get fixed. And you're going to fix somebody, though, for reasons unknown today why it should be done. I'm keeping it short and sweet.

COWDERY: Thank you, Mr. Brundin. Rep. Wendte.

WENDTE: Brian, is it your opinion that every set of articles of incorporation would have to be revised if this bill passes?

BRUNDIN: From the brief reading I've given of this, yes.

COWDERY: Any more House members, anybody on the network care to, any questions? Rep. Furnace.

FURNACE: I just wanted to say Mr. Chairman, I've known Brian for many years and I certainly do respect his opinion.

BRUNDIN: I do have a tax comment I wanted to make, too, if you'd allow. When we put the professional corporation act into law in Alaska, when we first did that, we put a section in that left the professional liable period. We had a tax problem with that so we had to amend it and say, he's liable only for his own malpractice. That's the way the professional corporation act was done. That was done, and I think the same would occur here

on this liability thing. The Internal Revenue Service, if it finds we have a corporation act that says, if you are, as many Alaskans are, the owner, the officer and the director, if you're liable for $25,000 per creditor, friend, you don't have a corporation. And that's what the IRS will say. And so those small corporations, if this law were passed as it now says, who are corporations for tax purposes are going to find they're not.

COWDERY: Thank you. Rep. Bussell.

BUSSELL: Thank you, Brian. That was really my next question, since you said you were a CPA attorney, was about that. And the other question I asked earlier was on the insurance, is that a corporate . . .

BRUNDIN: I guess half of what our law firm does is known as an insurance defense firm. From what I know of it, there is now no director's liability insurance available in the United States. I've looked into that personally. There is not a director's liability policy available. There is one sold which people bought, but there never has been a successful claim made against it. I asked the guy who wrote it whether anyone had ever, it comes out of Chicago, and he said, nope. And that's because it doesn't cover anybody for anything. There is no insurance that I'm aware of which protects businessmen in any shape for their debts, except bonding. And that's not insurance. And when you have bonding, the comment earlier made is quite correct, they'll bond you if you give them your personal assets and the like. In which case, bonding is simply an added, additional cost factor to the liability, since you pay the bill yourself anyway.

BUSSELL: Brian, can I ask you to explain to the committee just what a bond is. I know what it is, but I suspect most of the committee doesn't know what a bond is and how it works if you try and exercise.

BRUNDIN: I think the clearest analogy, it's like you guarantee someone else's debt. You guarantee someone else, borrows from the bank, you guarantee it, and you have to pay it if he doesn't. That's what a bond is only it's done on a more formal basis.

BUSSELL: That's right and they take the bond holder or the guy they sold it to completely to the cleaners before they begin to exercise. That's the important thing about a bond. Thank you, sir.

COWDERY: Rep. Malone.

MALONE: Thank you, Mr. Chairman. I'd like to ask Mr. Brundin, did you see our ad in the newspaper?

BRUNDIN: No, I didn't.

MALONE: Thank you.

BRUNDIN: I missed something pretty good apparently.

COWDERY: Thank you, Mr. Brundin. I think we're going to make the deadline here. We have one more witness, I think, Mr. Bill Cook. Not here, he's left then. So then if we'd like . . .

KELLY: Mr. Chairman, we have one additional witness who was unable to sign up on the sheet. He can come after Mr. Abbott . . .might as well let Mr. Abbott testify.

COWDERY: If you'd like to come forward at this time, we'd appreciate it. State your name and spell your last name, and affiliation.

COPELAND: My name is Mark Copeland. I'm an attorney here in Anchorage. I've been in Anchorage, first came up in 1960, actually came back again in '77 and practiced law since that time. Practiced law since '67. My name is spelled C-o-p-e-l-a-n-d. I would basically concur with Brian Brundin's statements and rather than repeat them, I would like to just add a couple of quick comments.

One is, there has been a lot of concern about unsecured creditors reaching people used corporations to avoid their liabilities. Those same people whether they're incorporated or not will avoid their liabilities Even if they have to move out of state and go in business in another state. So you're not going to catch up with the person who truly desires to avoid his liabilities. I would emphasize that the bill as written is just a trap for the unwary. There are provisions in the bill that we haven't talked about, including provisions with regard to reports as to inside transactions between members of the corporation, shareholders and the corporation. I doubt very much that most people in Alaska would recognize the fact that they have two different businesses that's involving an insider transaction without a lot of discussion and a lot of education by the bar. So those people are going to find that they've failed to meet a statutory requirement. Some way they're going to find foreign corporations as having the same problem.

I find it really amusing that the entire section, or the entire commentary, goes back to New York and California law. I have never heard people who intend to enter into business deliberately seeking out the New York or California codes. Basically, people seek out a Delaware code or another statute that has a long history of business activity and which appears to provide the limited liability that is so important to capital formation and to getting into business.

Someone touched earlier on sec. 450 which provides a negligence standard. You know this is even more extensive than the apparent secondary liability standard of sec. 488. And once you give a lawyer a negligence standard to go after, that's everything. You can sit down and make a business decision and some member of the board of directors, and it turns out that you weren't right. Now it's really a question, were you right because you didn't, because you were negligent, or because you acted in good faith, but you were wrong. And negligence can be anything from you didn't spend enough money to go out and research the new area you were going into, the amount of funding it would take to build your new building, or some other reason. And what you've done is, is you've opened up a very expensive litigation section.

Just one comment, I was reading page 140 of the comments, I guess, and maybe it says it all. It says as early as 1848, the State of New York addressed the interest of employees and others to look at this limited liability question or the secondary liability question. I have now made a survey of the states, and I believe that what we're being asked to look at here is something kind of like the Edsel, it's unique. But this one's been around since 1848, and a large number of other jurisdictions and bodies have looked at it and not rushed out to adopt this proposal. This is a major change in the social and economic philosophy of corporations. And I feel that we should wait and see what happens.

The concept that was talked about earlier about whether or not there is some shareholder liability. There may not be shareholder liability except to the extent that often times an officer, director is also a shareholder. And I thought Mr. Reitman's comment with regard to anyone that accepted the job as a president of a corporation in Alaska if this were passed, would just be out of his mind, is absolutely appropriate. I also wonder about the personal secretary who under this act happens to sign, being the corporate secretary and she's making maybe $24,000 a year and finds out that she's just mortgaged the farm or the house or whatever it is, and to fairly look at this act as a complete act would be very difficult. I favor the other approach which is let's find those sections we don't like and change those.

COWDERY: Thank you. Are there questions from the Labor and Commerce side? Any questions from Fairbanks?

VOICE: Commissioner Brown has a comment.

BROWN: This is Fred Brown in Fairbanks. I'm asking if the next witness or one of the next witnesses is going to be Professor Fessler or some of the attorneys who've just testified have time that they could catch at least some of his remarks. I assume he's going to respond to some of the matters that have

been mentioned here. I know that they have busy schedules, and probably have other engagements, but if th[illegible]'s at all possible, I would hope there would be some kind of . .

COWDERY: O.K. Thank you, Mr. Brown. Any more questions for the witness? Thank you. It's approaching 1:00 p.m., and we had intended to break from 1:00 til 2:30 p.m. now. I'm here for the pleasure of the witnesses here if, I know some of the committee has appointments for lunch with various other people in town, so it would be the pleasure, I would sit here if . . .

VOICE: Mr. Chairman, might I suggest that we invite the witnesses to come back at 2:30 p.m.?

COWDERY: That's what I was getting at. I hope that . .

FESSLER: Mr. Chairman, as somebody who has been working with the code revision commission on this bill . . .

COWDERY: Would you come up to the mike at this time.

FESSLER: Yes, I am Dan Fessler and I've obviously been playing a role in the working on the drafting of this bill for some four years. I'm here from California this afternoon. I'd be very happy to return at 2:30 p.m. You've heard many comments this morning, some of which I think raise questions that are policy questions which only you can address. Some of which because, perhaps of the admitted paucity of time the witnesses have had, have involved statments about the content of the bill which were simply flatly inaccurate, and I would not wish the committee members to be under the illusion that they were. And also, I think that I would like to have the opportunity this afternoon if it is the committee's pleasure to respond to questions from members of the committee. So, of course, I'll be back here at 2:30 p.m. For many of the very busy members of the House, this would be the first time in the three years since this bill has been pending, it was first introduced in March of 1982, that we will have had an opportunity to directly supply information and to answer and respond to questions. So I look forward to that opportunity, sir.

COWDERY: We look forward to seeing you at 2:30 p.m. We'll adjourn this, or recess this meeting until 2:30 p.m.

VOICE: Mr. Chairman, is it your intention to come back with more testimony on this bill, or were you going to go to other subjects at 2:30?

COWDERY: We're going to stay with this and then go to the other subjects as time permits.

VOICE: Do you have any indication as to how many people

are left to testify?

COWDERY: On our list, just the code commission.

VOICE: It's my understanding that the network down here is going to be tied up for something else, so we probably won't be able to tie into that.

COWDERY: O.K. Well, we will certainly have transcripts of all this testimony, so if it's not possible for you to tie in, we'll fill you in Monday. At this time we'll sign off.

COWDERY: . . . to order at this time and three members of the Judiciary Committee are here. Anyway, are we back on? We've reconvened the continuing from the morning meeting, and we had one more witness on the, Mr. Fessler from the code revision commission. If he would come forward at this time, we're dealing with HB 343, an act revising the Alaska Corporate Code. Professor, if you would please identify yourself for the record . . .

FESSLER: Yes, for the record, I'm Dan Fessler. I'm a professor of law at the University of California at Davis and for the past four years have been retained by the code revision commission as its consultant in first surveying the state of existing Alaska law, determining the potential need for revision and then acting as the person who has done the technical work of drafting the value judgments made by the members of the code revision commission. I'm appearing here this afternoon with John Abbott, a member of the Alaska Bar who is the chairman, and with your permission, Rep. Cowdery, Chairman Abbott had some remarks he wished to make before I spoke.

COWDERY: Yes, I would like to announce we have some other people on confirmation that we intend to get right into that as soon as we're through here, so if you'd just please stand by, we'd appreciate it. Mr. Abbott.

ABBOTT: Thank you, Mr. Chairman, members of both of the committees. I'd like to preface my remarks by saying that we are here today, we do have under consideration a rather complex piece of legislation, and it does need to bear full scrutiny as far as the code commission is concerned. What I would like to do, however, is briefly dispel any misapprehension on the part of the committee members as to whether or not this matter was adequately noticed, and I can assure you that it was. The bar association has been represented on the code commission since its inception in 1975.

When this bill was first taken on as a code revision project, the bar association requested, both formally and informally, input from the bar association, and specifically from any business law committee that could be convened to consider

this. In May of 1982 the bar association through its then chairman of the business law committee, Mr. Dick Block who was the first witness to appear here today, specifically requested that the code commission provide Professor Fessler as a speaker to explain the bill that's now in front of the joint committees today. That was 1982. At that time Mr. Dick Block was still the chairman of the business law committee of the business law committee of the bar association. There have been repeated efforts, both formal and informal, to involve the bar association in deliberations in seeking input from them on the drafting, the implementation of this corporation's bill. It's inconceivable to me that anybody could argue that the bar association was not put on notice of what we were doing with the bill, did not have any idea of what was happening with it, or that any of the members could claim that they didn't know or shouldn't have known that this bill was under consideration. Be that as it may, they've asked for a certain amount of time to review the bill. With grave reluctance, I will say on behalf of the commission that we would acquiesce in a 30 day period with review, and we'd hope that the joint committees would hold firm to that 30 day period. As Rep. Malone earlier pointed out, that may or may not be the death knell for this particular bill, and we are pushing hard for consideration of this bill this year.

You've heard a fair amount of testimony concerning the existing Alaska law and the new bill. And I'll let Professor Fessler respond to the claims that it's innovative or radical. It is not. Input on this bill has been provided by me and by Commissioner Jerry Kurtz, who represents the bar association. I have been in Alaska since 1969 and practiced law since that time. Commissioner Kurtz has been in Alaska since 1961 and has practiced law during that time. We both have extensive background in private practice dealing with corporation and corporate abuses. And it was our opinion that there were significant abuses which cried out for [TAPE CHANGE] . . . of the existence of public hearings on a bill. In short, we have taken great pains to contact everybody that might have an interest in this bill. And I think it would be misleading for anyone to claim that they didn't have an opportunity to comment. That opportunity has been present.

At this point in time, if there are no questions, I would turn this over to Professor Fessler.

COWDERY: Yes, I would like to just like comment on your comments, that I think that this morning the question was asked of individuals here if they had known about it, and I think they were expressing their views that maybe they had known about it, but this is the first time they really got serious about listening to it. And under that I think there are 1,400 bills or so that are in the hopper that probably 100 won't become law in the 13th, maybe 150 will become law. So this is in that 1,400 bills, so until it gets down to where there is some action, a lot

of times on bills, people don't get too serious about them until they think there might be some action.

ABBOTT: I appreciate that, Mr. Chairman, and I guess my response would be that I feel there is a professional responsibility on the part of lawyers to participate on bills that will affect them or their clients. And I'm not just talking about notifying the bar association, I'm referring to specific requests for assistance from the bar association to help us, to give us their input as private practitioners in how this law should be drafted. Something we would have welcomed.

COWDERY: I think that's what they expressed this morning, they want to have a part in it. Rep. Wendte.

WENDTE: Could you educate me to the extent of what, could you go through the membership of the commission?

ABBOTT: Yes, I would, Rep. Wendte . . .

WENDTE: And if they represent designated or what their affiliation is.

ABBOTT: Yes, and I'll go just a little further than that. The legislature in 1976 created the Alaska Code Revision Commission due to the success that it felt it had with the subcommission on Title 11, which was the criminal code. Because of the success of that commission enacted a permanent commission, the Alaska Code Revision Commission, gave it a broad mandate to examine all existing laws, statutes, to entertain requests from the court system, the administration, and the legislature as to areas that needed to be looked into. Since that time numerous requests have been entertained from the legislature and from, very few from the private section, some from the administration. The composition of the code commission was such that it fairly represented all three branches of government. There were at that time, one public member appointed by the governor, there was a member from the attorney general's office who also represented the governor through the attorney general's office, there was a representative from the state legislature, there was a senator from the state senate, both appointed by their respective chairs, there was a member of the Alaska Bar Association, and there was a designee of the Alaska Supreme Court chosen by the chief justice. In 1981, I believe it was, that was expanded to include two additional public members, one of whom has been appointed by Governor Sheffield, that's former Representative Fred Brown, the other position is currently vacant. We have as such representation of all three branches of government, and the parties that are readily identifiable as those that would be interested in legislation being passed.

The work of the commission is such that it is transmitted to the legislature in two ways. First, we report on

everything that's done by the commission to the Legislative Council, which is reponsible for oversight of the code revision commission. Secondly, individual materials are sent to individual legislators. You should have just recently received a package of some six bills along with commentary advising you as to what the code commission is doing. We have spread a lot of paper in advising the legislature as to what bills we are considering and what we are doing.

WENDTE: How did this bill been issued, within the commission or administration? How did you begin this review?

ABBOTT: The normal process for consideration of a bill, unless it's a specific request from a legislator or somebody from the administration, is to generally review laws in the State of Alaska, particularly those of a sophisticated nature, since we don't deal with laws that legislatures would normally handle. We deal with those they might not be interested in handling or don't have time to handle. One of the laws that had not been reviewed in quite some time was the corporation code. There was some six months, and that's an estimate, of deliberation in the commission before it was adopted as a formal project to be taken on by the commission. That review indicated that there were some serious needs for revision. So in answer to your question, the bill had its genesis in the code commission itself.

COWDERY: Thank you. Mr. Fessler.

FESSLER: Yes, gentlemen, I'd like if I can to briefly touch on four areas that seem to be sinful to the testimony you heard this morning.

First, I'd like to briefly describe, to clarify for the members, the origin of the bill and at point I'd left the issue of whether or not the bill is radical. Second, what is the state of current Alaska law which comments on the necessity of doing something. Third, sec. 488, the secondary liability of officers and directors, was a matter of great concern this morning. In that connection, I have, I would like to talk about is the bill generally inscrutable, is the drafting such that it cannot be read. And then finally, the issue that was of particular concern to Chairman Bussell, will the bill clog the courts with litigation if you were to enact it into law.

The origin of the bill is as follows: The code commission asked me if I would be interested in doing a survey of existing statutory and decisional law in the business field with a view toward determining whether or not, given the passage of some 23 years since the enactment of the original code, it was time for Alaska to have a code in the corporate field of its own creation. I undertook that by comparing the existing Alaska law to the model corporation act as it has been evolving since that period of time to the corporation experience that had taken place

in New York, which had gone through a similar plenary revision of its law in the late 1960's and to the revision of the California Corporation Act, which had also gone through a some five year, and in that instance, multimillion dollar process of analysis and revision in the early 1970's which culminated in the adoption of the California Corporations Code in the fall of 1972 by that legislature. Now when I reviewed the existing Alaska law, I came back with the following general recommendations.

First, Alaska had adopted at the time of statehood what was then the Oregon version of the model act. And since that time had paid no apparent consistent attention to the corporations code. The Alaska Corporations Code, therefore, was no longer in compliance with the model act. The model act had gone through twenty years of revision and evolution, most of which had not been tracked by amendments to the law here in the State of Alaska.

Second, if one tried to look to decisional law in the Alaska Supreme Court to fill in the gaps, one found there was very little decisional law. The consequence that I drew, or the conclusion I drew, is that a lawyer or citizen in Alaska asking questions the answers to which ought to be ascertainable in very many areas of corporate law, ran up against an absolute blank wall. There was no statutory provision on point, and the Alaska Supreme Court had never spoken to the area at all. Some people today referred to this as the lawyers relief act. The existing Alaska law could only be described as hayday for chiromantists, palm readers, and individuals who stare at crystal balls. If one looks outside of Alaska to the model act on the theory you will find in other states decisional law that readily tell you what Alaska law means, I submit to you that ten minutes of analysis would not support that statement. The model act in various degrees is the law in some 18 to 20 jurisdictions. Their courts over a period of time have reached frequently conflicting interpretation as to the meaning of identical statutory language. And, therefore, it's delightful to sit in a negotiation with a client in which the same statutory language, coupled with a decision that the Supreme Court of West Virginia, of the Court of Appeals in Tennessee, and a federal district court sitting in diversity in Florida is on my side, while on your side you lead off the bidding with a decision of the supreme judicial court of Massachusetts, the Supreme Court of Illinois and a federal district court sitting in New Mexico. Now it is again as to which view would be adopted by an Alaska court, and in a moment I'll talk about the costs both in time and in treasure to citizens of this state in following up that guess with litigation.

It was the philosophy of the code revision commission that the state's economy would be better off if there was in one place a rther thorough expression of basic statutory policy so one did not have to look at a bill supported by a variety of

crutches in order to determine what, exactly, is the answer to a client's question. That is also why the law is organized the way it is. You'll notice it is organized in a manner totally unlike existing Alaska law, which has no organization whatsoever. It is organized in a manner which attempts to restate the area from the beginning of a corporation right on through to dissolution. And to organize it so that it has comprehensive statutory treatment of these important topics in one place and at one time.

The comments which were prepared are an attempt to synthesize in those areas where we continue, and in most areas we continue the policies of the model act, but we have looked at, taken into account, the divergent interpretations and had written the comments in a manner that says that it appears most in concert with our understanding of the law and where this statute as a whole wishes to go, to follow the Tennessee view on this matter and not the Florida view. Now if the legislature were to adopt by concurrent resolution recognition of those comments, you would go a long way toward clearing up the log jam and confusion of outside, lower 48 interpretations of the model act.

This bill hopefully brings to you the best of existing law under the model act. Virtually all provisions of the model act, including the most recent provisions of that act, are contained in this draft. So to the extent that people were wishing this morning that that might happen, gentlemen, it has happened. It also looks to the law of New York for its basic organization. It examined the law of Delaware very carefully, the law of North Carolina with some care because Carolina has gone through a somewhat sweeping although not total reform of its statutory law, and finally the law of California.

Is it a radical bill? Rep. Liska asked the question this morning in several areas. It deserves a very frank answer. Sir, it is not a radical bill. What it attempts to do is to draw a middling, fair, straightline position saying we're not trying to develop a bill that is totally management oriented. Most lawyers would tell you that is the existing law in Delaware. We are not attempting to recommend to you a bill that is totally shareholder oriented. That is the general characterization of the law of California. What we have attempted to do is draw a bill that is more or less neutral on the issue of whether it is to be management overall or shareholders overall, but leave great flexibility to individual Alaskans and their advisors, whether they deem themselves capable of making these decisions or they wish to hire an attorney to structure in the articles of incorporation how this particular corporation will be. There was a lot of complaint this morning that the articles of incorporation would be important for the first time in Alaska if you were to adopt this bill. Since the articles of incorporation function is the very constitutional document in any corporate setting, it seems to me that it is sensible that the basic decisions about the structure of the corporation, prerogatives of

shareholders, limitations, if any, upon the prerogatives of directors and officers, should be stated in that single document. People are not frozen in concrete. The articles may always be amended. The impression was left this morning that you had to be prescient and put it in the original articles, and that is simply not the fact.

Now, there is one area of this bill which is innovative, which has no direct statutory support in any state. And the members of the House Labor and Commerce Committee will recognize this, but for the benefit of those from the Judiciary Committee, that is sec. 488. I might add that we tried to go out of our way to advertise the fact that this is something deserving of your greatest scrutiny. We believe that over a period of time an abuse of the corporation has crept in which it is responsibility of the legislature as the duly elected representatives of the people to think about every 20 or 30 years before it allows it to just go on and on and on. And that is the question as to whether or not merely because someone has achieved corporate status whether they have torn out forms from a book, or if you've been on an airline recently, and you've seen these advertisements for "send me $49.95, and I'll send you something that can show you how without any of your money, without the need of any lawyer, you can reduce your taxes, you can keep all your fortune, and you can be responsible to nobody." Now I submit to you that that is a decision which you must make, but the greatness of this country was never built on premeditated irresponsibility to creditors. And that is being advertised at the present time as a great virtue of the corporate form.

The corporate form with limited liability is a state conferred privilege. It does not exist unless the members of the Alaska Legislature says that it exists. And the question as to whether you have a right from time to time to look at that privilege and to decide whether it's working for the common good or whether it should be fine tuned to rescue any abuse that has crept in, is something which I think you ought not be denied. Now all that sec. 488 does, it does not repeal limited liability to the corporate form. What it does do is this. It recognizes and suggests a solution to the problem if you agree that there is a problem. It recognizes that limited liability is the norm if you have a corporation. It is true, as was stated by some of the attorneys this morning, that there are common law doctrines called "piercing the corporate veil" or disregard of limited liability that theoretically act as a check upon people who abuse limited liability. My survey of Alaska Supreme Court cases in this area reveals two cases in the 25 years that Alaska has been a state. From this we can either conclude that there is simply no problem, and therefore there could not be millions upon millions of dollars in damaging liability under sec. 488, or that the problem is not adequately being addressed under the existing common law doctrine. I suggest that it is likely to be the latter and not the former that is true. To litigate all the

way to the Alaska Supreme Court the issue of piercing the corporate veil requires an individual who has great resources both in time and in treaure. And if you are a creditor who has an $8,000 bill that is owed you, you do not have the money to bring this question to any court. The only individuals that sec. 488 is trying to protect are those individuals with their small claims who have not got, because of the cost of litigation, any attempt to even challenge the question as to whether or not there should be a disregard of limited liability. The solution which is suggested is to impose liability on designated corporate officers and directors. The only other state that has a law in this area, that is remotely comparable, is New York's position, which is limited only in favor of employees. So our recommendation to you goes beyond New York law. And New York fastens the liability upon the ten largest shareholders in the corporation. And that liability cannot be shaken. We did not recommend that you fasten liability on the shareholders on the theory that frequently some shareholders will be totally passive, playing no role in the actual conduct of the business. The suggestion was instead that you place it upon the officers and directors on the theory that they are running the business. Further, we did not follow New York in making this an unshakeable source of liability. Please recognize that sec. 488 says this liability, like any other created here, can be contracted away. That it requires that the corporation obtain in writing the agreement of the potentially advantaged creditor under sec. 488, you employees, etc. That they will not look to the liability which you would have under statute, but instead would release you from that.

We heard two things about that today. First, one of the attorneys who testified this morning that you don't need it because large corporations in dominant market positions will always insist that that be waived. And very small and needy individuals in the marketplace entering contracts are in no market position to resist the demand of waiver. The other was that it doesn't make much difference whether you do go after the owners of these fly by night corporations, because the truth of the matter will be, they, themselves, are going to wind up having no assets. The only analogy I would offer to you is that the same justification could be used if you were out in the waters off the coast of this state in this month and you saw somebody in those waters for not throwing him a rope. First, he might not catch it and second, he might not be able to hold on. But if you at least afford the opportunity to people to have something in lieu of what they now have, which is nothing, you will have gone some distance toward, I think, a useful reform of the law. So that's sec. 488, and any time there are questions, I would be happy to answer.

Rep. Furnace asked several times this morning, would it be wise to reduce the dimension of exposure to an aggregate of $25,000. Rep. Furnace, there are many things you could do. You

could reduce the amount of dollars, you could try and create exemptions, you could wait until the legislature decides that too many people are brought under the umbrella of sec. 488. What I do ask is that you give serious consideration to doing something. Large institutional lenders don't need the protection of 488, and they are not given it by this bill. They will always insist upon the fact that there be personal guarantees, or they should. What we are attempting to do is to offer some hope to people who have no voice and no position because of the de facto costs of litigation. And unless the legislature does something here, that is not the classical American way, to defeat people who cannot afford to take you to court and to try and build the economic future of this state paved on the backs of those individuals. Or if there are thousands or should there be millions of dollars in liability here. Gentlemen, please understand that is already liability in this state. It's just that it is being borne by employees, and it is being borne by materialmen and suppliers. We are not creating a liability here, we are shifting the liability from the creditors. You heard this morning that these creditors should understand that when they do business with a corporation, they are taking that chance. Well, the philosophical question was never better posed. Should it be heads, I win, if there is prosperity as the owner of the business, the prosperity is mine. If, however, the busines should fail, one group of people I will certainly not owe anything to are the people who cannot even afford to sue me for the debts I have incurred to them. That is the only group of people who are the target of sec. 488.

One other matter this morning in this area, is the bill difficult to read. Well, I readily confess that the bill is lengthy. I've attempted to explain why the code revision commission drafted a bill of this nature was recognizing that Alaska has very little common law in the business field. That if questions were to be asked and answered by Alaska sources, not guesstimate, it would be better to have it done by statute in this jurisdiction, rather than wait for 50, 60 or 70 years to build up a large body of common law. Several statements that were made this morning are simply inaccurate in terms of representing to you problems that exist under the bill. I pick out two, because it will not take much of your time to dispel them. And I think that when the gentlemen who testified this morning have greater opportunity to read it, they may conclude that some of the things said this morning are not the problems which through the lack of time they represented them to be.

I would ask you to look at page 54, if you have the bill in front of you. Many of you are not attorneys and therefore I will pose a hypothetical to you. The question was, does this bill require a corporation to have three directors when it may have fewer shareholders than that. Wouldn't that be a ridulous thing. One individual sat in the chair that I'm sitting in this morning and told you that he just found it impossible to

understand this bill's provision on that point. The section is 453, gentlemen, lines 27 and 29. Now if you read that and come away with the conclusion that you don't understand that if a corporation has fewer than three directors, it doesn't need to have any more directors than it does shareholders, then I will be happy to take this and leave. That is not a problem here.

Another statement was made this morning that the bill expands the secondary liability to shareholders. I don't think it takes 30 seconds of attention to page 67, sec. 488, to discover that shareholders have no liability per se under sec. 488 at all. Now there are philosophical problems that many raise with sec. 488, and I would be the last person to try and forestall a clear and vigorous debate on that. And I am the first person to recognize that as the 60 elected representatives of the people of Alaska, the ultimate decision on that point is yours. But I would not want you to make that decision under the influence of misinformation about the bill, no matter how innocent its origin might have been.

Finally, Rep. Bussell was increasingly interested in the issue of would this clog the courts. Rep. Furnace was ahead of him on that question. Rep. Furnace posed that question to the Alaska Court System and has received after their opportunity to review the bill and to comment upon the sections they found of interest and would affect the judiciary, a conclusion which as it is stated very succinctly in the cover letter to the committee. "Reviewed the proposed bill in detail. Our comments are attached". Based upon her comments, the court system concludes that the superior court will not be substantially burdened by passage of this bill. So I suggest to you that the one inquiry to the individuals most likely to be knowledgeable has been lodged by Rep. Furnace and it has been asked. Surely there will be litigation under this bill, but I hope that as the court system recognizes, they will have substantially greater guidance from the legislature as to what the value judgments are that should be brought and not left to the question ultimately of the five appointed members of the Alaska Supreme Court to decide about these matters. The judiciary recognizes that it is desirable that these matters of high public policy be decided by the elected representatives of the people, and I believe that this bill gives you an opportunity to face those questions and to resolve them.

I have volunteered and I wish to simply make it a matter of record to work with the ad hoc group of people who formed themselves at 7:00 a.m yesterday morning who wish 30 days to review the bill. I would because of the press on you and your business have hoped that that would have come earlier. It has not. I addressed that group in May of 1982, the state bar association's annual convention, business law section. In December of 1982 I returned to Anchorage and conducted a two-day seminar on this very bill, and every member of the business law

section in attendance was given a copy of the bill and the comments. This bill, of course, is with very minor revisions nearly identical to the bill that was first introduced in March of 1982. That is the past. In the future in the next 30 days, I will be happy to supply any information. And I reiterate there is a great deal of study of contrasts with the model act, in looking at the Oregon, Washington acts, looking at their decisional law that I will make available to any member of this House or any staff member you designate. You have already spent a great deal of your time and money hiring me and the individuals who serve without any compensation at all, the code revision commissioners, to work on this matter for some four years. We would like to continue to work on the matter and to work with you in the manner that you deem most productive.

If there are any questions, I would welcome the opportunity to respond.

COWDERY: Yes, I'd just like to comment on this bill. How long has this bill been active in the Senate, in the other body? Is that, the point I'm making, this is the second time we've dealt with this bill in the House.

FESSLER: There was a Senate hearing on the bill last year, Mr Chairman, but I would not represent to you and you would have to ask your colleagues in the Senate, that it received extensive attention in the Senate in the last legislature, excuse me, in the first session of the current legislature. The legislature which was immediately passed, had the bill introduced, but it did not hold hearings on it.

COWDERY: Well, the point I'm making, it seems like we've had some criticism, you might have taken it personal, I don't think it was intended to be a personal criticism, but I think we have to hear both sides and the philosophy of the code revision commission is certainly to be commended of this bill. But the philosophy of the legislature will probably be a balance that it has to go through, and these hearings I think are very necessary. And even though we had people that expressed their views, we listened to all sides, including yourself, and respect all the views . . .

FESSLER: The only thing I ask is the opportunity to, if there are areas where through inadvertence or otherwise, misrepresentations are made, you'll spend a great deal of time attempting to acquaint me with the content of this bill. And I would never wish to have you make a judgment that was predicated upon misinformation. That was my, I am offended by little, when it happens, I lose hair, and it's obvious I can't afford much more offense in my life.

COWDERY: One of your comments about creditors that could sign releases, well, I come from, that might sound good in

paper or textbook, but in the real world I've found in my business, I've been in the business for a few years, that when something seems to go sour in creditors, it concerns, the hardest thing you can get them to do is to sign anything that would weaken their chance of getting paid. And any promises or anything in the real world outside of a cashier's check or cash, to get anybody to sign anything, and I think . . .

FESSLER: Yes, most businesses are born in the spirit of optimism. And the time to deal with the creditors on this issue is at that optimistic moment. If you wait until it is evident that the business is going under to ask for releases, it would not be, in the words of one individual, a propitious time.

COWDERY: Yes, well I've worked with companies for years that eventually have something go wrong, so anyway, Rep. Uehling.

UEHLING: Thank you, Mr. Chairman. I just would like to sort of reiterate probably some of the things that you've mentioned here. It's my understanding that when the original code revision code was put into effect in 1953, that we're still under the present Oregon statutes then, I mean we've taken the code question from the Oregon statutes, is that correct?

FESSLER: That is correct and was also the recollection of Judge Stewart who is a member of the commission who was in the first legislature that adopted . . .

UEHLING: And actually there hasn't been any changes in those statutes since that time, but although in Oregon there has been changes that have occurred in that state under the model business act.

FESSLER: There have been amendments to the Alaska act since its original enactment. Some of them as recently as two years ago, when the legislature decided to shift to a biannual reporting as opposed to an annual one. Another one was the requirement, which is an Alaska requirement not in the model act, of identifying individuals who are foreign to the State of Alaska who have a significant interest in the corporation. But Oregon has certainly gone much further. Oregon's law looks less like it did in 1954 than Alaska's does.

UEHLING: And then also another question. If you could, I understand that under the provisions in this code revision, we are talking about value decisions that are made as far as, in regard to shareholders' rights and the board of directors, is there a pretty well of a balance there, maybe you could be more specific about what occurs in this bill regarding that. Because I understand there is a lot of flexibility.

FESSLER: The basic flexibility is in the provision which deals with the mandatory content of the articles and also

with the optional content of the articles. There you decide such basic questions as to whether the shareholders will have along with incumbent directors the right to propose amendments to the bylaws or to the articles, whether or not the shareholder when you have votes on them will vote with simple majorities or whether there will be less than simple majorities or greater than simple majorities. In other words, if you just go down that . . . Chairman Abbott used to have a phrase which was drummed into his brothers and at that time sister on the code revision commission, that he wanted the thing to read like a cookbook, so that a lawyer or a layperson who was setting up a corporation would go right down that matter and begin to discuss. I think one of the great advantages of requiring that they be in the articles is that it provokes the basis of discussion. Even if you're going down a checklist, do you want the shareholders to have the right to vote on amendments to the bylaws. Yes or no. If you're a lawyer, the client may ask well, gee, whether, should we or should we not. And then it's the job of the attorney to explain the advantages and disadvantages. Whether we are going to have cumulative voting, whether there are to be preemptive rights of shareholders are other matters which must be settled.

As statement was made this morning, well, those matters could right now be put in an agreement. Well, under this bill if you enact it, as a side letter of agreement, it wouldn't be effective. It would have to be in the articles. Why did we want that? Because we wanted everybody to focus on that question. We wanted to have a single document which as a prospective shareholder I could ask to examine and see where these basic decisions are. That I couldn't be surprised if there was a letter of agreement that had never come to my attention. We thought that was very important for protecting shareholders, especially shareholders who weren't on board when the corporation was formed, but acquired their shares later.

UEHLING: Then, also, Mr. Chairman, a follow up question, my last question. There was a lot of comment this morning and testimony in regard to case law and evidently there was a real concern about the attorneys and other people who testified that by putting this code revision into effect that we really wouldn't have any kind of a basis to work from. Maybe you could comment on that.

FESSLER: With the exception of sec. 488, every provision in this act is drawn from the statutory law of some other jurisdiction if it is not already existing Alaska law. The whole purpose of the provisions here, which are in the comments, is to point out to people what are the basic decisional laws that you will find out there that have interpreted this or similar language. So that the comments are an attempt to marry this statute to a body of decisional law, far from coming into the world with a law like no other states, I respectfully suggest that that is not accurate. The one major reform that is

conducted here is with regard to accounting, how you go about determining when you can make dividend distributions. That is the law now in the State of California. It is pending in the legislatures of nine other states and the American Bar Association's committee on business law, which is the orator of the content of the model act, has recommended the very provisions in the bill in front of you on the financials of the corporations as being the new provisions of the model act. So in that one other area where there is reform, you are not charting new waters, you have California behind you, you have a number of states ahead of you lining up to get on board, and you have the model act now recommending this to the legislatures of several states.

UEHLING: Now one other follow up question quickly here. Then there was also the question of cost, cost to the people that set up the corporations and costs as far as the mom and pop type of corporations, as it being a very expensive type of operation if we change into this code system, because there would be higher attorney fees, at least I got that sort of feeling. Maybe you could comment very briefly on that . . .

FESSLER: Very briefly I think that the job of anyone setting up a corporation under this code is easier than under existing law because the decisions that are to be made and how they are to be expressed and when the corporation comes into existence and when limited liability obtains, are all set forth here with brightline rules so you know what you're doing. All the problems addressed by statutory provisions in this bill exist in Alaska today. It's just that with regard to half of them, you have no way of knowing what you're doing. I don't regard that as a costless state of affairs when you force people to behave in a world where they are simply surrounded by ambiguity. They may pay now, or pay dearly later. So I think from the vantage point of costs, I have had the privilege in my life of being an attorney since 1966, and of incubating if that can be claimed, it's from my perspective a privilege whether it would be the unanimous consent in this room, I do not know, of thousands of others, but rarely have I seen anything more conducive to handsome livelihood than the ability of a lawyer to conjecture. And we are trying to replace conjecture with learned advice.

COWDERY: Thank you. Rep. Furnace.

FURNACE: Thank you, Mr. Chairman. I've come to the conclusion at lunch today that there's basically nothing wrong with the document as presented. But I think what we're dealing with is somewhat of a philosophical shift within the State of Alaska. It's no great secret that Alaska is still an emerging economy and we go a little slow in some instances. And I guess the main question is, are we ready for such a broad philosophical jump in a number of areas. The legislative body in my opinion often times, should be in a position of responding to changes

that the voters said we need to address, as opposed to heaping upon them massive changes all at one time. And I think that's where some of our indecisions are coming from. You spoke in the bill of the attempt to balance the concerns of the interaction between management and shareholders. I think you've done that. You've shifted, however, the burden from the creditor to the officers and directors of a corporation. That in itself is not bad. A statement was made earlier that creditors are often times very sophisticated, particularly in the State of Alaska. They get all kinds of guarantees and affirmation of debt. They are very selective as to who they will take on as a potential creditor, and whatever. So we do deal with somewhat of a very sophisticated economy in that respect. When we look at sec. 488 and look at the secondary liability which, indeed, is most concerned. It's been my experience that people in the State of Alaska normally in incorporating look to the fact of limited liability whether that's a truism or not, I am aware that you can reach beyond the corporate veil, but it takes some time, but to pass a piece of legislation that somewhat shortens that, that put in the statute perhaps a real firm, the fact that the secondary liability, gives me some concern there. And I'm not saying, I don't think what, simply do away with it, but it's an item that we may not be ready as a community at this point.

One of the other sweeping changes has to do with the serving of process. And surely in the State of Alaska we have a number of persons who are sued daily, under the present act as I recall, a process server must deliver the process to the address of the registered agent. Under the new bill, if he can't find that address or can't find that person, he can simply deliver the process to the commissioner. And I would assume the commission in this instance as being the commissioner of commerce. That the commissioner somewhat acts on behalf of the corporation. Well, indeed that is a sweeping change of taking the responsibility from the corporation, you are putting it back in as a state function and I question if we ought to do that. I mean granted we can amend that out of the bill. The other question that I asked earlier in the deliberation, was it broke, and if it's not broke why fix it. Well, I think we've heard here from some people I respect a great deal, principally Mr. Brundin and Mr. Reitman that I know to be well respected attorneys in this community, and they say basically it's not broke. There are some good sections in this bill that we ought to perhaps endorse and support at this point, but there doesn't appear to be a need to do a sweeping overhaul of our corporate code at this time, and it appears that what this committee is faced with is going through and trying to determine what can we digest at this early stage, what should be phased in over time, and then we do that in concert with the people that we represent. That's the people who have testified and the people, the small business guy that's sitting there. A lot of the realtors are here today, and I would recommend that they read this bill, because a lot of things that they do in a very new area of real estate development could

certainly be affected by this a great deal. They need to know. And I guess I'm concerned too that we've covered the accountants, we've covered the attorneys, we've covered some other persons, but the main persons that will be affected by this, is the little, small business guy. We have not seemed to be able to reach out and make that person aware that we are doing something here that can have a major impact on the way they conduct their business. I'm not saying that's right and I'm not saying that's wrong. But it will affect them and we have not been to date, to my satisfaction . . .committee's satisfaction, been able to reach out and advise these people something is happening that will affect you and you ought to be involved in it.

VOICE: Mr. Chairman, I think that summarizes my concern. Thank you.

COWDERY: Rep. Wendte.

WENDTE: I was very interested in your review of the extent to which you have exposed the bar association to this bill both as it was being formed and then after it was put together. I guess given that background it's not surprising we only have one or two of those who object to this at how it's put together and what your views were bothered to come back to listen to your testimony. I would note though that 100% of the nonattorneys did come back to listen, although he just left, to hear your presentation. The question I would ask, is could you identify by letter I guess if there are extensive, if not you could respnd now, the extent of the sections of this bill that do not match the model act aside from 488.

FESSLER: Yes, sir, if you'll take this commentary . . . the way it works is that with regard to each section in the bill you have a statement under the scope note of exactly what it is to the best of my ability to express it that the bill do. And to the extent that it must interrelate with common law developments, that is done there. Then you have a provision on every section on every section which says change in former Alaska law. There you will find the provisions of Alaska law identified that are affected. You are told the origin of this draft's thing. You'll be told that it's sec. 47 of the model act, or you will be told that it's sec. X of the North Carolina law, or the New York law. And then you will be told as best as I am able to do it, if there is existing statutory law in Alaska, and we didn't simply reenact it, exactly what changes would be made. So you will be able to go through here and identify the source of every provision in this act. Now you will find the model act is here when you get to the area on the "financials", Article 5 of the act. You will find that it is heavily reliant on California law. As I just represented to you that view has now taken hold with the model act, and the revised model act is now in congruence with that provision. It was not when this was written.

The other provisions you will find is that if you look at the model act as it came out originally and as it now exists, it has no organization whatsoever. This act organizes the statutory law in a manner which is taken from New York's act, so it differs from the model act in its organizational format. But I think all for the better, for the existing Alaska Corporations Code would be the Anchorage telephone directory nonalpabetized. And at least it has been set up in an alphabetical manner for you now.

VOICE: Can I gather from that then, that every section with the exception of 488 . . .

FESSLER: Has statutory precedence.

VOICE: Well, is a part of the model act.

FESSLER: No, no, sir. As I say, there are provisions in this act which would, for instance, come from New York or California that might not have exact model act corollaries. The model act itself is not a very comprehensive statutory basis for corporate law, and the reason that the drafters of the model act did that [TAPE CHANGE] . . . And then the legislature having taken the model act is invited to flush it out as it thinks best for the particular jurisdiction. The statement I did make, and I will reiterate, is that the model act and more is here. There are provisions here that go beyond the model act. But I will also tell you that that would not surprise the drafters of the model act. Illinois, which is the state upon whose law the model act was originally adopted, has gone substantially beyond the model act in flushing it out in that state.

VOICE: The identification of those sections is in your memo . . .

FESSLER: Is in your Joint House/Senate Journal, you will find it under the so called change in former Alaska law. The first thing it tells you is where it came from, the second thing it tells you is what the status of existing Alaska law is, and the third thing is it tries to interpret the meaning of that change, if any change there is.

COWDERY: Rep. Malone.

MALONE: Thank you, Mr. Chairman. Question for Mr. Fessler. First I want to see if I understand the explanation you made during your original testimony on how Alaska case law is affected by this new revised version. As I understood the argument, the gist of it was that we have so little case law in Alaska that this legislation in your opinion being clear, and the commentary which further defines it, will give people a better basis for interpretation than our present case law and much

sooner than any case law would ordinarily be developed. Is that right?

FESSLER: That is my belief, sir.

MALONE: The second question I had was that during your testimony you mentioned you found two cases which I think had something to do with trying to . . .

FESSLER: Pierce the corporate veil.

MALONE: Yes, get past the limitation of corporate liability. If those were cases in Alaska, were they successful or . . .

FESSLER: They are Alaska cases. One was and one wasn't. Those cases are identified, Rep. Malone, in the discussion of sec. 488. And so you will find that discussion commencing at page 140 and carrying over to page 143 in which the Alaska cases as well as some cases from other states of interest would be found.

VOICE: A final point, isn't a question, but since we have not had any extensive hearings on this, at least in the Judiciary Committee yet, and since this request made by a group of attorneys in Alaska, I personally would appreciate very much, even if it is at a late date, if Mr. Fessler and the code revision commission would work with the ad hoc group of the Alaska Bar Association on it. Because I don't pretend to be an expert and I would guess that even though I might agree or disagree with various interpretations or proposals, I'll be in a lot better position if there are judgments on the issues.

COWDERY: I would hope, too, and it's my intent that, or interpretation of what was said this morning, it's the intent of the ad hoc group or the other people that testified this morning, to work together to come up with some balance of agreement. And so when it comes back or before we work on it again in this committee, that as it leaves our committee, hopefully, we'll have some agreement that will go on to the next committee of referral for action hopefully.

FESSLER: As I indicated, it would be my pleasure to work with the gentlemen and other interested Alaskans, particularly my office will supply all of the background memoranda and studies that were done over a period of time so that . . . the statement was made this morning by Mr. Block that there was no desire to reinvent the wheel. I can save them the trouble of reconstructing the society that reinvented the wheel. We can and will give them all of that information.

One final point that addressed a concern that Rep. Bussell raised repeatedly this morning. The issue of costs. The

Alaska Federation of Natives appointed a subcommittee to review this bill, and they did it over an extended period of time. One of their interesting conclusions was they felt it would save hundreds of thousands of dollars in legal costs, because they now would be able to ascertain from a statute that originated with the Alaska legislature, rather than from opinions that are, as they put it, frequently expensive guesstimates, not infrequently coming from Washington, D.C. law firms, of what the state of law would be on many areas of great concern to them. And this bill has no more ardent supporters than the AFN at the present time, because they recognize that having had Congress decide for them they should be corporations, they have run a length experiment in exactly what it's like to try and live under existing statutory and common law in the State of Alaska in the corporate field. And they feel that they will save time, not only in litigation, which they will not go through, but on paying lawyers. And the one thing that did come out of everything this morning, is you have an extremely altruistic bar, never have I heard attorneys be so disdainful of future business. Well, there wish will be satisfied if the AFN is correct in its assessment of what would happen should this bill be enacted.

COWDERY: Thank you. We have people on our next committee that have planes to catch and we're running over so I'll, with this comment I hope you'll keep it short.

WENDTE: It is a comment, but I personally have a problem with the second hand expression of reporters, I would request the chairman to specifically invite the AFN, if they had not expressed their opinion.

FESSLER: They were at the hearing, I am reiterating their testimony at the hearing that took place in Juneau, Rep. Wendte, which supports . . .

COWDERY: Like I said, this was the first really hearing that we've had on the bill in the House, but we joined with the hearing of the Senate, but anyway we appreciate your comment.

FESSLER: I thank you very much.

COWDERY: It's the intent, I'm going to recess for about 5 minutes so we can get some of this stuff cleaned off, and we appreciate everybody coming in and being patient with us. And we'll get back to the confirmation. Thank you.

SENATE LABOR & COMMERCE
STANDING COMMITTEE
May 17, 1983
3:00 p.m.

Members Present: Senator Pa[illegible] Rodey

Members Absent: [illegible]enator Dick Eliason, Chairman
Senator Bob Mulcahy
Senator Don Bennett
Senator John Sackett

COMMITTEE CALENDAR

SB 246 Amended Title: An Act revising the corporations code; and providing for an effective date.

WITNESS REGISTER

Professor Dan Fessler, Consultant
Code Revision Commission
University of California, Davis, CA
Phone not provided
Position Statement: Outlined Corporate Code Revision.

Henry Lancaster, Aide
Senator Josephson's Office
Pouch V, Juneau, AK 99811
465-3787
Position Statement: Asked for points of clarification.

Jeff Berry, Aide
House Labor & Commerce Committee
Pouch V, Juneau, AK 99811
465-3892
Position Statement: Asked for points of clarification.

John Abbott, Chairman
Alaska Code Revision Commission
Address and phone not provided
Position Statement: Answered questions from the committee.

Willis Kirkpatrick, Director
Division of Banking, Securities and Corporations
Department of Commerce & Economic Development
Pouch D, Juneau, AK 99811
465-2521
Position Statement: Stated concern regarding the method of keeping the records.

PREVIOUS ACTION

SB 246--There is no previous action to report on this bill.

ACTION NARRATIVE

The meeting of the Senate Labor & Commerce Committee was called to order at 3:00 p.m., with Senator Rodey present. Senators Eliason Chair, Mulcahy, Bennett and Sackett were absent. This meeting was called for the purpose of receiving public testimony on SB 246. The following is a verbatim transcript of the proceedings from a cassette tape of the reel-to-reel tape of the meeting.

SENATOR RODEY: . . . This is a subcommittee meeting of the Labor & Commerce Committee. The task is to review the Code Commission's work on the corporation's statute. We have with us today the Chairman of the Code Revision Commission, Mr. John Abbott, attorney from Anchorage. With us also is Professor Daniel Fessler, who is the author of the corporations code, along with the Code Commission. John, did you have any questions, or rather any comments, you'd like to make? Perhaps the best thing you can do is . . . would be to give everybody here, we have mostly staff people and people from the administration here with us today who, they are the ones that do the real work. And, of course, the legislature . . . this is a complicated matter, the legislature really has to take the opinion of those people who have the time and expertise to work on it.

JOHN ABBOTT: Thank you, Senator Rodey. Just a few preliminary comments before I turn it over to Professor Fessler. The corporations code has been under advisement, so to speak, for about four years now. It has undergone a number of revisions, a lot of thought and a lot of man hours. It is a technical bill. It is the first time that the Alaska Corporations Code will have been substantially revised since its adoption in 1962, at which time it was probably not a very good code. And what the Code Commission has tried to do is to improve it, bring it to modern status as a corporation code governing the activities of people that have acquired a state charter and to fill in a number of voids in areas which the Legislature has not spoken to and which need to be spoken to since a corporate charter is, in effect, a set of directions to anyone wishing to incorporate as to how they are to act as a corporation in the legal diction. That is basically what the Code Commission has done and without further ado, I'll turn it over to Professor Fessler. He'll give you a run down on technical aspects of the code.

PROFESSOR FESSLER: And if it would be helpful, Senator, anytime either, particularly you or any members of the staff that are here have questions, please feel free to interrupt me. I should first begin by identifying myself. I am from the University of California at Davis. I am here in the capacity as a consultant to the Code Revision Commission. I was first retained in the fall of 1979 and asked to review the content of Alaska statutory law on for profit corporations, with a view toward advising the commission as to whether or not I thought that any kind of basic reform

PROFESSOR FESSLER (cont'd): was necessary. I concluded that it was, and I can briefly highlight for you what my thoughts were. When Alaska became a state, the legislature adopted with virtually no modification of what was then the current corporation law of the State of Oregon. The Oregon law in turn was a 1954 version of the model act. Now subsequent to Alaska's adoption of the Oregon act, there have been significant change both in the recommended content of the law. The model act, I should point out parenthetically, is an act which is recommended to the legislatures of the several states by a committee of the American Bar Association. Of necessity, it is a very general act. It pertains to the conditions and experience of no single jurisdiction and over the years it has become the basic act in numerous smaller states. It has never been successful in having much of an impact on the law of those states where any legislature sat down and decided to craft their own corporation's law. The Delaware, New York and California laws, which are the three major approaches to the organization and discipline of corporate activity in the United States, and have reflected very little influence on the model act. We have adopted the model act. Now the model act that was adopted in Oregon in 1954 was obviously not adopted with a view toward any interest that might be in Alaska or in legislatures not be given credit or presence in figuring out their law to become that of another state. Unlike the State of Oregon, which in 1954 had ninety years of common law decisions in the business field, and therefore when the legislature enacted a statute to regulate business activity in Oregon, it could take into account that the Oregon Supreme Court is speaking to these questions for nearly a century. The Alaskan act was brought into our state against a background of a near void of decisional law. And in the years that have intervened, our Supreme Court has had occasion to speak from time to time on business matters. But I think that not even the most optimistic leader of the Alaskan courts would feel that there is today a background of supplemental decisional law. So from a practitioner's vantage point or from a client's vantage point, the corporate law in Alaska starts off as being, bearing no rational relationship to the state. It is subsequent to being enacted here. It has been tinkered with from time to time. There have been some amendments. It has never been thoroughly restated. Amendments to the model act as they have been recommended have some been adopted in Alaska, but most have not. And there is virtually no common law in Alaska, pre-statehood and post-statehood, in this area. So that the biggest problem Alaskans face is that the law with regard to business associations in the state is very sparse, very difficult to determine, and therefore it threatens business with the one thing which business cannot deal with--uncertainty. When questions are raised and business people need legal advice, they need to be told yes or no. The answer maybe isn't very useful at all. For the answer that we may get this eventually decided by the Supreme Court is both an expensive and hideously time consuming period at which to try and predicate corporate decisions or corporate action. So what I have recommended, and over the years what the commission

has evolved, is an extremely comprehensive statute. The bill which is pending in the Senate is Senate Bill 246. It is probably the most elaborately stated corporation's code in the United States. If it has a rival, it would be the California act from the mid-1970's. The reason that this statute speaks on subjects that go considerably beyond the model act is because we are attempting to answer by legislative provision many questions which in other states are answered by well known common law decisions, which decisions we simply do not have in the State of Alaska. So in order to have a thoroughly conceptual and detailed statute, it was felt necessary to begin by looking at some basic philosophical choices. And when the commission looked beyond the State of Alaska it found that the attitude of state government toward corporations varies dramatically from state to state. The most impressive distinction would be between Delaware on the one hand and the State of California, where I come from, on the other. It is sort of surprising to people when they first get into this field that Delaware is the most important American jurisdiction for corporate purposes. If you look at the Fortune list of the 100 largest American corporations, 97 are incorporated in post office boxes in Dover, Delaware. And this is because over the years people in business, in management, have found in the Delaware legislature a very, very receptive and understanding body. Also, the State of Delaware has maintained chancery courts long after they were abolished in all other American jurisdictions with the result that you can get a matter litigated, tried and finally disposed of on appeal in the State of Delaware inside of a 100 days. Again, business cannot stand to be told maybe with regard to a question. Delaware's act is considered a management oriented statute. If there are value judgments to be made giving preference to the prerogatives of shareholders on the one hand, or those of the incumbent management, the officers and directors on the other hand. The Delaware act makes all those value calls in favor of incumbent management. In stark contrast, the State of California has the most pro-shareholder, anti-incumbent management corporations code in the United States. In California, Delaware, excuse me, California directors can serve only one year terms of office. It is illegal to attempt to give a director a longer term of office. The entire board must stand for election at a single meeting held every year. And beyond that, in California shareholders are given the mandatory right to cumulate their votes. The voting scheme designed to maximize the opportunity for minority share interest to gain board representation. Now when one looks at the management oriented Delaware act on the one hand, and the California approach which is to bend everything in favor of shareholders, a decision was made by the Code Revision Commission that we would craft a statute which had no inherent internal bias. Under this proposed bill, it would be possible for individuals desiring to form a corporation, to form a corporation that had all of the prerogatives which California insists upon for a California corporation. In other words, you could choose to have one year terms for directors. You could choose to have no classification of the boards, so that the entire board must stand for

annual elections. You can choose to have cumulative voting, but none of these choices are forced upon you by the state. Therefore, it would be possible under this statute to choose three year terms for directors, to classify the board so that only one-third of the board comes up for election every year, and to deny to the shareholders cumulative voting. What we have attempted to do is to allow people in this state the freedom to make their own business decisions and to make their own decision about what it is they want in terms of management and the rights and prerogatives of the beneficial owners, the shareholders. What we have sought by way of reform, however, is to insure that all of these basic decisions are taken within the context of the articles of incorporation so that there is a single document which shareholders or other interested parties can look to that will you a totally accurate picture of what basic decisions have been made with regard to this specific corporation. For that reason, you will notice that there is important language in the provisions of the act dealing with the articles of incorporation. Two sections, the section that speaks to the mandatory terms which must be covered by the articles and the succeeding section which refers to the optional terms. That has a very important caveat. All of the topics covered in that section are stated by the statute to be effective only if made the object of provision in the articles. Therefore, if you put them in bylaws, if you try to put them in shareholder agreements, statutorily they would be null and void. So that our attempt has been made to make the articles of incorporation and the process of incorporation of a new corporate entity is very much like a cookbook. The statute is a recipe of choices to be made. They are clearly presented. Both the counsel and client should find it very easy to go through the process of incorporation, giving to the clients the opportunity to make basic decisions about the corporation being formed. Thereafter any potential investors will find those decisions clearly reflected in terms of the articles of incorporation. So you have here a statute which is pretty much devoid of any internal bias, in favor of shareholders or in favor of management prerogatives, which has also sought to minimize the role of government. Certain states have recently been adopting acts which have attempted to intrude the government more and more into the area of corporate activity. There is concern about the social responsibility of corporate behavior. There is solicitude about the question as to whether corporate management, the people whom Louis Brandeis once referred to as managing other people's money, the degree to which they were truly, honestly and efficiently exercising their business judgment and what the state's interest ought to be. Our decision has been to recommend to the legislature adoption of a pact which renders certain reporting obligations which must be made to the Department of Commerce and Economic Development which standardizes the reporting obligations, both in terms of their content, their form and their title, so that there will be a habitual pattern of reporting to the state. But beyond that does not seek to give the state a very intrusive role to play in the

operation of for profit corporations. The old pro warranto provision brought by the Attorney General which has never enjoyed much use in the State of Alaska does not come in for much of an enhanced role in statute. Yes?

HENRY LANCASTER: Excuse me, but does your definition of state intrusiveness extend to fiduciary duties and . . . type of shareholders?

PROFESSOR FESSLER: No, when I am speaking now of a statement, I appreciate the opportunity to clarify. I am speaking now of the executive branch of government. I am not speaking now of attempting to minimize the role of the judiciary in the event litigation should take place, but rather to what extent would there be an investigative presence of the Attorney General looking into the operation of corporations. We have two provisions: There is a provision in this act which allows the Attorney General to commence a cause of action designed to seek the dissolution of a corporation. That's the old classical pro warranto procedure for very serious offenses against state law or public policy. There is also a provision for the administrative dissolution of corporations which are merely habitually ignoring the various reporting requirements and tax obligations which the state has created. And those enforcement procedures are placed in the hands of the Commissioner of Commerce and Economic Development. They are administrative procedures. There is a provision in the act which would allow a corporation who just had its charter suspended pursuant to this to appeal to the superior court for a trial de novo on the matter so that the state's role is certainly going to be vindicated in terms of tax obligations or reporting obligations. The prerogatives of the Attorney General of the Department of Law have been protected in this legislation. But basically what we have attempted to do is to force those who control the corporation, especially larger corporations having numerous shareholders, to make annual reports to shareholders. And we assume that the shareholders will be the best source of discipline over the stewardship of people who are managing corporate resources which the shareholders have the beneficial interest in protecting. So for the first time if this act were adopted, there would be mandatory reporting obligations every year on the part of the corporation to its shareholders, giving the shareholders a fairly facile means of gathering what the financial status of the corporation is. Also, you'll be interested in looking at the section on what are called transactions with interested directors and officers. These transactions are specifically defined in the statute, and every year corporate management must disclose to the shareholders the identities, dates and amounts of transactions falling within the statutory definition. The shareholders will have a much better opportunity to decide whether or not there have been abuses of fiduciary obligations. I should also point out the reference to the inquiry about fiduciary obligations, that this statute for the first time gives a clear definition of the duties of care

and loyalty which are owed by a director to the corporation. The statute also specifically delineates the rights of a director to rely on certain information supplied by corporate officers including the opinion of counsel or by committees on which that particular director does not happen to serve. Also for the first time in this statute, fiduciary duties are articulated on behalf of corporate officers. There is no statutory formulation of fiduciary of corporate officers in the State of Alaska today. They would be left intrusive to common law conjecture as to what they were and what the dimension might be. So those are the basic approaches which are taken to this very important question.

HENRY LANCASTER: Does it do anything to relieve the burden or reduce the cost of shareholder litigation in seeking to find that information?

PROFESSOR FESSLER: Well, first, the statute clearly defines the rights in which shareholders will have with regard to inspecting corporate books and records. A distinction is drawn, you'll notice in the provisions of this act, between a shareholder whose basic interest is examining the shareholder list and gaining knowledge of the identity of the other shareholders or even greater interest in trying to figure out how the shares are proportionately handled. We also have created a right of inspection with regard to corporate books and records. The statute specifically includes in that description the books and records of subsidiary corporate entities. Because one of the basic problems that has arisen in jurisdictions in recent times has been that corporations will frequently hide transactions that they know may be objectionable by having those transactions take place within the guise of subsidiary or other affiliated corporate entities. So shareholders are now given statutory rights of inspection, and they are given certain teeth. You'll be interested in the provisions that deal with the consequence to a corporate officer who denies to a shareholder what are that shareholder's statutory rights of inspection, including a $5,000 civil liability to that shareholder in addition to whatever actual damages the shareholder may be able to show by virtue of the denial. In the past, one could simply, in the jargon of the trade, tough it out or stumble when faced with shareholder demands. There were no statutory penalties. There was no legally defined downside risk for such a strategy. There was always the possibility that you might well be sued, but you could take a chance that you could resist any liability on the theory that the shareholder could not show that she had suffered any discreet, provable, ascertainable damages. Those matters have been thought out by the commission, debated at some length, and the commission's recommended positions on that are reflected in this bill. In addition to that, in other words, in addition to the prerogatives which a shareholder who suddenly makes it her business to want to look into these matters, there is as I stated a few moments ago the mandatory

reporting obligations which corporations have. They become more elaborate as the size of the corporation increases, and the inertia of shareholders is thought to require that the corporate management be forced to come to them with annual reports. Some are the twelve pay reports that are required by the Securities and Exchange Commission, so that shareholders would at least be alterted by the basic information imparted in those reports. And then might be well alerted to follow up by inquiries and take advantage of their rights of inspection. And in this regard, there is one other area of Alaska law that I think is shockingly deficient. Alaska is one of two jurisdictions in the United States that has no statutory regulation of the shareholder derivative cause of action. If there has been a reform which has had rough sledding in the United States since the 1940's, it has been the theory that the shareholders could be relied upon like Cincinnatus, at their own expense, to enter lists against those who are managing the corporation and sue using the corporation as the beneficial plaintiff for the litigation. The theory in the 1940's when this became a matter of great vogue in corporate literature was that in this manner corporate responsibility would be returned to corporate. . . The role of government was receding as corporations became more and more, there are more than eight thousand for profit corporations in Alaska already. And that number can only be expected to go up. If the Department of Law were to look into their affairs, they would have to be massively inspected. So the theory was, let the shareholders do it. The difficulty was, of course, the flaw in nature of humankind is nicely reflected in the cross section of individuals who are likely to be shareholders. Therefore, section 435 in the bill is addressed to the statutory regulation of shareholder derivative cause of action. However, it has been to attempt to ferret out the shareholder who was most likely to bring a meritorious cause of action and have the legal resources to stick with that cause of action through a process of prosecution and final adjudication. The basic abuses, of course, over the years have become shareholders would bring what are now . . . referred to as strike suits. The causes of action initiated against the corporation with full knowledge that the corporation could find the expense, both in time and treasury, the adverse publicity of the media picking up that a corporation has been sued for a hundred million dollars or a million dollars, alleging that all of the people who are running the corporation are crooks. And that any individuals who brought these types of action were frequently very interested in having incumbent management simply buy them off with non-judicially supervised, out of court settlements. It is not surprising that the fruits of these non-judicially supervised out of court settlements never went to the corporate treasury, which is a theory in a derivative cause of action, but went to the shareholder who was keeping his peace. All of these types of abuses I think have been prophylactically dealt with in section 435. You will notice that the statute defines standing on the part of

shareholders who will be allowed to bring the derivative cause of action. For the first time the statute clearly settles the issue of when such a shareholder is obliged to exhaust intracorporate remedies by making a demand for the action which the shareholder seeks to have effectuated on the incumbent directors, settles for the first time the question as to what the status of incumbent directors and their business judgment should be, recognizing that the question of whether it is in the best interests of XYZ corporation to engage in litigation for the next two years is not purely a question for lawyers to decide, but for businessmen and businesswomen to decide. And, therefore, unless the directors are themselves accused of being the wrongdoers or under the direct or indirect control of those who are alleged to be the wrondoers, the good faith, independent business judgment of disinterested directors is to be respected and will terminate the cause of action which is created by section 435(a).

HENRY LANCASTER: Yes, (a), I guess that leads me to my next question. I noticed you were expressing corporations for profit. What I am going to ask is what protections does that give public corporations in Alaska. The state oversees some of them against residents claiming themselves to be shareholders who want to take some kind of action.

PROFESSOR FESSLER: Nonprofit corporate entities?

HENRY LANCASTER: Well, AHFC, or any other public corporation.

SENATOR RODEY: This section, this bill we have before us doesn't deal with that question. It's just for profit corporations.

PROFESSOR FESSLER: They are not covered at all.

SENATOR RODEY: Mr. Lancaster is legal counsel with Senator Josephson.

PROFESSOR FESSLER: I see. Well, they are not covered at all. Any government created corporation, either by the state or federal government or any nonprofit corporate entity created, has fallen outside the purview of this particular act. Although the Code Revision Commission has prepared an extensive draft of a not for profit corporations bill which very shortly will be submitted by Chairman Abbott to the Legislative Council with the request that it be introduced.

SENATOR RODEY: Let me ask one question . . .

PROFESSOR FESSLER: Senator.

SENATOR RODEY: . . . particularly since we have the banking director here as well, what impact will this bill have on the banking code?

PROFESSOR FESSLER: Well, basically, you are asking me a question that I am afraid that I cannot answer.

SENATOR RODEY: I always wanted to ask a professor a question that he couldn't answer.

PROFESSOR FESSLER: This does not address banking and corporations.

HENRY LANCASTER: Separate titles also.

SENATOR RODEY: Yes, I know that. Is there, which is the reason I asked, as you know, when you draft corporate articles now as a lawyer you say except for insurance and banking in the State of Alaska is the magic words that you put in. But is there anything in the bill that would affect banking?

PROFESSOR FESSLER: Since banks cannot be formed under the terms of this act, I would say that there would be nothing in this act which would directly affect banking.

SENATOR RODEY: I wanted to put that on the record.

PROFESSOR FESSLER: Well, I think that would be my opinion. I was trying to remember, I think several years ago the commission decided to stick with the basic scheme which was that the current Alaska Corporations Code does not extend to banking. It is receiving discreet statutory treatment, and so it continues to do so.

SENATOR RODEY: That answers my question, and many, many bankers will probably rest easier.

PROFESSOR FESSLER: Well, I assume it will not be because of the enhanced fiduciary obligations that are defined in this code. The bankers will be resting easier, but they are not covered, merely because they would be superfluous . . .

SENATOR RODEY: They become nervous when anybody attempts to change the law.

PROFESSOR FESSLER: If I could generally in terms of suggesting that areas that you might wish to look into for various senators and representatives and committees of the legislature. Article 4 of this act deals with corporate finance. It brings about a suggested reform that I think will be most welcome in the state. One of the most difficult legal issues of the present time is to decide when it is licit for corporate management to make a distribution of corporate assets to the beneficial owners, most commonly in the form of payment of dividends. The difficulty has been that the legal profession in the 1920's began to intrude concepts which were apparently meaningful to lawyers, concepts such as earned surplus, reduction surplus, which had no meaning then or now to

accountants. They also had no meaning then or now to individuals who are in the business world. Consequently, we have the sort of Alice in Wonderland business of the law speaking one language venerating certain very ill defined value judgments with regard to this basic issue, and the accounting profession which was charged with obeying the law or keeping accounting clients within the law, and men and women of good faith desirous of obeying the law in an abysmal state of ignorance as to what exactly it was that the law wanted. Now, California in the 1970's spent a great deal of time and no little treasure attempting to solve this question. They came up with a scheme which is called the ratio/assets surplus test. And with very minor modifications, that is the basis of Article 4 of this proposed bill. It answers the very primitive question of when can a corporation make a licit distribution of assets with a very simple answer. Any time the assets of the corporation exceed its liabilities by a ratio of five dollars of assets to four dollars of liabilities. Any corporate assets beyond that ratio are free to make distributions to shareholders. So that if a corporation has five hundred thousand dollars in assets and four hundred thousand dollars in liabilities, it could make no distribution to shareholders at all. If it had six hundred thousand dollars in assets and four hundred thousand dollars in liabilities, it could make a distribution up to one hundred thousand dollars at which point its assets would have been brought into the statutory equilibrium of liabilities, and no further distribution would be licit. There is a further caveat. The statute does take into account that there is a big distinction between fixed and current assets. If a corporation which had most of its assets tied up in illiquid matters such as land or a factory and had in its liabilities recurrent, short-term money obligations, even though the total ratio of assets to liabilities might meet the so called ratio/assets surplus test, there is a requirement that giving a prospective effect of the proposed distribution that current assets, which is a term of art to accountants, equal current liabilities, another term of art to accountants. The basic scheme here with regard to all accounting concepts is to leave them to the evolved understanding of the accounting profession. You will notice here that the statute does not contain definitions of accounting concepts at all. It simply says that in reckoning the ratio/assets surplus test, that management is to be guided by the decisions or recommendations of members of the Certified Public Accounting field. So as they evolve their various understandings, our act will also beneficially evolve. We will never be wedded to a set of accounting principles which are constantly being eroded as they are being improved by the accounting profession. So that I think that reform will be very deducible in allowing people to be prudentially advised now or frequently to be able to get along without the needed advice, because it is a fairly easy test for accountants to apply. So that in Alaska at the present time, you have a statute which contains elements of two antiquated tests, the so called earned surplus test and

the balance sheet surplus test, are used by various jurisdictions that have a model act. In other words, if you look at our statutory language it doesn't define the test. If you then look at other states that have similar statutory language, you run into a sea of confusion. Since we have no decisional law interpreting our statute, an accountant or businesswoman in this state faces one of the most vexing of all dilemmas. A statute which we have not interpreted which faces divergent and frankly at war interpretations of other jurisdictions. That would all be swept aside and replaced now by fairly easily understood concepts.

SENATOR RODEY: Could you deal with the question of the secondary liability of directors. I think that's an important one. Obviously there are problems in this jurisdiction in that area, and it would probably be one of the more controversial aspects of the bill.

PROFESSOR FESSLER: Yes, one of the most difficult questions that I think the legislature may well wish to face is the idea of corporations being used in a manner which is very, very unlike the classical image of a corporation. Remember now I am talking about limited liability. The corporation is the only vehicle for the conduct of business which carries with it the presumption of limited liability for all participants. For both tort and contract claimants the theory is that the assets of th individual shareholders are not at risk beyond the assets which they have contributed by the way of capitalization of corporation in subscribing for stock. Limited liability was extended to corporations in the United States in the 19th Century on the assumption that this permitted individuals who were risked at first, but who had surplus assets to give those assets over to individuals who were without assets themselves, but who had management talents and were very interested in taking other people's money and developing them into businesses which would later on become manufcturers and employers. And, in other words, major economic entities for the benefit of everybody. Limited liability to those shareholders was thought to be essential because the shareholders almost by definition were going to play an extremely passive role in the corporation. Having large public issue corporations today, that is still generally true. I have inherited fifteen shares of stock in Western Union Corporation, an entity for whatever virtues it may have, I would state on the record has never produced large dividends for me and is an entity which has had some substantial difficulties. There is literally nothing which I as an owner of fifteen shares in Western Union can do to meaningfully influence the business decisions of those in management of Western Union. The notion that I should enjoy limited liability for the debts of Western Union or even the tort claims against Western Union is probably senseless. But since 1950, and there have been several books, if you ever fly on an airliner, you are aware that you see constantly ads in all the airline magazines, how to set up

your own corporation. So you've been bankrupt five times, so you don't have any assets, etc., you, too, can have a great tax dodge. You don't have to put up any money at all, and none of your personal assets are at risk here. The sad part about that forty-nine dollar trap is that it is pretty much true. And I think it became true not because any legislature in any state ever said that that should be what would happen. That I as a one single sole could incorporate myself, or that two or three people could incorporate, put up a few dollars in assets, conduct the business so long as it was to our interests. And when it was no longer to our self advantage to simply walk away from that business in this state and you are not at all unique. You have several thousand more corporations that you haven't heard from in months or years. They were never dissolved. They just went away. And they likely went away owing lots of relatively small people money that to those individuals meant a lot. There were employees who weren't paid, and then they found out that the owner of the business didn't owe them the money because business had been incorporated. There were materialmen and suppliers who were not paid because the business had been incorporated. The same enterpriser not infrequently goes on the start another business in another corporate personna and operate that business so long as it is convenient. In other words, what I am suggesting is that limited liability, just as the airline magazines now advertise, has become a very, very simple means of abusing one's creditors. You can only take bankruptcy once every six years, but you can walk away from a corporation once every six days, and there is nothing illegal about it. Banks aren't too interested in this problem. Insurance companies and other institutional lenders are not too concerned about this problem, because when an individual in a business goes to them and wants to borrow money they always ask for individual cosigners. They ask for the incursion of personal liability. The people who are the fall guys in this situation are the hundreds of small creditors who extend credit on open account. So, one of the questions which was debated at length in the Code Revision Commission was what could be done to make people running corporations have any greater sense of responsibility to creditors. In theory, of course, each of you who is a lawyer well knows, that limited liability has never been guaranteed, and there are numerous common law doctrines for quote piercing the corporate veil. Indeed, in California the idea that the business has been thinly capitalized, a term not well defined but at least well conceptualized, is a ground for a court to overturn the limited liability of some or all the shareholders. But if you are an individual who has a four or five thousand dollar claim against the business, you certainly do not have the assets to prosecute through the court system a suit designed to pierce the corporate veil and gain the personal liability of shareholders who have abusively conducted business in the corporate forum. The time and cost of litigation means this is a fairly availing strategy. Now New York, which was the first major American jurisdiction to

permit corporations to come into existence, has never granted total limited liability. This is not well known outside of New York, but it has been the content of New York statutory law from 1834 until this afternoon. And they appear to have no intention of changing it. In New York with regard to employee claims to compensation, wages owed, etc., the ten largest shareholders in the corporation have always been totally statutorily liable, jointly and severally, in their personal assets. Now the problem isn't limited just to employees, and we felt that putting the liability on the ten largest shareholders was not the best way to go. Most corporations doing business under the Alaska Corporations Code as it exists today would have fewer than ten shareholders. Some of those shareholders would be very active in the conduct of the business but others might be quite passive, either because they have retired, they are the surviving spouses of individuals who were active in the business, or they have inherited stock from parents who were active in the business, or because they never planned to be active in the business to begin with. Therefore, putting liability on those individuals seemed to be putting liability on individuals who have not made the decisions which created the liability to third party claimants. So, the act has come up with this notion of secondary liability of officers and directors. Those are the people who make the business decisions. They incur the liabilities to third parties. They are active. If the legislature were to adopt the Code Revision Commission's recommendations, directors and certain named officers of the corporation, or individuals who were discharging the functions of those offices even if they were given different titles. You can see that if the president of the corporation has statutory liability, you might try to create a corporation that had a great pooh-bah but no president on the theory that nobody would be behind the label to whom the statute can pin the liability. So the persons who would occupy and discharge the functions which were normally to be attributed to the president, vice president, etc., of the corporation are liable to creditors for an amount up to twenty-five thousand dollars. Now, that is per creditor. So there could be very significant liability under this statute. If you have ten creditors then there could be a quarter of a million dollars in total liability here. The liability is joint liability with the right of contribution. The liability extends in favor of a statutorily defined class of creditors. Those creditors include employees, materialmen and suppliers and others who extend credit to the corporation on open account. The liability is not mandatory. The statute specifically says, and some individuals who read this statute have either refused to recognize that this is the way it is written or they just simply don't wish to read it carefully. The statute plainly says that the liability which was created can be contracted away. In other words, in writing any individual who is made the beneficiary of this liability can release

any or all of the individuals who are incurring the liability. Therefore, if the corporation and its officers and directors desire to do business if you ran a restaurant in this town and you habitually bought fresh fish down on the wharves. Almost always that is presently sold to you on open account. You get a little bill at the end of the month. There is nothing in writing. At the present time if you closed the restaurant and walk away from it, the individual to whom you owe five thousand dollars or ten thousand or twelve thousand dollars for fish if you incorporate the business has no tactical recourse against you. He can't afford to get a lawyer, he can't afford to try to pierce the corporate veil, he just eats the loss. Now, you could go to that individual and say do you realize that my restaurant is a corporation, and I would like you to agree that in the event that this business fails, you will right here in writing state and you will not look to any of us for payment, but you will accept whatever payment the corporation is able to make. But unless the corporation takes the precaution to gain the written release of reduction of that liability, it is open to total contractual modification. This statute would create that secondary liability.

JEFF BERRY: Is that provision in the statute?

PROFESSOR FESSLER: It certainly is.

JEFF BERRY: So an employer could go to an employee and say it is a term or condition of your employment that you must release us from any liability if we strip the corporation.

PROFESSOR FESSLER: If we what?

JEFF BERRY: Strip the corporation. In other words, strip all the assets out along the way.

PROFESSOR FESSLER: Well, that would certainly be done in form, sir, but I mean whether or not that contract would stand up against an assault in could would be another question. And there are going to be some problems with allowing this contractual modification. You pose a very difficult one of the employer saying to somebody, I want your conscience, your conscious waiver of this right you have. Not on the theory that I am going to strip the corporation, but that I am not guaranteeing that this business will be successful. And, therefore, I want you to help share the risk with me if the business . . . [END OF FIRST SIDE OF TAPE] of the commission. I would find that this is probably a tolerable pattern of behavior.

JEFF BERRY: I think it would run afoul of some labor laws. The rights of employees cannot be waived of minimum wage, for instance, and that may run afoul to federal labor law statutes which guarantee certain rights to individuals that would be setting a term or condition of employment that cannot be waived . . .

JOHN ABBOTT: Okay, but you have to keep in mind that the present corporation law doesn't provide this cause of action or this liability against officers and directors.

PROFESSOR FESSLER: So they don't have that right today.

JOHN ABBOTT/SENATOR RODEY: They don't right now.

JOHN ABBOTT: We are not talking about doing away with some protection that employees presently have.

PROFESSOR FESSLER: You might want to look into, in terms of the Labor Committee, might wish to look into the question as to whether or not it thinks it's a good idea that employees could be put in a position to be asked to waive this secondary liability. But right now it's a right they don't have. So I doubt that any existing legislation would protect it.

JEFF BERRY: Well, if you put it in this form, it may be a right that they would never have. It would exist only on paper.

JOHN ABBOTT: No, no. You are assuming that there is some right there presently that there is not. There is . . .

JEFF BERRY: Well, we hopefully would be creating that right.

PROFESSOR FESSLER/JOHN ABBOTT: Sure.

PROFESSOR FESSLER: Yes, that's fine.

JEFF BERRY: For potential abuses or for, particular for potential abuses because that is really the only area that it would go into. If a person had started a corporation and it failed, they are not going to have anything anyway. And they are going to take everything that they have traditionally and attempt to satisfy the creditors. I think it is a pretty safe assumption that we could make. The question would be in those cases where they may have transferred the funds for whatever purposes elsewhere and walked away. . . then you may not be creating that right. Maybe as far as wages, certainly it's a different bargaining position, employer and employee as opposed to that. I am willing to open an account with you and everything. I think that there is a balancing effect that we could quite possibly look at as to say, can an employee actually bargain with the employer on an equal footing. And that basis would be really creating a right or a disservice, perhaps.

PROFESSOR FESSLER: Well, again, the section we are referring to, sir, that everyone can look at it later is section 488, which shows up at page 67 of SB 246. The group of individuals who are made liable are defined by section 488(a). They are the president, secretary and treasurer or individuals performing the functions of those offices. Notice that section 488 also extends to foreign

corporations doing business in Alaska. This is necessary if you are going to conclude an end run around whatever the legislature does by the simple expedience of foreign incorporation, and then coming back to Alaska to do business as a Delaware corporation, or as an Oregon corporation, or a Nevada corporation. So that this act is applied to foreign corporations doing business in the state. And then you'll notice that there is language here that says to the extent that the act as a corporate entity prove insufficient. In other words, the person seeking to be covered under section 488 would first have to exhaust the liability of the corporation. You couldn't come after a director just because that individual was a more obvious target as a defendant. Now, you'll notice that the liability is for contract indebtedness, whether formal or otherwise, for materials, supplies, inventory or services furnished, and that's what covers the employees. During the period of service, so if a director wants to know how long would I be liable and for what amount. Well, it would only be for those contract indebtedness claims arising during my period of service on the board. (b) is the point that I was making a few minutes ago. The terms of a written contract, not an oral understanding, but a written contract between a corporation and a third party may modify or preclude the liability. And then (c) is designed to keep a large creditor from dividing the claim and assigning twenty five thousand dollar portions of the claim to friends or family members, etc., in order to get more liability than the legislature intends here. Large creditors were perfectly willing to fend for themselves in dealing with corporations. It is the small person who we are interested in protecting here. And then you'll notice under (d) that a party against whom a claim is asserted under this section is entitled to a contribution from others under (a) so that there is a right of contribution that is created to spread the loss. Yes, sir.

JEFF BERRY: I have a tangential question, since you said the word foreign corporation. A question was asked from the insurance administrator. At the current time the Director of Insurance is the registered agent for all foreign corporations. And they are exempt from registering under the corporation statutes. How would this proposed legislation affect that? Would they then become subject to dual registration for the purpose of legally serving anyone who is an admitted insurer, whether it is excess or insurance for that state. I looked through and I really didn't see it and . . .

PROFESSOR FESSLER: The answer, sir, is clear in section 5, that a corporation may be organized under this chapter for any lawful purpose except for the purposes of banking and insurance. So insurance corporations are totally excluded from this legislation. They would face no dual reporting or . . .

JEFF BERRY: They weren't really too sure.

PROFESSOR FESSLER: Well, I mean, one of the problems which I certainly recognize is that a bill of this complexity which has evolved through drafts, repeated drafts, and hearings, most recently six months work with the Alaska Federation of Natives study subcomittee on this subject. It is itself now, by the time it comes to the members of the House and Senate an extremely lengthy, and I think it does not betray the reality to say, a complex piece of legislation. And even I who find gardening thrilling in my pastoral existence in Davis, would not find this the most exciting reading in the world. But we have to the extent possible attempted to provide very extensive comments that are designed to explain, not only to members of the House and Senate and professional staff, but also to citizens, lawyers, and other interested persons in the greater world that lies outside this building, exactly what the intentions were. You will notice that one of the other things which the official comments seeks to do is to give Alaska an instant common law heritage by taking into account certain of the very major common law decisions in allied areas. And stating whether or not in the commission's view, hopefully in the legislature's view, adherence to those famous decisions in other jurisdictions would or would not be consistent with the rules and philosophies that are being framed legislatively here. This is very important where we have continued provisions of existing law, because they were model act provisions and we felt that they were adequate. But when you went outside of Alaska you found that they were the object of conflicting interpretation. The comments will tell you which line of common law interpretation are being approved and specifically which common law decisions are being disapproved. So that a lawyer now would be able to advise a client as to what the legislative history was and to be able to integrate it with the greater body of common law. Senator, do you have any other specific questions?

SENATOR RODEY: Not any specific questions, no.

PROFESSOR FESSLER: Fine. The other factor which I would commend to the general attention of the members is that the rights of members when a corporation is going through what is called an organic change where there is going to be a merger, corporation (A) merges into corporation (B), a consolidation. Corporations (A) and (B) emerge as new corporation (C), or a sale of all or substantially all corporate assets other than in the usual course of business where a corporation sells virtually all of its assets to (B) corporation which takes them over. These organic changes which are very ill defined in existing Alaska statutory law are now very clearly defined, and the rights of shareholders to be allowed to vote before such a plan is affected and not a fait accompli is guaranteed by this new statute. And also shareholders who vote no on the question of organic change are given the statutory rights which are called dissenter's rights which

is a right to have the new corporation buy the shares of the dissenting stockholders at a fair value which is to be determined on the day before the vote in favor of the organic change is taken. And as we always do, you'll notice consistently here when value comes up, the statute first gives to the shareholder and the corporation made liable to pay the dissenting shares the opportunity to fix the value by mutual agreement. If they are unable to do so, the statute provides that the court may appoint appraisers, and the decision of the appraisers as to the value of the stock is binding both on the dissenting shareholders all of them so no one is paid five dollars, and somebody else is paid three-fifty, and the corporation, and that this matter can be expeditiously settled within sixty days, because the last thing that the corporation which has just gone through an organic change needs is protracted uncertainty as to the dimension of its liabilities to any dissenting shareholders.

JEFF BERRY: What is the ratio of percentage of what a shareholder can buy into this new corporation that's in a sell-out situation. Corporation (C) sells out to a multinational corporation, what percentage do they automatically get to buy. The shareholder can't do that with a multinationational.

PROFESSOR FESSLER: The statute creates the general presumption that they are entitled, in other words, all shares must be treated equally. So that if any of the shares in the corporation are going to be given shares of stock in the multinational purchaser then all of the shareholders must be accorded similar rights. You cannot discriminate between shareholders of the same class of stock and say, we find it very convivial to bring in the family of the new corporation. All of the shareholders in this room, except Fessler, and we really don't want him as a participant in our new business, so we are going to give him a thousand dollars for his stock. That would be discriminatory treatment, and we either have to give everybody money or everybody stock.

JEFF BERRY: But what percentage of stock? What portion of the corporation?

PROFESSOR FESSLER: That would be framed by the boards of directors of the two corporations. In other words, if there is a merger the statute puts upon the board of directors of "X" corporation framing the terms of the merger and upon the board of "Y" corporation consent to those terms. That's done at the board level. Then each corporation is obliged to go to its respective shareholders and bring to those shareholders the terms of the proposed organic change. The statute grants a right to all shareholders to vote on this organic change even if they otherwise hold nonvoting classes of stock. And if the corporation has classified its stock, there is an obligation that before the organic change can be affected it must command a majority, not only of all the shares, but of each class of the shares. So we do not seek to build in any guaranteed

ratio of the shares, but we do seek to have it brought to the attention of the shareholders of the respective corporations. And then by giving everybody voting rights, we are trying to make certain that in their self-interest the shareholders will reject or accede to the request. And as I say, any shareholder who votes no on the organic change is given the right to have the successor corporation buy out those percentage shares at a value that was supposed to be the fair value not taking the organic change into account at all. So it is an elaborate balancing of values, but generally what we are doing is we are saying that we like the result that the Supreme Court of Delaware came up with in the Singer v. Magnavox case, and we don't care for the Panzer decision which came along ten months later. And you'll notice that the comments specifically confer a seal of approval on Singer and Magnavox, both as a result and its reasoning, and indicate that the legislature has adopted and framed this statute to carry into effect the Magnavox decision. And if the legislature would regard a judicial construction of this act in a manner that is consonant with the Panzer case as being contrary to the legislature's intention. So we tried to stay on top of the major decisions that have come along and influenced corporate law. Just as in the area of derivative suits, you will find that we are literally, thoroughly up to date. We know all about Flynn and Muldinaro cases; we know about Barr v. Wackman. And therefore, the commentaries to the provisions on derivative causes of action in section 435 specifically indicates to what extent we are willing to sanction the result and reasoning in Barr v. Wackman, on the opinion of disinterested directors, their business judgment and to what extent we are favoring the Muldinaro case decided by the Supreme Court of Delaware. We specifically indicate that our statute would be subverted by the interpretation of the Delaware law given by the federal district court in some of the instances . . . which said that the opinion of the board of directors that in their business judgment the litigation was not meritorious. This is one of the problems in Alaska, that in so many of these areas counsel just simply cannot advise clients because we don't know what the law is, and none of us has an interest in perpetuating that. And that's not good for business. You take in . . . comments, and that's antithetical to the economic evolution of this jurisdiction. Senator, I have no further observations other than to indicate that at any time I will be, if my schedule at the University permits it, be willing to answer questions in writing or by conference calls or by personal appearances for any of the committees of either house.

SENATOR RODEY: I am very unable to predict exactly the course of the legislation will be, and John is, of course, available to help out on it also. Essentially, the recommendation of staff is very important on this. That's why we have a number of staff people here today, because a complicated corporations code has

to be taken in part on faith because most of the legislators will be unfamiliar with the content. The fact that it has had a broad review in the state, has been signed off on by a variety of interested individuals, I think that speaks well for it. I am going to talk with Senator Ray who is Chair of the Judiciary Committee. I don't know what the Chairman of Labor and Commerce will wish to do with the bill. Hopefully, we will move it out in a very timely fashion so it can go to Judiciary again, having that staff and members look at it. There are a number of attorneys on the Judiciary Committee, which is helpful. I don't know whether we'll pass the corporations code this year, given the amount of time it takes for everybody to become familiar with it. It is a complicated piece of legislation, but a very important piece of legislation for the business community. Perhaps nothing else is as important as the structuring of corporate activity in the State of Alaska. And you very eloquently set forth some of the difficulties we have had in the State of Alaska or the lack of any real corporate history or law. And it, of course, was reflected in the statutes and other areas which is the reason for the code commission. The legislature simply doesn't have the tiem to redraft completely in many cases what is law generally taken from the State of Oregon wholesale at the time it was taken or slightly before. Perhaps the best course is for myself to talk with the Chairman of Labor and Commerce, and at that point talk with Chairman Abbott. We very much appreciate your efforts, and we probably will at some point in time call on you to answer questions or make comments. I think that the only way that the bill will really pass, at least pass comfortably, is with the broadest possible dissemination of information about the bill, and I will try to do that. Are there any other questions from anyone that is here today about the contents of the bill or anything that is attended to the bill? If there are no other comments then the subcommittee meeting is . . . Willis.

WILLIS KIRKPATRICK: I don't know whether I should bring it up now, would there be other hearings on this?

SENATOR RODEY: There probably will, but go ahead.

WILLIS KIRKPATRICK: Let me point out, for the record my name is Willis Kirkpatrick. I am Director of Banking, Securities, Small Loans and Corporations. On the corporation part there are three areas that have come to mind, and I have discussed it with the commission. One of them is that there is a requirement for foreign corporations to file their articles of incorporation with the State of Alaska. We have been in touch with other state jurisdictions, and this is a provision that has been deemed eliminated actively as far as foreign corporations are concerned in filings. We have done some research on it, and prepared a paper in that respect, but we feel that it would be for the amount of usage that it would be, that it would get as far as the

practicing attorney and find out what the articles are. This is probably more current and better obtained when they . . . regardless of whether they are . . . The other thing is that there is a requirement in the proposed act that the department file with the Superior Court some updated records weekly, and we would like to have the intent of the legislature if that is passed to make it a microfische copy acceptable for filing in the division. If we print weekly, the updates are going to be very expensive and very encumbering, a massive paper production. So we would request that microfische be considered as meeting the provisions of that section. The other section that we had some concern about is section 910 that gives the provisions for filing writings with the department, and we would like the writings to be specifically suitable for microfilming. Everything is microfilmed now, and we are totally dependent upon microfilming. So we don't want to be in a position where we have no statutory authority to turn down a filing because it is not legible for microfilming. Those are the only comments that we have at this time, Senator.

SENATOR RODEY: Thank you, Willis. Are there, Professor Fessler, Mr. Abbott, did you have any comments this?

JOHN ABBOTT: Well, the code commission is not opposed to any of those changes. And as to the last two, I don't think there is anything in the statute that precludes these microfilm and microfilming format, so I know of nothing in the act that would preclude the director from promulgating any regulations which would provide for microfische. . . district courts or in the districts or requiring documents be susceptible for microfilming. So we have no objection to the foreign corporation articles.

SENATOR RODEY: Actually it fits in with recordations ideas that the code has expressed in the past.

PROFESSOR FESSLER: I would point out, Senator, that I had hoped that we had accommodated this by the provisions of section 868 which say that the reports required by this chapter to be filed with the department by the commissioner shall be on forms prescribed and furnished by the commissioner.

JOHN ABBOTT: I was under the same opinion.

PROFESSOR FESSLER: We are trying to give you the broadest possible authority to prescribe the forms and say what scheme you want in. Your liability with regard to processing them under section 910 presupposes their conformity under section 890.

WILLIS KIRKPATRICK: We weren't quite sure whether actually under 910 weakened the other section.

PROFESSOR FESSLER: Well, if there is any concern circling what Chairman Abbott has stated, there is nothing in this draft that

was intended to do anything other than what you are now seeking to accomplish. And we didn't want to wed you to microfische if at some point in the future there was some other dazzling means of handling information and you were statutorily burdened with a statement that you had to come to the legislature and get it changed.

WILLIS KIRKPATRICK: We wrestled with the fact that we didn't specifically want you to name microfische in there.

PROFESSOR FESSLER: Oh.

SENATOR RODEY: If you could get the committee a memo on that and perhaps consider artful language that would allow you to do what you've stated, give you the authority to make the administrative decisions. I don't think they will have any difficulty with that. Are there any other questions? If not, the subcommittee meeting is adjourned.

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

MEMORANDUM

TO: Ken Johnson, Committee Assistant
House Labor & Commerce Committee

Sheila Peterson, Administrative Assistant
Senate Labor & Commerce Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: January 13, 1984

RE: Profit corporations--HB 343/SB 246

You may wish to include the following background information with materials for the Joint House/Senate Labor and Commerce Committee hearing at 8:30 a.m., Monday, January 23, 1984, in the House Labor and Commerce Committee Room in the Behrends Building.

HB 343/SB 246 would replace the Alaska Business Corporations Act, AS 10.05, with the Alaska Corporations Code (ACC). The bill was introduced in both houses on April 8, 1983, to facilitate joint committee work.

On May 17, 1983, a joint hearing was set up on the bill. However, last minute conflicts developed that prevented the House committee's participation and also prevented most of the Senate members attendance.

The meeting was held, however, as a Senate Labor and Commerce meeting, chaired by Senator Pat Rodey, subcommittee on the bill. Staff of some legislators and other interested persons attended. An overview of the bill was given by Professor Dan Fessler who drafted the bill with the code revision commission, and questions were asked and answered.

A transcript of that hearing is attached. It was retyped in the code revision commission office from a garbled original. The original is available in Senate Labor and Commerce and in the code revision commission office.

The hearing set for Monday, January 23, will be the first hearing on the bill for the House committee and the second hearing on the bill for the Senate committee. However, it is anticipated that the hearing will lead off again with an explanation of the bill by Professor Fessler as in the May 17, 1983 hearing.

A general overview of the bill is also contained in the transmittal letter at the start of a section commentary on the bill in House and Senate Joint Journal Supplement No. 11. That overview is followed by in-depth commentary on the bill.

Attached also is a miniature summary of the bill.

DR:chw

Attachments

HB 343 SB 246
on
Business Corporations

Summary

The bill provides for replacing the Alaska Business Corporation Act, AS 10.05, with the Alaska Corporation Code (ACC), a comprehensive revision.

The proposed ACC sets minimum requirements that must be met for the privilege of doing business in the corporate form.

Within limits it leaves to incorporators how to divide powers between shareholders and directors.

It standardizes reporting required to shareholders and the state.

It seeks to clearly define in what circumstances it is permissible to pay a dividend.

While maintaining the right of shareholders to sue corporate officers and directors in appropriate circumstances, it seeks to control the misuse of these "derivative suits".

It also seeks to control misuse of the limited liability of officers and directors that the corporate form provides.

In the covering letter at the start of the commentary that follows in this binder, there is an expanded summary of the bill. Following that is a section analysis which includes the background and basis for choices that have been made in drafting the bill.

Status

The bill is introduced in both houses for greater flexibility and for the possibility of joint hearings should that be the choice of the house and senate committees.

Status going into the Second Session of the Thirteenth Legislature: In House and Senate Labor and Commerce Committees, the first committees of reference. Second reference: House and Senate Judiciary Committees.

Draft

January 13, 1984

John Clough, President
Juneau Bar Association
801 W. 10th St., Suite 300
Juneau, Alaska 99801

Dear Mr. Clough:

Please inform persons attending the next Juneau Bar lunch:

Regarding HB 437/SB 313. On Friday, January 20, at 1:30 p.m., in Court Room A, Dan Fessler, a UC Davis law professor and consultant to the code revision commission on corporation law, will review the bill now in the legislature for a revision of law on nonprofit corporations. The attached notice which is going out to nonprofit corporations further explains the purpose of the session. It will be a teleconference.

Regarding HB 343/SB 246. On Monday, January 23, at 8:30 a.m., in the House Labor and Commerce Committee Room in the Behrends Building, a joint hearing of the House and Senate Labor and Commerce Committees will be held on the proposed revision of the business corporation law. Fessler will be on hand there, too, to explain the bill.

Persons interested in corporation law can attend these meetings, get an overview of the proposed codes, and offer testimony on good or bad features of the bills.

Very truly yours,

Dick Regan, Research Director
Alaska Code Revision Commission

DR:chw
Enclosure

Draft

MEMORANDUM

TO: ALL LEGISLATORS

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: January 12, 1984

RE: Profit and Nonprofit Corporations
Codes ~~Teleconferencing~~

Alaska Nonprofit Corporations Code, HB 437/SB 313.

With the concurrence of the appropriate committee chairmen, the code revision commission will teleconference part of its next meeting to explain and discuss the nonprofit corporations bills, HB 437/SB 313. The teleconferenced part of the meeting will be in the Juneau Court and Office Building, Court Room A, at 1:30 p.m, Friday, January 20.

The attached notice is in the mail to over 3,000 nonprofit corporations. The notice explains the purpose of the teleconference.

Sitting in on the code revision commission teleconference would serve to inform legislators or staff about the purpose and the bill on nonprofit corporations which probably will be coming up for hearings of the House and Senate Labor and Commerce Committees later in the session.

Alaska Corporations Code, HB 343/SB 246.

The Friday, January 20th teleconference of part of the code revision commission's meeting should not be confused with a joint hearing of the House and Senate Labor and Commerce Committees on the for profit code--HB 343/SB 246--scheduled for 8:30 a.m., Monday, January 23rd, in the House Labor and Commerce Committee Room. Professor Fessler will be here for that meeting also, and that, too, would be a chance for staff to hear an outline of the lengthy bill. Of course, the joint committee will take testimony from others who wish to be heard.

DR:chw
Attachment

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4078

MEMORANDUM

TO: Nonprofit corporations and interested parties

FROM: Alaska Code Revision Commission

DATE: January 6, 1984

RE: Teleconference on nonprofit corporations law, House Bill 437/Senate Bill 313

This is notice that at 1:30 p.m., Friday, January 20, 1984, the Alaska Code Revision Commission will hold a teleconference concerning a proposed revision of Alaska law on nonprofit corporations.

The proposed revision is in the form of a bill drafted by the commission and introduced as two identical bills, one in each house of the legislature, House Bill 437 and Senate Bill 313. Here we generally refer to them as "the bill".

Although the bill is already in the legislature and referred to the Labor and Commerce Committees of the House and Senate, the teleconference is neither a meeting of those committees nor a substitute for hearings of those committees.

Rather, it is part of a regular meeting of the code revision commission that drafted the bill, an informational hearing and a chance for the commission to hear suggestions about the bill that it will, if it believes warranted, pass on to the Labor and Commerce Committees in the form of proposed changes.

The bill will go through hearings of the legislative committees. However, we expect a bill revising for profit corporation law, as differentiated from nonprofit corporation law, will be treated first by the committees. Legislative committee hearings on the nonprofit bill may be weeks or months away. The early teleconference provides an early look at the bill before the legislature is actively working with it.

We ask that persons who wish to either listen in or testify at the January 20 teleconference notify their local teleconference center as soon as possible, so that center will be included in the teleconference. The list of centers is attached.

We hope and trust the teleconference will be helpful for all that are concerned with the bill.

DR:chw
Attachment

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

MEMORANDUM

TO: Representative John Cowdery, Chairman
House Labor and Commerce Committee

Senator Richard I. Eliason, Chairman
Senator Labor and Commerce Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: February 1, 1984

RE: Transcript of joint hearing on
HB 343/SB 246 on profit corporations

Enclosed is a transcript made from the House Labor and Commerce Committee's tape of the joint hearing on HB 343/SB 246 held Monday, January 23, 1984. Catherine Walsh of this office typed it at the request of the code revision commission.

Any members of the House or Senate Labor and Commerce Committees who were absent from the January 23rd meeting may be especially interested in the transcript.

Since the House members had to leave for a floor session before the meeting was concluded, they may be interested in the testimony at the last of the transcript--testimony of Elizabeth Johnston of the Alaska Federation of Natives subcommittee on the bill and Irv Bertram, legal counsel for Alaska Airlines.

DR:chw

Enclosure

JOINT HOUSE /SENATE LABOR AND COMMERCE COMMITTEE
HEARING ON HB 343/SB 246--FOR PROFIT CORPORATIONS
JANUARY 23, 1984
8:30 a.m.

COWDERY: I'd like to call the Labor and Commerce meeting to order. It's January 23, 1984, at 9:50 a.m. (sic) 8:50 a.m. I'd like to note those present: Rep. Ueling, Rep. Pestinger, Rep. Koponen and James Cowdery. And I'd also like to note present Senator Mulcahy. The purpose of this morning's meeting is to have testimony on an act revising the corporate code. At this time I think that we would like to call on John Abbott and anyone that would like to testify sign in. The first one to testify that I believe I'd like to have is John Abbott. State your name and affiliation.

ABBOTT: Thank you, Rep. Cowdery. My name is John Abbott and I am the chairman of the Alaska Code Revision Commission. The code revision commission, for those of you who are unaware of this, was a Title 24 commission created by the legislature in 1976. It is comprised of individuals representing the Alaska Court System, the Attorney General's office representing the Governor, the Alaska Bar Association representative, representatives from both the House and the Senate, at this time, Rep. Charlie Bussell and Senator Patrick Rodey. Myself as an appointment of the Governor, as a layperson and Fred Brown as a representative of Governor Sheffield. We have one vacancy on the commission at the present time. Generally, the purpose of the commission is to entertain requests by the legislature, by any branch of government for that matter, to look into areas of statutory law of a technical nature that are in need of revision for any number of reasons including the fact that they no longer comport with the Alaska life, because we are a more sophisticated state, because they haven't provided for a number of years, that they are out of sync with the present needs of the law. The commission also entertains its own projects and has at any given point in time two major projects at least, plus a number of minor projects for consideration by the legislature. We have at the present time five major bills, some of which will be considered by the legislature this session, others will die and not get consideration. The bill in front of you today has been introduced by the Rules Committee in both the House and the Senate as HB 343 and SB 246. The two bills are identical in what they do and were introduced simultaneously for the purpose of consideration by both the House and Senate without the necessity of going through one and then going through the other. This is the practice the code revision commission has used for the past several years to expedite consideration of the bill. Myself, as chairman, and Jerry Kurtz who represents the Alaska Bar Association have been present on the commission during the entire

period of time the corporations bill has been considered and worked on, and we along with with other members of our staff and other commissioners are most anxious to meet with you or your staff to further explain the bill itself. It's a very large bill; it's complicated; it is a sophisticated bill. It determines all of the areas of responsibility which are taken on when a company seeks a corporate charter and seeks a privilege conferred by the State of Alaska. We have with us today Professor Daniel Fessler. He is a professor of law at the University of Davis, California, who has been the consultant on this bill since its inception and is one of the recognized authorities on corporate law in the United States. He will give you a thumbnail sketch of this bill and attempt to answer any questions that you may have concerning the specific technical aspects of the bill. The bill was the result of concern on the part of members of the code commission, both in private practice and in the other areas represented by the code commission, that some work needed to be done because the basic bill had been, as it were, an off-the-rack bill adopted from Oregon statutes at the time of statehood. Whether or not it was appropriate to Alaska even at the time it was adopted leaves some question. Certainly the existing law does not in any respect really meet the needs of Alaskans for incorporation. The new bill attempts to set out and define all the relationships between the various principals or players in the corporate status. So that one need only look at this bill to determine how you become a corporation; how you act as a corporation; how you terminate as a corporation. The bill that's presently before this committee was introduced, I believe, on April 9, 1983. Since that time, some changes have been made as a result of public hearings held by the code revision commission and input from various different organizations concerning some of the specific features of the bill. And as a result, the code commission will be making some recommendations for changes to the committees considering this bill. The work on sections, written comments to the bill and requests that certain changes be made. These changes address concerns raised by Alaska Airlines, one of probably the state's largest corporations, a special subcommittee of the Alaska Federation of Natives that has worked for quite some time with the code commission, has graciously, generously provided its own time and expertise and its legal staff in various of the corporations and has provided us with some good and needed amendments to the bill. Those, too, will be entertained. We also have worked very closely with Mr. Willis Kirkpatrick, deputy director of corporations in the Commissioner of Commerce office. And he, too, has recommended some changes that if made will reduce any financial impact on his office. So that it was the intent of the commission to draft a bill that would have no financial impact on the Commissioner of Commerce office or the director of corporations. So you will be getting some recommendations for amendments pursuant to our discussions and the exchange of ideas of Alaska Airlines, the Commissioner of

Commerce and the Alaska Federation of Native's subcommittee. I think without further ado I'll ask Professor Daniel Fessler to come up and give you a brief summary, an overview of what the bill does. If there are any questions, we also have signed up as witnesses, Commissioner Jerry Kurtz, Fred Brown to provide additional testimony or comments or, in the event you have some questions, we'll do our best to answer them for you. Thank you.

COWDERY: Thank you. I'd like to note that Senator is present. And at this time, I'd like to have John Abbott . . . then the next one up is . . .

RODEY: Rather than invite any comments, I think that Professor Fessler can do a better job of explaining the material than anybody else I know. Mr. Chairman, I'm the Senate member of the code revision commission, and the code has labored long and hard, particularly Professor Fessler and Chairman Abbott on this particular legislation. And I think it is worthy of the committee's very serious consideration. It is in final form, but it is very near passage.

FESSLER: Gentlemen, I am a school teacher at the University of California at Davis. And the subjects that I teach are contracts and corporations. Four years ago I was approached by the commission and asked if I would be interested in serving as a consultant to first survey the content of existing Alaska statutory law in the business field, and then work with the commission should it determine that there was need for revision. The survey of existing Alaska law was undertaken, and the conclusion was arrived at that the existing Alaska law was not the law that the state would most like to have its citizens functioning under. The law that we currently have in Alaska was adopted by the legislature, the first legislature after statehood, by adopting the then Alaska, excuse me, the then content of the Oregon corporation law. The Oregon corporations law in turn was taken from something called the Model Business Corporation Act, which act was put out by the Business Law Section of the American Bar Assocation in the early 1950's. By the time Alaska adopted the Oregon law, the Oregon legislature was on the verge of changing it. And, subsequently, the Oregon legislature has changed much of the content of the law. So, and this is because the model act, which was the basis of the Oregon law and then became the basis of our sort of stepchild has been in the process of evolution. The commission also noted that in the intervening near quarter of a century, that there have been significant changes in corporate law in three of the most critical jurisdictions to which other states generally look for guidance. And that is that New York had rewritten its corporations laws in the late 1960's; California undertook a similar project in which I was involved on the working committee with the legislature in the mid-1970's. And finally the model

act itself has been recalled and is in the process of a three-year study in which a couple of years from now will result in further recommendations. So there have been changes with regard to the theoretical basis of the law. Further, there are changes in Alaska in a quarter of a century. Changes which suggested that it might be time for the State of Alaska to have a corporation law that is a product of its own deliberate creation, rather than something borrowed from elsewhere. The result of this four-year effort is the bill which you have in front of you. And with the exception of some minor amendments which resulted in final meetings with representatives of the Alaska Federation of Natives subcommittee and various other private parties who have testified before the commission that the bill which the commission is seeking your legislative approval and enactment is now in final form. In addition to the bill, the commission has prepared very lengthy commentaries. These commentaries, hopefully, are designed to explain to members of both the House and Senate the origin of each and every provision of the act, to share the value judgments which caused the members of the code revision commission to recommend that particular content, to disclose to you to the extent that the statute is borrowed or modified from statutory law in other jurisdictions the specific genesis of the law, and then to state what change would be made in existing Alaska law were the legislature to adopt this bill. In addition, your staffs will be furnished, and the members will be invited, to work with another document. I apologize for the prodigious size of these documents, but this document is useful in that if an individual is familiar with the provision of existing Alaska law, this works backwards from existing Alaska law, section by section, and shows how that provision would fare should this particular bill be adopted. So those study aids hopefully will be useful to staffs and will be useful to the various committees of the legislature. What I had hoped to do this morning was to share with you some of the value judgments which the commission has made and which are embodied in the multiple provisions of this act. One of the major disadvantages of existing Alaska law is that if an individual were to pick it up seeking to know the content of the law the individual might follow, existing Alaska corporate law is totally disorganized. Provisions which may relate or surround the problem are scattered throughout the bill. One of the initial impressions that you will gain from looking at this bill is that it is very tightly organized. it is organized by major topical sections with the hope that if an individual has a problem with the formation of a corporation, all provisions of the act that deal with corporate formation will be found in Article 3. If the issue relates to corporate finance, Article 4 contains all the relevant law. So that, in essence, the commission directed me to draft the value judgments which it had made very much in the form of a cookbook, but hopefully getting the ingredients in the right order so that it should be something which an individual, whether

a layperson or a practitioner desirous of knowing the content of the law, will be able to find it. And once in the right area, will find all of the related provisions of the statute rather than have them lying around in land mines some 25 to 30 credit pages later, which is the rather dubious distinction of the current provisions of chapter 5, Title 10. Now the areas wherein significant value judgments are found would be Article 3 which deals with the formation of a corporation. Some states like California have attempted to say that if you are going to form a corporation in California, certain major value judgments have been made by the legislature. And the price for forming a corporation in California is that you comply with the value judgments. They would include such things as the requirement that there be cumulative voting for shareholders; that the board cannot be classified; that the directors can only serve one-year terms. California is a statute which is very pregnant with value judgments that sort of tell citizens this is the only way we are going to permit it to be done. Now the reason that this statute does not do that is first there was a fundamental philosophical disagreement that the State of Alaska should be in the business of making value judgments about how people who enter in the corporate form ought to behave. The value judgment which took precedence over that was that people should be informed by reading the statute what the possibilities are. And that they should be allowed, knowing what the possibilities are, to make their own decisions as to whether there will be cumulative voting; how large a board they will have; whether they will classify the board; whether the board will have terms that exceed one year. But that those value judgments should be layed out, and they are layed out in Article 3 in a manner which an individual determining to form a corporation can quickly see that these are the basic things with which the individuals desirous of entering this association should come to some agreement. Further, there is the advantage that we say that if you are going to make these fundamental decisions, you must put them in the articles of incorporation. So that if a person who is a potential investor desiring to know what the lay of the land is for XYZ corporation need only obtain a copy of the articles of XYZ corporation, and that individual will have a definitive statement of the basic value judgments which citizens forming that corporation have made. And there is a further problem, while California has attempted to make value judgments and impose them on citizens, the scandal is that people then simply leave the state and foreign incorporate. They come back as Oregon corporations. They come back across the state line as Nevada corporations. And so it was deemed that this was probably not the best thing to attempt, and that the attempt in the state that's pursuing it isn't working. So in that respect, although you'll see the California corporation code has had a significant impact on many of the provisions of this recommended legislation, the basic thing that the California corporation code is known for

is not carried forward here. It is possible to form a corporation in Alaska which is every bit as straightlaced as a corporation mandated under California law. That is a value judgment that citizens can make. It is not a value judgment that the legislature would be making for you. Now with regard to Article 4 on corporate finance, Here Alaska law was deemed to be flawed in a manner that is true of virtually every state. Lawyers, at least in my experience of being one and teaching others for a longer period of time than I like to recollect, generally make a career decision to go into law sometime after they learn that they have no aptitude whatsoever for arithmetic, let alone mathematics. The consequence is that most lawyers cannot, including myself, balance a checkbook. And lawyers are horrified by concepts of accounting. Therefore, over the years we have sort of developed our own accounting techniques. Because over the years we have had perhaps a bigger voice than we should have whispering in the ears of elected representatives and people, our versions of the myths of accounting rather than the accounting profession have begun to creep into the law. Alaska's current corporation law suffers from perhaps a terminal case of lawyer-accounting terms. One of the major things which corporations must worry about if they are to behave in a socially responsible manner, since they are given the presumption of limited liability. If I form a corporation, my creditors and even victims of calamaties such as torts must look only to the assets of the corporation, not to my own personal assets. Circumstances are important to the state, all people who come into contact with corporations. Well, then what assets must I leave with the corporate entity? What accounting principles must I observe in keeping the books of the corporation? The law has always been interested in this question. But the problem is that we allowed a gulf to grow between what the law seemed to be suggesting and what accountants were telling people are the intelligent way to parse through matters and to resolve them on the books and records of a corporate entity. California broke new ground in 1977 when it said that it would abolish all concepts of legal accounting. It would substitute some straight, common sense ideas as to when a corporation could pay a dividend. A corporation could pay a dividend within the discretion of the board of directors at any time so long as the assets of the corporation equal the liabilities of the corporation with the protective ratio of $5.00 in assets to every $4.00 in liabilities. A very simple concept to understand. There are no longer reduction surplus, earned surplus, all of the notions which lawyers have invented over the years. It's a very simple idea. If we are going to make distribution, whether we make it in money, whether we make it in corporate property to shareholders, we have what is called the ratio of assets to liabilities which must be maintained. This bill adopts what is turning out to be one of the most successful decomplications of corporate life which was done in California. It also follows both

California and now New York in saying that in complying with the law, that so long as a corporation keeps its books and records in a manner which reflects generally accepted accounting principles, he has complied with the law. So we leave to the accounting profession and not to my brothers and sisters-in-law the determination as to what is the best way for that craft and science to proceed to advise. So accounting is left to accountants, but we make a simple value judgment to protect people. It's this ratio of liabilities to assets. Five dollars in assets to four dollars. You can make any distribution you want so long as you do not go below that floor. That, I think, will make it much easier for people determined to comply with the law to do so and make the detection of those few people who are determined to evade the law much easier. Now with regard to Article 5, a major question has been in existence for many years. What are the proper prerogatives of shareholders as opposed to the directors and officers of the corporations? Is it to be an Athenian democracy, or is the better model that you elect the directors and you vest control and management of the corporate entity during the period of tenure of their terms in the individuals? Article 5 has a default provision that the powers of control and management of the corporation are vested in the board. However, a corporation may by the terms of its articles modify this presumption and confer greater prerogatives upon shareholders. If it is going to do that, however, it must do it by an affirmative provision in the articles of incorporation. The thrust of Article 5 is to ensure that shareholders have acess to reliable and up-to-date information as to the condition and record of accomplishment or failure of the people they have elected to be the directors of the corporation. You will notice that for the first time we would standardize notice requirements. Under current law, one of the defects is that we have no standardization of notice requirements. For certain matters, 30 days' notice is sufficient. For others, 40 days is required. Under this bill, notice requirements are standardized, and it should make people who are determined to evade it much easier to ferret out. So again the act reflects the commission's value judgment that the basic policy or power between shareholders on the one hand and directors on the other that the act should specify what should be that ratio or relationship if the parties don't wish to change it. But if they do wish to make a different arrangement, if they put it in the articles they are free to do so. Article 6 deals with the prerogatives and responsibilities of officers and directors. Here I think you'll be very pleased to see that for the very first time we have a statutory definition of the duties of care and duties of loyalty which directors and officers are expected to obey. At the present time in Alaska, it would be a matter of conjecture what the Alaska Supreme Court would eventually say with the content of those important duties. This makes it difficult for an individual who is embarking upon the career of

being a corporate director, perhaps out of accommodation to friends, and many small corporations know exactly what it is I am expected to do, a peril of later on being held accountable for not having done it. Another important feature of this bill which has received wide support by those people who have read it, is Section 435. Section 435 for the first time in Alaska subjects shareholder derivative causes of action to statutory regulation. Alaska presently has the dubious distinction of being one of two American jurisdictions which has no statutory regulation of the derivative suit. This is a suit in which a shareholder comes forward and brings a cause of action that alleges that not I, the shareholder, have been injured but that the corporation has been injured. And I as a shareholder appoint myself to litigate this matter on behalf of the corporation. The tension between the prerogatives of the incumbent directors of the corporation to make that decision and to control that litigation and the rights of a shareholder to say that I am going to elbow my way into the pilot's seat in this plane for the next several years, is a very important one because it may be that there is corruption at the board level. Maybe there is not. I urge your very careful attention to Section 435 to point out that I believe you would find that you would go from having no statutory regulation on this important subject to having one of the most balanced, comprehensive regulations of the subject in this country. Section 435, therefore, is an important innovation. Article 7 is rather technical in nature. It deals with the question of how we go about making amendments and changes to the articles of incorporation. Again, it standardizes procedures and forces the attention of those who wish to change the basic format of a corporation into doing it by way of amending the articles so that there is regularity. And again so that potential investors interested in the corporate entity can look at the articles of incorporation and have not only an historical impression of what the corporation was like in yesteryear, but an accurate, modern impression of where the power within this corporation is currently being distributed. Article 8 is going to be a matter of great interest to your constituents. It deals with what are called organic changes. In essence, mergers; consolidations; share exchanges; sale of all the corporate assets other than in the usual course of business. As each of us is aware, the United States right now is going through what is called a merger craze. Corporations are appearing to be attractive takeover candidates by individuals who may or may not have legitimate desires or desires which would advance the interest of shareholders should they be in a position to seize control of the board of directors. At the present time, Alaska law is very unclear as to the respective roles of incumbent boards as opposed to shareholders. And, therefore, Alaska corporations look vulnerable to individuals who are determined to launch a takeover bid. Article 8 clearly defines the prerogatives of existing management and the shareholders of a corporation with respect to

framing the content of one of these organic changes and taking it through the shareholder approval level. Essentially, what Article 8 does is vest with the existing board the power to frame the terms of a merger, a consolidation, a share exchange, or sale of assets in an extraordinary transaction. And then require two-thirds approval by the shareholders of the corporation in order to approve. This should bring Alaska corporations into line with California and New York and other major states which have moved to protect the integrity of their corporations from being the victims of an easy takeover in which the will of the shareholders and existing management would simply be subverted and brushed aside. Reform needs to be taken in Alaska in this area. I would hope that you would be satisfied with the commission's recommendations which are embodied in Article 8. Article 9, dealing with dissolution, is very important because of the changes that have been made in the federal bankruptcy law. It coordinates with modern federal bankruptcy law and creates for the Alaska judiciary a far more sensible approach to protecting the rights of creditors as well as the rights of senior shareholders in the event that a corporation goes to either voluntary or involuntary dissolution. It also contains some very innovative, and I think, useful provisions that deal with giving shareholders who are being oppressed or frozen out of the role of management or income where other shareholders are being afforded such prerogativees a right in the final analysis to petition for involuntary dissolution in order that the grievance which would have to rise to the level of a very serious grievance to get the attention of Alaska courts. Again, these are not new ideas. They might be the final decision of the Alaska Supreme Court if someone were to spend $100,000 litigating that. But if you enact this bill, all Alaskans with only the expense of supporting their government will have presumptive answers to these important questions. Those are the basic provisions and value judgments which underlie this bill. Both myself and the law students who have assisted me in working with the technicians in this area will be available to any member of either body and staff members. I am prepared now to answer any questions which any members of the committee may have.

RODEY: Mr. Pestinger.

PESTINGER: Thank you, Senator Rodey. Professor Pessler, to me this is a really excellent articulation of the rights and duties and obligations so that it gives our larger corporate participants a clearer understanding of where they stand, which is so essential to doing business. But what I am wondering about, though, is what burden this approach may place upon the smaller mom and pop family corporation. To me, if I had such a business I could not engage in corporate law comfortably without the assistance of counsel. Do you think that this packet necessitates the assistance of counsel as almost a mandate now

for anyone that does business in the corporate form? In other words, I am wondering, I see the need for this in California and New york, and I see the need for this in Alaska with that level of corporations that we deal with. But how about that other level that are just kind of, they get their articles punched out and they ask their lawyer to help them with the minutes, and they look at the Supreme Court that says that the only way you pierce the corporate veil is with an indicia of fraud. So they are using a whole different standard of operation. I mean this is really substantial. Do you think it might have a negative effect on that small family business?

FESSLER: In terms of cost of doing business in the corporate form, I think it will have the opposite effect. Right now, many small businesses probably are coming into corporate existence without the assistance of counsel at all. People are going out and buying little kits for $49.95 that contain forms that they fill in and send to the state. They are oblivious to the legislature's requirement that they file biannual reports to the legislature. They are not doing so. They are in danger of having their articles and their corporate status dissolved by the commission because the legislature has prescribed that as the penalty for not filing reports. And one of the basic difficulties with this situation will always be people who, to use your example, a two-person corporation, decides for one reason or another that they should do business in the corporate form, and then having done that they forget about it. They don't observe any of the formalities of corporate existence. They don't keep separate books and records. They don't segregate their assets from the assets of their corporation. And they don't file reports. Now they would be in trouble under existing Alaska law, sir. They will be in trouble under this bill. In the sense that when the State of Alaska confers a corporate charter on someone, whether or not they have sent $49.95 off to somebody who advertises in every airline magazine, that you don't need a lawyer and you, too, can be a corporation and somehow you will pay no income tax and like me you will turn out being rich. The only person that's probably ever done that is the individual who wrote that book, because he is getting rich by all of the people who write in and send their $50. I think this is the problem you'll want to keep in mind. What I am saying to all of you is that this bill is designed in such a manner that, although it is a complicated subject and I wouldn't suggest anyone could write a corporation code that could be so obvious that an individual could make casual reference to it and never need an attorney so they could guide themselves through the world of maintaining a corporation, this bill does organize the law. It does restate the law. It does have comments which are designed to assist people in understanding the law. Not one of those features can be said about current Alaska law. So there will be a problem of people who incorporate and thereafter regard it as a

little flag of convenience which they'll fly so long as it's useful and which, on the day that it isn't, they'll just forget about it. That will continue to be a problem not only in Alaska, but in Califo .. It's true in Nevada. It's true in Wyoming where I was reared. It's a major social problem we have. People who incorporate with no idea that there are responsibilities as well as privileges for taking on that status. Now, fortunately, the federal tax law which in years gone by caused people to believe that they could pay less income tax by somehow becoming a corporation, have because of movements undertaken first by the administration of President Carter and now of greater emphasis during the administration of President Reagan. As you know, the marginal income tax on individual income has now been reduced from a maximum of 70% now to where it is very close to the top corporate, there is only a two percent spread. But I still find that many people believe that they are going to get some tremendous tax benefit by becoming a corporation. What they do, of course, is eventually wind up in a hellacious tax audit. They find and the individual who wrote the $49 book and gave you the form never accompanies you to that audit because he is living in Bimini.

RODEY: Representative Koponen.

KOPONEN: I was interested in Section 488 which does create a liability for the officers of the corporation, and I'm not up on contract law and one of your notes, in terms of any written contract to modify or eliminate the liability created by this section, what happens to that liability, is it transferred or . . .

FESSLER: Let me explain to all of the members. Section 488, gentlemen, appears at page 67 of the draft in front of you. Section 488 relates also to Rep. Pestinger's question. One of the reasons that people incorporate is to achieve from the State of Alaska a presumption of limited liability. Now this presumption of limited liability means that to all individuals who do business with the entity which is incorporated, they are to look only to the assets which the individuals who incorporated have left with the corporation to satisfy their claim. This is true whether those individuals have made contractual relationships with the corporation or whether they have entered into an accidental injury situation, a tort. Section 488 is called secondary liability of directors and officers. It was reflected after lengthy discussions among members of the commission, a feeling that for small creditors of corporations, employees, tradesmen, materialmen, suppliers, individuals who generally have a credit relationship to a corporation which is not reduced to writing, that these individuals are the year in and year out, these are the individuals who pay the price for corporate existence. When corporations are run so long as it is

convenient to the individuals who find they are the owners and then when they are not, they are simply abandoned. Large institutional lenders, bankers, insurance companies, large contracting creditors, will get a lawyer and go out and they will quote, attempt to pierce the corporate veil. Alaska's common law on the circumstances in which it will disregard limited liability is found in only three cases since statehood. Those cases do not hold out great hope that in the absence of fraud in a transaction that the court would do. But if you have a claim for $1,000 in wages owed to you, there is no lawyer who is going to be able to successfully launch that lawsuit. If you are an individual who sold fish to a restaurant which has now gone out of business, and the owner has marched off leaving you unpaid and it's a $43,000 account receivable, you cannot get any modern recourse at all. Section 488 for the first time to a very limited extent shifts that presumption. It says that the officers and directors of a corporation to the extent that its assets prove insufficient to cover its liabilities, have a liability to a class of individuals who are defined as employees of the corporation as materialmen, tradesmen, etc., people who have extended credit on open account for up to $25,000. Now this liability, sir, is not inevitable. The statute clearly says that if I have a corporation and you have a fishing fleet, and you are supplying my incorporated restaurant with fresh salmon, that you can be approached by me saying I would like you to agree in writing that in the event that this business folds, my restaurant, you won't look to me for the liability which exists under the law. It would be a liability of up to $25,000. That's all you could ever recover under this. So for the first time there would be an incentive in dealing with the smallest people in the marketplace who are the recurrent little mules on which this business of limited liability is ridden out, year in and year out, that these people would have some relief and that there would be an incentive to talk about this question of limited liability. And then if I can convince you that you should give me a relaxation, a waiver of that, that's fine. But in the absence of a contractual modification, I would have the right to this.

KOPONEN: The contract then is between the creditor and the corporation, not between the corporation and its directors.

FESSLER: That's absolutely right. It's between the corporate debtor and its employees, between the corporate debtor and its materialmen or suppliers.

KOPONEN: It's a very useful section. I know there is a major business problem in the Fairbanks area, these collapsible corporations.

FESSLER: Mr. Chairman.

COWDERY: Would the effect of this, would it discourage say qualified managers from getting into taking over a trouble corporation that was having some problems, maybe through a lack of expertise in the past, would this discourage someone from coming in . . .

FESSLER: Well, it would certainly give me pause. Now there are two things relevant, sir, in the bill. First, if the corporation is in a process of dissolution, one of the ways to avoid dissolution under the provisions of this bill is for a court to appoint interim directors in order to resolve deadlocks. Those directors are not subjected to this type of liability. So the director who is brought on board to try and straighten things out by court order is the director who is exempted by the reference in the bill to other than the directors who are appointed pursuant to. Now that is one protection. Another factor, of course, would be that if a corporation is in trouble, and I am going to step in and attempt to save it, one of the things I'd want to do is be aware of Section 488 and go to the creditors and say, I am willing to come into this picture only if you are willing to contract to exempt me from any personal liability that I would incur. Yes, sir, it would be something that in the hypothetical you advance an individual would want to take into consideration.

RODEY: If I might interject, that would apply to directors but not to employees of the corporation?

FESSLER: It has no application to employees at all. In fact, I should tell you that this appears to be very novel, and I want you to understand that it has a great quality of being novel. But New York has never given total limited liability to anyone. And if anybody tries to come to you and say, my God, if we adopt this the wheels of commerce will grind to a halt. Since 1843 when New York adopted the first general incorporation statute, the ten largest shareholders in a New York corporation are subjected to liability in the event the corporate assets prove insufficient to the claims of all employees. New York has never stricken that from the books, and it has not prevented the development of the State of New York as a center of commerce. What we did here, was to say that in many Alaskan corporations we didn't want to have the liability on the ten largest shareholders because that might include many very passive people who really have nothing to do with the way in which the business was run. So put the liability on the people who are being paid, the officers, the president, and the secretary and the treasurer. They are the defined officers and the directors. They are not passive, or they oughtn't to be. So that is how we would differ from New York law. And we have broadened the exposure, because in New York the exposure is limited to claims of employees, and we broadened it to include the claims of materialmen and

suppliers.

COWDERY: In the past we have had some of the Native corporations who have had financial troubles and hired two people to direct them and turn it around. And this is an area I was wondering about, if that would be . . .

FESSLER: I appreciate the question. It is an important matter. The AFN subcommittee has looked into this question. I think that at that level, or at the level of any large corporation that is involved in an attempted turn around, that there would be awareness of the provisions of Section 488 and that there would be appropriate advice from counsel to deal with the subject. That would be my hope.

BROWN: Mr. Chairman, may I suggest . . .

RODEY: Mr. Brown.

BROWN: I am Fred Brown. It's nice to know that Labor and Commerce [garbled] . . . The one example you might think of is what would really happen . . . the example might be one of the most prosperous, currently most prosperous Alaska corporation is Alaska International Air. Originally, that was Interior Airways based out of Fairbanks. They expanded too fast for the building of the pipeline, which didn't get built fast enough as many Alaskans remember. What happened then was, and this sort of thing is really what happens when a corporation gets into trouble in most cases, and that's why I'm raising this as an example. What happened then was they went into reorganization and the creditors and shareholders hired Mr. Duncan McClaren, a legend in the Canadian air industry, a great manager and a legendary worker [TAPE CHANGE] . . . Section 488 to take care of that problem.

RODEY: Thank you, Mr. Brown. This is a problem currently in Alaska. It is possible for individuals who incorporate to run up all sorts of bills, not pay its creditors, and then just move away from that corporation, will eventually be resolved by the state, set up another corporation and then bilk a lot of small tradesmen who work for the corporation, creditors, what have you, move on. You can do it in serial fashion. It is currently being abused presently in the state. Mr. Abbott has kept an eye on this, has had a practice in that area of the law for 15 years. But it is currently a problem. There are a lot of honest Alaskans who lose money because of this problem.

FESSLER: And I think the problem is also that it has a broader ramification. To the extent that citizens get the impression that there are tricks out there for people who are in with lawyers, if you will. It demeans my profession of which I am very proud. We were never the source of this value judgment,

that people could pull this type of thing. But to the extent that people believe that if you quote, know the law, you can do bad things and get away with it. You can do hurtful things and have no accountability. It creates an impression of the law which none of us have an interest in seeing furthered in the minds of citizens. Because the minute one law becomes suspect like this, the cloud falls over all law. And so this is probably the most important value judgment about corporations. They have done great things for us. But the idea of a one-person corporation, and the only person that probably has pulled off that role real well in history, was Louis the Fourteenth and a tremendous price was paid for that notion.

UEHLING: If we can kind of go back to the section regarding the foreign corporations, maybe you could explain what the Alaska Code Revision Commission took as far as an approach as a comparison of what occurred in California regarding the foreign corporation situation there.

FESSLER: Because California has this basic social problem that in order to evade the restrictions on long-term director terms or in order to have a board classify itself, most important California business, most corporate business at the moment in my state, is foreign incorporated. Runs to a different jurisdiction and comes back home and says we've been gone 20 minutes, and we are now a foreign corporation, we're a Delaware corporation. The basic social problem we had in California when we approached the revision of the legislation was to say, well, will we give up these value judgments which we've had for many years. And the bar association, frankly, and the banking industry thought that's what was going to happen. That we were going to get a corporation law that looked more like that of other states. What the legislature did, interestingly enough, and I think it remains to be seen because it's costing us a lot of money in litigation in front of the federal supreme court, was to say, no, if a corporation has a certain percentage of its employees in California, does a certain volume of business in California, has a certain amount of its ownership owned by shareholders in California, then even though it purports to be an Alaska corporation or a Delaware corporation, we're going to say that it's merely a pseudo foreign corporation, and we're going to apply California's laws to it. Now the Arden-Mayfair litigation is pending in the California Supreme Court where it has been on hold for nearly three years. Delaware's courts have already litigated the Arden-Mayfair case and come to the conclusion that California was attempting to deny full faith and credit to the public acts of a sister state. Ultimately, the federal supreme court will have to decide whether California's notion of pseudo foreign corporations is an idea whose time has come. The judgment of the commission was that there are no pseudo foreign corporation concepts in this bill. Instead, we increased the

reporting obligations on foreign corporations to keep us informed of the nature of their activities. We greatly increased the circumstances under which it's clear that they must seek a certificate to do business in the State of Alaska. But we have not attempted to interfere with their internal control and management such as California has done, because we haven't done it to our own people. We haven't said you have to have a board with one-year terms, that you can't classify the board, that you have to have cumulative voting. Our default mode if you don't say is, you do have one-year terms, if you do have cumulative voting and you don't have b[illegible]ssification. But we didn't feel that it was necessary to [illegible]olved in that position. But later on in what may be five [illegible]ears as you see the outcome of the Arden-Mayfair matter, [illegible]a if you decide you want to adopt certain similar rules, t[illegible]ld be an appropriate time to do that. But there is nothing n[illegible] now that contains that.

BROWN: At least some of the members of the commission think the Delaware view is going to prevail in the state supreme court, and that's one of the reasons why the provision is written that way.

RODEY: Thank you, Mr. Brown.

UEHLING: This is a follow up question. And in just sort of reading through this I got the feeling what would be the situation like if you took a state like Delaware where we had a situation where companies are going to incorporate ther because it's a very pro-management kind of situation, where in California it's very pro-shareholder, the shareholder is a completely different situation, how does Alaska rate on that spectrum? Would they be considered a very pro-management situation?

FESSLER: No. The default provisions, ever since I learned to use the personal computer, I've picked up the jargon, excuse me. The provisions that are in place if you don't say otherwise of the Alaska statute today, because it's a version of the early '50's model act would today be called a pro-shareholder jurisdiction. And the provisions which would lock into place in the absence of agreement that they be otherwise under this bill are also pro-shareholder provisions. But so that Alaska would in the default mode line up looking very much more like California than Delaware. But it would be possible for people to make an intelligent and informed decision to form a very, very management oriented, reduced role for shareholder corporation, not going as far as Delaware has gone. For instance, a good example in Delaware, it is possible that the board of directors would have the exclusive power to amend the articles and bylaws, and the shareholders could be ousted from any role at all. That would not be possible in Alaska. It isn't possible under current law with regard to the articles. It would not be possible with

regard to the bylaws should the legislature enact this bill. So it continues to leave Alaska law with most other western jurisdictions as having a pro-shareholder bias, but not going nearly as far as California.

RODEY: Are there other questions from members of the committee? If there are . . .

FESSLER: I'll remain in the room, Mr. Chairman, in case anyone does have any questions for me, but there are other witnesses desiring to appear.

RODEY: The next witness is Willis Kirkpatrick, the director of the division of banking and securities.

KIRKPATRICK: Mr. Chairman and committee members. My name is Willis Kirkpatrick. I am director of banking and securities for the State of Alaska. I'd first like to say that we have appreciated the opportunity to join with the commission as a participant in discussion in their work. I believe that any of the concerns the state has had as far as the administration of this new code, the commission has known up front as to what the problems we've had. One of the things I'd like to point out is that what I am excited about in their work is that in a present situation where we have an old Oregon law, in a situation where we have very little, if any, state common law court cases the administration of the provisions of the Alaska Business Corporations Code as it stands today is somewhat suspect in some of its legislative intent. And to determine legislative intent, we go back to Oregon law, we go back to Oregon cases, we go back to the sparse official comments under the model code. With the passage of this bill, I think that our work as far as working with the corporations in maintaining their files is going to be a whole lot easier because of the official comments alone. Everything has been addressed. I would suggest that in considering the passage of this bill, that they make part of the record the official comments as to the new law. There is only one particular area that I have a problem with, and that is in Section 733 on page 127, in the filing of foreign corporations to do business in the State of Alaska. On line 7, beginning on line 7, it requires that together with a certified copy of its articles of incorporation all amendments to the articles . . . In other words, what they are saying here is that one of the provisions for a foreign corporation to qualify to do business in the State of Alaska, is that it would have to file its articles with the state and any amendments to those articles. In a hearing last session, we brought this up and I believe, you'd have to check with the code revision commission on this, but I believe it was agreed upon that they would reconsider that requirement to file articles. At the present time articles of foreign corporations are not filed with the state. We find that

some of our sister states, those that do have this provision, are looking at dropping them, I think the last one we've heard from is Texas. Now I don't believe that it is going to create any hardship to anybody in the State of Alaska that wishes to find out the substance of the articles of a foreign corporation. First of all, if they are looking for the officers and directors of the foreign corporation, we can look at the application they file with us giving us that particular information. If they do want a copy of the articles of incorporation or the amendments to the articles of incorporation of a foreign corporation, the place that would have the most current filing would be the state of domicile so that they are available. We would be more than happy to assist anybody that wanted that to find out the proper procedures to obtain those records. With my understanding that this provision, that the code revision commission had no particular problem with that being dropped, the fiscal note that I prepared was zeroed out. If this provision stays in, I am going to ask for a revision of the fiscal note because one of the problems we have now is just file maintenance. The biggest problem in file maintenance is amendments to articles. We receive a great number of amendments to articles every day, and one of the things we have to do is that we just don't file the amendments. A lot of times we have to look back through the files to see what the prior articles contain to see amendments are consistent. If nothing more than article order. That is the only comment that I have as far as any changes are concerned, and I am sorry I don't have an amendment prepared, but I would be most happy to. I would replace that word with a certificate of compliance executed by the officer of domicile, or the official of domicile. I am open to any questions.

RODEY: If I might ask either Chairman Abbott or Professor Fessler to respond.

ABBOTT: Yes, Mr. Chairman. We had previously agreed with Mr. Kirkpatrick that we would make that change. Unfortunately, consideration of this matter came up after the bill was printed. So it is the position of the commission that this requirement should be deleted when it was brought to our attention that it would serve no useful purpose and would impose an additional fiscal burden on the commissioner of commerce. We are in complete agreement that the provision should be deleted, and there should be no requirement to file foreign articles or amendments.

RODEY: Thank you, Chairman Abbott. Mr. Brown.

BROWN: On behalf of the commission, I am sure they would agree, it would be very nice if Professor Fessler were involved in structuring the amendment that the committee might be interested . . .

RODEY: That's a very good suggestion, Mr. Brown. Professor, would it be possible for you to prepare that amendment?

FESSLER: Certainly.

RODEY: Mr. Kirkpatrick, continue.

KIRKPATRICK: One other item that my notes show. On page 138 and 139, on line 28 of page 138 it refers to the misdemeanor, and my staff says that it should be either a rated misdemeanor A or B to be consistent with Title 9. And the same with line 9 on page 139. That also relates to a misdemeanor.

RODEY: If I might address Chairman Abbott or Professor Fessler, are we in that case talking about a Class A misdemeanor?

ABBOTT: That's our understanding, Mr. Chairman. Yes.

RODEY: If again I could request you, Professor Fessler, to prepare the appropriate amendment based on current Alaska criminal law.

FESSLER: The question has been asked, has been prepared, is one of the amendments that Chairman Abbott was referring to is being transmitted . . .

RODEY: Thanks, Professor. Obviously we can't take any official action here. If there are any questions, we'll have this prepared and delivered to committees on both sides for their consideration and Senator Hulcahy and myself will explain it on our side and . . .

COWDERY: Could I, I was wondering what financial burden would this, if we adopt this to the existing corporation for the state, would it be to conform, is there any grandfathering situations . . .

KIRKPATRICK: If I understand your question, Mr. Chairman, as to what this is going to do to existing corporations. I think the last two sections of the bill pretty well cover a timely transfer of the act, and I think we are gong to have some problems just as far as educating the corporations in switching them over. I don't see that a lasting problem. I don't see it as much more of a problem than we have now with the new corporation that is coming on board. I don't think there will be an financial, I think the problem is going to be basically on the state's side as far as getting the information out and getting the transition going. I don't envision any

economic problem on the corporation. I am wondering about correspondence fees, but . . . I don't see it as a major problem.

RODEY: I just might add that the proposed draft was written to reduce legal fees by putting a great element of certainty in there so that a layman would have a much greater understanding of the law just by reading the law without having to consult a lawyer. So I think there will be actually a reduction of attorney's fees. Are there any other questions for Mr. Kirkpatrick? If none, thank you very much Mr. Kirkpatrick. We do have floor session now at 10:00 a.m. We don't go in until 11:00 o'clock on Mondays, as a convenience to the Anchorage legislators. Would you like me to stay?

ABBOTT: Mr. Chairman, if I might, there are only two other people that intend to offer brief testimony. That's Liz Johnston and Irv Bertram.

RODEY: In consultation with House chairman, I will stay here if Senator Mulcahy is agreeable and listen to the comments of Elizabeth Johnston and Irv Bertram and then report to you, sir. Thank you, gentlemen. Next, I'd like to call Elizabeth Johnston. It's always disconcerting to be testifying and have everybody leaving. But, Senator Mulcahy and I will make up for any absence of numbers. You have the floor, madam.

JOHNSTON: Gentlemen. My name is Elizabeth Johnston. I'm general counsel to Bristol Bay Native Corporation. Today I am here speaking on behalf of the Alaska Federation of Natives concerning the bill on the revision of the corporate statutes, the profit corporate statutes. You will be delighted to know my comments will be brief. This is because we have had extensive opportunity to present our concerns before the code revision commission. By way of background, I can tell you that in the summer of 1982, the Alaska Federation of Natives created a subcommittee. And the member of the subcommittee had both regional and village corporation backgrounds, and the committee was created to review and testify on the proposed revision. We met with the code revision commission on three separate occasions and made extensive comments. Based on the receptivity of the commission to our comments, and the way they were able to meet our concerns, in April of 1983 Janie Leask, who is the president of the federation, wrote in support of the proposed revision. And she commented specifically on the quality of the new legislative scheme, on the technical commentary which has already been brought up by some of the other people. But the fact there there is technical commentary to back up the new code which should help all of us in the absence of court cases to understand the legislative history. The fact there there is this kind of backup, we feel will mean it will reduce the legal expenses for

the Native corporations. We also articulated, commented on the finance section, that it was an important reform. Unlike Professor Fessler I can read numbers, and I still feel that it is a significant accomplishment. I was forced to. So finally the only final comment is that this is a bill which does strengthen the rights of shareholders and does strengthen the requirements of periodic reporting by corporations to their shareholders. It is a pro-shareholder document, and the federation supports the revision.

RODEY: Senator Mulcahy, do you have any questions for Miss Johnston? Thank you, appreciate your coming. Next I'd like to call Irv Bertram.

BERTRAM: I'm Irv Bertram, and I am assistant counsel to Alaska Airlines. We have looked at the bill and discussed it with the commission to raise some of the concerns we have. Our bylaws and articles go back to 1938, at least the articles do. The bylaws have been changed on numerous occasions. And we did have some concerns, but we found that the commission has made some changes that will assist us in going forward. We think that the bill is very well drafted and very good and will be of benefit to the state as well as being helpful to us. In my current position as house counsel, I have an opportunity to advise management or answer questions about Alaska law. I have practiced in Alaska for a number of years before joining the airlines, and you don't feel so foolish when you have something layed out in front of you in the law. You can look at it and say, well, this is how it's done. Currently Alaska law on corporations has a number of areas where simply there is no law. And so you really have to say, gee, I don't know, maybe we can do it and maybe we can't. It's . . . you're not sure how to do something. But I think the bill answers that. It does provide a very well layed out road map, so to speak, which I think will be very helpful not only to large corporations such as ourselves, but I also believe this will be helpful to the small mom and pop operations. There is that old trite saying that ignorance of the law is no excuse. However, when the law is a body of common law with very few statutory references, it makes it fairly difficult to know what's going on. On the other hand, once things have been layed out in a fairly succinct form that can be followed, it's true a lawyer may still be required and should be used. But I think most people will have a better understanding of what corporate governess should be once they have this body of law in front of them. So we think it would be good for the state. Alaska Airlines will have to make one change in its bylaws as a result of this. It doesn't address everything we wanted. But on the other hand, we think on the whole it is very good and we do support it and would recommend it. Thank you.

RODEY: Thank you very much, Mr. Bertram. Senator

Mulcahy, do you have any questions? I am aware of the . . . if there are no other comments, Mr. Brown.

BROWN: One comment, Mr. Chairman. There have been much comment about the comments, and the people who are supporting the bill who are now part of the commission, are finding that the comments are very important. I would hope an admission to the members of the Senate and the House in the event this bill is considered, that an action be taken similar to what was taken when the criminal code revision was passed. And that is there be specifically an affirmative vote on the floor of each house approving the comments or the comments as you may have amended in concert with the commission to make a clear and unambiguous legislative history. To really make sure those are available and that they are important legislative history, since they will be relied on by people in the private sector as well as scholars.

RODEY: Thank you, Mr. Brown. That's a very good suggestion. Obviously it's wise. It's an area of law we don't know much about in terms of importance, and whether a separate vote on that really means much or not.

BROWN: Take it from Alaska's only published legal historian.

RODEY: And a distinguished member of the Fairbanks bar. I think it is a wise suggestion to incorporate in the journal and to vote separately and affirmatively on the commentary. I think it is a good and desirable method of annotating Alaska laws. It is certainly preferable to allowing Michie Company to do it back east. If there are no other comments, the committee meeting is adjourned.

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

MEMORANDUM

TO: Representative John Cowdery, Chairman
House Labor and Commerce Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: February 3, 1984

RE: Amendments to HB 343/SB 246 on for profit corporations

The subcommittee appointed by the Alaska Federation of Natives to work on the corporations bill has proposed these changes in the proposed amendments I transmitted to you on January 31, 1984: Those members of the code revision commission that could be polled by telephone have agreed that the changes are acceptable.

(1) CHANGE:

Page 12, line 27-29: In the previously proposed amendment change "January 1, 1983" to "March 24, 1982".

EXPLANATION: A relatively recent date is needed, but the specific date chosen is not of importance. The date of first introduction of the Alaska Corporations Code as a bill in the legislature is a date used elsewhere in the bill. Using it here is simply to avoid using many different dates in the bill.

(2) CHANGE:

Page 56, following line 28: In the previously proposed amendment, change "January 1, 1971" to "March 24, 1982".

EXPLANATION: The bill provides that staggered terms of directors must be provided for in the articles of incorporation. The effect of the change is that a provision in a corporation's bylaws providing for staggered terms of its directors would be valid if the provision was in the bylaws before a recent date--the date of first introduction of the Alaska Corporations Code bill in the legislature, March 24, 1982.

In other words, the amendment would make this provision of the bill prospective, keeping in effect valid bylaws on staggered terms; however, no corporation would be able to hurriedly enact bylaws now, simply in anticipation of passage of this bill.

(3) CHANGE:

Page 149, line 12, following the period: In the previously proposed amendment, following "section" insert "prior to December 19, 1991,".

EXPLANATION: The amendment as previously proposed was overbroad. Its only purpose was to conform to a requirement of Section 30 of the Alaska Native Claims Settlement Act, a copy of which is attached. The reason for the change will be clear by reference to the attached Section 30 of ANCSA.

Retyped with these three changes, the proposed amendments are attached.

- -

An identical text to the foregoing with the same attachments was sent to Senator Eliason, chairman of the Senate Labor and Commerce Committee. A hearing was held by Senate Labor and Commerce on the bill February 2, 1984, and the revised amendments were adopted in the form attached to the memorandum.

The committee voted the bill out as a committee substitute and adopted a statement of intent containing the two small changes in the commentary on the bill, as previously provided you. The statement of intent is also attached as it was adopted in the Senate committee.

Please note that the attached amendments are a retyping of the amendments previously provided you, with the changes explained in this February 3 memorandum.

DR:chw
Attachments

A M E N D M E N T

Offered in the HOUSE LABOR AND COMMERCE COMMITTEE BY:

TO: HB 343

Page 12, line 27-29:

Delete all material and insert:

"(3) if incorporation is after March 24, 1982, the address of it initial registered office and the name of its initial registered agent;"

Page 12, line 29:

Delete "at that address"

Page 16, line 5:

Delete "AS 10.06.873" and insert "AS 10.06.870"

Page 56, following line 28:

Insert:

"(c) a provision in the bylaws of a corporation which, were it a provision of the articles of incorporation, would accord with (a) of this section shall be valid provided that it was adopted prior to March 24, 1982."

Page 127, lines 7-9:

Delete "together with a verified copy of its articles of incorporation and all amendments to the articles,"

Page 138, line 28:

Insert "Class A" before "misdemeanor"

Page 139, line 9:

Insert "Class A" before "misdemeanor"

Page 147, lines 28-29:

Delete ", except a village corporation that may be incorporated under either this chapter or AS 10.20,"

Page 148, line 8:

Delete "approved by the United States Secretary of the Interior"

Page 148, line 18:

Delete ", 7(i),"

Page 148, lines 25-26:

Delete "may not be considered to be a distribution in partial liquidation" and insert "is not a 'distribution to its shareholders' as defined by AS 10.06.990(17)"

Page 149, line 12, following the period:

Insert "Notwithstanding the provisions of AS 10.06.574--10.06.586, a plan of merger, consolidation, or exchange qualified under this section prior to December 19, 1991, shall not include the right of shareholders to dissent."

Page 149, line 15:

Delete "that is required by the language of that Act"

Page 161, line 13:

Delete "July 1, 1983" and insert "July 1, 1984"

SAVING CLAUSE

SEC. 26. To the extent that there is a conflict between any provision of this Act and any other Federal laws applicable to Alaska, the provisions of this Act shall govern.

SEPARABILITY

SEC. 27. If any provision of this Act or the applicability thereof is held invalid the remainder of this Act shall not be affected thereby.

TEMPORARY EXEMPTION FROM CERTAIN SECURITIES LAWS

SEC. 28. Any corporation organized pursuant to this Act shall be exempt from the provisions of the Investment Company Act of 1940 (54 Stat. 789), the Securities Act of 1933 (48 Stat. 74), and the Securities Exchange Act of 1934 (48 Stat. 881), as amended, through December 31, 1991. Nothing in this section, however, shall be construed to mean that any such corporation shall or shall not, after such date, be subject to the provisions of such Acts. Any such corporation which, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall transmit to its stockholders each year a report containing substantially all the information required to be included in an annual report to stockholders by a corporation which is subject to the provisions of such Act. (Added January 2 1976, P.L. 94-204 §§ 3, 18, 89 Stat. 1147, 1156)

RELATION TO OTHER PROGRAMS

SEC. 29. (a) The payments and grants authorized under this Act constitute compensation for the extinguishment of claims to land, and shall not be deemed to substitute for any governmental programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska.

(b) Notwithstanding section 5(a) and any other provision of the Food Stamp Act of 1964 (78 Stat. 703), as amended, in determining the eligibility of any household to participate in the food stamp program, any compensation, remuneration, revenue, or other benefit received by any member of such household under the Settlement Act shall be disregarded. (Added January 2 1976, P.L. 94-204 § 4, 89 Stat. 1147)

MERGER OF NATIVE CORPORATIONS

SEC. 30. (a) Notwithstanding any provision of this Act, any corporation created pursuant to section 7(d), 8(a), 14(h)(2), or 14(h)(3) within any of the twelve regions of Alaska, as established by section 7(a), may, at any time, merge or consolidate, pursuant to the applicable provi-

sions of the laws of the State of Alaska, with any other of such corporation or corporations created within or for the same region. Any corporations resulting from mergers or consolidations further may merge or consolidate with other such merged or consolidated corporations within the same region or with other of the corporations created in said region pursuant to section 7(d), 8(a), 14(h)(2), or 14(h)(3).

(b) Such mergers or consolidations shall be on such terms and conditions as are approved by vote of the shareholders of the corporations participating therein, including, where appropriate, terms providing for the issuance of additional shares of Regional Corporation stock to persons already owning such stock, and may take place pursuant to votes of shareholders held either before or after the enactment of this section: *Provided,* That the rights accorded under Alaska law to dissenting shareholders in a merger or consolidation may not be exercised in any merger or consolidation pursuant to this Act effected prior to December 19, 1991. Upon the effectiveness of any such mergers or consolidations the corporations resulting therefrom and the shareholders thereof shall succeed and be entitled to all the rights, privileges, and benefits of this Act, including but not limited to the receipt of lands and moneys and exemptions from various forms of Federal, State, and local taxation, and shall be subject to all the restrictions and obligations of this Act as are applicable to the corporations and shareholders which and who participated in said mergers or consolidations or as would have been applicable if the mergers or consolidations and transfers of rights and titles thereto had not taken place: *Provided,* That, where a Village Corporation organized pursuant to section 19(b) of this Act merges or consolidates with the Regional Corporation of the region in which such village is located or with another Village Corporation of that region, no provision of such merger or consolidation shall be construed as increasing or otherwise changing regional enrollments for purposes of distribution of the Alaska Native Fund; land selection eligibility; or revenue sharing pursuant to sections 6(c), 7(m), 12(b), 14(h)(8), and 7(i) of this Act.

(c) Notwithstanding the provisions of section 7 (j) or (m), in any merger or consolidation in which the class of stockholders of a Regional Corporation who are not residents of any of the villages in the region are entitled under Alaska law to vote as a class, the terms of the merger or consolidation may provide for the alteration or elimination of the right of said class to receive dividends pursuant to said section 7 (j) or (m). In the event that such dividend right is not expressly altered or eliminated by the terms of the merger or consolidation, such class of stockholders shall continue to receive such dividends pursuant to section 7 (j) or (m) as would have been applicable if the merger or consolidation had not taken place and all Village Corporations within the affected region continued to exist separately.

(d) Notwithstanding any other provision of this section or of any other law, no corporation referred to in this section may merge or consolidate with any other such corporations unless that corporation's shareholders have approved such merger or consolidation.

(e) The plan of merger or consolidation shall provide that the right of any affected Village Corporation pursuant to section 14(f) to withhold consent to mineral exploration, development, or removal within the boundaries of the Native village shall be conveyed, as part of the merger or consolidation, to a separate entity composed of the Native residents of such Native village. (Added January 2 1976, P.L. 94-204 § 6, 89 Stat. 1148)

ASSIGNMENTS OF RIGHTS BY REGIONAL CORPORATIONS

SEC. 31. (a) Notwithstanding the provisions of section 3477 of the Revised Statutes, as amended (31 U.S.C. 203), the Secretary is authorized to recognize validly executed assignments made by Regional Corporations of their rights to receive payments from the Alaska Native Fund. Such assignments shall only be recognized to the extent that the Regional Corporation involved is not required to distribute funds pursuant to subsection (j) or (m) of section 7 of this Act.

(b) The Secretary shall not recognize any assignment under this section which does not provide that the United States reserves the right to assert against the assignee and successors of the assignee, any setoff or counterclaim which the United States has against the assignor Corporation.

(c) No stockholder of any Regional or Village Corporation shall have any claim against the Secretary or the United States as the result of any assignment duly recognized by the Secretary pursuant to this section. (Added November 15 1977, P.L. 95-178 § 4, 91 Stat. 1370)

ALASKA STATE LEGISLATURE - SENATE

COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

OFFICIAL BUSINESS

LETTER OF INTENT

It is the intent of the Senate Labor and Commerce Committee that the detailed commentary accompanying S.B. 246, House and Senate Joint Journal Supplement No. 11, be considered a comprehensive guide to the proposed new Alaska Corporation Code and as such should be amended and revised accordingly if any changes are made to S.B. 246.

The following narrative changes reflect the amendments adopted in CSSB 246 (L&C).

(At page 89 of the House and Senate Joint Journal Supplemental for April 8, 1983, the Official Comment to Section 388 should be amended to read):

Official Comment to ACC Section 10.06.388. ACQUISITION OF CORPORATION'S OWN SHARES; REISSUANCE OR RETIREMENT.

SCOPE: ACC sec. 388 specifies the treatment to be given redeemed or repurchased shares. They revert to the status of authorized but unissued shares unless the articles of incorporation prohibit reissuance. If reissuance is prohibited, the article stating the number of authorized shares must be amended to reflect the lowered number. Such an amendment of the articles must be filed with the commissioner. Shareholder approval of the required amendment is not necessary.

While sec. 388 abolished the antiquated accounting concept of "treasury shares", nothing in this section is intended to prejudice the present or contingent contract rights which pre-ACC corporations may have created in reacquired shares described as "treasury shares."

CHANGE IN FORMER ALASKA LAW: ACC sec. 388 is taken from GCL Section 510. It continues prior Alaska law (former AS 10.05.312-345) in requiring a filing with the commissioner of an amendment to the articles. It departs from and simplifies prior law by the elimination of the concept of "treasury shares."

(At page 123 of the House and Senate Joint Journal Supplement for April 8, 1983, the Official Comment to Section 455 should be amended to read):

Official Comment to ACC Section 10.06.455. CLASSIFICATION OF DIRECTORS.

SCOPE: Sec. 455 provides for optional classification of a board consisting of a minimum membership while taking steps to preclude the adoption of such a scheme for a corporation which has not eliminated cumulative voting from adopting such a classification scheme by amendment if shares sufficient to elect one director under cumulative voting oppose such amendment. Sec. 455 replaces former AS 10.05.186.

CHANGE IN FORMER ALASKA LAW: Sec. 455(a) is an enactment of Model Act Section 37 and works an important change from former AS 10.05.186 respecting the election to classify the board. Under prior Alaska law this decision could be taken by a bylaw adopted by the board without shareholder participation. The danger to minority share representation in such circumstances led to subsection (a)'s requirement that the election be taken in the articles, which insures shareholder participation.

Subsection (b) is new. Continuing the concern for minority share representation on the board of a corporation which has not eliminated cumulative voting, sec. 455(b) precludes amendment of the articles to classify the board if the number of shares voting "no" on the amendment or refusing to consent in writing would be sufficient to elect one director if voted cumulatively at an election of the entire board.

Subsection (c) is new. It permits board classification pursuant to the terms of a provision on the bylaws rather than the articles of incorporation. In order to classify a board under sec. 455(c) it is necessary that the bylaw have been adopted prior to March 24, 1982 with or without shareholder participation, and that it contains nothing which, were it a provision in the articles of incorporation, would offend sec. 455(a). Thus, all of the restrictions on the minimum size of the board, the minimum number of classes, and the terms of the director office set forth in sec. 455(a) limit the terms of any bylaw which would be effective under sec. 455(c).

Alaska Court System
State of Alaska

KARLA L. FORSYTHE
General Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, AK 99501

Feburary 7, 1984

Representative Walt Furnace
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Furnace:

You had asked Arthur Snowden to provide comments about the anticipated impact on the courts of HB 343, revising the Alaska Corporations Code.

Carole Baekey, Judicial Education Coordinator for the court system, has extensive background in corporate litigation. Ms. Baekey reviewed the proposed bill in detail; her comments are attached. Based upon her comments, the court system concludes that the superior court will not be substantially burdened by passage of this bill.

Thank you for the opportunity to submit comments. If you have any questions or concerns, please let me know.

Sincerely,

Karla L. Forsythe

Karla L. Forsythe
General Counsel

KLF:smh

cc: Arthur H. Snowden, II
Carole Baekey
Judge Stewart

Memorandum

Alaska Court System

TO: Karla Forsythe
General Counsel

DATE : February 1, 1984

FROM: Carole A. Baekey
Judicial Education Coordinator

SUBJECT: House Bill No. 343, Revisions of the Alaska Corporation Code

You requested that I review House Bill No. 343 and its commentary, with a view to any increased burden on the court system.

Generally, House Bill No. 343 strives for greater clarity and flexibility with respect to corporate organization and operation. The bill contains several new legal concepts which could give rise to interpretation in superior court. Historically, when a statute containing new standards or legal concepts is developed, cases are brought to interpret the statute. I have briefly outlined the provisions of the proposed Alaska Corporation Code which could conceivably alter the court's burden. Only issues which might affect court caseloads have been addressed. From this overview, it does not appear that the superior court would be substantially burdened by enactment of the proposed Alaska Corporation Code.

The proposed provisions which have the potential to affect causes of action filed in superior court are highlighted below:

1. Proposed A.S. 10.06.358-365, inclusive:

These proposed sections address a corporation's distribution of corporate assets, usually in the form of dividends, and imposition of restrictions to prevent the dissipation of corporate assets by an insolvent corporation. The specific problem addressed is the distribution of dividends by a corporation to shareholders, after which the corporation is unable to meet its obligations to creditors or to meet its contractual preferences to holders of senior share of stock.

Existing A.S. 10.05.201 imposes an "equitable insolvency test" upon distribution of dividends. This test is the "inability of the corporation to pay its debts as they become due in the regular course of business." This test is also imposed upon existing A.S. 10.05.309 setting forth the restrictions on the redemption or purchase of redeemable shares. (It should be noted that page 76 of the March, 1983 commentary of the Alaska Code Review Commission refers to this

restriction in A.S. 10.05.012, which section does not exist in the present corporation code. Perhaps this is a typographical transposition referring to either existing A.S. 10.05.201 or A.S. 10.05.210.)

Existing A.S. 10.05.369 imposes a second accounting method, "use of capital surplus to reduce losses," upon distribution of dividends. As the commentary notes, existing A.S. 10.05.369 permits the board of directors to eliminate an operating deficit by simply writing down or reducing capital surplus. Any subsequent net profits could then be charged against stated capital or capital surplus and distributed as earned surplus notwithstanding the former deficit. The danger here is that dividends to common or junior shareholders might be distributed by a corporation so as to prejudice the ability of the corporation to meet its debts or dividend obligations to senior shareholders in subsequent accounting periods.

Each of the equitable insolvency tests and the use of capital surplus to reduce losses is reflected in existing A.S. 10.05.204 - payment of dividends, A.S. 10.05.207 - distribution in partial liquidation and A.S. 10.05.210 - payment of accumulated dividends out of capital surplus.

The commentary covers these issues in depth and this brief sketch is to frame the major change in accounting methods in the proposed law. Assuming a corporation is equitably solvent as defined in proposed A.S. 10.06.360, proposed A.S. 10.06.358 permits licit distribution of dividends if: (i) the distribution is made to the extent of retained earnings, or (ii) the distribution is in satisfaction of (a) the "ratio/assets surplus test" which requires that the assets of the corporation are equal to one and one-fourth of its current liabilities and (b) current liquidity requirements are met. Unlike the existing law, there are no exceptions to the stated requirements.

Proposed A.S. 10.06.360 would give limited protection to preferences of senior shares by forbidding any corporate distribution which would raid corporate assets. Proposed A.S. 10.06.365 restricts the board's authority under proposed A.S. 10.06.358 to make a distribution on junior shares unless certain requirements are met; the goal is to impose restrictions designed to protect shares with a dividend preference.

In short, proposed A.S. 10.06.358-365, inclusive, is a change in accounting procedures to clarify and strengthen standards for distribution of assets, namely dividends. If the proposed legislation becomes law, undoubtedly cases will be brought to test the law. That is the function of the court. However, it should be noted that proposed A.S. 10.06.358-365, inclusive, is an attempt to protect shareholders by simplifying accounting procedures and getting rid of numerous exceptions enabling corporations to dissipate assets. This simplification could conceivably reduce complex corporate litigation.

The only apparent lack of clarity I perceive is in proposed A.S. 10.06.363 which does not protect liquidation preferences when a distribution is made to either shares of the same class or series or to a class with superior preferences upon liqudation. Inequities could easily be remedied by proper corporate planning done by counsel. In any event, this provision is not likely to result in a flood of litigation.

2. Proposed A.S. 10.06.378.

This proposed section addresses shareholders who receive any distribution of corporate assets with knowledge of facts indicating the impropriety of the distribution. The commentary notes a shareholder would be liable "if a reasonable person in like circumstances exhibiting reasonable effort would have recognized an indication of impropriety in the distribution." Any suit would be brought in the name of the corporation and a shareholder's liability under this section would be brought for the amount received by the shareholder with interest at the legal rate on judgments until paid.

This proposed section, new to Alaska law and a new cause of action, is an extension of liability in existing A.S. 10.06.225(a). Present law provides that a director against whom a claim is asserted for the payment of distribution of assets is entitled to contribution from shareholders who knowing a payment to be illicit took it. Existing A.S. 10.05.225(a) is in the proposed code as A.S. 10.06.480(b).

3. Proposed A.S. 10.06.405.

This proposed section would require that shareholders of a corporation meet annually. If management defaults in the calling of an annual meeting, under proposed A.S. 10.06.405(b), on the application of a shareholder, the superior court may order a meeting held.

This is a new remedy for an aggrieved shareholder, giving rise to a new statutory cause of action in superior court.

4. Proposed A.S. 10.06.425.

This proposed section which would explicitly permit the formation of voting trusts and agreements among shareholders has its genesis in existing A.S. 10.05.171. As the commentary notes, A.S. 10.06.425(b), by not being more specific, leaves to common law development the development of limitations upon agreements between or among shareholders which fall short of a voting trust.

Clearly, under this proposed section courts could be called upon to determine what, short of a voting trust, constitutes a valid agreement of shareholders. Irrespective of the proposed changes, this issue historically has been and would remain a proper cause for determination in superior court. Therefore, no measurable change would seem to be wrought.

5. Proposed A.S. 10.06.430.

This proposed section has its origins in existing A.S. 10.05.237-249, inclusive, addressing inspection of books and records. Proposed A.S. 10.06.430 strengthens the penalties for restricting and refusing inspection, but creates no new cause of action.

Irrespective of the increased penalties for restricting or refusing inspection of books and records, this issue is presently within the domain of the superior court. Therefore, no measurable change would be wrought by the increased penalties.

6. Proposed A.S. 10.06.433.

This proposed section would establish a corporation's obligation to prepare and send an annual report to shareholders. No similar requirement exists in the present law Therefore, this proposed section would create a new obligation of domestic and foreign corporations to shareholders. This obligation would be enforceable by superior courts.

While this section gives rise to a new corporate obligation and thus a new cause of action, it is inconceivable that this would create a flood of litigation.

7. Proposed A.S. 10.06.435.

This proposed section would be Alaska's first statutory attempt to regulate shareholders' derivative actions. Presently, shareholders' derivative actions are regulated by the Supreme Court's adoption of Rule 23.1 of the Federal Rules of Civil Procedure.

Since this cause of action already exists in fact, the proposed statute should create no major changes.

8. Proposed A.S. 10.06.460.

This proposed section would permit the removal, by shareholders of a corporation, of a director without cause. This would be a new provision since existing A.S. 10.05.177-192, inclusive, provides only for removal of directors at the time of the annual meeting. The proposed section gives shareholders of a corporation more latitude in choosing and terminating directors and sets out restrictions on this right of shareholders.

This proposed section would seem to create no new causes of action, save the validity of an election, which, if challenged, would come under the court's scrutiny. A deluge of cases is unlikely.

9. Proposed A.S. 10.06.463.

If there would be insufficient votes to remove a director under proposed A.S. 10.06.460, proposed A.S. 10.06.463 provides for judicial removal of a director for specific types of acts. The corporation could be made a party to the action.

This section creates a new cause of action. Generally, corporations should be able to handle these matters internally with recourse to the court only in extreme cases. A deluge of such cases is unlikely.

10. Proposed A.S. 10.06.488.

This proposed section would provide for secondary liability of directors and officers personally, the cost of doing business, if the assets of the corporation should provide insufficient. This is an attempt to get at thinly capitalized or mismanaged corporations. The total secondary liability of an officer or director could not exceed $25,000 and contribution is authorized. A written contract could be competent to modify or eliminate liabilty.

This section is without precedent in Alaska and is an attempt to pierce the corporate veil and address ultra vires acts of directors and officers. Settling disputed claims is an obligation of the court and this proposed section falls within that obligation. This specific cause of action could give creditors additional parties to pursue in satisfaction of claims. Whether this would increase cases is not clear since, conceivably, directors and officers could be impleaded or otherwise joined as defendants.

11. Dissolution of Corporation.

Proposed A.S. 10.05.465-10.05.594, inclusive, addresses the dissolution and winding up of affairs of a corporation. Dissolution is noted herein because it is a major area of court intervention. Since this is usually a contentious area among corporate management, shareholders and creditors, courts have a long history of intervening in the affairs of a dissolving corporation. Proposed A.S. 10.06.605-675, inclusive, appears to create no substantial new duties for the court.

12. Proposed A.S. 10.06.818.

This proposed section has its origins in existing A.S. 10.05.777 which permits interrogatories by the commissioner if interrogatories are necessary to ascertain whether a corporation has complied with the state's corporation code.

Proposed A.S. 10.06.818(d), unlike existing law, provides that a petition from the corporation to extend the date for answer, to modify or set aside the interrogatories may be filed by the corporation with the commissioner.

Proposed A.S. 10.06.818(d) gives a corporation an unprecedented recourse to superior court. The use of this tool in superior court would largely depend on the extent to which the commissioner propounded unwelcome interrogatories to corporations. Lacking an abuse of discretion in the commissioner, it is unlikely this tool would create a deluge of superior court cases.

Please see me if you have any questions.

CB:tr

TESTIMONY OF ARCO ALASKA, INC.
JOINT HEARING OF HOUSE LABOR
AND COMMERCE COMMITTEE AND
HOUSE JUDICIARY COMMITTEE
PROPOSED HB 343
"AN ACT REVISING THE CORPORATION CODE"

Good morning. My name is Bruce Frenzel. I am an attorney with ARCO Alaska, Inc. here in Anchorage. I am also a member of the Corporation Code Revision Task Force of the Business Law Committee of the Alaska Bar Association. I am speaking today on behalf of ARCO Alaska, Inc., a wholly owned subsidiary of Atlantic Richfield Company.

Proposed House Bill 343 envisions a completely new Corporate Code. As noted in the House and Senate Joint Journal Supplement, No. 11, dated April 8, 1983, major portions of this bill "are without precedent in Alaska law." Any such major changes deserve adequate time for persons affected by the bill to review and comment. We recognize that the bill was introduced last April, but has laid dormant until now.

We especially appreciate the hard work by the Alaska Code Revision Committee which has gone into the preparation of this bill, but we are strongly opposed to certain portions of it, and are uncomfortable with others.

ARCO respectfully requests that consideration of this bill be deferred for 30 days so that specific, constructive comments on the precedent-setting portions of this bill can be made. With constructive changes to the bill, ARCO may be able to support it.

As currently drafted, one specific objectionable provision allows individual liability for corporate officers, which destroys a basic purpose of incorporation, which is to limit liability

for corporate officers and shareholders. For a large corporation such as ours, the proposed provision combined with the large number of creditors would amount to completely unlimited liability for a few of our highest-level employees. Such a provision is also likely to be even more onerous for small or closely-held corporations.

We will commit ourselves to recommend specific language changes to make the bill acceptable. Unless consideration is deferred, however, we must oppose this bill as currently drafted.

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

MEMORANDUM

TO: Representative John Cowdery, Chairman
House Labor and Commerce Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

Dick Regan

DATE: February 8, 1984

RE: Amendments to HB 343/SB 246 on
for profit corporations

At the joint hearing of the Labor and Commerce Committees January 23, 1984, reference was made to certain proposed amendments that would be forthcoming.

It was agreed that the amendments would be prepared by Professor Dan Fessler and would be provided to the committees after a final review of the form by the parties who had initiated them--the Division of Banking, Securities and Corporations, the spokesperson for the Alaska Federation of Natives subcommittee appointed to work on the bill, and counsel for Alaska Airlines.

Those steps were followed.

The amendments were provided to committee staff of the House and Senate Labor and Commerce Committees, both before and after the final review.

On February 1st, Senate Labor and Commerce approved the amendments as submitted, together with a Letter of Intent that two changes in the commentary on the bill be approved as submitted. The committee voted the bill out as CSSB 246(L&C), incorporating the agreed amendments.

Except for one date, the substance, and in some instances the form of the amendments had been agreed upon by the code revision commission many months ago, with the understanding that they would be offered to the legislative committees at the appropriate time.

The proposed amendments and proposed form of the Letter of Intent are attached, as previously provided on February 3.

Also attached are a few words of explanation keyed to the page and line of each proposed amendment.

DR:chw

EXPLANATION OF PROPOSED AMENDMENTS TO HB 343

Page 12, lines 27-29:

Section 5(b) at page 160 of the bill requires existing coorporations to restate their articles of incorporation within five years after the effective date of the new code. It was pointed out that in some instances a corporation cannot provide the name and address of its initial registered agent because the information has been lost. This amendment would take care of the problem.

A relatively recent date in the section is needed, but the specific date chosen is not of importance. The date of first introduction of the Alaska Corporations Code as a bill in the legislature is a date used elsewhere in the bill. Using it here is simply to avoid using many different dates in the bill.

Page 12, line 29:

The amendment is subsumed in the above amendment.

Page 16, line 5:

This corrects an erroneous cross reference. There is no section 10.06.873 in the bill.

Page 56, following line 28:

The bill provides that staggered terms of directors are invalid unless provided for in the articles of incorporation. The effect of the change is that a provision in a corporation's bylaws providing for certain staggered terms of its directors would be valid if the provision was in the bylaws before a recent date--the date of first introduction of the Alaska Corporations Code bill in the legislature, March 24, 1982.

In other words, the amendment would make this provision of the bill prospective, keeping in effect valid bylaws on staggered terms; however, no corporation would be able to hurriedly enact bylaws now, simply in anticipation of passage of this bill.

Page 127, lines 7-9:

The commission agreed with Director Kirkpatrick that requiring a corporation from another state to file its articles and all amendments to its articles in Alaska would be costly to administer and that the ready availability of those articles and amendments from the parent state of the corporation adequately serves the needs of Alaskans. The change was agreed upon in the committee hearing May 17, 1983, and again in the hearing January 23, 1984.

Page 138, line 28; Page 139, line 9:

These are only changes to preferred drafting style. A misdemeanor is a "Class A" misdemeanor if no class is designated in the statute. (Reference existing AS 11.81.250(c)).

Page 147, lines 28-29

This is a deletion of unnecessary and possibly confusing verbiage.

Page 148, line 8:

The deleted phrase is obsolete. Originally the articles of incorporation of an ANCSA corporation had to be approved by the Secretary of the Interior (ANCSA, Section 7(d)). However, after five years the articles could be freely amended. Because many such amendments have been made, articles that are "approved by the Secretary of the Interior" are a thing oof the past in some of the ANCSA corporations.

Page 149, line 18:

The change is to conform to a decision made by the legislature in existing law, AS 10.05.005(a)(2)(B)(ii), that ANCSA Section 7(i) money is not included in "capital". Section 7(i) income is from the poolled 70% of revenue from the subsurface estate and timber.

Page 148, lines 25-26:

This is a change in form only, to conform to language elsewhere in the Act.

Page 149, line 12, following the period:

The section of the bill amended here deals only with ANCSA corporations. The only purpose of the amendment is to conform to Section 30 of the Alaska Native Claims Settlement Act.

Page 149, line 15:

Surplus and confusing language is deleted.

Page 161, line 13:

An update of the effective date clause.

A M E N D M E N T

Offered in the HOUSE LABOR AND COMMERCE COMMITTEE BY:

TO: HB 343

Page 12, line 27-29:

Delete all material and insert:

"(3) if incorporation is after March 24, 1982, the address of its initial registered office and the name of its initial registered agent;"

Page 12, line 29:

Delete "at that address"

Page 16, line 5:

Delete "AS 10.06.873" and insert "AS 10.06.870"

Page 56, following line 28:

Insert:

"(c) a provision in the bylaws of a corporation which, were it a provision of the articles of incorporation, would accord with (a) of this section shall be valid provided that it was adopted prior to March 24, 1982."

Page 127, lines 7-9:

Delete "together with a verified copy of its articles of incorporation and all amendments to the articles,"

Page 138, line 28:

Insert "Class A" before "misdemeanor"

Page 139, line 9:

Insert "Class A" before "misdemeanor"

Page 147, lines 28-29:

Delete ", except a village corporation that may be incorporated under either this chapter or AS 10.20,"

Page 148, line 8:

Delete "approved by the United States Secretary of the Interior"

Page 148, line 18:

Delete ", 7(i),"

Page 148, lines 25-26:

Delete "may not be considered to be a distribution in partial liquidation" and insert "is not a 'distribution to its shareholders' as defined by AS 10.06.990(17)"

Page 149, line 12, following the period:

Insert "Notwithstanding the provisions of AS 10.06.574--10.06.586, a plan of merger, consolidation, or exchange qualified under this section prior to December 19, 1991, shall not include the right of shareholders to dissent."

Page 149, line 15:

Delete "that is required by the language of that Act"

Page 161, line 13:

Delete "July 1, 1983" and insert "July 1, 1984"

ALASKA STATE LEGISLATURE - SENATE

COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

OFFICIAL BUSINESS

LETTER OF INTENT

It is the intent of the Senate Labor and Commerce Committee that the detailed commentary accompanying S.B. 246, House and Senate Joint Journal Supplement No. 11, be considered a comprehensive guide to the proposed new Alaska Corporation Code and as such should be amended and revised accordingly if any changes are made to S.B. 246.

The following narrative changes reflect the amendments adopted in CSSB 246 (L&C).

(At page 89 of the House and Senate Joint Journal Supplemental for April 8, 1983, the Official Comment to Section 388 should be amended to read):

Official Comment to ACC Section 10.06.388. ACQUISITION OF CORPORATION'S OWN SHARES; REISSUANCE OR RETIREMENT.

SCOPE: ACC sec. 388 specifies the treatment to be given redeemed or repurchased shares. They revert to the status of authorized but unissued shares unless the articles of incorporation prohibit reissuance. If reissuance is prohibited, the article stating the number of authorized shares must be amended to reflect the lowered number. Such an amendment of the articles must be filed with the commissioner. Shareholder approval of the required amendment is not necessary.

While sec. 388 abolished the antiquated accounting concept of "treasury shares", nothing in this section is intended to prejudice the present or contingent contract rights which pre-ACC corporations may have created in reacquired shares described as "treasury shares."

CHANGE IN FORMER ALASKA LAW: ACC sec. 388 is taken from GCL Section 510. It continues prior Alaska law (former AS 10.05.312-345) in requiring a filing with the commissioner of an amendment to the articles. It departs from and simplifies prior law by the elimination of the concept of "treasury shares."

(At page 123 of the House and Senate Joint Journal Supplement for April 8, 1983, the Official Comment to Section 455 should be amended to read):

Official Comment to ACC Section 10.06.455. CLASSIFICATION OF DIRECTORS.

SCOPE: Sec. 455 provides for optional classification of a board consisting of a minimum membership while taking steps to preclude the adoption of such a scheme for a corporation which has not eliminated cumulative voting from adopting such a classification scheme by amendment if shares sufficient to elect one director under cumulative voting oppose such amendment. Sec. 455 replaces former AS 10.05.186.

CHANGE IN FORMER ALASKA LAW: Sec. 455(a) is an enactment of Model Act Section 37 and works an important change from former AS 10.05.186 respecting the election to classify the board. Under prior Alaska law this decision could be taken by a bylaw adopted by the board without shareholder participation. The danger to minority share representation in such circumstances led to subsection (a)'s requirement that the election be taken in the articles, which insures shareholder participation.

Subsection (b) is new. Continuing the concern for minority share representation on the board of a corporation which has not eliminated cumulative voting, sec. 455(b) precludes amendment of the articles to classify the board if the number of shares voting "no" on the amendment or refusing to consent in writing would be sufficient to elect one director if voted cumulatively at an election of the entire board.

Subsection (c) is new. It permits board classification pursuant to the terms of a provision on the bylaws rather than the articles of incorporation. In order to classify a board under sec. 455(c) it is necessary that the bylaw have been adopted prior to March 24, 1982 with or without shareholder participation, and that it contains nothing which, were it a provision in the articles of incorporation, would offend sec. 455(a). Thus, all of the restrictions on the minimum size of the board, the minimum number of classes, and the terms of the director office set forth in sec. 455(a) limit the terms of any bylaw which would be effective under sec. 455(c).

HB 343 TITLE & SPONSOR SUMMARY 14:39 1/30/84 PAGE 1 OF 2
AMENDED TITLE:
AN ACT REVISING THE CORPORATIONS CODE; AND PROVIDING FOR
AN EFFECTIVE DATE

PRIME SPONSOR: HOUSE RULES COMMITTEE.
CO-SPONSORS:
CURRENT STATUS: 4/08/83 IN (H) LABOR & COM REFERRAL: JUDICIARY

HB 343 HOUSE ACTION 14:39 1/30/84 PAGE 2 OF 2

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/08/83	01	0791	FIRST READING -- COMMITTEE REPORTS
04/08/83	02	0792	COMMENTARY HSE JOINT SUPPL #11
			LABOR & COMMERCE
			JUDICIARY
			RULES
****	**	**	*** *** ***

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

MEMORANDUM

TO: Representative John Cowdery, Chairman
House Labor and Commerce Committee

Senator Richard I. Eliason, Chairman
Senator Labor and Commerce Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: February 1, 1984

RE: Transcript of joint hearing on
HB 343/SB 246 on profit corporations

Enclosed is a transcript made from the House Labor and Commerce Committee's tape of the joint hearing on HB 343/SB 246 held Monday, January 23, 1984. Catherine Walsh of this office typed it at the request of the code revision commission.

Any members of the House or Senate Labor and Commerce Committees who were absent from the January 23rd meeting may be especially interested in the transcript.

Since the House members had to leave for a floor session before the meeting was concluded, they may be interested in the testimony at the last of the transcript--testimony of Elizabeth Johnston of the Alaska Federation of Natives subcommittee on the bill and Irv Bertram, legal counsel for Alaska Airlines.

DR:chw

Enclosure

JOINT HOUSE /SENATE LABOR AND COMMERCE COMMITTEE
HEARING ON HB 343/SB 246--FOR PROFIT CORPORATIONS
JANUARY 23, 1984
8:30 a.m.

COWDERY: I'd like to call the Labor and Commerce meeting to order. It's January 23, 1984, at 9:50 a.m. (sic) 8:50 a.m. I'd like to note those present: Rep. Ueling, Rep. Pestinger, Rep. Koponen and James Cowdery. And I'd also like to note present Senator Mulcahy. The purpose of this morning's meeting is to have testimony on an act revising the corporate code. At this time I think that we would like to call on John Abbott and anyone that would like to testify sign in. The first one to testify that I believe I'd like to have is John Abbott. State your name and affiliation.

ABBOTT: Thank you, Rep. Cowdery. My name is John Abbott and I am the chairman of the Alaska Code Revision Commission. The code revision commission, for those of you who are unaware of this, was a Title 24 commission created by the legislature in 1976. It is comprised of individuals representing the Alaska Court System, the Attorney General's office representing the Governor, the Alaska Bar Association representative, representatives from both the House and the Senate, at this time, Rep. Charlie Bussell and Senator Patrick Rodey. Myself as an appointment of the Governor, as a layperson and Fred Brown as a representative of Governor Sheffield. We have one vacancy on the commission at the present time. Generally, the purpose of the commission is to entertain requests by the legislature, by any branch of government for that matter, to look into areas of statutory law of a technical nature that are in need of revision for any number of reasons including the fact that they no longer comport with the Alaska life, because we are a more sophisticated state, because they haven't provided for a number of years, that they are out of sync with the present needs of the law. The commission also entertains its own projects and has at any given point in time two major projects at least, plus a number of minor projects for consideration by the legislature. We have at the present time five major bills, some of which will be considered by the legislature this session, others will die and not get consideration. The bill in front of you today has been introduced by the Rules Committee in both the House and the Senate as HB 343 and SB 246. The two bills are identical in what they do and were introduced simultaneously for the purpose of consideration by both the House and Senate without the necessity of going through one and then going through the other. This is the practice the code revision commission has used for the past several years to expedite consideration of the bill. Myself, as chairman, and Jerry Kurtz who represents the Alaska Bar Association have been present on the commission during the entire

period of time the corporations bill has been considered and worked on, and we along with with other members of our staff and other commissioners are most anxious to meet with you or your staff to further explain the bill itself. It's a very large bill; it's complicated; it is a sophisticated bill. It determines all of the areas of responsibility which are taken on when a company seeks a corporate charter and seeks a privilege conferred by the State of Alaska. We have with us today Professor Daniel Fessler. He is a professor of law at the University of Davis, California, who has been the consultant on this bill since its inception and is one of the recognized authorities on corporate law in the United States. He will give you a thumbnail sketch of this bill and attempt to answer any questions that you may have concerning the specific technical aspects of the bill. The bill was the result of concern on the part of members of the code commission, both in private practice and in the other areas represented by the code commission, that some work needed to be done because the basic bill had been, as it were, an off-the-rack bill adopted from Oregon statutes at the time of statehood. Whether or not it was appropriate to Alaska even at the time it was adopted leaves some question. Certainly the existing law does not in any respect really meet the needs of Alaskans for incorporation. The new bill attempts to set out and define all the relationships between the various principals or players in the corporate status. So that one need only look at this bill to determine how you become a corporation; how you act as a corporation; how you terminate as a corporation. The bill that's presently before this committee was introduced, I believe, on April 9, 1983. Since that time, some changes have been made as a result of public hearings held by the code revision commission and input from various different organizations concerning some of the specific features of the bill. And as a result, the code commission will be making some recommendations for changes to the committees considering this bill. The work on sections, written comments to the bill and requests that certain changes be made. These changes address concerns raised by Alaska Airlines, one of probably the state's largest corporations, a special subcommittee of the Alaska Federation of Natives that has worked for quite some time with the code commission, has graciously, generously provided its own time and expertise and its legal staff in various of the corporations and has provided us with some good and needed amendments to the bill. Those, too, will be entertained. We also have worked very closely with Mr. Willis Kirkpatrick, deputy director of corporations in the Commissioner of Commerce office. And he, too, has recommended some changes that if made will reduce any financial impact on his office. So that it was the intent of the commission to draft a bill that would have no financial impact on the Commissioner of Commerce office or the director of corporations. So you will be getting some recommendations for amendments pursuant to our discussions and the exchange of ideas of Alaska Airlines, the Commissioner of

Commerce and the Alaska Federation of Native's subcommittee. I think without further ado I'll ask Professor Daniel Fessler to come up and give you a brief summary, an overview of what the bill does. If there are any questions, we also have signed up as witnesses, Commissioner Jerry Kurtz, Fred Brown to provide additional testimony or comments or, in the event you have some questions, we'll do our best to answer them for you. Thank you.

COWDERY: Thank you. I'd like to note that Senator is present. And at this time, I'd like to have John Abbott . . . then the next one up is . . .

RODEY: Rather than invite any comments, I think that Professor Fessler can do a better job of explaining the material than anybody else I know. Mr. Chairman, I'm the Senate member of the code revision commission, and the code has labored long and hard, particularly Professor Fessler and Chairman Abbott on this particular legislation. And I think it is worthy of the committee's very serious consideration. It is in final form, but it is very near passage.

FESSLER: Gentlemen, I am a school teacher at the University of California at Davis. And the subjects that I teach are contracts and corporations. Four years ago I was approached by the commission and asked if I would be interested in serving as a consultant to first survey the content of existing Alaska statutory law in the business field, and then work with the commission should it determine that there was need for revision. The survey of existing Alaska law was undertaken, and the conclusion was arrived at that the existing Alaska law was not the law that the state would most like to have its citizens functioning under. The law that we currently have in Alaska was adopted by the legislature, the first legislature after statehood, by adopting the then Alaska, excuse me, the then content of the Oregon corporation law. The Oregon corporations law in turn was taken from something called the Model Business Corporation Act, which act was put out by the Business Law Section of the American Bar Assocation in the early 1950's. By the time Alaska adopted the Oregon law, the Oregon legislature was on the verge of changing it. And, subsequently, the Oregon legislature has changed much of the content of the law. So, and this is because the model act, which was the basis of the Oregon law and then became the basis of our sort of stepchild has been in the process of evolution. The commission also noted that in the intervening near quarter of a century, that there have been significant changes in corporate law in three of the most critical jurisdictions to which other states generally look for guidance. And that is that New York had rewritten its corporations laws in the late 1960's; California undertook a similar project in which I was involved on the working committee with the legislature in the mid-1970's. And finally the model

act itself has been recalled and is in the process of a three-year study in which a couple of years from now will result in further recommendations. So there have been changes with regard to the theoretical basis of the law. Further, there are changes in Alaska in a quarter of a century. Changes which suggested that it might be time for the State of Alaska to have a corporation law that is a product of its own deliberate creation, rather than something borrowed from elsewhere. The result of this four-year effort is the bill which you have in front of you. And with the exception of some minor amendments which resulted in final meetings with representatives of the Alaska Federation of Natives subcommittee and various other private parties who have testified before the commission that the bill which the commission is seeking your legislative approval and enactment is now in final form. In addition to the bill, the commission has prepared very lengthy commentaries. These commentaries, hopefully, are designed to explain to members of both the House and Senate the origin of each and every provision of the act, to share the value judgments which caused the members of the code revision commission to recommend that particular content, to disclose to you to the extent that the statute is borrowed or modified from statutory law in other jurisdictions the specific genesis of the law, and then to state what change would be made in existing Alaska law were the legislature to adopt this bill. In addition, your staffs will be furnished, and the members will be invited, to work with another document. I apologize for the prodigious size of these documents, but this document is useful in that if an individual is familiar with the provision of existing Alaska law, this works backwards from existing Alaska law, section by section, and shows how that provision would fare should this particular bill be adopted. So those study aids hopefully will be useful to staffs and will be useful to the various committees of the legislature. What I had hoped to do this morning was to share with you some of the value judgments which the commission has made and which are embodied in the multiple provisions of this act. One of the major disadvantages of existing Alaska law is that if an individual were to pick it up seeking to know the content of the law the individual might follow, existing Alaska corporate law is totally disorganized. Provisions which may relate or surround the problem are scattered throughout the bill. One of the initial impressions that you will gain from looking at this bill is that it is very tightly organized. it is organized by major topical sections with the hope that if an individual has a problem with the formation of a corporation, all provisions of the act that deal with corporate formation will be found in Article 3. If the issue relates to corporate finance, Article 4 contains all the relevant law. So that, in essence, the commission directed me to draft the value judgments which it had made very much in the form of a cookbook, but hopefully getting the ingredients in the right order so that it should be something which an individual, whether

a layperson or a practitioner desirous of knowing the content of the law, will be able to find it. And once in the right area, will find all of the related provisions of the statute rather than have them lying around in land mines some 25 to 30 credit pages later, which is the rather dubious distinction of the current provisions of chapter 5, Title 10. Now the areas wherein significant value judgments are found would be Article 3 which deals with the formation of a corporation. Some states like California have attempted to say that if you are going to form a corporation in California, certain major value judgments have been made by the legislature. And the price for forming a corporation in California is that you comply with the value judgments. They would include such things as the requirement that there be cumulative voting for shareholders; that the board cannot be classified; that the directors can only serve one-year terms. California is a statute which is very pregnant with value judgments that sort of tell citizens this is the only way we are going to permit it to be done. Now the reason that this statute does not do that is first there was a fundamental philosophical disagreement that the State of Alaska should be in the business of making value judgments about how people who enter in the corporate form ought to behave. The value judgment which took precedence over that was that people should be informed by reading the statute what the possibilities are. And that they should be allowed, knowing what the possibilities are, to make their own decisions as to whether there will be cumulative voting; how large a board they will have; whether they will classify the board; whether the board will have terms that exceed one year. But that those value judgments should be layed out, and they are layed out in Article 3 in a manner which an individual determining to form a corporation can quickly see that these are the basic things with which the individuals desirous of entering this association should come to some agreement. Further, there is the advantage that we say that if you are going to make these fundamental decisions, you must put them in the articles of incorporation. So that if a person who is a potential investor desiring to know what the lay of the land is for XYZ corporation need only obtain a copy of the articles of XYZ corporation, and that individual will have a definitive statement of the basic value judgments which citizens forming that corporation have made. And there is a further problem, while California has attempted to make value judgments and impose them on citizens, the scandal is that people then simply leave the state and foreign incorporate. They come back as Oregon corporations. They come back across the state line as Nevada corporations. And so it was deemed that this was probably not the best thing to attempt, and that the attempt in the state that's pursuing it isn't working. So in that respect, although you'll see the California corporation code has had a significant impact on many of the provisions of this recommended legislation, the basic thing that the California corporation code is known for

is not carried forward here. It is possible to form a corporation in Alaska which is every bit as straightlaced as a corporation mandated under California law. That is a value judgment that citizens can make. It is not a value judgment that the legislature would be making for you. Now with regard to Article 4 on corporate finance. Here Alaska law was deemed to be flawed in a manner that is true of virtually every state. Lawyers, at least in my experience of being one and teaching others for a longer period of time than I like to recollect, generally make a career decision to go into law sometime after they learn that they have no aptitude whatsoever for arithmetic, let alone mathematics. The consequence is that most lawyers cannot, including myself, balance a checkbook. And lawyers are horrified by concepts of accounting. Therefore, over the years we have sort of developed our own accounting techniques. Because over the years we have had perhaps a bigger voice than we should have whispering in the ears of elected representatives and people, our versions of the myths of accounting rather than the accounting profession have begun to creep into the law. Alaska's current corporation law suffers from perhaps a terminal case of lawyer-accounting terms. One of the major things which corporations must worry about if they are to behave in a socially responsible manner, since they are given the presumption of limited liability. If I form a corporation, my creditors and even victims of calamaties such as torts must look only to the assets of the corporation, not to my own personal assets. Circumstances are important to the state, all people who come into contact with corporations. Well, then what assets must I leave with the corporate entity? What accounting principles must I observe in keeping the books of the corporation? The law has always been interested in this question. But the problem is that we allowed a gulf to grow between what the law seemed to be suggesting and what accountants were telling people are the intelligent way to parse through matters and to resolve them on the books and records of a corporate entity. California broke new ground in 1977 when it said that it would abolish all concepts of legal accounting. It would substitute some straight, common sense ideas as to when a corporation could pay a dividend. A corporation could pay a dividend within the discretion of the board of directors at any time so long as the assets of the corporation equal the liabilities of the corporation with the protective ratio of $5.00 in assets to every $4.00 in liabilities. A very simple concept to understand. There are no longer reduction surplus, earned surplus, all of the notions which lawyers have invented over the years. It's a very simple idea. If we are going to make a distribution, whether we make it in money, whether we make it in corporate property to shareholders, we have what is called the ratio of assets to liabilities which must be maintained. This bill adopts what is turning out to be one of the most successful decomplications of corporate life which was done in California. It also follows both

California and now New York in saying that in complying with the law, that so long as a corporation keeps its books and records in a manner which reflects generally accepted accounting principles, he has complied with the law. So we leave to the accounting profession and not to my brothers and sisters-in-law the determination as to what is the best way for that craft and science to proceed to advise. So accounting is left to accountants, but we make a simple value judgment to protect people. It's this ratio of liabilities to assets. Five dollars in assets to four dollars. You can make any distribution you want so long as you do not go below that floor. That, I think, will make it much easier for people determined to comply with the law to do so and make the detection of those few people who are determined to evade the law much easier. Now with regard to Article 5, a major question has been in existence for many years. What are the proper prerogatives of shareholders as opposed to the directors and officers of the corporations? Is it to be an Athenian democracy, or is the better model that you elect the directors and you vest control and management of the corporate entity during the period of tenure of their terms in the individuals? Article 5 has a default provision that the powers of control and management of the corporation are vested in the board. However, a corporation may by the terms of its articles modify this presumption and confer greater prerogatives upon shareholders. If it is going to do that, however, it must do it by an affirmative provision in the articles of incorporation. The thrust of Article 5 is to ensure that shareholders have acess to reliable and up-to-date information as to the condition and record of accomplishment or failure of the people they have elected to be the directors of the corporation. You will notice that for the first time we would standardize notice requirements. Under current law, one of the defects is that we have no standardization of notice requirements. For certain matters, 30 days' notice is sufficient. For others, 40 days is required. Under this bill, notice requirements are standardized, and it should make people who are determined to evade it much easier to ferret out. So again the act reflects the commission's value judgment that the basic policy or power between shareholders on the one hand and directors on the other that the act should specify what should be that ratio or relationship if the parties don't wish to change it. But if they do wish to make a different arrangement, if they put it in the articles they are free to do so. Article 6 deals with the prerogatives and responsibilities of officers and directors. Here I think you'll be very pleased to see that for the very first time we have a statutory definition of the duties of care and duties of loyalty which directors and officers are expected to obey. At the present time in Alaska, it would be a matter of conjecture what the Alaska Supreme Court would eventually say with the content of those important duties. This makes it difficult for an individual who is embarking upon the career of

being a corporate director, perhaps out of accommodation to friends, and many small corporations know exactly what it is I am expected to do, a peril of later on being held accountable for not having done it. Another important feature of this bill which has received wide support by those people who have read it, is Section 435. Section 435 for the first time in Alaska subjects shareholder derivative causes of action to statutory regulation. Alaska presently has the dubious distinction of being one of two American jurisdictions which has no statutory regulation of the derivative suit. This is a suit in which a shareholder comes forward and brings a cause of action that alleges that not I, the shareholder, have been injured but that the corporation has been injured. And I as a shareholder appoint myself to litigate this matter on behalf of the corporation. The tension between the prerogatives of the incumbent directors of the corporation to make that decision and to control that litigation and the rights of a shareholder to say that I am going to elbow my way into the pilot's seat in this plane for the next several years, is a very important one because it may be that there is corruption at the board level. Maybe there is not. I urge your very careful attention to Section 435 to point out that I believe you would find that you would go from having no statutory regulation on this important subject to having one of the most balanced, comprehensive regulations of the subject in this country. Section 435, therefore, is an important innovation. Article 7 is rather technical in nature. It deals with the question of how we go about making amendments and changes to the articles of incorporation. Again, it standardizes procedures and forces the attention of those who wish to change the basic format of a corporation into doing it by way of amending the articles so that there is regularity. And again so that potential investors interested in the corporate entity can look at the articles of incorporation and have not only an historical impression of what the corporation was like in yesteryear, but an accurate, modern impression of where the power within this corporation is currently being distributed. Article 8 is going to be a matter of great interest to your constituents. It deals with what are called organic changes. In essence, mergers; consolidations; share exchanges; sale of all the corporate assets other than in the usual course of business. As each of us is aware, the United States right now is going through what is called a merger craze. Corporations are appearing to be attractive takeover candidates by individuals who may or may not have legitimate desires or desires which would advance the interest of shareholders should they be in a position to seize control of the board of directors. At the present time, Alaska law is very unclear as to the respective roles of incumbent boards as opposed to shareholders. And, therefore, Alaska corporations look vulnerable to individuals who are determined to launch a takeover bid. Article 8 clearly defines the prerogatives of existing management and the shareholders of a corporation with respect to

framing the content of one of these organic changes and taking it through the shareholder approval level. Essentially, what Article 8 does is vest with the existing board the power to frame the terms of a merger, a consolidation, a share exchange, or sale of assets in an extraordinary transaction. And then require two-thirds approval by the shareholders of the corporation in order to approve. This should bring Alaska corporations into line with California and New York and other major states which have moved to protect the integrity of their corporations from being the victims of an easy takeover in which the will of the shareholders and existing management would simply be subverted and brushed aside. Reform needs to be taken in Alaska in this area. I would hope that you would be satisfied with the commission's recommendations which are embodied in Article 8. Article 9, dealing with dissolution, is very important because of the changes that have been made in the federal bankruptcy law. It coordinates with modern federal bankruptcy law and creates for the Alaska judiciary a far more sensible approach to protecting the rights of creditors as well as the rights of senior shareholders in the event that a corporation goes to either voluntary or involuntary dissolution. It also contains some very innovative, and I think, useful provisions that deal with giving shareholders who are being oppressed or frozen out of the role of management or income where other shareholders are being afforded such prerogativees a right in the final analysis to petition for involuntary dissolution in order that the grievance which would have to rise to the level of a very serious grievance to get the attention of Alaska courts. Again, these are not new ideas. They might be the final decision of the Alaska Supreme Court if someone were to spend $100,000 litigating that. But if you enact this bill, all Alaskans with only the expense of supporting their government will have presumptive answers to these important questions. Those are the basic provisions and value judgments which underlie this bill. Both myself and the law students who have assisted me in working with the technicians in this area will be available to any member of either body and staff members. I am prepared now to answer any questions which any members of the committee may have.

RODEY: Mr. Pestinger.

PESTINGER: Thank you, Senator Rodey. Professor Fessler, to me this is a really excellent articulation of the rights and duties and obligations so that it gives our larger corporate participants a clearer understanding of where they stand, which is so essential to doing business. But what I am wondering about, though, is what burden this approach may place upon the smaller mom and pop family corporation. To me, if I had such a business I could not engage in corporate law comfortably without the assistance of counsel. Do you think that this packet necessitates the assistance of counsel as almost a mandate now

for anyone that does business in the corporate form? In other words, I am wondering, I see the need for this in California and New york, and I see the need for this in Alaska with that level of corporations that we deal with. But how about that other level that are just kind of, they get their articles punched out and they ask their lawyer to help them with the minutes, and they look at the Supreme Court that says that the only way you pierce the corporate veil is with an indicia of fraud. So they are using a whole different standard of operation. I mean this is really substantial. Do you think it might have a negative effect on that small family business?

FESSLER: In terms of cost of doing business in the corporate form, I think it will have the opposite effect. Right now, many small businesses probably are coming into corporate existence without the assistance of counsel at all. People are going out and buying little kits for $49.95 that contain forms that they fill in and send to the state. They are oblivious to the legislature's requirement that they file biannual reports to the legislature. They are not doing so. They are in danger of having their articles and their corporate status dissolved by the commission because the legislature has prescribed that as the penalty for not filing reports. And one of the basic difficulties with this situation will always be people who, to use your example, a two-person corporation, decides for one reason or another that they should do business in the corporate form, and then having done that they forget about it. They don't observe any of the formalities of corporate existence. They don't keep separate books and records. They don't segregate their assets from the assets of their corporation. And they don't file reports. Now they would be in trouble under existing Alaska law, sir. They will be in trouble under this bill. In the sense that when the State of Alaska confers a corporate charter on someone, whether or not they have sent $49.95 off to somebody who advertises in every airline magazine, that you don't need a lawyer and you, too, can be a corporation and somehow you will pay no income tax and like me you will turn out being rich. The only person that's probably ever done that is the individual who wrote that book, because he is getting rich by all of the people who write in and send their $50. I think this is the problem you'll want to keep in mind. What I am saying to all of you is that this bill is designed in such a manner that, although it is a complicated subject and I wouldn't suggest anyone could write a corporation code that could be so obvious that an individual could make casual reference to it and never need an attorney so they could guide themselves through the world of maintaining a corporation, this bill does organize the law. It does restate the law. It does have comments which are designed to assist people in understanding the law. Not one of those features can be said about current Alaska law. So there will be a problem of people who incorporate and thereafter regard it as a

little flag of convenience which they'll fly so long as it's useful and which, on the day that it isn't, they'll just forget about it. That will continue to be a problem not only in Alaska, but in California. It's true in Nevada. It's true in Wyoming where I was reared. It's a major social problem we have. People who incorporate with no idea that there are responsibilities as well as privileges for taking on that status. Now, fortunately, the federal tax law which in years gone by caused people to believe that they could pay less income tax by somehow becoming a corporation, have because of movements undertaken first by the administration of President Carter and now of greater emphasis during the administration of President Reagan. As you know, the marginal income tax on individual income has now been reduced from a maximum of 70% now to where it is very close to the top corporate, there is only a two percent spread. But I still find that many people believe that they are going to get some tremendous tax benefit by becoming a corporation. What they do, of course, is eventually wind up in a hellacious tax audit. They find and the individual who wrote the $49 book and gave you the form never accompanies you to that audit because he is living in Bimini.

RODEY: Representative Koponen.

KOPONEN: I was interested in Section 488 which does create a liability for the officers of the corporation, and I'm not up on contract law and one of your notes, in terms of any written contract to modify or eliminate the liability created by this section, what happens to that liability, is it transferred or . . .

FESSLER: Let me explain to all of the members. Section 488, gentlemen, appears at page 67 of the draft in front of you. Section 488 relates also to Rep. Pestinger's question. One of the reasons that people incorporate is to achieve from the State of Alaska a presumption of limited liability. Now this presumption of limited liability means that to all individuals who do business with the entity which is incorporated, they are to look only to the assets which the individuals who incorporated have left with the corporation to satisfy their claim. This is true whether those individuals have made contractual relationships with the corporation or whether they have entered into an accidental injury situation, a tort. Section 488 is called secondary liability of directors and officers. It was reflected after lengthy discussions among members of the commission, a feeling that for small creditors of corporations, employees, tradesman, materialmen, suppliers, individuals who generally have a credit relationship to a corporation which is not reduced to writing, that these individuals are the year in and year out, these are the individuals who pay the price for corporate existence. When corporations are run so long as it is

convenient to the individuals who find they are the owners and then when they are not, they are simply abandoned. Large institutional lenders, bankers, insurance companies, large contracting creditors, will get a lawyer and go out and they will quote, attempt to pierce the corporate veil. Alaska's common law on the circumstances in which it will disregard limited liability is found in only three cases since statehood. Those cases do not hold out great hope that in the absence of fraud in a transaction that the court would do. But if you have a claim for $1,000 in wages owed to you, there is no lawyer who is going to be able to successfully launch that lawsuit. If you are an individual who sold fish to a restaurant which has now gone out of business, and the owner has marched off leaving you unpaid and it's a $43,000 account receivable, you cannot get any modern recourse at all. Section 488 for the first time to a very limited extent shifts that presumption. It says that the officers and directors of a corporation to the extent that its assets prove insufficient to cover its liabilities, have a liability to a class of individuals who are defined as employees of the corporation as materialmen, tradesmen, etc., people who have extended credit on open account for up to $25,000. Now this liability, sir, is not inevitable. The statute clearly says that if I have a corporation and you have a fishing fleet, and you are supplying my incorporated restaurant with fresh salmon, that you can be approached by me saying I would like you to agree in writing that in the event that this business folds, my restaurant, you won't look to me for the liability which exists under the law. It would be a liability of up to $25,000. That's all you could ever recover under this. So for the first time there would be an incentive in dealing with the smallest people in the marketplace who are the recurrent little mules on which this business of limited liability is ridden out, year in and year out, that these people would have some relief and that there would be an incentive to talk about this question of limited liability. And then if I can convince you that you should give me a relaxation, a waiver of that, that's fine. But in the absence of a contractual modification, I would have the right to this.

KOPONEN: The contract then is between the creditor and the corporation, not between the corporation and its directors.

FESSLER: That's absolutely right. It's between the corporate debtor and its employees, between the corporate debtor and its materialmen or suppliers.

KOPONEN: It's a very useful section. I know there is a major business problem in the Fairbanks area, these collapsible corporations.

FESSLER: Mr. Chairman.

COWDERY: Would the effect of this, would it discourage say qualified managers from getting into taking over a trouble corporation that was having some problems, maybe through a lack of expertise in the past, would this discourage someone from coming in . . .

FESSLER: Well, it would certainly give me pause. Now there are two things relevant, sir, in the bill. First, if the corporation is in a process of dissolution, one of the ways to avoid dissolution under the provisions of this bill is for a court to appoint interim directors in order to resolve deadlocks. Those directors are not subjected to this type of liability. So the director who is brought on board to try and straighten things out by court order is the director who is exempted by the reference in the bill to other than the directors who are appointed pursuant to. Now that is one protection. Another factor, of course, would be that if a corporation is in trouble, and I am going to step in and attempt to save it, one of the things I'd want to do is be aware of Section 488 and go to the creditors and say, I am willing to come into this picture only if you are willing to contract to exempt me from any personal liability that I would incur. Yes, sir, it would be something that in the hypothetical you advance an individual would want to take into consideration.

RODEY: If I might interject, that would apply to directors but not to employees of the corporation?

FESSLER: It has no application to employees at all. In fact, I should tell you that this appears to be very novel, and I want you to understand that it has a great quality of being novel. But New York has never given total limited liability to anyone. And if anybody tries to come to you and say, my God, if we adopt this the wheels of commerce will grind to a halt. Since 1843 when New York adopted the first general incorporation statute, the ten largest shareholders in a New York corporation are subjected to liability in the event the corporate assets prove insufficient to the claims of all employees. New York has never stricken that from the books, and it has not prevented the development of the State of New York as a center of commerce. What we did here, was to say that in many Alaskan corporations we didn't want to have the liability on the ten largest shareholders because that might include many very passive people who really have nothing to do with the way in which the business was run. So put the liability on the people who are being paid, the officers, the president, and the secretary and the treasurer. They are the defined officers and the directors. They are not passive, or they oughtn't to be. So that is how we would differ from New York law. And we have broadened the exposure, because in New York the exposure is limited to claims of employees, and we broadened it to include the claims of materialmen and

suppliers.

COWDERY: In the past we have had some of the Native corporations who have had financial troubles and hired two people to direct them and turn it around. And this is an area I was wondering about, if that would be . . .

FESSLER: I appreciate the question. It is an important matter. The AFN subcommittee has looked into this question. I think that at that level, or at the level of any large corporation that is involved in an attempted turn around, that there would be awareness of the provisions of Section 488 and that there would be appropriate advice from counsel to deal with the subject. That would be my hope.

BROWN: Mr. Chairman, may I suggest . . .

RODEY: Mr. Brown.

BROWN: I am Fred Brown. It's nice to know that Labor and Commerce [garbled] . . . The one example you might think of is what would really happen . . . the example might be one of the most prosperous, currently most prosperous Alaska corporation is Alaska International Air. Originally, that was Interior Airways based out of Fairbanks. They expanded too fast for the building of the pipeline, which didn't get built fast enough as many Alaskans remember. What happened then was, and this sort of thing is really what happens when a corporation gets into trouble in most cases, and that's why I'm raising this as an example. What happened then was they went into reorganization and the creditors and shareholders hired Mr. Duncan McClaren, a legend in the Canadian air industry, a great manager and a legendary worker [TAPE CHANGE] . . . Section 488 to take care of that problem.

RODEY: Thank you, Mr. Brown. This is a problem currently in Alaska. It is possible for individuals who incorporate to run up all sorts of bills, not pay its creditors, and then just move away from that corporation, will eventually be resolved by the state, set up another corporation and then bilk a lot of small tradesmen who work for the corporation, creditors, what have you, move on. You can do it in serial fashion. It is currently being abused presently in the state. Mr. Abbott has kept an eye on this, has had a practice in that area of the law for 15 years. But it is currently a problem. There are a lot of honest Alaskans who lose money because of this problem.

FESSLER: And I think the problem is also that it has a broader ramification. To the extent that citizens get the impression that there are tricks out there for people who are in with lawyers, if you will. It demeans my profession of which I am very proud. We were never the source of this value judgment,

that people could pull this type of thing. But to the extent that people believe that if you quote, know the law, you can do bad things and get away with it. You can do hurtful things and have no accountability. It creates an impression of the law which none of us have an interest in seeing furthered in the minds of citizens. Because the minute one law becomes suspect like this, the cloud falls over all law. And so this is probably the most important value judgment about corporations. They have done great things for us. But the idea of a one-person corporation, and the only person that probably has pulled off that role real well in history, was Louis the Fourteenth and a tremendous price was paid for that notion.

UEHLING: If we can kind of go back to the section regarding the foreign corporations, maybe you could explain what the Alaska Code Revision Commission took as far as an approach as a comparison of what occurred in California regarding the foreign corporation situation there.

FESSLER: Because California has this basic social problem that in order to evade the restrictions on long-term director terms or in order to have a board classify itself, most important California business, most corporate business at the moment in my state, is foreign incorporated. Runs to a different jurisdiction and comes back home and says we've been gone 20 minutes, and we are now a foreign corporation, we're a Delaware corporation. The basic social problem we had in California when we approached the revision of the legislation was to say, well, will we give up these value judgments which we've had for many years. And the bar association, frankly, and the banking industry thought that's what was going to happen. That we were going to get a corporation law that looked more like that of other states. What the legislature did, interestingly enough, and I think it remains to be seen because it's costing us a lot of money in litigation in front of the federal supreme court, was to say, no, if a corporation has a certain percentage of its employees in California, does a certain volume of business in California, has a certain amount of its ownership owned by shareholders in California, then even though it purports to be an Alaska corporation or a Delaware corporation, we're going to say that it's merely a pseudo foreign corporation, and we're going to apply California's laws to it. Now the Arden-Mayfair litigation is pending in the California Supreme Court where it has been on hold for nearly three years. Delaware's courts have already litigated the Arden-Mayfair case and come to the conclusion that California was attempting to deny full faith and credit to the public acts of a sister state. Ultimately, the federal supreme court will have to decide whether California's notion of pseudo foreign corporations is an idea whose time has come. The judgment of the commission was that there are no pseudo foreign corporation concepts in this bill. Instead, we increased the

reporting obligations on foreign corporations to keep us informed of the nature of their activities. We greatly increased the circumstances under which it's clear that they must seek a certificate to do business in the State of Alaska. But we have not attempted to interfere with their internal control and management such as California has done, because we haven't done it to our own people. We haven't said you have to have a board with one-year terms, that you can't classify the board, that you have to have cumulative voting. Our default mode if you don't say is, you do have one-year terms, if you do have cumulative voting and you don't have board classification. But we didn't feel that it was necessary to get involved in that position. But later on in what may be five or six years as you see the outcome of the Arden-Mayfair matter, and then if you decide you want to adopt certain similar rules, that would be an appropriate time to do that. But there is nothing here now that contains that.

BROWN: At least some of the members of the commission think the Delaware view is going to prevail in the state supreme court, and that's one of the reasons why the provision is written that way.

RODEY: Thank you, Mr. Brown.

UEHLING: This is a follow up question. And in just sort of reading through this I got the feeling what would be the situation like if you took a state like Delaware where we had a situation where companies are going to incorporate ther because it's a very pro-management kind of situation, where in California it's very pro-shareholder, the shareholder is a completely different situation, how does Alaska rate on that spectrum? Would they be considered a very pro-management situation?

FESSLER: No. The default provisions, ever since I learned to use the personal computer, I've picked up the jargon, excuse me. The provisions that are in place if you don't say otherwise of the Alaska statute today, because it's a version of the early '50's model act would today be called a pro-shareholder jurisdiction. And the provisions which would lock into place in the absence of agreement that they be otherwise under this bill are also pro-shareholder provisions. But so that Alaska would in the default mode line up looking very much more like California than Delaware. But it would be possible for people to make an intelligent and informed decision to form a very, very management oriented, reduced role fc shareholder corporation, not going as far as Delaware has gone. For instance, a good example in Delaware, it is possible that the board of directors would have the exclusive power to amend the articles and bylaws, and the shareholders could be ousted from any role at all. That would not be possible in Alaska. It isn't possible under current law with regard to the articles. It would not be possible with

regard to the bylaws should the legislature enact this bill. So it continues to leave Alaska law with most other western jurisdictions as having a pro-shareholder bias, but not going nearly as far as California.

RODEY: Are there other questions from members of the committee? If there are . . .

FESSLER: I'll remain in the room, Mr. Chairman, in case anyone does have any questions for me, but there are other witnesses desiring to appear.

RODEY: The next witness is Willis Kirkpatrick, the director of the division of banking and securities.

KIRKPATRICK: Mr. Chairman and committee members. My name is Willis Kirkpatrick. I am director of banking and securities for the State of Alaska. I'd first like to say that we have appreciated the opportunity to join with the commission as a participant in discussion in their work. I believe that any of the concerns the state has had as far as the administratio of this new code, the commission has known up front as to what the problems we've had. One of the things I'd like to point out is that what I am excited about in their work is that in a present situation where we have an old Oregon law, in a situation where we have very little, if any, state common law court cases the administration of the provisions of the Alaska Business Corporations Code as it stands today is somewhat suspect in some of its legislative intent. And to determine legislative intent, we go back to Oregon law, we go back to Oregon cases, we go back to the sparse official comments under the model code. With the passage of this bill, I think that our work as far as working with the corporations in maintaining their files is going to be a whole lot easier because of the official comments alone. Everything has been addressed. I would suggest that in considering the passage of this bill, that they make part of the record the official comments as to the new law. There is only one particular area that I have a problem with, and that is in Section 733 on page 127, in the filing of foreign corporations to do business in the State of Alaska. On line 7, beginning on line 7, it requires that together with a certified copy of its articles of incorporation all amendments to the articles . . . In other words, what they are saying here is that one of the provisions for a foreign corporation to qualify to do business in the State of Alaska, is that it would have to file its articles with the state and any amendments to those articles. In a hearing last session, we brought this up and I believe, you'd have to check with the code revision commission on this, but I believe it was agreed upon that they would reconsider that requirement to file articles. At the present time articles of foreign corporations are not filed with the state. We find that

some of our sister states, those that do have this provision, are looking at dropping them. I think the last one we've heard from is Texas. Now I don't believe that it is going to create any hardship to anybody in the State of Alaska that wishes to find out the substance of the articles of a foreign corporation. First of all, if they are looking for the officers and directors of the foreign corporation, we can look at the application they file with us giving us that particular information. If they do want a copy of the articles of incorporation or the amendments to the articles of incorporation of a foreign corporation, the place that would have the most current filing would be the state of domicile so that they are available. We would be more than happy to assist anybody that wanted that to find out the proper procedures to obtain those records. With my understanding that this provision, that the code revision commission had no particular problem with that being dropped, the fiscal note that I prepared was zeroed out. If this provision stays in, I am going to ask for a revision of the fiscal note because one of the problems we have now is just file maintenance. The biggest problem in file maintenance is amendments to articles. We receive a great number of amendments to articles every day, and one of the things we have to do is that we just don't file the amendments. A lot of times we have to look back through the files to see what the prior articles contain to see amendments are consistent. If nothing more than article order. That is the only comment that I have as far as any changes are concerned, and I am sorry I don't have an amendment prepared, but I would be most happy to. I would replace that word with a certificate of compliance executed by the officer of domicile, or the official of domicile. I am open to any questions.

RODEY: If I might ask either Chairman Abbott or Professor Fessler to respond.

ABBOTT: Yes, Mr. Chairman. We had previously agreed with Mr. Kirkpatrick that we would make that change. Unfortunately, consideration of this matter came up after the bill was printed. So it is the position of the commission that this requirement should be deleted when it was brought to our attention that it would serve no useful purpose and would impose an additional fiscal burden on the commissioner of commerce. We are in complete agreement that the provision should be deleted, and there should be no requirement to file foreign articles or amendments.

RODEY: Thank you, Chairman Abbott. Mr. Brown.

BROWN: On behalf of the commission, I am sure they would agree, it would be very nice if Professor Fessler were involved in structuring the amendment that the committee might be interested . . .

RODEY: That's a very good suggestion, Mr. Brown. Professor, would it be possible for you to prepare that amendment?

FESSLER: Certainly.

RODEY: Mr. Kirkpatrick, continue.

KIRKPATRICK: One other item that my notes show. On page 138 and 139, on line 28 of page 138 it refers to the misdemeanor, and my staff says that it should be either a rated misdemeanor A or B to be consistent with Title 9. And the same with line 9 on page 139. That also relates to a misdemeanor.

RODEY: If I might address Chairman Abbott or Professor Fessler, are we in that case talking about a Class A misdemeanor?

ABBOTT: That's our understanding, Mr. Chairman. Yes.

RODEY: If again I could request you, Professor Fessler, to prepare the appropriate amendment based on current Alaska criminal law.

FESSLER: The question has been asked, has been prepared, is one of the amendments that Chairman Abbott was referring to is being transmitted . . .

RODEY: Thanks, Professor. Obviously we can't take any official action here. If there are any questions, we'll have this prepared and delivered to committees on both sides for their consideration and Senator Hulcahy and myself will explain it on our side and . . .

COWDERY: Could I, I was wondering what financial burden would this, if we adopt this to the existing corporation for the state, would it be to conform, is there any grandfathering situations . . .

KIRKPATRICK: If I understand your question, Mr. Chairman, as to what this is going to do to existing corporations. I think the last two sections of the bill pretty well cover a timely transfer of the act, and I think we are gong to have some problems just as far as educating the corporations in switching them over. I don't see that a lasting problem. I don't see it as much more of a problem than we have now with the new corporation that is coming on board. I don't think there will be an financial, I think the problem is going to be basically on the state's side as far as getting the information out and getting the transition going. I don't envision any

economic problem on the corporation. I am wondering about correspondence fees, but . . . I don't see it as a major problem.

RODEY: I just might add that the proposed draft was written to reduce legal fees by putting a great element of certainty in there so that a layman would have a much greater understanding of the law just by reading the law without having to consult a lawyer. So I think there will be actually a reduction of attorney's fees. Are there any other questions for Mr. Kirkpatrick? If none, thank you very much Mr. Kirkpatrick. We do have floor session now at 10:00 a.m. We don't go in until 11:00 o'clock on Mondays, as a convenience to the Anchorage legislators. Would you like me to stay?

ABBOTT: Mr. Chairman, if I might, there are only two other people that intend to offer brief testimony. That's Liz Johnston and Irv Bertram.

RODEY: In consultation with House chairman, I will stay here if Senator Mulcahy is agreeable and listen to the comments of Elizabeth Johnston and Irv Bertram and then report to you, sir. Thank you, gentlemen. Next, I'd like to call Elizabeth Johnston. It's always disconcerting to be testifying and have everybody leaving. But, Senator Mulcahy and I will make up for any absence of numbers. You have the floor, madam.

JOHNSTON: Gentlemen. My name is Elizabeth Johnston. I'm general counsel to Bristol Bay Native Corporation. Today I am here speaking on behalf of the Alaska Federation of Natives concerning the bill on the revision of the corporate statutes, the profit corporate statutes. You will be delighted to know my comments will be brief. This is because we have had extensive opportunity to present our concerns before the code revision commission. By way of background, I can tell you that in the summer of 1982, the Alaska Federation of Natives created a subcommittee. And the member of the subcommittee had both regional and village corporation backgrounds, and the committee was created to review and testify on the proposed revision. We met with the code revision commission on three separate occasions and made extensive comments. Based on the receptivity of the commission to our comments, and the way they were able to meet our concerns, in April of 1983 Janie Leask, who is the president of the federation, wrote in support of the proposed revision. And she commented specifically on the quality of the new legislative scheme, on the technical commentary which has already been brought up by some of the other people. But the fact there there is technical commentary to back up the new code which should help all of us in the absence of court cases to understand the legislative history. The fact there there is this kind of backup, we feel will mean it will reduce the legal expenses for

the Native corporations. We also articulated, commented on the finance section, that it was an important reform. Unlike Professor Fessler I can read numbers, and I still feel that it is a significant accomplishment. I was forced to. So finally the only final comment is that this is a bill which does strengthen the rights of shareholders and does strengthen the requirements of periodic reporting by corporations to their shareholders. It is a pro-shareholder document, and the federation supports the revision.

RODEY: Senator Mulcahy, do you have any questions for Miss Johnston? Thank you, appreciate your coming. Next I'd like to call Irv Bertram.

BERTRAM: I'm Irv Bertram, and I am assistant counsel to Alaska Airlines. We have looked at the bill and discussed it with the commission to raise some of the concerns we have. Our bylaws and articles go back to 1938, at least the articles do. The bylaws have been changed on numerous occasions. And we did have some concerns, but we found that the commission has made some changes that will assist us in going forward. We think that the bill is very well drafted and very good and will be of benefit to the state as well as being helpful to us. In my current position as house counsel, I have an opportunity to advise management or answer questions about Alaska law. I have practiced in Alaska for a number of years before joining the airlines, and you don't feel so foolish when you have something layed out in front of you in the law. You can look at it and say, well, this is how it's done. Currently Alaska law on corporations has a number of areas where simply there is no law. And so you really have to say, gee, I don't know, maybe we can do it and maybe we can't. It's . . . you're not sure how to do something. But I think the bill answers that. It does provide a very well layed out road map, so to speak, which I think will be very helpful not only to large corporations such as ourselves, but I also believe this will be helpful to the small mom and pop operations. There is that old trite saying that ignorance of the law is no excuse. However, when the law is a body of common law with very few statutory references, it makes it fairly difficult to know what's going on. On the other hand, once things have been layed out in a fairly succinct form that can be followed, it's true a lawyer may still be required and should be used. But I think most people will have a better understanding of what corporate governess should be once they have this body of law in front of them. So we think it would be good for the state. Alaska Airlines will have to make one change in its bylaws as a result of this. It doesn't address everything we wanted. But on the other hand, we think on the whole it is very good and we do support it and would recommend it. Thank you.

RODEY: Thank you very much, Mr. Bertram. Senator

Mulcahy, do you have any questions? I am aware of the . . . if there are no other comments, Mr. Brown.

BROWN: One comment, Mr. Chairman. There have been much comment about the comments, and the people who are supporting the bill who are now part of the commission, are finding that the comments are very important. I would hope an admission to the members of the Senate and the House in the event this bill is considered, that an action be taken similar to what was taken when the criminal code revision was passed. And that is there be specifically an affirmative vote on the floor of each house approving the comments or the comments as you may have amended in concert with the commission to make a clear and unambiguous legislative history. To really make sure those are available and that they are important legislative history, since they will be relied on by people in the private sector as well as scholars.

RODEY: Thank you, Mr. Brown. That's a very good suggestion. Obviously it's wise. It's an area of law we don't know much about in terms of importance, and whether a separate vote on that really means much or not.

BROWN: Take it from Alaska's only published legal historian.

RODEY: And a distinguished member of the Fairbanks bar. I think it is a wise suggestion to incorporate in the journal and to vote separately and affirmatively on the commentary. I think it is a good and desirable method of annotating Alaska laws. It is certainly preferable to allowing Michie Company to do it back east. If there are no other comments, the committee meeting is adjourned.

alaska federation of natives, inc.

411 W. 4th Avenue, Suite 1A • Anchorage, Alaska 99501 • Phone 907-274-3611

PRESENTATION TO THE JOINT SENATE AND HOUSE
LABOR AND COMMERCE COMMITTEE HEARING ON
SENATE BILL NO. 246 AND HOUSE BILL NO. 343
January 23, 1984

Mr. Chairman:

My name is Elizabeth B. Johnston. I am Secretary and General Counsel of Bristol Bay Native Corporation. Today I am speaking on behalf of the Alaska Federation of Natives concerning Senate Bill No. 246 and House Bill No. 343.

My comments will be brief. This is because the Federation has already been given the opportunity to present its concerns to the Code Revision Commission.

In the summer of 1982, the Alaska Federation of Natives created a subcommittee, with both regional and village corporation experience represented, to review and testify on the proposed revision to the profit corporation code. The Code Revision Commission received testimony from the Federation subcommittee on three separate occasions and satisfied its major concerns.

In April, 1983, Janie Leask, President of the Federation, wrote in support of the proposed revision. Her letter is attached, but I would like to quote from the last paragraph. "The proposed corporations code is a comprehensive and generally careful legislative scheme of good quality. Further, it is accompanied by a technical commentary which can serve to reduce Native corporations' extensive litigation costs. The finance section is an important reform, making possible some distributions from capital, but not jeopardizing creditor's security."

I would like to add that the proposed code strengthens the rights of shareholders and the requirements of periodic reporting. In other words, the proposed bill is a pro-shareholder document.

The Federation supports this revision.

Elizabeth B. Johnston

ELIZABETH B. JOHNSTON
Attorney at Law
For the Alaska Federation of
Natives Subcommittee

ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 1A • Anchorage, Alaska 99501 • Phone 907-274-3611

April 8, 1983

Mr. John W. Abbott, Chairman
Alaska Code Revision Commission
Pouch Y
State Capitol
Juneau, Alaska 99811

Dear Mr. Abbott:

I would like to take this opportunity to thank the Commission for fully providing the AFN with the opportunity to review and comment on the proposed Alaska Corporations Code. The AFN now supports the passage of Senate Bill No. 246 and House Bill No. 343.

The proposed Corporations Code is a comprehensive and generally careful legislative scheme of good quality. Further, it is accompanied by a technical commentary which can serve to reduce Native corporations' extensive litigation costs. The finance section is an important reform, making possible some distributions from capital, but not jeopardizing creditors' security. If you need us to testify on behalf of the Bill, we will do so.

Sincerely,

Janie Leask

Janie Leask
President

cc: Honorable Joe L. Hayes
Honorable Jay M. Kerttula
Honorable Walter R. Furnace
Honorable Charlie Bussell
Honorable Richard I. Eliason
Honorable Bill Ray
Honorable Al Adams
Honorable Don Bennett
Honorable John C. Sackett

HB

344

opinion

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Katherine Fanning
Editor and Publisher

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Lawrence Fanning Editor and Publisher 1967 to 1971
Alaska's Only Morning Newspaper • Founded in 1946 by Norman C. Brown

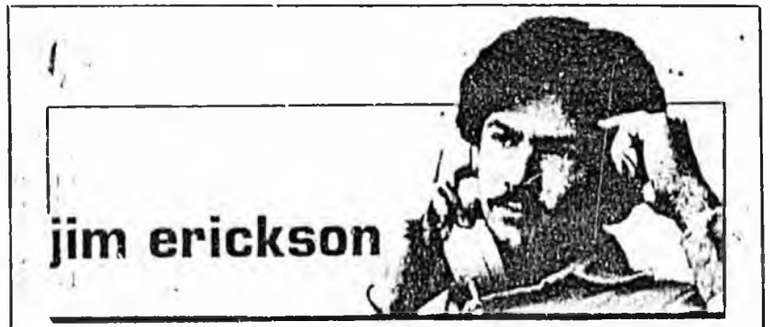
Dealing with 'lemons'

Public voices should ring clearly today at a teleconference hearing before the House Labor and Commerce Committee on a proposed state "lemon law" governing new automobile warranties. The hearing begins at 2 p.m. and deserves healthy public participation.

The law essentially would shift part of the burden of proof in dealing with defective automobiles from the consumer to the dealer and manufacturer. It provides that a consumer is entitled to either a new vehicle or a full refund if a manufacturer's defect renders it undriveable for 30 days or more during the first year of ownership.

The major effect would be to encourage dealers to stand up and pay heed to the products and warranties they offer. For the dealer who already performs warranty service promptly and efficiently, the impact of the law would be negligible, and in fact good for credibility. For the dealer who ducks or delays the demands of a good-faith warranty there would be new incentive to meet the obligations of doing business.

And for the consumer who has a right to expect automobiles under warranty to run properly, there would be an improved chance of gaining full value for a very expensive investment. That seems like a good deal for all concerned.



TROUBLESHOOTER

CONSUMER ADVISORY-ALASKA LEMON LAW: A statewide teleconference has been set for Wednesday on a proposed Alaska "lemon law," legislation that would give consumers substantially more leverage when wrangling with automobile dealers and manufacturers over warranty obligations.

Under the provisions of House Bill 344, automakers would be forced to replace or refund the purchase price of new cars that, due to manufacturing defects covered by the new-car warranty, cannot be satisfactorily repaired.

If the defect causes the car to be undriveable for 30 days or more during the first year of ownership, the car buyer would be entitled to either an identical new vehicle or a refund, including repair costs. Auto dealers would be given four chances to repair the defect.

Fred Marino, part-owner and general manager of Eero Volkswagen in Anchorage, said Monday that he felt the bill was unnecessary in light of the track record of Alaska dealers.

"If the customer has a legitimate complaint, most (dealers) really seemed to bend over backward" to help iron out difficulties, he said. "If there is a problem, none of us to our knowledge haven't got it fixed within a reasonable length of time."

Marino, who called the bill "heavy and cumbersome," added that the legislation would increase taxpayers' expense, despite legislative estimates to the contrary. "Just enacting it would cost a great deal," Marino said.

In written testimony submitted to the House Labor and Commerce Committee May 9, Assistant Attorney General Connie Sipe noted the bill gives vehicle owners the benefit of "a legal presumption that after a reasonable number of attempts to correct a deformity, that the vehicle is in fact defective or a lemon."

Sipe, head of the Consumer Protection Section of the Attorney General's Office, said under current common law warranty rights, it is up to the vehicle owner to prove a car is a lemon before the courts can compel automakers to replace a vehicle.

If HB 344 is passed, she said, that burden of proof would be shifted. If the manufacturer cannot prove a defect does not cause substantial impairment to the operation or value of the vehicle or prove the owner caused the failure by abuse or modification of the car, the car would be presumed to be a lemon and the buyer would be entitled to reimbursement.

"It is my opinion, after working in this area for seven years, that very few Alaskans, especially those who live outside the three major cities, receive full value of the warranty on their vehicles," Sipe said. "Since Alaskans pay not only the top manufacturers' suggested retail price, but usually amounts in addition to the suggested retail price, we can see that Alaskans do not get any break or allowance for their difficulty in obtaining warranty work."

Consumer Protection auto investigator Scotty Dawkins said before the House Labor and Commerce Committee May 9 that automakers routinely deliver vehicles to buyers with built-in problems.

"Often the manufacturer is aware of these defects but seldom is any voluntary action taken to correct the problems in cars that are already built," Dawkins said.

"Instead, the manufacturer relies on the predelivery inspection performed by the dealer to detect and correct these problems. What actually happens is that the buyer finds the problems after delivery and faces the hassle of attempting to have repairs completed by the dealer."

Dawkins added that new car warranties require the buyer to return to the dealer for warranty work, but "In Alaska, the fact that your new-car dealer may be hundreds of miles away somewhat complicates this requirement."

The Attorney General's Office is calling for an amendment to the bill that would require manufacturers to establish factory-authorized repair centers in towns where there are no dealers.

The public is invited to testify at Wednesday's public hearing before the House Labor and Commerce Committee. The hearing will be held via the Legislative Teleconference Network at 2 p.m. ADT. Anchorage residents who would like to participate can contact the Legislative Information Office, 1024 W. 6th Ave (278-9624).

Alaska's auto dealers protest 'lemon law' proposal

Dealers: Law unneeded Consumer rep: Yes it is

By DEBBIE REINWAND ROSE
Empire Staff Reporter

Alaska car dealers converged on teleconference sites throughout the state this morning to protest a bill its sponsors say will protect consumers who purchase autos.

Labeled the "lemon law," the legislation sponsored by local Reps. Jim Duncan and Mike Miller and Sen. Bill Ray would force car dealers to adhere strictly to the advertised warranty on a new car.

If a customer complained of a "substantial" problem not caused by owner abuse, the manufacturer or distributor would be given four chances to fix the vehicle. Failing that, the customer could receive a refund or a new car to replace the defective model.

Testimony at today's teleconference, organized at the request of car dealers in the state, ran heavily against the bill. Input came primarily from auto distributors.

Fairbanks car dealer James Masters said the consumer already has plenty of protection from defective autos.

"In case of a difference between the consumer and the dealership, they can go directly to the dealer, or the manufacturer," he said. "If that doesn't work, the (state) Consumer Protection Division is very good at following through on these complaints."

Consumer Protection officials, however, favored the legislation as offering the car buyer "some recourse" when dealing with faulty vehicles, according to Scotty Dawkins in the Anchorage Consumer Protection office.

"In Alaska, it often takes two weeks or more just to get the cars into the service department. Not one manufacturer has a service representative in the state, so the consumer has to wait six to eight weeks for that rep to come up here," he said. When dealing with many warranty problems, the defect often must be checked by the service representative.

Alaska has a booming automobile sales business, Dawkins said, and dealers should be responsive to the public's needs. Last year, 27,705 cars were sold in the state for an average of 1,148 sales per distributorship. In the rest of the nation, the average is 205 cars per year for each dealership, he added.

As an example of problems faced by Alaska car owners, Dawkins cited several complaints received over defective cars:

- One district court judge had his car worked on 10 times for, among other things, a defective horn. After all attempts to repair the car had failed, he was offered half the $9,000 sticker price on a trade-in, said Dawkins.
- An Alaska State Trooper had his station wagon worked on eight times, and ended up having the engine replaced after the protection agency intervened in the matter.
- After purchasing a car in Anchorage, complete with a $700 service contract, a Valdez resident had to pay towing fees between Anchorage and Valdez when the engine quit running. He had been assured by the dealership in Anchorage that his service contract would be honored in Valdez, Dawkins said.

Continued on Page 2

'Lemon'...

Continued from Page 1

Bill sponsor Miller said the crux of the testimony revolved around "people giving excuses for not conforming to the warranty."

"We are not trying to place the burden on the dealer. ... They are missing the point of the bill. If there is a major problem with a car, then it should be corrected. The manufacturer issues the warranty, and they are ultimately responsible for living up to that warranty," he said.

Extensive testimony from disgruntled car dealers continued until adjournment of the meeting. House Labor and Commerce Chairman Walt Furnace, R-Anchorage, has scheduled a statewide teleconference on the bill for May 18, from 4 to 6 p.m. in the Labor and Commerce room in the Behrends Building.

Photo by Danny Daniels

ual Walk for Hope, which was
e C-3.

Lemon law would force

dealers to replace cars

By JIM ERICKSON
Daily News reporter

Alaska auto dealers would be forced to buy back or replace automotive "lemons," defective new cars that defy all attempts at repair, if legislation introduced recently in the state Senate and House becomes law.

House Bill 344 calls for replacement of a new car or a refund of the purchase price when manufacturing defects make the car undriveable for 30 days or more during the first year of ownership.

The so-called "lemon law" is scheduled for a House Labor and Commerce Committee hearing Monday.

An identical bill introduced in the Senate by Sen. Bill Ray, D-Juneau, has not been scheduled for a hearing.

The House measure was introduced last month by Rep. Mike Miller, D-Juneau. Miller said Saturday the legislation would compel dealers and manufacturers to honor new-car warranties promptly.

"The legislation doesn't spell out the warranty," he cautioned. "That's up to the manufacturer. What it does do is put full force of the state law behind customer satisfaction of that warranty."

If the defect poses a safety hazard, the car must be repaired within 14 days, the measure states.

In all cases, dealers would be allowed four chances to fix the car, before the buyer could demand a refund or a replacement. The measure applies only to failures covered by new-car warranties, and only during the first year of ownership.

"What we are talking about is correcting major problems of the vehicle," Miller said. "This is not in regard to trivial repairs or problems that result due to owner abuse."

Similar legislation has been adopted in California, Connecticut, Montana and Wyoming, said legislative aide Denise Zachary. Ten other states are considering lemon laws, she said.

Monday's hearing will be linked to Anchorage, Fairbanks and Ketchikan via the state teleconference network.

Zachary said the public can comment on the bill by attending the teleconference, to be held in Anchorage at the Anchorage Legislative Information Office, 1024 W. 6th Ave.

The teleconference will begin at 7 a.m.

3/8/83 Daily News

s a phrase for every misdeed

(Not to mention the ultimate disaster: "If you eat that now, you won't be hungry for dinner!")

And then there is the chapter on Questions Without Answers. These generally come along during the teen-age years.

Questions like, "You're not going out dressed like that, are you?"

Or, "You know this goes against everything we've ever taught you, don't you?"

Not to mention the all-time winner, which spans most of the formative years: "Just what do you think you're doing?"

Experienced mothers know they can mix and match these phrases for special effect, as in: "Just where do you think you're going dressed like that?"

"When you're grown and have children of your own, that's when."

This last, especially, falls under the definition of all-purpose Motherese, touching as it does on the perpetually ripe arena of life after one has children of one's own.

Of course, it's not all conflict and threats in Motherese. There's the Broken Heart chapter, things mothers say to make you feel better. Things like, "Ten years from now this will all seem funny" and "Just think of it as good experience" — not to mention the all-time classic, "Well, just consider yourself lucky, a man will never marry a girl like that!"

I suppose with changing mores they'll be wanting to update the Mother's Phrase Book before long, make it a little more hip, but I

'Lemon law' deserves support

Sometimes it seems that all cars should be painted yellow just to warn buyers what they are getting themselves into. All too often nowadays, expensive cars transform themselves into "lemons" before their owners' very eyes.

Before a sale is made, salesmen point out all of the wonderful aspects of a new car. It's pretty, the doors slam with a solid "thunk" and it sounds good idling there in front of the dealer.

But a select few cars turn into "lemons," some the minute they are driven off the lot. Some don't start right; some don't stop right; some don't do anything right.

Any dealer is more than happy to provide buyers with a copy of the warranty manufacturers give for their cars. Some last for a year; some last for five years. But unless the dealer and manufacturer back up the claims of those warranties, they aren't worth the paper they are printed on.

Introduced in the Alaska Legislature last week was a bill aimed at taking the "lemon" out of the lives of Alaska car buyers. The bill, whose prime sponsors are Juneau Sen. Bill Ray in the Senate and Reps. Jim Duncan and Mike Miller in the House, does nothing more than make manufacturers and dealers live up the promises made in warranties.

For most people, buying an automobile is the second-largest purchase they will make in their lives. The largest purchase, of course, is a home, but it should be remembered that the price of some 1983 cars would buy a nice house 20 years ago.

Because of the tremendous expense of cars, no one should be stuck with a "lemon" — a car that doesn't work properly. Yet we all know people with horror stories about how their expensive new cars went to pot on them and they were unable to get satisfaction from the dealer.

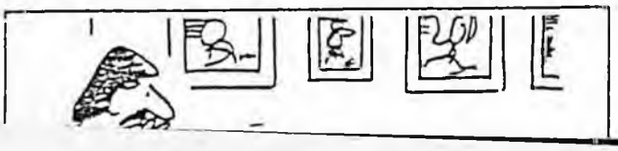
It is for those people that the "lemon law" before the Legislature is meant. A warranty is not written on paper that self-destructs once the sales agreement is signed. It is a document in which the manufacturer, through the dealer, promises to make a car run properly, no ifs, ands or buts.

Dealers should welcome the advent of a "lemon law" in Alaska. It means dealers that have been standing behind their products won't be affected in the slightest. Other dealers, who are unwilling to stand behind their products and the warranties that go with them, will — and should — find themselves having to shape up.

The "lemon law" bill deserves your support.

5/7 Juneau Empire

Berry's World



We went up some stairs to a glass-enclosed booth.

When Widget shut the door he said, "I want you to meet my Master Robot, Turnbill. He is programmed to program the robots on the floor."

Turnbill gave me a steely look and reluctantly put out his arm which I shook.

"How many sneakers did we make today, Turnbill?" Widget asked.

Turnbill's lights blinked, and a deep voice said, 12,890."

Widget rubbed his hands. "I used to make that many in a week.

Eyeing the ne

WASHINGTON (NEA) — "I can make a million through the union," Jackie Presser boasted several years ago to a magazine in his hometown of Cleveland. Indeed, the union has made him rich — and now it's about to make him famous as well.

The union is the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, arguably the country's most corrupt labor organization.

When the Teamsters' executive board met recently to select a new president for the union, it could have chosen a leader whose reputation had not been blackened by compelling evidence of regular affiliation with organized crime figures.

M.E. (Andy) Anderson, area director of the union's Western Conference, is hardly a candidate for sainthood but he surely would have been more suitable as president than Presser if the Teamsters were serious about restoring at last a semblance of integrity to their organization.

The same is true, although perhaps to a lesser extent, of the other two "dark horse" contenders for the presidency — Joseph W. Morgan, area director of the union's Southern Conference and Donald Peters, a Chicago Teamster leader.

But, in an election preordained as far back as the union's 1981 convention, all three of those men were summarily rejected in favor of Presser, a glib, portly 56-year-old veteran of more than three decades as a Teamster organizer.

A detailed affidavit filed by the FBI in connection with a criminal case in U.S. District Court in Los Angeles quoted FBI informants as stating that Presser was "controlled" by members of the Mafia.

In testimony before the New Jersey Commission of Investigation, a state police sergeant identified Presser as an intermediary for syndicate members seeking loans from the Teamsters' pension and welfare funds.

Some of the most disturbing allegations about Presser come from Aladena "Jimmy the Weasel" Fratianno, believed to be the first Mafia member to testify against another Mafioso in court. His testimony has aided federal prosecutors to convict approximately two dozen organized crime figures.

According to Fratianno, Presser's union activities generally have been conducted under the direction and control of James T. "Blackie" Licavoli, the reputed head of the Cleveland "family" of the nationwide crime syndicate. "Jackie Presser, he told me himself that 'I don't do nothing unless Blackie tells me,'" Fratianno said in sworn court testimony.

How does Presser respond to those allegations? He blithely denies any knowledge of La Cosa Nostra: "There's no organized crime that I know of as a person."

Presser offers a similar see-no-evil response to the documented examples of massive abuse of the union's Central States, Southeast and Southwest Areas Pension Fund: "Despite the many claims and accusations of various governmental agencies, the Central States (Fund) is a sound, well managed plan."

In 1976, Presser's father, William, was forced to resign as a trustee of the fund after he invoked his Fifth Amendment right against self-incrimination while being interrogated about trust fund abuses by federal investigators.

William Presser's position as a fund trustee was inherited by his son, Jackie, but he too was forced to resign only one year later and is one of numerous Teamster leaders being sued by the Justice Department for approving more than

Window of v

The New York Times

The basic assumption of arms control may be permanently

Juneau Empire 5/3

'Lemon' bill would put the squeeze

By DEBBIE REINWAND ROSE
Empire Staff Reporter

Hearings begin this week on a bill that should warm the hearts of everyone who has ever bought a "lemon" — a car that for some reason doesn't work right.

Commonly known as the "lemon law," this legislation, introduced by the Juneau delegation, would bind car dealers under state law to adhere strictly to the warranty they advertised when selling a car.

Under it, if a customer complains of a "substantial" malfunction during the warranty term, the dealer or manufacturer would have to repair it. The dealer would be given four chances to bring the car up to par, and failing that, would then have to refund the customer's money or provide a new car.

"It's not an overly restrictive law; if anything it's conservative and could be tighter," said Rep. Mike Miller, D-Juneau. "What we're talking about correcting are major problems with the vehicle. This is not in regard to trivial repairs or problems that result because of owner abuse."

Currently, 12 states have similar legislation on the books. Montana and Wyoming just passed lemon laws.

While the bill is aimed at protecting the consumer, it should not unnecessarily alarm car manufacturers.

"One feature is that the legislation doesn't spell out what the warranty is — that's up to the manufacturer. What it does is put the full force of state law behind customer satisfaction of that warranty," said Miller.

"The idea is if the distributor or parent company issues a warranty as a selling point for their vehicles, they should live up to it; no sloughing off," said Sen. Bill Ray, D-Juneau.

And Ray should know. Like a number of people who have contacted him about the bill, the senator once owned a "lemon."

"A lot of the time, the car wouldn't start. The dealer kept saying we didn't know how to operate it. ... The car ended up being recalled because of a problem with the starter," he said.

During that experience, Ray ran into delays getting the car fixed. He advocated the clause in the bill putting a limit on how long the car can be out of commission. That provision would allow the customer a refund or new car if the "lemon" has been out of service for 30 days during the warranty period or one year, or if repair services are not available to the owner for reasons beyond the owner's control.

Rep. Jim Duncan, D-Juneau, has also had a "couple of lemons," and backs the bill because it would benefit Alaskans.

Continued from page 1

"You run into this every once in awhile and it should be cleared up so the consumer is adequately protected," he said.

The measure has been introduced in both houses, and while House passage is unclear, the co-sponsorship of several majority coalition members may help the bill.

The first hearing on the lemon law will be Thursday at 8:45 a.m. in the Labor and Commerce Committee, room 210 in the Behrends Building.

Buyer gets $85,000 for lemon

MEMPHIS, Tenn. (AP) — A man who complained about the treatment he got from an auto dealer after his new car burned too much oil has been awarded $85,000 by a Circuit Court jury.

Charles Pardue was awarded $10,000 for actual loss and $75,000 in punitive damages in the judgment reached Tuesday.

"As far as the repair of his car was concerned, it was poorly handled," said jury foreman James Reid Jr.

Reid said jurors discussed awards ranging from $20,000 to $500,000 but settled on the final figure as a "fair compromise."

Randall Noel, the lawyer for Lewis Ford Inc., where Pardue bought his 1976 Ford Grenada, said his client is considering an appeal.

Pardue, a resident of Oakland, Tenn., bought the car in 1977 for $5,178, but said it soon began using too much oil.

He said it took two years to get the car fixed and he was charged $1,600 for a new engine he never ordered.

Tennessee Reporter 4/4/83

AUTOMOBILE IMPORTERS OF AMERICA, INC.

1735 JEFFERSON DAVIS HIGHWAY, SUITE 1002 • ARLINGTON, VA 22202 • (703) 979-5550 • RAPIFAX (703) 522-3009

May 5, 1983

Mr. Walt Furnace, Chairman
House Labor and Commerce Committee
Alaska State Capitol
Juneau, Alaska 99801

Dear Mr. Furnace:

We have been informed that the House Labor and Commerce Committee is considering H-344 which would, in simplest terms, require a motor vehicle manufacturer or importer to replace or repurchase a vehicle if it suffered the "same nonconformity" four times or if the vehicle is out of service for warranty repairs thirty calendar days during the vehicle's first year.

Automobile Importers of America, Inc. (AIA) and its sixteen Members strongly oppose this "replace or repurchase" bill as counterproductive for consumers, car dealers, and car warrantors (i.e., manufacturers or importers). This bill is apparently based on two faulty premises. First, that a consumer is without an effective remedy if a vehicle repeatedly breaks down other than for the vehicle to be "fixed as best it can be". This is incorrect. The Uniform Commercial Code provides for revocation of acceptance of a product where the product has a defect or nonconformity which substantially impairs the product's value to the purchaser. Such revocation can result in a rescission of the purchase contract (i.e., purchaser gets his money back and returns the product) if the defect or nonconformity cannot be cured in a reasonable time and manner. There have been several cases - in both courts and private informal dispute resolution processes - where rescission has occurred in new motor vehicle cases.

The other faulty premise upon which the bill is based is that it is possible to set arbitrary figures for the motor vehicle industry representing "reasonable" number of attempts to cure the "same nonconformity". There are so many different models of motor vehicles with varying levels of mechanical sophistication, varying levels of product and parts distribution sophistication, and varying levels of reasonable consumer expectations, that it should be self evident that no one set of numbers could be reasonable for all vehicles. Moreover, even for a single, relatively simple vehicle model, favored with a comprehensive, sophisticated product service and replacement parts network, and with reasonably modest consumer expectations because of its low price, that vehicle will have some 17,000 parts and many different components and systems. No one number can possibly be used as a "reasonable" standard for repair attempts for all possible mechanical problems with that vehicle. Some defects are so obvious that two repair attempts are too many; some so subtle that five repair attempts are not unreasonable.

It is the great advantage of the existing UCC system that each case is decided on its own merits without the intervention of arbitrary standards.

In addition to unnecessarily complicating existing reasonable remedies, the bill would be counter-productive in several respects. Among them are:

(1) Unrealistic increased consumer expectations. As simple but little known as the UCC remedy - and its availability through the courts and informal dispute resolution process - is to consumers, this complex bill is sure to be misunderstood by them to guarantee them greater rights than it does. The inevitable result will be consumer disappointment with the motor vehicle industry and the law, including the way it is written, implemented and interpreted. Consumers will become ever more cynical about all of us, industry and government.

(2) Increased litigation. Experience teaches us that any "consumer" legislation leads to more litigation. Because of the increased consumer expectations discussed above, there will be more disputes than usual over vehicle service and warranties leading to more litigation.

(3) Reduced "goodwill" warranty work. Every manufacturer approves some "goodwill" warranty work, that is, payment for service not covered by the warranty but done in an effort to

maintain the consumer's goodwill. Typical are examinations and adjustments in response to consumer complaints that the fuel economy of the vehicle is not as great as expected. However, under this bill, such goodwill service might count as one of four repair attempts. Therefore, the warrantor will be less likely to go beyond the precise language of the warranty strictly as a matter of defense against possible future claims.

(4) Increased dealer disputes. Just as the bill will surely increase consumer disputes, so also will it cause more dealer disputes. Fewer "goodwill" warranty approvals will mean the dealer will have to charge the consumer - a sure source of conflict. On the other side of the dealer's business, consumer claims against the manufacturer are sure to bring the dealer into many of the disputes on a "claim over" basis (e.g., were the repeated repair attempts the result of inadequate dealer repairs?

(5) Increase costs - for everyone. The bill would necessitate the creation and maintenance of records not now kept, e.g., number of repair attempts, more detailed explanation of the nonconformity involved, numbers of days the vehicle is out of service for repair. This information is difficult to assemble from one dealer, but where multiple dealers are involved, as where the consumer goes to a second dealer when dissatisfied with the results from the first, the difficulties go up geometrically. Dealer and manufacturer litigation costs will also go up. All these costs eventually find their way into the price of the product to be borne by the consumer.

Finally, we submit that the bill, even if it were appropriate in basis and concept, is inartfully drafted creating ambiguous, unfair, and unintended results. For example, the provision on informal dispute resolution processes would seriously damage the utility of the dealer established AUTOCAP programs utilized by all sixteen AIA Members and American Motor Corporation to resolve consumer warranty disputes. The bill would apparently cull out AUTOCAPs from the "accepted" informal dispute resolution processes despite their proven worth and status as the most widely used such process in the motor vehicle industry. This is but one example of several such anomolies.

AIA stands ready to discuss with you or any member of your staff the specific problems posed by H-344. Please contact me or Diane DePould, Esq., AIA's General Counsel at your convenience.

Respectfully submitted,

AUTOMOBILE IMPORTERS OF AMERICA, INC.

George C. Nield

George C. Nield
President

GCN:ab

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May 3, 1983

Mr. Jeff Barry, Professional Aid
House Labor and Commerce Committee
Pouch V
Juneau AK 99810

Re: House Bill 344

Dear Jeff:

As a result of our conversation on Tuesday, April 26, I am sending you this letter outlining our concerns with HB 344, the lemon car bill, as it is presently drafted. As I indicated, one of the things we like to do if at all possible is to keep uniformity and consistency from one state to the other, if in fact the respective state legislature is desirous of passing such a bill.

On page 1, line 12 in Section 45.45.300, we would like to see the words "in writing" between "nonconformity" and "to the." In addition, on line 13 following the word "manufacturer" remove the language through line 14. The reason is that if the manufacturer has the responsibility of buying the vehicle back or refunding the consumer his money, it is important that we be aware of the fact there is a nonconformity of the vehicle. The only way we can achieve this is by having the consumer provide us in writing the fact that he is willing to pursue the third party settlement procedure as outlined in (h), page 3. If the consumer notifies the distributor, agent or dealer, the likelihood of the manufacturer receiving such communication is remote, plus the fact there could be a significant time lapse.

As far as including the terms "distributor, agent or dealer" in the rest of the language throughout the bill, that does not create a problem.

On page 1, line 26, we would like to see the word "comparable" inserted between "new" and "motor vehicle." This would allow for us to try to work out with the consumer a replacement vehicle as close as possible but perhaps not exactly like the one he previously had due to its unavailability. A problem in this area could occur particularly if the consumer buys the vehicle late in the model year.

On page 1, line 27, we would like to see the words "excluding interest" inserted after "collateral charges." We have no problem refunding the full purchase price plus any taxes or license or other fees, but we don't like to include interest, as that is the individual's choice as to how he purchases the vehicle and as to what interest rate he pays.

On page 2, line 15, include the word "business" between the words "more" and "days." The rationale behind this is that 30 or more business days in fact gives the dealer or manufacturer about one-third more time to find and correct the difficulty. Generally there are about 22 working days in a month and with "business" days it does allow us some additional time for a serious problem.

Sections (e) and (f) on page 2 are new sections which I have not seen in any other state's repair/replace bill. Section (e), relating to the unsafe defect, seems overly restrictive in reducing the repair/replace time to 14 days. Section i (3) talks about "substantially impairs use and value," which could in fact relate to the safety of the vehicle, but in addition to that, who would make the determination of whether or not it is unsafe? Regarding section (f), the remedy is already provided in section (b) of the bill which would require the manufacturer to comply with the decision of the third party mechanism, therefore making section (f) unnecessary. Also, there has been a general practice throughout the industry wherein the third party settlement procedure is binding on the manufacturer and he must comply with the decision, or the consumer can pursue his case in court.

On page 3, line 3, (h), we would like to have the word "substantially" inserted between "that" and "complies." The rationale is that the Federal Trade Commission regulations under Part 703 are voluminous and in fact the settlement procedure is not binding on either party, but in practice we consider it to be binding on us. Additionally, there are many paperwork procedures in those federal regulations which don't really add to the benefit of the consumer, but are "make work" for the informal dispute settlement procedure mechanism. Therefore, including the word "substantially" before "complies" means that the program must basically meet all the provisions but not to the letter.

The intent of this legislation in the other states is to try to prevent the problem from ending up in court where the consumer has to spend time and money in order to have his problem resolved. The industry in fact has voluntarily embarked on this type of program some four years ago and it appears to be working out pretty well on a voluntary basis. Again, this is designed to resolve the consumer's problem in a quick and expeditious way but still does not preclude them from going to court if in fact they are not satisfied with the third party dispute procedure's decision.

I will give you a call after you have had a chance to look this over and we can discuss it further at that time.

Thank you very much for your consideration.

Sincerely,

James W. Austin
Public Affairs Manager
Pacific Coast Region

JWA/eb

cc: Mr. Dugally, Ford Motor Company
Mr. Ridgeway, General Motors Corporation

Assembly Bill No. 1787

CHAPTER 388

An act to amend Section 1793.2 of the Civil Code, relating to warranties.

[Approved by Governor July 7, 1982. Filed with Secretary of State July 7, 1982.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, Tanner. Warranties.

Under existing law, a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts must either replace the goods or reimburse the buyer, as specified.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle, as defined, excluding motorcycles, motorhomes, and off-road vehicles, to the applicable express warranties if within one year or 12,000 miles (1) the same nonconformity, as defined, has been subject to repair 4 or more times by the manufacturer or its agents and the buyer has directly notified the manufacturer of the need for repair, as specified; or (2) the vehicle is out of service by reason of repair for a cumulative total of more than 30 calendar days since the delivery of the vehicle to the buyer. The bill would provide that the presumption may not be asserted by the buyer until after the buyer has resorted to an existing qualified third party dispute resolution process, as defined. The bill would also provide that a manufacturer shall be bound by a decision of the third party process if the buyer elects to accept it, and that if the buyer is dissatisfied with the third party decision the buyer may assert the presumption in an action to enforce the buyer's rights, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1793.2 of the Civil Code is amended to read:

1793.2. (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:

(1) Maintain in this state sufficient service and repair facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of such warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of such warranties.

As a means of complying with paragraph (1) of this subdivision, a manufacturer shall be permitted to enter into warranty service

contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work, however, the rates fixed by such contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, shall not preclude a good-faith discount which is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph shall not be executed to cover a period of time in excess of one year.

(2) In the event of a failure to comply with paragraph (1) of this subdivision, be subject to the provisions of Section 1793.5.

(b) Where such service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods must be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement. Where such delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(c) It shall be the duty of the buyer to deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, such delivery cannot reasonably be accomplished. Should the buyer be unable to effect return of nonconforming goods for any of the above reasons, he shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of such notice of nonconformity the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All reasonable costs of transporting the goods when, pursuant to the above, a buyer is unable to effect return shall be at the manufacturer's expense. The reasonable costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall be at the manufacturer's expense.

(d) Should the manufacturer or its representative in this state be unable to service or repair the goods to conform to the applicable

express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(e) (1) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within one year from delivery to the buyer or 12,000 miles, whichever occurs first, either (A) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity, or (B) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to subparagraph (A) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this subdivision and that of subdivision (d), including the requirement that the buyer must notify the manufacturer directly pursuant to subparagraph (A). This presumption shall be a rebuttable presumption affecting the burden of proof in any action to enforce the buyer's rights under subdivision (d) and shall not be construed to limit those rights.

(2) If a qualified third party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of a third party process with a description of its operation and effect, the presumption in paragraph (1) may not be asserted by the buyer until after the buyer has initially resorted to the third party process as required in paragraph (3). Notification of the availability of the third party process is not timely if the buyer suffers any prejudice resulting from any delay in giving the notification. If a qualified third party dispute resolution process does not exist, or if the buyer is dissatisfied with the third party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of such third party decision, the buyer may assert the presumption provided in paragraph (1) in an action to enforce the buyer's rights under subdivision (d). The findings and decision of the third party shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or California laws with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a third party dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms, whichever occurs later.

(3) A qualified third party dispute resolution process shall be one that complies with the Federal Trade Commission's minimum requirements for informal dispute settlement procedures as set forth in the Commission's regulations at 16 Code of Federal Regulations Part 703; that renders decisions which are binding on the manufacturer if the buyer elects to accept the decision; that prescribes a reasonable time not to exceed 30 days, within which the manufacturer or its agents must fulfill the terms of those decisions; and that each year provides to the Department of Motor Vehicles a report of its annual audit required by the Commission's regulations on informal dispute resolution procedures.

(4) For the purposes of this subdivision the following terms have the following meanings:

(A) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle.

(B) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family, or household purposes, but does not include motorcycles, motorhomes, or off-road vehicles.

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May 1983

DEPARTMENT OF LAW -- CONSUMER PROTECTION SECTION

AUTOMOTIVE WARRANTY COMPLAINTS

A Note on Complaint Statistics: A total of 133 auto warranty complaints were formally filed with Consumer Protection from January 1981 to April 1983. This figure, although significant, does not necessarily reflect the total number of warranty problems in Alaska.

A study by T.A.R.P. Inc., a Washington D.C. based research firm, revealed that 96 percent (96%) of consumers with a complaint never even tell the business of the problem, much less complain to a government agency. The Consumer Protection Section's experience over a ten year period is that for each consumer who complains, there are probably five or more additional consumers in a similar situation. Many Alaskans do not file a complaint with Consumer Protection because: they don't know we exist, they are distant from our offices, or our limited ability to negotiate voluntary settlements may not satisfy their needs. National automobile industry complaint statistics show that three percent (3%) of all new car buyers feel they were sold a defective vehicle and are frustrated in their attempts to have the defects corrected. If this three percent number holds true in Alaska (and indeed it might be higher) last year alone 846 Alaskans purchased defective vehicles that may meet the criteria established in HB 344.

AN ANALYSIS OF AUTO WARRANTY COMPLAINTS

January 1981 - April 1983

TOTAL NUMBER WARRANTY COMPLAINTS 133

REGIONAL BREAKDOWN:	Number	Percentage
South Central/Anchorage	101	76%
Interior/Fairbanks	14	10%
Southeast/Juneau	18	14%

COMPLAINTS BY PRIMARY ALLEGATIONS:

Multiple Repairs to Same Defect	28	22%
Unreasonable Delay in Repairs	17	14%
Multiple Defects	27	20%
Safety Related Defect	13	10%
Complaint Involves Defect Under Federal Investigation (FTC, NHTSA, EPA, ect.)	12	9%
Paint, Water Leak	7	6%
Miscellaneous	10	8%

Total Complaints 133

DISPOSITION OF WARRANTY COMPLAINTS:	Number	Percentage
Mediated to Consumer's Satisfaction ....TOTAL:	73	55%
Repairs Completed	38	29%
Repair Costs Refunded	10	8%
Repair Cost Split between Factory and Consumer	8	6%
Manufacturer Supplied Parts but not Labor	5	4%
Manufacturer or Dealer Bought Car Back	5	4%
Miscellaneous	7	5%
	(73)	(55%)
Not Mediated to Consumer's Satisfaction.TOTAL:	48	36%
Because Manufacturer's Response Was:		
Warranty Expired	10	8%
Not Covered by Terms of Warranty	8	6%
Consumer Unable to Return Vehicle to Dealership, So Repairs Denied	2	2%
Factory Refused to Authorize Repairs	4	3%
Owner Abuse/Lack of Maintenance	3	2%
Consumer Refused to Return to Dealership: (Lost Confidence After Dealer's Attempts to Repair).	3	2%
Refused Consumer's Buy Back Request	8	6%
Miscellaneous	10	8%
	(48)	(36%)
WARRANTY COMPLAINTS NOW PENDING: .....TOTAL:	12	9%
Anchorage	8	6%
Fairbanks	2	2%
Juneau	2	2%

ECONOMIC IMPACT ON CONSUMERS

The owner of a defective vehicle suffers real economic harm, measured in: (1) hours/days of lost work, (2) cost of substitute transportation, and (3) after the warranty expires, cost of numerous repairs due to aftereffects of the defect.

Also, the economic life and value of a defective vehicle is seriously lessened, and this economic truth is recognized by the automobile industry itself. The following example is taken from the June 1983 "Blue Book," a widely used guide to used car values. Calculation of the Blue Book resale price of a 1982 Cadillac includes a deduction of $1,335. because the vehicle is equipped with a diesel engine which has become nationally recognized as seriously defective. This sharp decrease in value, in comparison to a non-diesel version of the same Cadillac, is made despite the fact that this particular diesel engine had cost the owner $925. extra at the time of purchase. Thus, the owner of the defective diesel vehicle can be said to have suffered an economic loss of $2,460. in the value of his/her defective vehicle in comparison to the owner of a similar Cadillac without the defect.

STATE
of ALASKA

MEMORANDUM

TO: Rep. Walt Furnace, Chairman

DATE: May 04, 1983

FILE NO:

TELEPHONE NO: 279-0428

FROM: NORMAN GORSUCH
ATTORNEY GENERAL
By:
Scotty Dawkins, Investigator
Consumer Protection Section
AGO/Anchorage

SUBJECT: HB 344
Motor Vehicle
Warranties

The weekly newspaper "Automotive News" reported that the average 1982 automobile sold for $9910.00. In Alaska I'm sure this figure is considerably higher, however, even at this price vehicles routinely are delivered to buyers with built-in problems. General Motors recently said "When a product is mass-produced, it is possible that from time to time a particular item may be completed and yet contain a defect in material or workmanship". GM was speaking to the problems with the Oldsmobile diesel engine, the Chevette transmission they installed in their full size cars and the thousands of camshafts that failed in the 305/350 Chevrolet V8 since 1974. GM was making the understatement of the year, when they made this admission.

Consumer Reports often finds over twelve built-in defects in the new cars they test. Often the manufacturer is aware of these defects but seldom is any voluntary action taken to correct the problems in cars that are already built. Instead the

manufacturer relies on the predelivery inspection preformed by the dealer to detect and correct these problems. What actually happens is that the buyer finds the problems after delivery and faces the hassle of attempting to have repairs completed by the dealer.

Most, if not all new car warranties require that you take your car back to the dealer for these warranty repairs. In Alaska the fact that your new car dealer may be hundreds of miles away somewhat complicates this requirement.

Even if you live in the Anchorage area warranty service can be a problem. Consumers often report to me that it takes two weeks or more just to get their car into the dealer's repair shop. It is clear many Alaskan automobile dealer's lack adequate service departments for the number of vehicles they sell. Indeed, I was recently told by a major manufacturer's representative that their largest Alaskan dealer had half the number of mechanics they should have, by national standards. Indeed, it is not unusual to find an Alaskan dealership that has more sales personnel than it has mechanics.

Last year the 25 Alaskan new car dealers sold 27,705 new vehicles, which works out to be 1,148 new vehicles per dealership. Automotive News of May 1983, reports the sales per dealer of the average GM single line dealer is 265 vehicles. The

average Alaskan automobile dealership is big business with the average gross sales in excess of $10,480,000. Indeed Alaska is host to two of the most profitable dealerships in the country and the only full line GM dealer this side of Kuwait.

Despite the healthy condition of the auto dealers in Alaska, Alaskan buyers of new cars have problems when it comes to obtaining service on the defective products they were sold. What recourse do these buyers have? In Alaska very little. While all vehicle manufacturers have a service support system spread across the country, a system that includes thousands of employees and dozens of offices, not one manufacturer has a office or an employee in this state that is responsible for any of the aspects of customer service. An Alaskan with vehicle problems has to rely on an Oregon or Washington service representative that visits once every 6 to 8, weeks or long distance telephone calls to Seattle, California or Detroit. In other states most of the manufacturers have set up third-party arbitration systems to help deal with these problems. In Alaska nobody has as of this date. Instead you may be referred to a Seattle based arbitration programs. A consumer may seek redress through litigation. However, the Small Claims limit of $2000.00 precludes most of these cases. Alaskan attorneys normally are reluctant to handle these cases due to the lack of statutory definitions and minimal case law, besides the time and expense involved.

I don't wish to waste the committee's time with any unnecessary rhetoric but let me outline five separate complaints that I have recently been involved with. The first complaint came from a District Court Judge who for 18 mont had been trying to have his 1980 vehicle's thirst for engine oil and an inoperative horn repaired. The dealer who had worked on this problem 10 times told the judge that the warranty had now expired, and since the dealer didn't build the car just sold it, he was not responsible. Instead the dealer offered half of the $9000 selling price in trade for a new car. The judge then contacted the manufacturer only to be rebuffed. They would not even return his calls. It is well known that this brand of vehicle had an oil-burning defect but the Alaskan industry refused to acknowledge it.

The second complaint came from a Valdez resident who purchased a car from an Anchorage dealer. The salesman assured the buyer that warranty work could be handled in Valdez. The buyer also bought an additional service contract to expand his warranty to 5 years or 50,000 miles. Seven months later the vehicle's engine failed. Contact was made with the dealer who informed the consumer that repairs would only be made at the dealership and whatever expenses were accrued in towing the now disabled vehicle from Valdez to Anchorage would be out of the owners pocket. I tried but was unsuccessful in resolving this dilemma. The consumer ended up paying several hundred dollars to have his disabled truck shipped to Anchorage, and probabley hundreds more to ship it home after the repairs.

The third complaint was by an Alaska State Trooper. His station wagon had been in the dealers shop 8 times in a futile battle to effect repairs to a defective engine. Our intervention finally convinced the manufacturer to replace the engine. However, the problems did not end. The replacement engine also failed. It was again repaired but to this day still uses an excessive amount of oil.

The fourth complaint came from a Ketchikan resident. The vehicle in question had been purchased in Washington. Again assurance was made by the selling dealer that warranty repairs could be done in Ketchikan. The vehicle, a small four wheel drive unit, developed a severe vibration. The consumer soon found out how reliable the warranty representations were. After having a number of local garages work on the problem, the consumer paid to have the vehicle shipped back to the Washington dealer. The dealer made a number of modifications to the vehicle then shipped the vehicle back to Ketchikan, at the consumer's expense. The problem persisted, however, and finally progressed to the point that the State Troopers ordered the car off the road. Our office was called and finally after technical information was received from Detroit a local garage was able to correct the defect. The car however, is in a deteriorated condition caused by the vibrations of the defect.

Alaska dealers and their employees have on numerour occasions stated they wish they could do more to correct these problems. On occasion I have been told by dealership personnel that a particular automobile was a lemon and should be brought back; however, there hands were tied and they could only follow manufacturers procedures or that the manufacturer would not authorize what needed to be done.

I could go on with many more "horror" stories but I think I've made my point. Alaskans have severe problems in obtaining service on their new cars, and House Bill 344 goes a long way to correct these woes.

Photo by Danny Daniels

ual Walk for Hope, which was
e C-3.

Lemon law would force dealers to replace cars

By JIM ERICKSON
Daily News reporter

Alaska auto dealers would be forced to buy back or replace automotive "lemons," defective new cars that defy all attempts at repair, if legislation introduced recently in the state Senate and House becomes law.

House Bill 344 calls for replacement of a new car or a refund of the purchase price when manufacturing defects make the car undriveable for 30 days or more during the first year of ownership.

The so-called "lemon law" is scheduled for a House Labor and Commerce Committee hearing Monday.

An identical bill introduced in the Senate by Sen. Bill Ray, D-Juneau, has not been scheduled for a hearing.

The House measure was introduced last month by Rep. Mike Miller, D-Juneau. Miller said Saturday the legislation would compel dealers and manufacturers to honor new-car warranties promptly.

"The legislation doesn't spell out the warranty," he cautioned. "That's up to the manufacturer. What it does do is put full force of the state law behind customer satisfaction of that warranty."

If the defect poses a safety hazard, the car must be repaired within 14 days, the measure states.

In all cases, dealers would be allowed four chances to fix the car, before the buyer could demand a refund or a replacement. The measure applies only to failures covered by new-car warranties, and only during the first year of ownership.

"What we are talking about is correcting major problems of the vehicle," Miller said. "This is not in regard to trivial repairs or problems that result due to owner abuse."

Similar legislation has been adopted in California, Connecticut, Montana and Wyoming, said legislative aide Denise Zachary. Ten other states are considering lemon laws, she said.

Monday's hearing will be linked to Anchorage, Fairbanks and Ketchikan via the state teleconference network.

Zachary said the public can comment on the bill by attending the teleconference, to be held in Anchorage at the Anchorage Legislative Information Office, 1024 W. 6th Ave.

The teleconference will begin at 7 a.m.

3/8/83 Daily News

s a phrase for every misdeed

(Not to mention the ultimate disaster: "If you eat that now, you won't be hungry for dinner!")

And then there is the chapter on Questions Without Answers. These generally come along during the teen-age years.

Questions like, "You're not going out dressed like that, are you?"

Or, "You know this goes against everything we've ever taught you, don't you?"

Not to mention the all-time winner, which spans most of the formative years: "Just what do you think you're doing?"

Experienced mothers know they can mix and match these phrases for special effect, as in: "Just where do you think you're going dressed like that?"

"When you're grown and have children of your own, that's when."

This last, especially, falls under the definition of all-purpose Motherese, touching as it does on the perpetually ripe arena of life after one has children of one's own.

Of course, it's not all conflict and threats in Motherese. There's the Broken Heart chapter, things mothers say to make you feel better. Things like, "Ten years from now this will all seem funny" and "Just think of it as good experience" — not to mention the alltime classic, "Well, just consider yourself lucky, a man will never marry a girl like that!"

I suppose with changing mores they'll be wanting to update the Mother's Phrase Book before long, make it a little more hip, but I

Introduced: 4/8/83
Referred: Labor & Commerce

BY M.M.MILLER, DUNCAN, FLOOD, GRUSSENDORF, MALONE AND PHILLIPS

IN THE HOUSE

HOUSE BILL NO. 344

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to motor vehicle warranties."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.45 is amended by adding a new section to read:

ARTICLE 6. MOTOR VEHICLE WARRANTIES.

Sec. 45.45.300. MOTOR VEHICLE WARRANTIES. (a) If a new motor vehicle does not conform to an express warranty that is applicable to it and the owner of the vehicle reports the nonconformity to the manufacturer or distributor of the vehicle, the agent of the manufacturer or distributor, or the manufacturer's or distributor's dealer during the term of the warranty or within one year after the date of delivery of the motor vehicle to the owner, whichever date is earlier, the manufacturer, distributor, agent, or dealer shall make the necessary repairs to conform the vehicle under the express warranty.

(b) If a manufacturer, distributor, agent, or dealer is unable to conform the motor vehicle under an applicable express warranty under (a) of this section after a reasonable number of attempts and the nonconformity is a defect or condition that substantially impairs the use and value of the motor vehicle to the owner, the manufacturer or distributor shall accept the return of the defective motor vehicle and shall, at the option of the owner, replace the motor vehicle with a new motor vehicle, or refund the purchase price to the owner, including all collateral charges. A refund under this subsection shall be made to the owner and to a lienholder as their respective interests appear.

(c) It is an affirmative defense to a claim made under (b) of this section for a new motor vehicle or a refund that the nonconformity complained of

(1) does not substantially impair the use and value of the motor vehicle; or

(2) is the result of abuse, neglect, or unauthorized modification or alteration of the motor vehicle by the owner.

(d) A presumption that a reasonable number of attempts have been undertaken to conform a motor vehicle under an applicable express warranty is established if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or distributor, its agent, or its dealer during the term of the warranty or the one-year period after delivery of the motor vehicle to the owner, whichever period terminates first, but the nonconformity continues to exist; or (2) the vehicle is out of service for repair for a total of 30 or more days during the warranty term or the one-year period referred to in (1) of this subsection, whichever period terminates first. A period of time under this subsection is extended by any period during which repair services are not available to the owner for reasons that are not the responsibility of the owner.

(e) If the nonconformity is a defect in the motor vehicle that makes it unsafe for the owner to operate it and the defect is reported under (a) of this section, the time period for repair, refund, or replacement under (b) of this section is reduced to 14 days.

(f) A failure to replace or refund the purchase price of a motor vehicle when there is a requirement to do so under this section is an unfair trade practice under AS 45.50.471.

(g) The provisions of this section do not limit other rights and remedies that may be available to the owner of a motor vehicle under

other provisions of law.

(h) If a manufacturer or distributor has established an informal dispute settlement procedure that complies with the provisions of 16 C.F.R. Part 703, as that Part may be amended, the provisions of (b) of this section concerning refund or replacement do not apply to an owner who has not first resorted to the informal dispute settlement procedure.

(i) In this section

(1) "motor vehicle" or "vehicle" means a motor vehicle as defined in AS 28.35.360 that is required to be registered under AS 28.10 or with a governmental agency of another jurisdiction performing a similar function;

(2) "owner" means a purchaser, other than for resale, of a new motor vehicle, a person to whom the motor vehicle is transferred during the term of an express warranty applicable to the vehicle, or any other person entitled to enforce an express warranty on the vehicle under the terms of the warranty;

(3) "substantially impairs use and value" refers to a defect or condition in a vehicle that

(A) prevents it from being operated;

(B) makes it unsafe to operate; or

(C) decreases the economic life of the vehicle.

The act also reduces the amount of interest that is forfeited by a tenant for late payment of a month's rent from the interest earned during the entire year to the interest earned during the month that the rent payment was late.
EFFECTIVE DATE: October 1 1982

PA 82-287—sHB 5729
General Law Committee

AN ACT CONCERNING AUTOMOBILE WARRANTIES

SUMMARY: This act requires a manufacturer of a new passenger car, van or truck or the manufacturer's agent or authorized dealer to repair all defects covered by a written warranty if reported by the purchaser during the warranty period or within one year of the vehicle's delivery date, whichever is earlier. If these vendors are unable to repair a defect which substantially impairs the vehicle's use and value after a reasonable number of attempts, the act requires the manufacturer to either replace the vehicle or refund the full purchase price and collateral charges, less an allowance for the consumer's use. A refund is made to the consumer and to anyone holding a lien on the vehicle. If a manufacturer has established an informal dispute settlement mechanism that complies in all respects with relevant Federal Trade Commission regulations, the act requires a consumer to attempt to settle the dispute through this mechanism before the act's refund or replacement provisions apply. The act specifies that the manufacturer has the following affirmative defenses in any suit to have a vehicle replaced or to recover the cost of a vehicle:

1) The defect does not substantially impair the vehicle's use and value; and
2) The defect was caused by the consumer's abuse, neglect or unauthorized modification of the vehicle.

The act specifies that a "reasonable number of attempts" have been undertaken when:

1) the same problem has been subject to repair four or more times during the warranty period or within one year of the vehicle's delivery date, whichever is earlier; or
2) the vehicle has been out of service for repair for a cumulative total of 30 calendar days during the same period.

In addition, the act extends the term of a written warranty, the one-year period following the vehicle's delivery and the 30-day period for repair for the period of time during which repair services are unavailable due to war, invasion, strike, fire, flood or other natural disasters.

Finally, the act does not limit other rights or remedies available to a consumer under any other law.
EFFECTIVE DATE: October 1, 1982

COMMENT

Informal Dispute Settlement Mechanisms

Federal Trade Commission regulations providing a means to mediate disputes between consumers and warrantors were issued under the authority of the "Magnuson-Moss Warranty Act." They must be complied with only if the manufacturer refers to such a mechanism in the warranty. The regulations:

1) establish requirements for consumer notification;
2) require the mechanism to be insulated from the manufacturer's influence and that the decision-makers not be associated in any way with a party to a dispute;
3) require that the mechanism be free to the consumer; and
4) generally require that a dispute be settled within 40 days.

PA 82-299—sSB 300
Finance, Revenue and Bonding Committee
General Law Committee

AN ACT ESTABLISHING A CATERER'S PERMIT

SUMMARY: This act establishes a restaurant liquor permit for catering establishments. The permit allows the sale of liquor to persons invited to and attending a catered event. The act also:

1) limits the hours and days such an establishment may sell liquor to the same as those previously established by law for restaurants, hotels, cafes, and several other types of on-premises permits;
2) specifies that the permittee is not required to be open except during the hours events are scheduled; and
3) specifies that the permittee is required to comply with local health regulations.

The permit fee is $1,200.
EFFECTIVE DATE: July 1, 1982

FURTHER EXPLANATION

Permit Eligibility

A person or business organization is eligible for the permit if he or it:

1) regularly furnishes rooms for hire for particular events or regularly furnishes provisions or services for these events;

Substitute House Bill No. 5729

PUBLIC ACT NO. 82-287

AN ACT CONCERNING AUTOMOBILE WARRANTIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (a) As used in this act: (1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty; and (2) "motor vehicle" means a passenger motor vehicle or a passenger and commercial motor vehicle, as defined in subdivisions (35) and (36) of section 14-1 of the general statutes, as amended, which is sold in this state.

(b) If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

(c) If the manufacturer, or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and lienholder if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the

Lemon Law
Motor Vehicles
Consumer Protect
Warranties

vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under this act (1) that an alleged nonconformity does not substantially impair such use and value or (2) that a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by a consumer.

(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist or (2) the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

(e) Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

(f) If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of title 16 Code of Federal Regulations Part 703, as from time to time amended, the provisions of

subsection (c) of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such proced re.

Certified as correct by

_____
Legislative Commissioner.

_____
Clerk of the Senate.

_____
Clerk of the House.

Approved _____, 1982

_____
Governor.

> cle in 1970 . . . for all *checks* and *adjustments*. Actual *defects* we bill the factory for on a regular warranty claim. . . . We spend an average of three hours on each car in preparation. . . .
>
> We are reimbursed nothing for predelivery service by the factory. We charge it off as a "cost of sale" per factory accounting manual—same as salesman's commission. . . .
>
> There is no fee as such collected for predelivery service from the customer. We absorb the cost in its entirety.
>
> Other dealers are less responsible. A Ford dealer in southern California puts his better mechanics on make-ready, but pays them only a flat $5 per car, giving them no incentive to do a good job.

Of course, when the manufacturers deem predelivery inspection to be important, they know how to improve the usual make-ready procedure. For instance, dealers who process police cars are paid by Ford for 5.4 hours of labor per car to insure a thorough check. In New Jersey this amounts to $59.40 per car.

Ford and Chrysler are both experimenting with regional predelivery inspection operations, financed, in part, by fees charged to participating dealers. However, there are only a few of these facilities. Most new cars are either poorly inspected or not inspected at all by the dealers. Informants estimate that less than 25% of the required checks are generally performed.

To complicate matters considerably, cars frequently arrive from the assembly plant with defects which the dealer cannot remedy —because parts are unavailable, because the dealer is not equipped to diagnose the defect, or because the defects are too numerous. One dealer has reported that the new 1970 cars are "being received in the poorest condition ever. They are poorly assembled and finished." A car which starts out as a lemon at the factory is thus unlikely to undergo any significant alteration before reaching the buyer.

Even more distressing, some new cars are received from the assembly plant in damaged condition. A. East Douglas, Massachusetts, resident wrote that he saw a new Maverick in a body repair shop having a badly smashed fender repaired, only to discover later that it was the very Maverick he had ordered. The dealer's response: "It is a common practice to pass on to customers patch jobs like this, for that matter much worse." [16] According to one dealer, the manufacturer's policy is that if front fenders have to be replaced (because of damage in transit) or if the K frame has to be replaced, this is done and the car is sold by the dealer as new. But if the roof or quarter panel is seriously damaged and needs replacement, the car is sold as used. The reason for the distinction is simple: in the first instance, if the repair is done properly, it cannot be detected; in the second it can.

Introduced: 4/8/83
Referred: Labor & Commerce

BY M.M.MILLER, DUNCAN, FLOOD, GRUSSENDORF, MALONE AND PHILLIPS

IN THE HOUSE

HOUSE BILL NO. 344

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to motor vehicle warranties."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.45 is amended by adding a new section to read:

ARTICLE 6. MOTOR VEHICLE WARRANTIES.

Sec. 45.45.300. MOTOR VEHICLE WARRANTIES. (a) If a new motor vehicle does not conform to an express warranty that is applicable to it and the owner of the vehicle reports the nonconformity to the manufacturer or distributor of the vehicle, the agent of the manufacturer or distributor, or the manufacturer's or distributor's dealer during the term of the warranty or within one year after the date of delivery of the motor vehicle to the owner, whichever date is earlier, the manufacturer, distributor, agent, or dealer shall make the necessary repairs to conform the vehicle under the express warranty.

(b) If a manufacturer, distributor, agent, or dealer is unable to conform the motor vehicle under an applicable express warranty under (a) of this section after a reasonable number of attempts and the nonconformity is a defect or condition that substantially impairs the use and value of the motor vehicle to the owner, the manufacturer or distributor shall accept the return of the defective motor vehicle and shall, at the option of the owner, replace the motor vehicle with a new motor vehicle, or refund the purchase price to the owner, including all collateral charges. A refund under this subsection shall be made to the owner and to a lienholder as their respective interests appear.

(c) It is an affirmative defense to a claim made under (b) of this section for a new motor vehicle or a refund that the nonconformity complained of

(1) does not substantially impair the use and value of the motor vehicle; or

(2) is the result of ~~abuse~~ UNREASONABLE abuse, neglect, or unauthorized modification or alteration of the motor vehicle by the owner.

(d) A presumption that a reasonable number of attempts have been undertaken to conform a motor vehicle under an applicable express warranty is established if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or distributor, its agent, or its dealer during the term of the warranty or the one-year period after delivery of the motor vehicle to the owner, whichever period terminates first, but the nonconformity continues to exist; or (2) the vehicle is out of service for repair for a total of 30 or more days during the warranty term or the one-year period referred to in (1) of this subsection, whichever period terminates first. A period of time under this subsection is extended by any period during which repair services are not available to the owner for reasons that are not the responsibility of the owner.

(e) If the nonconformity is a defect in the motor vehicle that makes it unsafe for the owner to operate it and the defect is reported under (a) of this section, the time period for repair, refund, or replacement under (b) of this section is reduced to 14 days.

(f) A failure to replace or refund the purchase price of a motor vehicle when there is a requirement to do so under this section is an unfair trade practice under AS 45.50.471.

(g) The provisions of this section do not limit other rights and remedies that may be available to the owner of a motor vehicle under

BINDING ON MANUFACTURER
MANUFACTURER
BILL DEFINITIONS

other provisions of law.

(h) If a manufacturer or distributor has established an informal dispute settlement procedure that complies with the provisions of 16 C.F.R. Part 703, as that Part may be amended, the provisions of (b) of this section concerning refund or replacement do not apply to an owner who has not first resorted to the informal dispute settlement procedure. FEDERAL REGULATION (PROGRAM INFORMAL BASIS)

(i) In this section

(1) "motor vehicle" or "vehicle" means a motor vehicle as defined in AS 28.35.360 that is required to be registered under AS 28.10 or with a governmental agency of another jurisdiction performing a similar function;

(2) "owner" means a purchaser, other than for resale, of a new motor vehicle, a person to whom the motor vehicle is transferred during the term of an express warranty applicable to the vehicle, or any other person entitled to enforce an express warranty on the vehicle under the terms of the warranty;

(3) "substantially impairs use and value" refers to a defect or condition in a vehicle that

(A) prevents it from being operated;

(B) makes it unsafe to operate; or

(C) decreases the economic life of the vehicle.

STATE
of ALASKA

MEMORANDUM

TO: Rep. Walt Furnace, Chairman
House Labor & Commerce Committee
House of Representatives

DATE: May 4, 1983

FILE NO:

TELEPHONE NO: 279-0428

SUBJECT: House Bill 344
(Motor Vehicle Warranties)

FROM: Norman C. Gorsuch
Attorney General
By: C. J. Sipe
Connie J. Sipe
Assistant Attorney General
Chief, Consumer Protection Section
AGO/Anchorage

The Office of the Attorney General is in favor of House Bill 344, although we do suggest some possible amendments to the bill which would enhance its benefit to Alaskan citizens. Before I analyze the bill section by section, I would like the committee to note that state legislation which dictates a certain degree of performance of warranties on consumer goods is not unusual, and in many states, it has been a frequent subject of legislative action. The Alaska legislature passed a bill in 1978 setting minimal warranty standards for mobile homes and providing for performance bonds by manufacturers of mobile homes sold in the state. (AS 45.30.011--100.) The Uniform Commercial Code for the State of Alaska also addresses warranties in a more general manner.

It is our information that as of this date the states of Connecticut, California, and Wyoming have passed a bill similar to House Bill 344, and that the State of Wisconsin is likely to pass a bill this section. Several other states are considering these bills.

Analysis of HB 344

Section 1. Section 1 of the bill states that when the express warranty given by a manufacturer against defects of design, manufacturing or assembly is not being carried out, because the vehicle is displaying a defect, then the owner may report the nonconformity to either the manufacturer, or in the case of a foreign manufacturer the U.S. "distributor" of the vehicle, or their agent. Subsection (a) limits the application of the bill to the term of the warranty, or one year, whichever comes first. Many manufacturers are now offering three to five years warranties with extended mileage periods, but HB 344 would only apply to the first year of ownership of the vehicle if a year is shorter than the manufacturer's express warranty.

Subsection 1(a) also requires the manufacturer or its dealer to make the necessary repairs to bring the vehicle to conformity under the express warranty. Testimony which will be submitted by our auto investigator will show that Alaskans have great difficulty in getting such repairs performed in a timely fashion.

Section 1(b), at line 19, sets out the burden of proof which a consumer would have to meet if the consumer sued the manufacturer of a vehicle. (Under case law interpreting the Uniform Commercial Code and other common law warranty rights, the consumer's burden of proof can be more difficult.) By the operation of (b), the vehicle owner would enjoy a legal presumption that after a reasonable number of attempts to correct a deformity, that the vehicle is in fact defective or a "lemon." HB 344 also provides a remedy: namely, that the owner has the option of returning the defective vehicle for a refund of the purchase price (including all collateral charges) or having the new motor vehicle replaced with an identical motor vehicle. (The bill does provide for a refund to a lien holder if one exists.)

Subsection (c) (page 2, line 1) gives the manufacturer two affirmative defenses to the owner's claim for a refund. The manufacturer may not be liable if the defect complained of does not actually cause substantial impairment to the owner's ability to use the vehicle or to the value of the vehicle, or if the defect is not in fact a manufacturer defect but resulted from the abuse or modification of the vehicle by the owner. I would urge the addition of the word "unreasonable" just before "neglect." Otherwise, an express warranty may set up such an unreasonably strict maintenance schedule for the consumer to follow that the manufacturer would always be able to claim that any defect was caused by consumer "neglect." I think that a modification to "unreasonable neglect" would be a good balance.

Subsection (d) creates the presumption (or in other words a legal definition) of when a car is "defective" by defining as defective a vehicle which has been worked on four or more times for the same nonconformity, or which is out of service for more than 30 days, during the warranty term or the first year (whichever comes earlier). Such a car is legally presumed to be a "lemon."

Please note that an amendment needs to be made in subsection (d), at page 2, lines 17-20. This last section of the sentence should read:

... The warranty term or the one year period referred to in (1) of this section shall be extended by any period during which repair services are not available to the owner for reasons that are not the responsibility of the owner.

As the section reads now, the presumption of what is a lemon (4 repairs or 30 days out of use) would be taken away from the consumer by being "extended" (?) when the manufacturer fails to provide repairs.

Subsection (e). Frankly, I do not understand what the legislative drafter meant by subsection (e). The clear intent of the passage seems to be that if the nonconformity which is a defect in the motor vehicle is one that makes the vehicle unsafe for owner operation, that a repair must be effected within 14 days. However, the 14 days language references back to subsection (b) which does not contain any time period. Perhaps the drafter meant to refer back to subsection (d) saying that if the vehicle is unsafe to operate, then only 14 instead of 30 days would be required to create a presumption of a "lemon." However, as you will hear from testimony of the auto investigator, 14 days is the norm in Alaska even for safety defects. I think the 14 days would probably be too strict a time period in terms of a standard for creating the presumption that the vehicle is a lemon. I think that 30 days out of service during the warranty period, or the first year, is a reasonable time period for creating a presumption that the owner owns a defective car.

Subsection (f) makes the manufacturer's failure to honor the owner's request for replacement of, or refund of the purchase price of a defective motor vehicle an unfair trade practice under the Alaska Unfair Trade Practices and Consumer Protection Act. This is an efficient way of providing an enforcement mechanism for the statute, since it gives the Attorney General public enforcement powers against a manufacturer or dealer who is engaging in a pattern of refusal to honor its warranty obligations, but it also gives private individuals a private cause of action, with up to triple damages, costs and attorneys fees, under AS 45.50.531. Since the Alaska Unfair Trade Practices Act already discusses warranty work at AS 45.50.471(b)(17), and since the warranty becomes "false" if it is not honored by the manufacturer, it is appropriate to put the enforcement section in this

statute. It also dovetails well with the Motor Vehicle Repair statute which is already incorporated into the Unfair Trade Practices Act, at AS 45.50.471(b)(23).

Subsection (g) insures that the provisions of this act do not limit any other rights or remedies that the motor vehicle owner might have under common law regarding express or implied warranties. This is a good provision, since the courts might develop a higher standard for manufacturers, and some courts might rule in the owner's favor on a defect which shows up after the one year period.

Subsection (h) refers to the federal Magnuson-Moss Warranty Act act, and the regulations promulgated pursuant to that act. Under that act a manufacturer of vehicles may set up an informal dispute settlement procedure, outside the court, (usually an arbitration panel) to which consumers must take their defect or warranty claim before filing suit against the manufacturer for a defective vehicle. However, the informal dispute settlement procedure must follow carefully the standards in the federal regulations, including a provision that the award of the arbitration panel is binding on the manufacturer but is not necessarily binding on the consumer owner of the vehicle unless the owner accepts the award. If the owner does not agree with the award the owner may then proceed to court. Subsection (h) insures that under the Alaska motor vehicle warranty act we would also allow the national manufacturers to exercise this same option.

[The committee should know that historically, it was the hope of Congress to encourage all the manufacturers to create such informal dispute resolution programs, but that to date none of the manufacturers have set up a national program that complies with the Magnuson-Moss Act. In the last year, General Motors has contracted with the Better Business Bureau in some states (not Alaska) to do arbitrations with discontented vehicle owners, but the arbitrations do not meet the federal requirements because they are binding on both parties and the consumer does not have the option of refusing the arbitration award. Because of this requirement, consumers are <u>not</u> <u>required</u> to use the GMC/BBB program before going to court on what the consumer believes to be a defective GMC car.]

Subsection (i) of the bill includes pertinent definitions. The definition of "owner" includes not only the original purchaser of the vehicle but anyone to who the vehicle is transferred during the term of the express warranty, which is appropriate, since the warranties on new vehicles are transferrable by their own terms. Also, this subsection includes examples of what are "substantial impairments" of the use and value of a vehicle. These definitions seem to cover most instances that a court would want to consider and I think they are adequate.

OVERALL COMMENTS ON HB 344

HB 344 is very well drafted in respect that it avoids some problems found in its counterpart in Connecticut statutes. Specifically, in the Connecticut statute, the consumer owner who asks for a refund of the purchase price of the vehicle will have deducted from it a "reasonable allowance for use of the vehicle." This is a serious problem, and one which it is anticipated that dealers or the manufacturers may suggest as an amendment to HB 344. HB 344 should not include this kind of set off provision, because, under court case law developed pursuant to under the U.C.C. on warranties, when a consumer revokes acceptance of a defective vehicle the consumer is usually entitled to the full refund of the purchase price, and may sometimes recover from the manufacturer "cover" costs for buying a more expensive replacement vehicle. Also, under the U.C.C., the consumer may recover incidental and consequential damages from the dealer, not just the purchase price. Under the U.C.C., a consumer could claim consequential damages caused by the vehicle's failure, such as: loss of work due to a car that broke down, long distance telephone calls, towing charges. HB 344 is a better statute than the Connecticut lemon law because it does not allow the manufacturer to ask for the set off for use of the defective vehicle. This is appropriate in light of the case law.

Overall, HB 344 if passed would greatly help the work of the Consumer Protection Section of the Office of the Attorney General in mediating and investigating warranty complaints by consumers. As our auto investigator will report, a great number of our auto repair problems are alleged warranty violations or defects in vehicles.

It is my opinion, after working in this area for seven years, that very few Alaskans, especially those who live outside the three major cities, receive full value of the warranty on their vehicles. We know that warranties, and the service guaranteed under warranties, is a substantial selling tool of the manufacturers. We also know that the warranty has a definite, although unstated, economic value as part of the purchase price of a motor vehicle. Since Alaskans pay not only the top manufacturers' suggested retail price but usually amounts in addition to the suggested retail price we can see that Alaskans do not get any break or allowance for their difficulty in obtaining warranty work. (As far as I know this is the only marketplace in the entire United States where consumers pay manufacturer's suggested price or above.)

Suggested Amendments

I would suggest the addition of language like the following, although this has not yet been refined to legislative standards. The suggested language, which is attached, would require manufacturers of motor vehicles to either maintain sufficient repair facilities reasonably close to all areas where its vehicles are sold or to designate independent shops in various towns as authorized warranty repair facilities.

Most manufacturers and their corporate organization provide for such independent repair facilities, but in fact, we do not know of any non-dealer, factory authorized repair centers in the State of Alaska. We have tried to negotiate directly with a couple of manufacturers to get them to authorize repairs in population centers like Ketchikan, but we have failed in our efforts.

Also as you will note in the suggested amendments, it is important that the manufacturer be required to fairly compensate either the dealer or the non-dealer authorized repair facility for the warranty work done. As the auto repair investigator can testify, the flat rate paid to dealers for warranty work often reflects the economic and political power differential between the manufacturer and the dealer more than it does the actual time and effort necessary to cure a warranty defect. Also, the warranty service manual's suggested times for repair are geared to large dealer service centers with computer diagnostic equipment and factory-trained technicians. Since an independent repair facility in Bethel would be unlikely to have the same sophistication of equipment or personnel training, the manufacturer should pay the actual time necessary to repair the warranty defect, not just the suggested flat rate time in a warranty repair manual.

Availability of parts. Another problem in Alaska is the availability of repair parts for warranty work. The manufacturer should fairly reimburse the repair facility for shipping cost on warranty covered repairs. Also, the manufacturer should timely reimburse repair facilities for warranty expenses. Consumers should not be required to pay for parts shipments on warranty repairs.

Substitute Transportation. Another suggested addition to the bill is a requirement that if a vehicle is not timely fixed, within two weeks of notice of defect, that the manufacturer should be obligated to provide substitute transportation or rental car cost, from the two week date until the car is repaired. (At the present time only one national manufacturer promises a loaner car in its express warranty. In Alaska, most dealers do not offer loaner cars as a courtesy, although that courtesy is a common practice in the lower 48.)

The manufacturers should be encouraged to beef up their repair facilities and their inventory of repair parts within the state or face the obligation to provide alternative transportation, at least after the first two-week period that a vehicle has been unuseable.

Vehicle Transport Costs. It is important that Alaska take action to clarify what is the duty of the customer to re-deliver a vehicle to the manufacturer's nearest dealership for warranty repairs. This is requirement in most express warranties, but it creates great difficulties, especially when there are no roads back from the consumer's location, (such as Bethel) to the nearest dealership (say in Anchorage). Perhaps manufacturers should not be required to bear all the high cost of transportation of vehicles within the state, but the manufacturer could choose an alternative if these amendments were put into law. The manufacturer should either authorize independent repair facilities in the communities to repair vehicles, or pay for at least one way of the transportation of the vehicle, namely from the dealership back to the customer after repair.

Sec. 45.45.305. WARRANTY REPAIR FACILITIES AND OBLIGATIONS. (a) Every manufacturer or distributor of motor vehicles sold in this state for which the manufacturer or distributor has made an express warranty shall maintain in this state sufficient repair facilities, reasonably close to all population centers where its vehicles are used, to carry out the terms of such warranties.

(b) As a means of complying with section (a), a manufacturer or distributor shall be permitted to enter into warranty service contracts with independent repair facilities. The warranty service contracts may provide for a flat rate schedule of repair times to be used in calculating charges for warranty service or repair work, provided that the contract hourly rates must reimburse the repair facility at normal retail rates, for the community where the facility is located, for any service and parts reasonably required to carry out warranty repairs. The manufacturer or distributor shall also fairly reimburse a dealer or authorized contract repair facility for expenses incurred in ordering and shipping parts needed to effect warranty covered repairs. Any request by a contract repair facility for reimbursement of warranty covered repairs must be paid by the manufacturer or distributor within 30 days.

(c) In the event that repairs of any warranty covered malfunction or defect are not completed within two weeks of (1) the customer's delivery of the vehicle to the manufacturer's or distributor's designated repair facility or dealer; or, (2) the customer's notification to the manufacturer, distributor, or its dealer of a warranty malfunction which renders the vehicle inoperable; then reasonable charges for the owner's rental of substitute transportation shall be paid by the manufacturer or distributor, or the manufacturer or distributor shall provide

a substitute vehicle, from the date two weeks after delivery of the vehicle or notification of a malfunction rendering a vehicle inoperable, until repairs are complete.

[NOTE: Subsection d, below, is very rough, even in concept!]

(d) If the express warranty requires the owner to deliver the vehicle to the nearest manufacturer's dealer for warranty repair, that duty shall not be binding on the owner, nor a waiver of the owner's warranty rights when, (1) due to the malfunction or defect the vehicle cannot safely be operated, or (2) the delivery of the vehicle cannot be made by road or by shipment by boat or ferry of less than one day's shipping or travel time. Should the customer be unable to effect return of the vehicle for any of the above reasons, the customer shall notify the manufacturer, distributor or its nearest dealer or authorized repair facility within the state. Written notice of the malfunction or defect to the manufacturer, distributor, dealer or repair facility shall constitute "return" of the vehicle for purposes of this section. Upon receipt of such notice of malfunction or defect the manufacturer or distributor shall, at its option, repair the vehicle at the customer's residence or town of residence, or arrange for transporting the vehicle to a dealer or repair facility. All reasonable costs of transporting the vehicle when, pursuant to (1) above, the owner is unable to effect delivery, shall be at the manufacturer's expense. When the owner cannot deliver the vehicle under the time limits of (2) above, if the manufacturer does not choose to repair the vehicle at the owner's residence or town of residence, the reasonable cost of transporting the vehicle to the dealer or designated repair facility shall be paid one-half by the owner and one-half by the manufacturer.

WARRANTIES - MOTOR VEHICLES - REPAIRS

COMMENTARY: Under existing case law, a manufacturer who is sued because of failure to service or repair goods to conform to applicable express warranties after a reasonable number of attempts may be required by a court to either replace the goods or reimburse the customer. However, the costs of determining in the court what is a "reasonable" number of repair attempts and by what method a customer should be reimbursed makes such suits very difficult and costly.

This bill would provide that it shall be presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable exprss warranties, if, during the first year or 12,000 miles of the applicable express warranty (note that some warranties are now "5-year"): (1) the same malfunction or defect has been subject to repair four or more times by the manufacturer or its agent or authorized dealers or (2) the vehicle is out of service by reason of repair (or repair delays) of a warranty covered malfunction or defect for a cumulative total of more than 30 business days during the first year of the warranty.

The bill would provide that the presumption may not be asserted by the customer until after the customer has resorted to an in-state qualified third party dispute resolution process, if one is available in state. The bill would also provide that a manufacturer shall be bound by a decision of the third party process if the customer elects to accept it, and that if the customer is dissatisfied with the third party decision the customer may assert the presumption in an action to enforce the buyer's rights as specified. (This tracks the federal Magnuson-Moss Warranty Act.) The bill also would require manufacturers to pay for the shipping of parts.

SECTION 1. (a) If a new motor vehicle does not conform to all applicable express warranties, and the customer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties, or during the period of one year following the date of original delivery of the vehicle to the customer, whichever is the later date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of the warranty term or the one-year period;

(b) Every manufacturer of motor vehicles sold in this state for which the manufacturer has made an express warranty shall maintain in this state sufficient service and repair facilities, reasonably close to all areas where its vehicles are sold, to carry out the terms of such warranties; and designate and authorize in this state as service and repair facilities independent repair or service facilities, reasonably close to all population centers where its motor vehicles are used, to carry out the terms of such warranties.

As a means of complying with this section, a manufacturer shall be permitted to enter into warranty service contracts with independent repair facilities. The warranty service contracts may provide for a flat rate schedule of repair times to be used in calculating charges for warranty service or repair work, provided that the contract hourly rates must reimburse the repair facility at normal retail rates, for the community where the facility is located, for any service and parts reasonably required to carry out warranty repairs. The manufacturer shall also fairly reimburse the repair facility for expenses incurred in ordering and shipping parts needed to effect warranty covered repairs. Any request by a contract repair facility for reimbursement of warranty covered repairs must be paid by the manufacturer within 30 days.

(c) In the event that repairs of any warranty covered malfunction or defect are not completed within two weeks of: (1) the customer's delivery of the vehicle to the manufacturer's designated repair facility; or, (2) the customer's notification to the manufacturer of a warranty malfunction which renders the vehicle inoperable; reasonable charges for the rental of substitute transportation shall be paid by the manufacturer, or the manufacturer shall provide a substitute vehicle, from the date two weeks after delivery or notification of the vehicle until repairs are complete.

(d) It shall be the duty of the customer to deliver the vehicle to the nearest authorized dealership or manufacturer authorized service and repair facility within this state unless: due to the malfunction or defect the vehicle cannot safely be operated, or the delivery of the vehicle cannot be made by road, or by shipment by boat or ferry, of less than one day's shipping or travel time. Should the customer be unable to effect return of the vehicle for any of the above reasons, the customer shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of the malfunction or defect to the manufacturer or its service and repair facility shall constitute return of the vehicles for purposes of this section. Upon receipt of such notice of malfunction or defect the manufacturer shall, at its option, repair the vehicle at the customer's residence, or arrange for transporting the vehicle to its repair facility. All reasonable costs of transporting the vehicle when, pursuant to the above, a customer is unable to effect return, shall be at the manufacturer's expense. The reasonable costs of return transport of a non-conforming vehicle to the customer after the vehicle's delivery to the repair facility shall be at the manufacturer's expense.

SECTION 2. (a) Should the manufacturer or its representative in this state be unable to service or repair the vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the vehicle or reimburse the customer in an amount equal to the purchase price paid by the customer, less a reasonable amount for use by the customer prior to the discovery of the non-conforming malfunction or defect.

(b) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within one year from delivery to the customer or 12,000 miles, whichever occurs first, either (1) the same vehicle system or assembly has been subject to repair for non-conforming warranty problems four or more times by the manufacturer or its agent, or (2) the vehicle is out of service by reason of repairs (or repair delays) by the manufacturer or its agents of the malfunctions or defects, for a cumulative total of more than 30 business days since delivery of the vehicle to the customer.

(c) If a qualified third party dispute resolution process exists in Alaska and the customer receives timely notification in writing of the availability of a third party process with a description of its operation and effect, the presumption in paragraph (b) may not be asserted by the customer until after the

customer has initially resorted to the third party process as described in paragraph (d). Notification of the availability of the third party process is not timely if the customer suffers any prejudice resulting from any delay in giving notification. If a qualified third party dispute resolution process does not exist in Alaska, or if the customer is dissatisfied with the third party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of such third party decision, the customer may assert the presumption provided in paragraph (b) in an action to enforce the customer's rights under (a). The findings and decision of the third party shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or Alaska law with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a third party dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms, whichever occurs later.

(d) A qualified third party dispute resolution process shall be one that complies with the Federal Trade Commission's minimum requirements for informal dispute settlement procedures as set forth in the Commission's regulations at 16 Code of Federal Regulations Part 703; that renders decisions which are binding on the manufacturer if the customer elects to accept the decision; that prescribes a reasonable time not to exceed 30 days, within which the manufacturer or its agents must fulfill the terms of those decisions.

(e) It shall be an affirmative defense to any claim under this act: (1) that a nonconforming malfunction or defect does not substantially impair the uses, values or safety of the vehicle; or (2) that a nonconformity is the result of abuse, unreasonable neglect, or unauthorized modifications or alterations of the vehicle by the customer.

SECTION 3. For the purposes of this chapter the following terms have the following meanings:

(1) "Malfunction or defect" means a nonconformity with an express warranty which substantially impairs the use, value, or safety of the new motor vehicle.

(2) "Customer" means the purchaser, ~~other~~ than for the purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person applicable to such motor vehicle, and any other person entitled

by the terms of such warranty to enforce the obligations of such warranty.

(3) "Vehicle" means a "new" motor vehicle which is the subject of a manufacturer's express new car warranty and specifically includes motorcycles and motorhomes.

(4) "Population center" means a community of over 1,000 persons (or ____ miles of publicly funded roads).

(5) "Vehicle system or assembly" means . . .

STATE
of ALASKA

MEMORANDUM

TO: Mike Ford, Legislative Aid to Representative Mike Miller

DATE: March 18, 1983

FILE NO.:

TELEPHONE NO.: 279-0428

SUBJECT: Lemon Law

FROM: Connie J. Sipe
Assistant Attorney General
Chief, Consumer Protection Section
AGO/Anchorage

Enclosed please find a copy of the California Lemon Law, and a copy of the Connecticut Lemon Law. The statute which you had referred to as possibly being a Pennsylvania law is in fact the Connecticut law, which is noted in their most recent supplement as "P.A.," which merely stands for "public act." To our knowledge, no states except Connecticut and California have passed lemon statutes.

Also enclosed you will find not a draft but a "sketch" of a lemon law for Alaska, with a prefatory page of commentary. Please note that this sketch of a bill does not in any way conform to Alaska drafting standards on legislation, but our office has been so busy that it was all that I and our auto investigator could do on short notice to throw together a "cut and paste" which combined parts of the Connecticut with parts of the California statute, and inserted some other modifications that would be needed to address the specific warranty problems in the Alaskan market.

As some background information on warranties, you should realize that many of the American manufacturers are now offering 5-year warranties rather than the former 1-year or 12,000 mile warranties. Both the California and Connecticut lemon laws seemed to be based on the assumption that the 1-year warranty would continue to be the industry standard. On the other hand, in terms of the leverage provided by the lemon law, perhaps it is appropriate that only the very "worst" lemons, those cars with massive defects showing up within 1-year or 12,000 miles should be covered by a state lemon law.

The way we set up the draft that we sent down to you separates out the manufacturer's responsibilities in two areas: First, the ~~simple duty to follow through on their vehicle warranties, and to maintain a sufficient number of authorized repair shops in the state to make the warranty effective.~~ Section One does not have any time deadline other than the terms of the express warranty given by the manufacturer or 1-year, if 1-year would be the longer of the two dates. Our auto investigator, Scotty Dawkins, and I feel that Section 1 is very important in Alaska, because one of the main warranty problems we see is the fact that for most of the state, a warranty received with a new car is

virtually useless. Alaskan consumers outside of the major metropolitan areas receive virtually no value for their warranty, but we do know that a warranty is a significant part of the purchase price of a new vehicle. (Scotty would be willing to meet with you and talk with you about this, because he has had extensive experience inside the industry in Michigan, working with warranty problems both there and here.)

It would be important also that any bill which is meant to encourage the manufacturers to appoint or contract with independent repair shops in the smaller Alaska communities, provide a standard of payment that would be high enough to encourage those independent repair shops to enter into such agreements. A very real problem in the area of manufacturer's warranties is that the manufacturers compensate their dealerships for warranty work based on a flat rate manual which has very little relationship to the actual time needed to complete a warranty repair. Also, the times suggested for repair in the manufacturer's manual assume that the person doing the work will have all the specialized tools and diagnostic equipment of a full dealership, as well as factory trained technicians who know about the latest problems or technology. An independent repair shop in a rural area attempting to correct a defect of any complexity soon discovers that it takes them many more hours to cure the problem than it would a factory trained technician back in the dealership's more fully equipped shop.

Another problem apparently unique to Alaska is the incredible delay in getting warranty repair work done. Although only one manufacturer offers in its express warranty to provide substitute transportation during w[illegible] repairs, most dealerships in the lower 48 do offer compl[illegible]y loaner vehicles to almost all warranty repair customers [illegible]epairs are delayed beyond a few days. Also, in the lower [illegible]ost dealerships would be chagrined if they could not get the car into the shop on a warranty repair within two to three days. In Alaska, one of our largest dealerships "prides" itself on being able to get a non-functioning vehicle, under warranty, into the shop to be "looked at" in 10 business days.

The problem in Alaska is further aggravated by the fact that many of the dealerships do not stock a significant inventory of parts, but order parts specially as the warranty calls for. (In fact, if a vehicle under warranty needs a part not available at the Alaska dealership, the customer is usually required to pay the air freight to get the part shipped promptly, or else wait for the surface shipment of the required parts.) To address these problems, we inserted a Section 1(c), which gives the manufacturer two weeks leeway, then imposes a duty to provide substitute transportation.

We also tried to put in some reasonably balanced criteria about what constitutes a customer's inability to deliver a vehicle to a dealership or authorized agent because of distance. You will find this in Section 2(d). The way we set up this statute, Section (2) really contains the heart of the "lemon" law provisions, namely the presumption of when a manufacturer has had a reasonable chance to attempt repair, and the manufacturer's duty to make reimbursement to a customer who has purchased a lemon. (Section 2's more powerful provisions are for the first year or 12,000 miles.)

We wrote some definitions, but we would still need to figure out definitions for "population center," and also for what a "vehicle system or assembly" is.

You will note that the other states focus in on whether a manufacturer has attempted to repair the "same non-conformity." What Scotty Dawkins tells me is that that language could provide an incredibly large loophole for the manufacturer. For instance, if a customer has a portion of the transmission "system or assembly" worked on four times, it is possible that the first two times the manufacturer will attempt to repair the least expensive portion of the system, hoping that that will be sufficient. Often in warranty repairs Scotty sees that the necessary work is done in a progressive manner; namely the least expensive and least complex repairs are attempted first, but when this doesn't work, only then does the manufacturer reluctantly dig into the larger system or into some more complex component of the system, which in fact may be the underlying problem. So, you see that Scotty wanted to make sure that the same nonconformity was broad enough to cover the same malfunction within a system. For example, your engine develops a severe oil leak, and it is repaired by repacking a seal. The engine then develops a knock, and the dealer attempts to correct it by first installing a new oil pump, then a crankshaft, and finally corrects the knock by rebuilding the engine. A few weeks later while operating the vehicle on the highway several hundred miles from home the engine seizes. That is the malfunction or the defect of the system that should trigger the statutory remedies.

We also did not write in any law enforcement mechanism into the statute, since I assumed you're thinking of it being a private action lemon law as in other states. You might want to note all the background warranty statutes that do exist in the State of California, and that provide for treble damages and affirmative defenses and other things. I am including those in this packet, for your use. You may also want to look at whether you want to make any or all of this act a violation of the Unfair Trade Practices Act if not followed. (You might get very different political reactions to those two proposals.)

I need to disclose to you a possible conflict of interest on this request. I am currently president of a nonprofit corporation known as the Conflict Resolution Center (CRC), which is a "third party dispute resolution mechanism," offering mediation and arbitration in the Anchorage municipality. In fact, the Conflict Resolution Center has made approaches to representatives of several automobile manufacturers about whether or not they would wish to use the services of CRC as a third party dispute mechanism under the federal Magnuson-Moss Warranty Act. At this time, there is no such specific relationship contemplated between CRC and any manufacturer. However, that is a possibiliity, so I thought I should mention my relationship to CRC.

Scotty Dawkins will be in Juneau on March 28 and, despite the official holiday, is very eager to discuss the lemon law concept with you.

/aw

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 344
Title: "...motor vehicle warranties."
Sponsor: Repr. M.M.Miller
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: Pub. Protec.
BRU, Program of Subprogram(s) Affected:
Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues Director
Phone: 465-3672
Division: Administrative Services Division
Date: April 13, 1983

Approved by Commissioner: Richard I. Pegues/FOR Norman C. Gorsuch, Attorney General
Date: April 13, 1983
Department: Department of Law

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HB 344
Fiscal Note
Analysis

HB 344 clarifies and defines the legal warranty rights and responsibilities between owners of new motor vehicles and the vehicle manufacturer, when a new vehicle is seriously defective. Section 1(f) of the bill makes the manufacturer's refusal or failure to fulfill its warranty duties an unfair trade practice under AS 45.50.471. AS 45.50.471, which is enforced by the Consumer Protection Section of the Department of Law, already covers warranties and repairs in a more general manner. The specific legal standards of HB 344 should not cause additional fiscal impact on Consumer Protection because HB 344 merely gives a better definition and therefore a better enforcement tool in the auto warranty area.

AS 45.50.471 also provides for the vehicle owner's private enforcement lawsuit, so some of HB 344's impact will be in the private legal sector.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB-344
Title: Motor Vehicle Warranties
Sponsor: M.M. Miller
Requestor: Sponsor

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Life/Property Pr
BRU, Program of Subprogram(s) Affected:
Driver/Vehicle Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

No fiscal impact anticipated

Prepared By: Robert J. Rowan, Director
Phone: 269-5551
Division: Motor Vehicles
Date: 4-20-83

Approved by Commissioner:
Date: 4/22/83
Department: Public Safety

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3/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB-344
Title: Motor Vehicle Warranties
Sponsor: M.M. Miller
Requestor: Sponsor

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Life/Property Pro
BRU, Program of Subprogram(s) Affected:
Driver/Vehicle Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

No fiscal impact anticipated

Prepared By: Robert J. Rowan, Director
Phone: 269-5551
Division: Motor Vehicles
Date: 4-20-83

Approved by Commissioner:
Date: 4/22/83
Department: Public Safety

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3/8/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 344
Title: "...motor vehicle warranties."
Sponsor: Repr. M.M.Miller
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: Pub. Protec.
BRU, Program of Subprogram(s) Affected:
Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard L. Pegues Richard L. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: April 13, 1983

Approved by Commissioner: Richard L. Pegues/FOR Norman C. Gorsuch, Attorney General
Department: Department of Law
Date: April 13, 1983

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

HB 344
Fiscal Note
Analysis

HB 344 clarifies and defines the legal warranty rights and responsibilities between owners of new motor vehicles and the vehicle manufacturer, when a new vehicle is seriously defective. Section 1(f) of the bill makes the manufacturer's refusal or failure to fulfill its warranty duties an unfair trade practice under AS 45.50.471. AS 45.50.471, which is enforced by the Consumer Protection Section of the Department of Law, already covers warranties and repairs in a more general manner. The specific legal standards of HB 344 should not cause additional fiscal impact on Consumer Protection because HB 344 merely gives a better definition and therefore a better enforcement tool in the auto warranty area.

AS 45.50.471 also provides for the vehicle owner's private enforcement lawsuit, so some of HB 344's impact will be in the private legal sector.

HB

346

FISCAL NOTE Revision Date , 1983

I. REQUEST

Bill/Resolution No: SS HB 346
Title: Exempting public utility income
Sponsor: Cato
Requestor: State Affairs and Finance

II. FISCAL DETAIL

Agency Affected: Department of Revenue
Program Cat gory Affected: Rev Coll & Mgmt
BRU, Program of Subprogram(s) Affected:
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	(500)	(2500)	(2000)	(2000)	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Robert R. Kessel Phone: 465-2320
Division: Audit Division Date: April 25, 1983

Approved by Commissioner: Date: 4/26/83
Department:

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

IV. Analysis

The fiscal note takes into consideration the retroactive provisions of the bill (1-1-83). Corporations make estimated payments in advance of their filing of a tax return and the fiscal note assumes that the first quarterly payments for 1983 taxes (paid on or before March 15, 1983) would not be refunded until after July 1, 1983. Therefore, the fiscal note for FY84 is greater than subsequent fiscal notes because of that refund carryover.

The fiscal note is based on data extracted from returns as filed for tax year 1981 and adjusted for anticipated increases in tax liabilities.

HB

347

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 5, 1984

MEMORANDUM

TO: Representative Furnace

FROM: Jay Livey
Legislative Analyst

RE: Regulation of Naturopaths in Other States
Research Request 84-055

Steve Levi of your staff asked that we compare the regulation and licensure of naturopaths in other states with the approach proposed by CSHB 374. There are currently six states, Washington, Arizona, Oregon, Hawaii, Nevada, and Connecticut, that license naturopaths. We were able to contact or obtain licensing laws for all of these states. The comparisons of the laws includes the following information:

- the entity responsible for the regulation;
- requirements for licensure as a naturopath;
- scope of naturopathic practice; and
- reciprocity arrangements with other states.

Responsibility for Naturopathic Regulation

CSHB 347 puts the responsibility for the regulation of naturopaths in Alaska within the authority of the Department of Commerce and Economic Development. The department would have the authority to evaluate the qualifications of applicants, prepare and administer examinations to applicants and revoke and suspend licenses for cause. The State of Washington uses a similar structure, giving these powers to the Department of Licensing.

In four states, Hawaii, Oregon, Nevada and Arizona, the authority to administer the licensure law is given to a Board of Naturopathic Examiners. These boards may discipline licensed naturopaths through revocation or suspension of licenses, establish and administer licensure examinations, evaluate the qualifications of applicants and generally administer the licensure law. Three of these states, Hawaii, Arizona

and Oregon, have a three-member board composed of licensed naturopaths. Nevada has a five-member Board of Examiners of which three members are required to be naturopaths; one member is required to be a physician and one member must be a layperson.

Connecticut has a structure that divides the licensing authority between a Board of Examiners and the Department of Health Services. The board, composed of 2 licensed naturopaths and one layperson, has the authority to discipline licensed naturopaths according to procedures established by the law and administrative code. The board is also responsible for developing the licensure examination. The Department of Health Services administers the licensure statute, and has final responsibility for licensing naturopaths under the statute.

Requirements for Licensure

In summary, to be licensed as a naturopathic physician in any of these states, the applicant must be a high school graduate, have graduated from an approved school of Naturopathy and pass an examination administered by either a state department or state board of examiners. As proposed in the Alaska law, Hawaii, Oregon and Connecticut require that applicants complete additional college work at an approved school. We also found the the standards used by the states to define approved schools of naturopathy were fairly similar to those proposed in the Alaska law. All states require a mix of classroom and clinical study, a course of study that occurs over four years and a minimum number of hours required for graduation. Each state's requirements are summarized below.

Alaska. To be eligible for a license as a naturopath in Alaska, CSHB 347 would require the applicant to be a high school graduate or equivalent, and to have completed two years of postsecondary education at an accredited college of liberal arts and sciences, have successfully completed an examination given by the Department of Commerce and Economic Development and not to have been licensed to practice naturopathic medicine in another state if the license has been revoked or suspended for disciplinary reasons. In addition, the applicant must have graduated from a legally chartered school of naturopathic medicine or a school of naturopathic medicine that meets specific curriculum requirements including a course of study of at least 4,000 hours of which 1,500 must be clinical.

Hawaii. In Hawaii, to be licensed as a naturopathic physician, an applicant must reside in the state for one year prior to application, be a high school graduate, have had two years liberal arts education at an accedited college and be a graduate of a legally chartered school of naturopathic medicine that meets specific curriculum requirements found in the law. In addition, the applicant must pass an examination prepared and administered by the Board of Naturopathic Examiners.

Arizona. Arizona law requires an applicant for a naturopathic license to be a high school graduate or the equivalent and to have graduated from a school of drugless therapeutics, approved by the Board of Naturopathic Examiners. The school must meet specific curriculum requirements specified in the law and provide a total of at least 4,500 hours of instruction. The applicant must also pass an examination prepared by the Board of Examiners.

Connecticut. Connecticut law requires an applicant for a naturpathic license to be a high school graduate, to have completed 64 weeks of study at a college or scientific school approved by the Board of Naturopathic Examiners and to have graduated from a legally chartered, reputable school or college of naturopathy approved by the board. To be approved, the school of naturopathy, must require a course of resident instruction of at least four years, with each year consisting of thirty-six weeks of actual attendance. The applicant must also successfully pass an examination given by the Department of Health Services.

Oregon. Minimum requirements to be eligible for a license of naturopathy in Oregon include a high school diploma, two years satisfactory study in an accredited college of liberal arts and sciences and graduation from a college of naturopathy approved by the Board of Naturopathic Examiners. To be accredited, the college of Naturopathy must provide at least 4,000 lecture or recitation hours. Applicants are also required to pass an examination administered by the board.

Washington. Washington requires applicants for a naturopathic license to be graduates of a school of naturopathic medicine approved by the Director of Licensing and to pass an examination prepared amd administered by the Director of Licensing. To be approved, the school must require a high school diploma as a condition of admission.

Nevada. To be licensed as a naturopath in Nevada, the applicant must be 21 years of age or older, a citizen of the United States or be legally entitled to work and live here, a graduate of a school of naturopathic medicine that is approved by the Board of Naturopathic Examiners and must have successfully completed an examination administered by the board.

Scope of Practice

The scope of naturopathic practice allowed by the proposed Alaska law is similar to the scope of practice allowed in Oregon, Arizona, and Connecticut. These states all allow naturopaths to perform childbirth, draw blood for diagnosis purposes, sign birth and death certificates and perform minor surgeries.

However, the states of Washington and Nevada restrict the scope of naturopathic practice more than the proposed Alaska law. These states do not allow naturopaths to perform surgeries of any kind or perform natural childbirth (except in Washington if a licensed midwife is present). Naturopaths in Nevada must work under the supervision of a physician; however, they are allowed to draw blood for diagnosis.

Alaska. The proposed Alaska law would allow naturopaths to perform physical exams, write prescriptions for noncontrolled substances, sign birth and death certificates, diagnose disease according to training, treat patients by stimulating normal functions of tissues and organs sensitized by disease, draw blood for laboratory purposes, use electrical or other methods for repair and care of superficial lacerations and abrasions, and practice natural childbirth in obsetrics. According to the proposed law, a naturopath may not perform surgery except as related to childbirth, use controlled substances, use radiation therapy or use drugs except antiseptics, local anesthetics, minerals and extracts, compounds or concentrates obtained from plants or animals.

Hawaii. Hawaii's naturopathic licensing law does not specify a scope of allowable practice. However, it does state that "naturopathic physicians licensed under this chapter shall observe and be subject to all state regulations relative to reporting births and deaths and all matters pertaining to the public health with equal rights and obligations as physicians, surgeons, and practitioners of other schools of medicine." Because we were unable to contact representatives of the Hawaii Board of Naturopathic Examiners, we were unable to make specific comparisons to the proposed Alaska law.

Arizona. The Arizona law does not specifically include the scope of services naturopaths can offer. According to Dr. Milburn Shelton, President of the State Naturopathic Licensing Board, the scope of services is determined by the definitions found in the statute.[1] For example, naturopathy means "a system for treating the abnormalities of the human mind and body by the use of drugless and nonsurgical methods including the use of physical, electrical, hygenic, and sanitary measures and all form of physiotherapy."

Nonsurgical is defined to be "a system of treating the abnormalities of the human mind and body without surgical invasion of the human body, but does not preclude the use of acupuncture, electrical or other methods for the repair and care of incident and superficial lacerations and abrasions, benign superficial lesions and the removal of foreign bodies

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[1]Dr. Milburne Shelton, President of the Arizona Board of Naturopathic Examiners, (602) 937-9125.

located in superficial structures, and the use of standard clincal procedures in connection therewith." This definition allows procedures that are similar to ones allowed in the proposed Alaska law.

Dr. Shelton stated that naturopaths in Arizona could also perform physical examinations, prescribe substances authorized in the statutes, sign both birth and death certificates, treat patients with acupuncture, draw blood for laboratory purposes and practice natural childbirth. He also noted that naturopaths in Arizona are prohibited from performing the activities also prohibited in CSHB 347.

Connecticut. As with Arizona, the Connecticut law is not very specific concerning the scope of practice naturopaths are allowed to perform. However, according to Dr. Charles Soderstrom, President of the Board of Naturopathic Examiners, the scope of practice is very similar to the proposed Alaska law.[2] He noted that Connecticut naturopaths can perform minor surgery, practice natural childbirth, sign both birth and death certificates, draw blood for laboratory tests, and perform diagnosis. However, as in the proposed Alaska law, naturopaths may not perform major surgery, use controlled substances, or use radiation therapy.

Oregon. The Oregon statutes allow naturopaths to "treat the human body by use of drugless methods, which has for its object the maintaining of the body in, or of restoring it to, a state of normal health." Although the full scope of allowed services is not detailed in the statute, it does specifically mention that antiseptics and anesthetics can be administered, birth and death certificates can be signed and minor surgery (as defined in the statute) can be performed.[3] Specific prohibitions mentioned in the law include the practice of optometry, performing chiropractic adjustments and prescribing drugs.

Washington. The Washington licensing law does not specifically detail the scope of naturopathic practice. According to Yvonne Braeme, Executive Secretary to the Drugless Examining Committee, the existing law in Washington, which was adopted in 1919, is outdated.[4] However, she did note that naturopathic practice in Washington may be more restricted than that proposed by the Alaska law. In Washington, naturopaths are

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[2]Dr. Charles Soderstrom, President, Connecticut Board of Naturopathic Examiners, (203) 633-5330.

[3]Minor surgery as defined in the Oregon law is very similar to the scope of services detailed in the proposed Alaska statute.

[4]Ms. Yvonne Braeme, Executive Secretary, Washington State Board of Drugless Medicine, (206) 753-3576.

not allowed to sign birth and death certificates, draw blood for laboratory uses, perform natural childbirth without the presence of a licensed midwife, do surgeries of any kind or prescribe medicine.

Nevada. Of all the states that we contacted, Nevada had the most restrictive law concerning naturopaths. In Nevada, naturopaths are required to work under the supervision of a licensed physician and are not authorized to "perform those functions and duties specifically delegated by law to physicians, dentists, nurses, osteopaths, chiropractors, practitioners of traditional oriental medicine, podiatrists, optometrists, hearing aid specialists or physical therapists."

Specifically, naturopaths may not use x-ray or radium treatments, perform major or minor surgery, perform obstetrics, prescribe drugs or draw blood for any reason other than diagnosis. Naturopaths may sign birth and death certificates if they are co-signed by the supervising physician.

Reciprocity in Licensing

Reciprocity refers to the granting of a license by one state based on the fact that a license has been granted to the applicant by another state that has similar licensing requirements. The proposed Alaska law gives this power to the Department of Commerce and Economic Development assuming that the law in the state in which the applicant currently has a license is equivalent to the requirements of Alaska law.

Currently, the states of Arizona and Oregon have the power in their statutes to grant naturopathic licenses based on reciprocity agreements. The states of Nevada, Washington, Connecticut and Hawaii do not allow reciprocity.

I hope that this informatiom is helpful to you. If you would like copies of the naturopathic regulations from other states or require additional research, please let me know.

JL

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

March 28, 1984

To: House Labor and Commerce Committee Members

From: Labor and Commerce Committee Staff

RE: CSHB 347 "Relating to Licensing of Naturopathic Practitioners

Following yesterdays public hearing on HB 347, a committee substitute for the bill was ordered by the Chairman of the Committee. The changes from the original committee are substitute are listed below.

1. The Board of Naturopathic examiners would consist of three naturopaths, one licensed doctor, and one public member. The original CS called for two naturopaths, one doctor, one nurse and a public member.

2. The Applicability section was deleted.

3. Page 2, Line 5, the words "equivalent to or higher than requirements in other states that license naturopaths" were added.

4. Page 3, Line 3, after the word held the words "at least twice a year" were added.

5. Page 6, Line 21 was changed so to read "through the prevention and treatment of illness."

Offered: 2/20/84
Referred: Labor & Commerce and Finance

Original sponsors: Martin and Tischer

IN THE HOUSE BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 347 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the licensing of practitioners of naturopathic medicine; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

(24) regulation of naturopathy or naturopathic medicine under AS 08.45.

* Sec. 2. AS 08 is amended by adding a new chapter to read:

CHAPTER 45. NATUROPATHS.

ARTICLE 1. REGULATION OF NATUROPATHY.

Sec. 08.45.010. DUTIES AND POWERS. The department shall

(1) evaluate the qualifications of applicants for licenses under this chapter;

(2) conduct hearings and keep records necessary to carry out the purposes of this chapter;

(3) license naturopaths and renew licenses in accordance with AS 08.45.100 - 08.45.170; and

(4) provide for temporary permits to engage in the practice of naturopathic medicine for persons who are apparently qualified that are valid until certification of the results of the next examination given under AS 08.45.120.

ARTICLE 2. LICENSING OF NATUROPATHS.

Sec. 08.45.100. LICENSING REQUIREMENT. A person may not engage in the practice of naturopathy or naturopathic medicine unless that

person has a valid license or temporary permit under this chapter.

Sec. 08.45.110. LICENSURE AS A NATUROPATH. To be eligible for a license as a naturopath, an applicant shall

(1) hold a high school diploma or the equivalent;

(2) have completed two years of postsecondary education at an accredited college of liberal arts or sciences;

(3) have graduated from a legally chartered school or college of naturopathic medicine that has as a requirement for graduation successful completion of a course of resident instruction of at least nine months actual attendance in each of four years and successful completion of a course of instruction totaling 4,000 hours or more of which at least 1,500 hours is clinical experience; the course of instruction shall include:

(A) anatomy, physiology, histology, and embryology;

(B) microbiology;

(C) pathology;

(D) immunology;

(E) public health;

(F) physical, clinical, and x-ray diagnosis;

(G) first aid and emergency medicine;

(H) obstetrics and gynecology;

(I) orthopedics;

(J) minor surgery and proctology;

(K) otolaryngology;

(L) physiotherapy and manipulative techniques;

(M) dietetics and clinical nutrition;

(N) botanical medicine;

(O) naturopathic theory, therapeutics and clinical practice;

(P) jurisprudence;

(4) successfully complete an examination given by the department;

(5) not have a license to practice naturopathic medicine in another state, province, or territory, that is suspended or revoked for disciplinary reasons;

(6) be a United States citizen or lawfully admitted to permanent residence in this country; and

(7) be of good moral character.

Sec. 08.45.120. EXAMINATION. (a) An examination for licensing as a naturopath shall be held at a time and place and shall be conducted as determined by the department. The examination shall be limited to the subjects listed in AS 08.45.110(3), each of which shall constitute a separate examination section. The examination shall be objective and in writing, but may be supplemented by oral examinations, and by demonstrations or other practical tests as the department may require.

(b) To pass the examination an applicant shall receive an overall average of 75 percent and may not receive less than 70 percent in more than two sections.

Sec. 08.45.130. ENDORSEMENT. The department may license a person as a naturopath if the person is currently licensed as a naturopath in another state or in a province of Canada and

(1) that state or province maintains professional licensing standards equivalent or higher than those in this chapter;

(2) that state or province extends the same licensing privilege to those holding a license in this state; and

(3) the person demonstrates to the satisfaction of the department qualifications at least equal to those required of persons

licensed under this chapter.

Sec. 08.45.140. DENIAL, SUSPENSION OR REVOCATION OF LICENSE. The department may deny, suspend, or revoke the license of a person or applicant who

(1) has obtained or attempted to obtain a license under this chapter by fraud or deceit;

(2) wilfully violates a provision of this chapter or a regulation adopted under this chapter;

(3) habitually overuses alcoholic beverages;

(4) unlawfully uses a controlled substance as defined in AS 11.81.900(b)(6);

(5) impersonates another physician;

(6) practices under an assumed name; or

(7) is convicted of a crime involving moral turpitude, including murder, sexual assault, robbery, kidnapping, incest, arson, burglary, theft, and forgery.

Sec. 08.45.150. FEES. The following fees are imposed under this chapter:

(1) application for examination	$ 50
(2) application for reexamination	10
(3) license issuance or biennial renewal	200
(4) issuance of temporary permit	50

Sec. 08.45.160. SCOPE OF NATUROPATHIC PRACTICE. (a) A naturopath in the course of the practice of naturopathic medicine may

(1) perform physical examinations, write prescriptions for substances authorized in this chapter, and sign birth and death certificates;

(2) use systems of diagnosis for which the naturopathic physician has been trained under AS 08.45.110(3);

(3) treat patients by physiological, nutritional, psychological, mechanical, electrical, manual, hydrotherapeutic, phytotherapeutic, mineral and organic substances and agencies, including acupuncture, that are effective in stimulating normal function of tissues and organs sensitized by disease;

(4) draw blood for laboratory purposes, and use electrical or other methods for the repair and care of superficial lacerations and abrasions, benign superficial lesions, and the removal of foreign bodies located in superficial structures; and

(5) practice natural childbirth in obstetrics, including related minor surgical procedures.

(b) A naturopath may not

(1) perform surgery except as provided under (a)(5) of this section;

(2) use controlled substances as defined in AS 11.81.-900(b)(6);

(3) use radiation therapy; or

(4) use drugs except (antiseptics, local anesthetics, minerals and extracts, compounds or concentrates obtained from plants or animals.)

Sec. 08.45.170. CONTINUING EDUCATION. (a) The department may prescribe by regulation continuing education requirements for persons licensed under this chapter.

(b) Before a license issued under this chapter may be renewed, the licensee shall submit to the department evidence of completion of continuing education requirements.

(c) The department may exempt a licensee from the continuing education requirement under (b) of this section upon an application of the licensee setting out extenuating circumstances. A licensee may

not receive more than one exemption under this subsection in a five-year period.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 08.45.200. TITLES AND ABBREVIATIONS. (a) A person licensed under this chapter may use the following titles: "Naturopath", "Doctor of Naturopathy" or its abbreviation, "N.D.". A person licensed under this chapter may not use a title in a manner that suggests that the person practices a form of medicine or a healing art other than naturopathy.

(b) A person may not use a title or abbreviation listed in (a) of this section unless the person is licensed under this chapter.

Sec. 08.45.205. VIOLATIONS. (a) A person is guilty of a class B misdemeanor if the person

(1) fraudulently obtains or furnishes a temporary permit, license, renewal, or record required by this chapter;

(2) wilfully violates a provision of this chapter or a regulation adopted under this chapter.

(b) A person who practices naturopathy or naturopathic medicine without a valid temporary permit or license issued under this chapter is guilty of a class A misdemeanor.

Sec. 08.45.220. DEFINITIONS. In this chapter

(1) "department" means the Department of Commerce and Economic Development;

(2) "naturopathy" and "naturopathic medicine" means a system of healing the human body that includes diagnosis and treatment through the use of natural agencies, forces, processes, and products with emphasis on the response of the individual to the disease rather than its treatment in isolation.

* Sec. 3. LICENSING OF PRACTITIONERS OF NATUROPATHY OR NATUROPATHIC

MEDICINE WITHOUT EXAMINATION. The commissioner of commerce and economic development shall license all persons who, on the effective date of this Act, meet the qualifications of AS 08.45.110(1) - (3) and (5) - (7) and who apply for licensure under AS 08.45 not later than June 30, 1985.

* Sec. 4. This Act takes effect July 1, 1984.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

March 28, 1984

To: House Labor and Commerce Committee Members

From: Labor and Commerce Committee Staff

RE: CSHB 347 "Relating to Licensing of Naturopathic Practitioners

Following yesterdays public hearing on HB 347, a committee substitute for the bill was ordered by the Chairman of the Committee. The changes from the original committee are substitute are listed below.

1. The Board of Naturopathic examiners would consist of three naturopaths, one licensed doctor, and one public member. The original CS called for two naturopaths, one doctor, one nurse and a public member.

2. The Applicability section was deleted.

3. Page 2, Line 5, the words "equivalent to or higher than requirements in other states that license naturopaths" were added.

4. Page 3, Line 3, after the word held the words "at least twice a year" were added.

5. Page 6, Line 21 was changed so to read "through the prevention and treatment of illness."

Cook
2/29/84

Original sponsors: Martin and Tischer

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 347 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the licensing of naturopaths; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

(24) regulation of naturopaths under AS 08.45.

* Sec. 2. AS 08 is amended by adding a new chapter to read:

CHAPTER 45. NATUROPATHS.

ARTICLE 1. BOARD OF NATUROPATHIC EXAMINERS.

Sec. 08.45.010. CREATION AND MEMBERSHIP OF THE BOARD. There is established the Board of Naturopathic Examiners consisting of

(1) two naturopaths licensed under this chapter;

(2) one doctor licensed under AS 08.64;

(3) one registered nurse licensed under AS 08.68; and

(4) one public member.

Sec. 08.45.030. TERM OF OFFICE. Members of the board serve staggered terms of three years. A member may be appointed to serve no more than two consecutive full terms.

〈Sec. 08.45.040. APPLICABILITY. AS 08.45.010 - 08.45.040 apply one year after the first eight licenses are issued under this chapter. After AS 08.45.010 - 08.45.040 becomes applicable, the board shall exercise the powers and duties of the department under this chapter.〉

ARTICLE 2. REGULATION OF NATUROPATHY.

Sec. 08.45.090. DUTIES AND POWERS. (a) The department shall

(1) evaluate the qualifications of applicants for licenses

under this chapter;

(2) conduct hearings and keep records necessary to carry out the purposes of this chapter; and

(3) license naturopaths and renew licenses in accordance with AS 08.45.100 - 08.45.170.

(b) The department may establish by regulation educational requirements for licensure under this chapter in addition to requirements under AS 08.45.110(2), and identify schools that provide courses of study that satisfy the requirements.

Sec. 08.45.100. LICENSING REQUIREMENT. A person may not engage in the practice of naturopathy unless that person has a valid license or temporary permit issued under this chapter.

Sec. 08.45.110. LICENSURE AS A NATUROPATH. To be eligible for a license as a naturopath, an applicant shall

(1) hold a bachelor's degree from an accredited college of liberal arts or sciences;

(2) have graduated from a school of naturopathy approved by the department that has as a requirement for graduation successful completion of a course of resident instruction of at least nine months actual attendance in each of four years and successful completion of a course of study totaling at least 4,000 hours of instruction of which at least 1,500 hours is clinical experience;

(3) successfully complete an examination given by the department;

(4) not have a license to practice naturopathy in another state, province, or territory, that is suspended or revoked for disciplinary reasons;

(5) be a United States citizen or lawfully admitted to permanent residence in this country; and

(6) after graduating from a school of naturopathy, complete a one-year internship supervised by a naturopath licensed in this or another state.

Sec. 08.45.120. EXAMINATION. (a) An examination for licensing as a naturopath shall be held at a time and place and shall be conducted as determined by the department. The examination shall be objective and in writing, but may be supplemented by oral examinations, and by demonstrations or other practical tests as the department may require.

(b) To pass the examination an applicant shall receive an overall average of 75 percent and may not receive less than 70 percent in more than two sections. If an applicant fails the examination, the applicant may apply to be re-examined.

Sec. 08.45.130. TEMPORARY PERMIT. (a) The department may issue a temporary permit to practice naturopathy to a person if the person

(1) is currently licensed as a naturopath in another state or territory or in a province of Canada; and

(A) that state, territory, or province maintains professional licensing standards equivalent or higher than those in this chapter;

(B) that state, territory, or province extends the same licensing privilege to those holding a license in this state; and

(C) the person demonstrates to the satisfaction of the department qualifications at least equal to those required of persons licensed under this chapter; or

(2) qualifies for a license under AS 08.45.110(1) - (5) and is working as an intern supervised by a naturopath with a license or temporary permit issued under this chapter.

(b) A temporary permit issued under (a)(1) of this section is valid until the date on which the next examination is offered under AS 08.45.120. A temporary permit issued under (a)(2) of this section is valid for one year.

Sec. 08.45.140. LICENSE RENEWAL. A license issued under this chapter expires unless it is renewed every four years.

Sec. 08.45.150. FEES. The following fees are imposed under this chapter:

(1) application for examination	$ 50
(2) application for re-examination	10
(3) license issuance or renewal	200
(4) temporary permit issuance	50

Sec. 08.45.160. SCOPE OF NATUROPATHIC PRACTICE. (a) A naturopath in the course of the practice of naturopathy may

(1) use systems of diagnosis for which the naturopath has been trained;

(2) treat patients by physiological, nutritional, mechanical, manual, hydrotherapeutic and phytotherapeutic means, with accupressure, ~~and~~ and with minerals, and ~~with~~ extracts, compounds and concentrates obtained from plants or animals.

(b) A naturopath may not

(1) perform surgery;

(2) use or prescribe controlled substances as defined in AS 11.81.900(b)(6); or

(3) use x-ray equipment, radium, or irradiation for diagnosis or therapy.

Sec. 08.45.170. CONTINUING EDUCATION. (a) The department shall prescribe by regulation continuing education requirements for persons licensed under this chapter.

(b) Before a license issued under this chapter may be renewed, the licensee shall submit to the department evidence of completion of continuing education requirements.

(c) The department may exempt a licensee from the continuing education requirement upon an application of the licensee setting out extenuating circumstances. A licensee may not receive more than one exemption under this subsection in a five-year period.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 08.45.200. TITLES AND ABBREVIATIONS. (a) A person with a license or permit under this chapter may use the following titles: "Naturopath", "Doctor of Naturopathy" or its abbreviation, "N.D.". A person with a license or permit under this chapter may not use a title in a manner that suggests that the person practices a form of medicine or a healing art other than naturopathy.

(b) A person may not use a title or abbreviation listed in (a) of this section unless the person is licensed under this chapter.

Sec. 08.45.210. IMPOSITION OF DISCIPLINARY SANCTIONS. After a hearing, the department may limit, deny, suspend, or revoke a license or temporary permit, or censure a licensee or permittee if the person

(1) secured a license or permit under this chapter through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted of a felony or other crime that affects the person's ability to continue to practice competently and safely;

(5) fails to comply with this chapter or a regulation adopted under this chapter;

(6) continued to practice after becoming unfit due to

(A) professional incompetence;

(B) addiction or severe dependency on alcohol or other drugs that impairs the person's ability to practice safely;

(C) physical or mental disability;

(7) engaged in lewd or immoral conduct in connection with the delivery of professional service to a patient.

Sec. 08.45.220. VIOLATIONS. (a) Except as provided in (b) of this section, a person is guilty of a class B misdemeanor if the person intentionally violates a provision of this chapter or a regulation adopted under this chapter.

(b) A person who practices naturopathy without a valid temporary permit or license issued under this chapter is guilty of a class A misdemeanor.

Sec. 08.45.900. DEFINITIONS. In this chapter

(1) "department" means the Department of Commerce and Economic Development;

(2) "naturopathy" and "naturopathic" means a system of human health care that promotes good health through the prevention of illness and treatment by the use of educational, physical, nutritional, botanical, hygienic and other methods, and without the use of prescription drugs, surgery, x-ray equipment or radium therapy.

* Sec. 3. TEMPORARY PERMITS FOR PRACTITIONERS OF NATUROPATHY. (a) The Department of Commerce and Economic Development shall issue a temporary permit to practice naturopathy to a person who, on the effective date of this Act,

(1) is practicing naturopathy in the state;

(2) meets all the qualifications of AS 08.45.110 or 08.45.130-(a)(2), except for AS 08.45.110(3); and

(3) applies for the permit.

(b) A temporary permit issued under this section is valid until the date on which the first examination is offered under AS 08.45.120, as enacted in sec. 2 of this Act.

* Sec. 4. Notwithstanding AS 08.45.010 as enacted in sec. 2 of this Act, the first members of the Board of Naturopathic Examiners shall be appointed for the following terms; one member shall serve a one-year term, two members shall serve two-year terms, and two members shall serve three-year terms.

* Sec. 5. This Act takes effect January 1, 1985.

introduced by Rep. Furnace

MARCH 27, 1984

TO: HOUSE LABOR AND COMMERCE COMMITTEE MEMBERS
RE: PROPOSED AMENDMENTS TO HB 347

THE FOLLOWING AMENDMENTS TO CSCSHB 347 WERE PROPOSED BY MEMBERS OF THE NATUROPATHIC PROFESSION.

1. ADD A THIRD NATUROPATH TO THE BOARD. THE TOTAL NUMBER OF BOARD MEMBERS WOULD THEN BE SIX.

2. PAGE 2, LINE 7 AFTER THE WORD CHAPTER ADD, CONSISTENT WITH OTHER STATES THAT LICENSE NATUROPATHS.

3. PAGE 3, LINE 5 AFTER THE WORD HELD ADD, AT LEAST TWICE PER YEAR.

4. PAGE 5, LINE 11 AFTER THE WORD NATUROPATHY ADD, NATUROPATHIC PHYSICIAN.

5. PAGE 6, LINE 21 BEGINNING WITH THE WORD PREVENTION, CHANGE TO READ, PREVENTION AND TREATMENT OF ILLNESS.

6. PAGE 6, LINE 24 CHANGE THE TERMS PRESRCIPTION DRUGS TO READ, CONTROLLED SUBSTANCES AS DEFINED UNDER AS 11.71.140-11.71.190

7. INCLUDE A SECTION AT THE END OF THE BILL ALLOWING THOSE NATUROPATHS WHO:

1. MEET THE REQUIREMENTS FOR LICENSURE
2. ARE LICENSED IN ANOTHER STATE
3. HAVE PRACTICED IN ALASKA FOR ONE YEAR OR MORE

TO BE EXCLUDED FROM TAKING THE NATUROPATHIC LICENSING EXAMINATION.

MARCH 7, 1984

TO: JOHN

FROM: KEN

RE: 347

THE PURPOSE OF HB 347 IS TO PROVIDE, IN STATUTES, LANGUAGE ON THE LICENSING OF PRACTITIONERS OF NATUROPATHIC MEDICINE, AND TO CLEARLY SPELL OUT THE SCOPE OF NATUROPATHIC PRACTICE. THIS LEGISLATION HAS BEEN SCRUTINIZED BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE AND PASSED ON TO THIS COMMITTEE FOR FURTHER WORK.

TO DEFINE THE INTENT OF THE BILL MORE CLEARLY, HB 347 WOULD SET UP A MEANS FOR REGULATING NATUROPATHY. IT ALSO WOULD ESTABLISH LICENSING, EDUCATION, AND EXAMINATION REQUIREMENTS, SET FEES, AND LAY OUT WHAT A NATUROPATH CAN OR CAN NOT PRACTICE.

THE HESS COMMITTEE PASSED OUT ONE VERSION OF THE BILL. REP. MILO FRITZ HAS ALSO OFFERED ANOTHER. BOTH VERSIONS OF THE BILL ARE BEFORE YOU KNOW FOR COMPARISON AND CONSIDERATION.

QUESTIONS:

1. SHOULD THE DEPARTMENT OF HEALTH EDUCATION AND SOCIAL SERVICES HAVE RESPONSIBILITY FOR REGULATING THIS FIELD, OR SHOULD A BOARD OF NATUROPATHY BE ESTABLISHED ?

2. WHY SHOULD OR SHOULDN'T A NATUROPATH BE ALLOWED TO DRAW BLOOD FOR TESTING ?

3. HOW MANY NATUROPATHS ARE THERE PRACTICING IN ALASKA AT THE PRESENT TIME ?

4. IN THE TWO BILLS THE EDUCATION REQUIREMENTS VARY. HOW MUCH EDUCATION SHOULD A NATUROPATH BE REQUIRED TO HAVE? AND, IN WHAT SPECIFIC AREAS SHOULD STUDY BE CONCENTRATED?

5. IN SECTION 3 OF THE HESS COMMITTEE VERSION, THOSE CURRENTLY PRACTICING NATUROPATHY IN ALASKA WOULD NOT HAVE TO MEET REQUIREMENTS ESTABLISHED FOR FUTURE PRACTITIONERS. WHY ?

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

March 28, 1984

To: House Labor and Commerce Committee Members

From: Labor and Commerce Committee Staff

RE: CSHB 347 "Relating to Licensing of Naturopathic Practitioners

Following yesterdays public hearing on HB 347, a committee substitute for the bill was ordered by the Chairman of the Committee. The changes from the original committee are substitute are listed below.

1. The Board of Naturopathic examiners would consist of three naturopaths, one licensed doctor, and one public member. The original CS called for two naturopaths, one doctor, one nurse and a public member.

2. The Applicability section was deleted.

3. Page 2, Line 5, the words "equivalent to or higher than requirements in other states that license naturopaths" were added.

4. Page 3, Line 3, after the word held the words "at least twice a year" were added.

5. Page 6, Line 21 was changed so to read "through the prevention and treatment of illness."

Offered: 2/20/84
Referred: Labor & Commerce and Finance

Original sponsors: Martin and Tischer

IN THE HOUSE BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 347 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the licensing of practitioners of naturopathic medicine; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

(24) regulation of naturopathy or naturopathic medicine under AS 08.45.

* Sec. 2. AS 08 is amended by adding a new chapter to read:

CHAPTER 45. NATUROPATHS.

ARTICLE 1. REGULATION OF NATUROPATHY.

Sec. 08.45.010. DUTIES AND POWERS. The department shall

(1) evaluate the qualifications of applicants for licenses under this chapter;

(2) conduct hearings and keep records necessary to carry out the purposes of this chapter;

(3) license naturopaths and renew licenses in accordance with AS 08.45.100 - 08.45.170; and

(4) provide for temporary permits to engage in the practice of naturopathic medicine for persons who are apparently qualified that are valid until certification of the results of the next examination given under AS 08.45.120.

ARTICLE 2. LICENSING OF NATUROPATHS.

Sec. 08.45.100. LICENSING REQUIREMENT. A person may not engage in the practice of naturopathy or naturopathic medicine unless that

person has a valid license or temporary permit under this chapter.

Sec. 08.45.110. LICENSURE AS A NATUROPATH. To be eligible for a license as a naturopath, an applicant shall

(1) hold a high school diploma or the equivalent;

(2) have completed two years of postsecondary education at an accredited college of liberal arts or sciences;

(3) have graduated from a legally chartered school or college of naturopathic medicine that has as a requirement for graduation successful completion of a course of resident instruction of at least nine months actual attendance in each of four years and successful completion of a course of instruction totaling 4,000 hours or more of which at least 1,500 hours is clinical experience; the course of instruction shall include:

(A) anatomy, physiology, histology, and embryology;

(B) microbiology;

Dee - not enough — (C) pathology; (alteration of tissue - by disease)

(D) immunology;

(E) public health;

(F) physical, clinical, and x-ray diagnosis;

(G) first aid and emergency medicine;

(H) obstetrics and gynecology;

(I) orthopedics;

(J) minor surgery and proctology;

(K) otolaryngology;

(L) physiotherapy and manipulative techniques;

(M) dietetics and clinical nutrition;

(N) botanical medicine;

should be left in — (O) naturopathic theory, therapeutics and clinical practice;

7 yrs

(P) jurisprudence;

(4) successfully complete an examination given by the department;

(5) not have a license to practice naturopathic medicine in another state, province, or territory, that is suspended or revoked for disciplinary reasons;

(6) be a United States citizen or lawfully admitted to permanent residence in this country; and

(7) be of good moral character.

Sec. 08.45.120. EXAMINATION. (a) An examination for licensing as a naturopath shall be held at a time and place and shall be conducted as determined by the department. The examination shall be limited to the subjects listed in AS 08.45.110(3), each of which shall constitute a separate examination section. The examination shall be objective and in writing, but may be supplemented by oral examinations, and by demonstrations or other practical tests as the department may require.

(b) To pass the examination an applicant shall receive an overall average of 75 percent and may not receive less than 70 percent in more than two sections.

Sec. 08.45.130. ENDORSEMENT. The department may license a person as a naturopath if the person is currently licensed as a naturopath in another state or in a province of Canada and

(1) that state or province maintains professional licensing standards equivalent or higher than those in this chapter;

(2) that state or province extends the same licensing privilege to those holding a license in this state; and

(3) the person demonstrates to the satisfaction of the department qualifications at least equal to those required of persons

licensed under this chapter.

Sec. 08.45.140. DENIAL, SUSPENSION OR REVOCATION OF LICENSE. The department may deny, suspend, or revoke the license of a person or applicant who

(1) has obtained or attempted to obtain a license under this chapter by fraud or deceit;

(2) wilfully violates a provision of this chapter or a regulation adopted under this chapter;

(3) habitually overuses alcoholic beverages;

(4) unlawfully uses a controlled substance as defined in AS 11.81.900(b)(6);

(5) impersonates another physician;

(6) practices under an assumed name; or

(7) is convicted of a crime involving moral turpitude, including murder, sexual assault, robbery, kidnapping, incest, arson, burglary, theft, and forgery.

Sec. 08.45.150. FEES. The following fees are imposed under this chapter:

(1) application for examination	$ 50
(2) application for reexamination	10
(3) license issuance or biennial renewal	200
(4) issuance of temporary permit	50

Sec. 08.45.160. SCOPE OF NATUROPATHIC PRACTICE. (a) A naturopath in the course of the practice of naturopathic medicine may

(1) perform physical examinations, write prescriptions for substances authorized in this chapter, and sign birth and death certificates;

(2) use systems of diagnosis for which the naturopathic physician has been trained under AS 08.45.110(3);

(3) treat patients by physiological, nutritional, psychological, mechanical, electrical, manual, hydrotherapeutic, phytotherapeutic, mineral and organic substances and agencies, including acupuncture, that are effective in stimulating normal function of tissues and organs sensitized by disease;

(4) draw blood for laboratory purposes, and use electrical or other methods for the repair and care of superficial lacerations and abrasions, benign superficial lesions, and the removal of foreign bodies located in superficial structures; and

(5) practice natural childbirth in obstetrics, including related minor surgical procedures. all Major - no minor

(b) A naturopath may not

(1) perform surgery except as provided under (a)(5) of this section;

(2) use controlled substances as defined in AS 11.81.-900(b)(6); should not need to use Drugs.

(3) use radiation therapy; or very dangerous

(4) use drugs except antiseptics, local anesthetics, minerals and extracts, compounds or concentrates obtained from plants or animals.

Sec. 08.45.170. CONTINUING EDUCATION. (a) The department may prescribe by regulation continuing education requirements for persons licensed under this chapter.

(b) Before a license issued under this chapter may be renewed, the licensee shall submit to the department evidence of completion of continuing education requirements.

(c) The department may exempt a licensee from the continuing education requirement under (b) of this section upon an application of the licensee setting out extenuating circumstances. A licensee may

not receive more than one exemption under this subsection in a five-year period.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 08.45.200. TITLES AND /BBREVIATIONS. (a) A person licensed under this chapter may use the following titles: "Naturopath", "Doctor of Naturopathy" or its abbreviation, "N.D.". A person licensed under this chapter may not use a title in a manner that suggests that tne person practices a form of medicine or a healing art other than naturopathy.

(b) A person may not use a title or abbreviation listed in (a) of this section unless the person is licensed under this chapter.

Sec. 08.45.205. VIOLATIONS. (a) A person is guilty of a class B misdemeanor if the person

(1) fraudulently obtains or furnishes a temporary permit, license, renewal, or record required by this chapter;

(2) wilfully violates a provision of this chapter or a regulation adopted under this chapter.

(b) A person who practices naturopathy or naturopathic medicine without a valid temporary permit or license issued under this chapter is guilty of a class A misdemeanor.

Sec. 08.45.220. DEFINITIONS. In this chapter

(1) "department" means the Department of Commerce and Economic Development;

(2) "naturopathy" and "naturopathic medicine" means a system of healing the human body that includes diagnosis and treatment through the use of natural agencies, forces, processes, and products with emphasis on the response of the individual to the disease rather than its treatment in isolation.

* Sec. 3. LICENSING OF PRACTITIONERS OF NATUROPATHY OR NATUROPATHIC

MEDICINE WITHOUT EXAMINATION. The commissioner of commerce and economic development shall license all persons who, on the effective date of this Act, meet the qualifications of AS 08.45.110(1) - (3) and (5) - (7) and who apply for licensure under AS 08.45 not later than June 30, 1985.

* Sec. 4. This Act takes effect July 1, 1984.

850-10-220

SCOPE AND PURPOSE

(1) ORS 685.060 requires that one of the minimum educational requirements for licensure to practice naturopathic medicine in Oregon is graduation from a naturopathic school or college approved by the State Board of Naturopathic Examiners which teaches adequate courses in all subjects necessary to the practice of naturopathic medicine. The statute also specifies required subjects and subjects which the Board may not require, and permits the Board to require other subjects at its discretion.

(2) The purpose of these rules is to provide a set of standards and procedure by which schools of naturopathic medicine may obtain approval by the Board of Naturopathic Examiners in order that graduates of those schools may be permitted to take examinations for license.

850-10-221

EXERCISE OF BOARD AUTHORITY

(1) The Board may grant provisional approval to a naturopathic college which has been in continuous operation for at least one year. Provisional approval may be for a period not to exceed two and one half years and may not be renewed or extended. Provisional approval shall not imply nor assure eventual approval under ORS 685.060.

(a) In order to obtain provisional approval, a naturopathic college must demonstrate compliance with, or adequate planning and resources to achieve compliance with, the standards of Rule 850-10-224, 1 through 17.

(b) The procedures for application, examination, review, and revocation of provisional approval shall be the same as those specified for approval in Rules 850-10-224, 850-10-225 and 850-10-226.

STANDARDS

The following standards shall be used by the Board in considering a naturopathic college's application for approval:

(1) Objectives. The objectives of the institution shall be clearly stated and address the preparation for the naturopathic physician to provide patient care. The implementation for the objectives should be apparent in the administration of the institution, individual course objectives, and in the total program leading to the N.D. degree.

(2) Organization. The institution shall be incorporated under the laws of the state of its residence as an education corporation. Control shall be vested in a board of directors composed of naturopathic physicians and others. Under no circumstances shall more than one-third of the directors have administrative or instructional positions in the college. The directors must demonstrate collective responsibility in their: Knowledge of, and policy decisions consistent with, the Articles of Incorporation or Charter, By-laws, and objectives of the college; support of college programs and active participation in college governance; selection and oversight of the chief Administrative Officer.

(3) Administration. The education and experience of directors, administrators, supervisors, and instructors should be sufficient to insure that the student will receive educational services concistent with institutional objects. The administration of the institution shall be such that the lines of authority are clearly drawn. The institution shall present with its application a catalog and a brief, narrative explanation of how the administration of the institution is, or is to be, organized and how the administrative responsibility for each of the following is or is to be managed:

(a) Faculty and staff recruitment

(b) Personnel records management

the student have been paid. Each course entry shall include a title, the number of credits awarded, and a grade. The transcript shall separately identify all credits awarded by transfer, or examination.

(c) Upon request, all student records and transcripts shall be made available to the Naturopathic Board of Examiners.

(7) Catalog. The institution shall publish a current catalog at least every two years containing the following information:

(a) Name and address of the school

(b) Date of publication

(c) Admission requirements and procedures

(d) A statement of tuition and other fees or charges for which a student is responsible and a statement on refund policies

(e) A school calendar designating the beginning and ending dates of each term, vacation periods, holidays, and other dates of significance to students

(f) Objectives of the institution

(g) A list of trustees (directors), administrative officers and faculty members including titles and academic qualifications

(h) A statement of policy about standards of progress required of students, including the grading system, minimum satisfactory grades, conditions for interruption for unsatisfactory progress, probation, and re-entry, if any

(i) A description of each course indicating the number of hours and course content, and its place in the total program

(j) A description of facilities and major equipment, including library laboratory and clinical training facilities

(k) Statements on the nature and availability of student financial assistance, counseling, housing, and placement services if any.

(9) Attendance. The college shall have a stated policy relative to attendance. Students shall be required to spend the last year of the course in residence in the college which confers the degree.

(10) Curriculum. The curriculum of the college shall be designed and presented to meet or exceed the statutory requirements of length and content. The following standards are intended not as an exact description of a college's curriculum, but rather as guidelines for the typical acceptable program. It is expected that the actual program taught by each college will be prepared by the academic departments of the institution to meet the needs of their students and will exceed the outline present here. This policy has been adopted to preserve the autonomy and uniqueness of each naturopathic institution, and to encourage innovative and experimental programs enhancing the quality of naturopathic education.

(a) Basic Science

Anatomy (Includes Histology and Embryology - 350 hours
Physiology .....250 hours
Pathology.....125 hours
Biochemistry.....125 hours
Public Health (Includes Public Health, genetics, microbiology, immunology.....175 hours
Naturopathic Philosophy.....100 hours
Pharmacology .....100 hours

(b) Clinical Sciences

I. Diagnostic Courses

Physical diagnosis..... 75 hours
Clinical diagnosis.....100 hours
Laboratory diagnosis..... 50 hours
Radiological diagnosis..... 50 hours

II. Therapeutic Courses

Materia Medica (Botanical medicine).....150 hours
Homeotherapeutics, Emergency Drugs)
Nutrition.....125 hours
Physical Medicine.....150 hours
Psychological Medicine..... 75 hours

(d) Name and course number of each course taught

(e) Other non-instructional responsibilities, if any, and the proportion of the faculty member's time devoted to them.

(f) The length of time associated with the college.

(13) Library. The library shall be staffed, equipped and organized to adequately support the instruction, and research of students and faculty. The college shall submit information about the library to include:

(a) Financial support

(b) Circulation

(c) Number of volumes exclusive of documents

(d) List of periodicals

(e) List of reference books

(f) List of other instructional media

(g) List of special collections

(h) Staff and operating hours

(i) Arrangements for student and faculty access to library facilities at other institutions.

(14) Clinical Training. The clinical facilities shall be adequate in size, number and resources to provide all aspects of naturopathic diagnosis and treatment. There shall be properly equipped rooms for consultation, physical examination, and therapy, and a pharmacy, laboratory, and radiological equipment. A licensed and adequately experienced naturopathic physician must be present in the clinic at all times which the clinic is open and in direct supervision of diagnosis and treatment of patients by students. The ratio of adequately prepared studented to clinical staff shall be such that patient care and student experience are optimized while the competence of the student is evaluated.

accrediation by the Council on Naturopathic Medical Education, Inc., or other accrediting agency acceptable to the Board.

(3) Final action for approval by the Board will be held open to the public and the applicant college shall be invited to attend.

850-10-226

Revocation of Approval

Approval obtained under ORS 685.060 may be revoked for proper cause by the Board at its discretion, after a hearing. Such hearing shall be held in accordance to Model Rules of Procedure applicable to contested cases.

NATUROPATHY--THE MEDICINE OF THE FUTURE

Naturopathic Medicine comprises a holistic system of healing based upon its own unique concepts of health and disease. Naturopathy may be defined as a philosophy, science, and art that follows specific physical, chemical, biological, mental, and spiritual laws in the restoration and maintenance of health and the correction of physical disorders, without the use of synthetic drugs or major surgery. For both short-term relief and long-range cure, it utilizes Nature's most beneficial agents, based on the premises that the natural condition of the human body in normal circumstances is one of health and and viability, and that the body is able to heal itself. Disease implies a block in this self-healing ability.

While naturopathic physicians are concerned with the immediate precursors of an illness, equal consideration is given to underlying causal factors and circumstances that are frequently associated with many disorders. Particular emphasis is placed on the maintenance of health and the prevention of disease through health education in nutrition, physical fitness, mental hygiene, and other aspects of bodily care.

The naturopathic physician first familiarizes himself with what constitutes natural living; then he learns to detect by diagnostic signs how, when, and where departure from the normal or natural has taken place, and applies his knowledge and skill, aided by naturopathic therapies, to help bring about a return to the normal and natural condition that is called health. Nature heals and cures; the naturopathic physician interprets Nature's laws for and lends intelligent assistance to the patient. A major emphasis in naturopathic treatment is the equal responsibility of the patient for his own health. Patients who come to a naturopathic physician must want to be well.

Naturopathic physicians treat conditions that fall within the scope of general medical practice; cardiovascular, respiratory, gastrointestinal, gynecological and obstetrical, genitourinary, geriatric, pediatric, neurological, psychiatric, musculoskeletal, and other orthopedic disease are treated by the naturopathic practitioner. In addition, many naturopathic physicians specialize in one or more therapeutic modality or organic system. Where indicated in the diagnosis and treatment of a patient, naturopathic physicians coooperate freely with licensed physicians in the other healing professions.

Naturopathy as Philosophy, Science, and Art

The philosophy of naturopathic medicine is based upon the premise that man is part of his environment and is always influenced by it to some extent. Therefore, the health of a person's body and mind is governed by the same natural laws that apply to all living organisms. For example, physiological science has demonstrated that the natural laws by which man must abide include nutrition, oxygenation, elimination, circulation, and excretion. Disease may be viewed as altered physiology or pathology and results when man does not follow or actually violates natural or biological laws. In treating disease, naturopathic physicians utilize "therapeutic" modalities that are compatible with these laws and thereby restore health. The two principal philosophical axioms of naturopathic medicine, therefore, are "Vis Medicatrix Naturae" ("the healing power of nature") and "Do No Harm."

The science of naturopathic medicine entails a thorough and rigorous study of all the basic medical sciences, including anatomy, physiology, histology, biochemistry, and microbiology. After mastery of the basic medical sciences, the subjects of diagnosis (physical, clinical, symptomatological, radiological, and laboratory) are of the

The History and Scope of Naturopathic Medicine

While the name "naturopathy" is of comparatively recent origin, its philosophy and practices can be traced to antiquity. Naturopathy does not discard a method because it is old; neither does it embrace a technic simply because it is new. Its methods and techniques have tested upon the anvil of time and experience and have been proven to be effective.

Many of the methods of treatment which the naturopathic physician employs have been in use since the prehistoric period. Sunshine, fresh air, heat, exercise, water, clay and mud baths, and the like served as agents for cure long before man knew how to heal by non-natural means. We see a similar situation among animals, which have always known "instinctively" how to treat themselves.

In early historical times, massage, manipulation of a crude type, more explicit rules of diet and hygiene inculcated by religious doctrines were added to the therapeutic regimen. The Greeks contributed athletics and physical culture, while the Romans made extensive use of therapeutic baths of all kinds.

During medieval times the Church fostered the various healing arts, among which the methods of natural healing were outstanding. After the Renaissance, the Nature Cure movement continued to develop in Central Europe, where it received considerable attention.

The latter part of the nineteenth century marked the beginning of the development of naturopathy as we know it today. Such men as Priesnitz, Rickli, Kuhne, Bilz, Schuessler, Father Kneipp, Just, Lahmann, Ehret, and others made important contributions to the natural healing arts. They did much to popularize the work which was now called naturopathy by incorporating natural healing methods into the already-existing practices of homeopathy in Central Europe by Lust, Lindlahr, Carey, and others. Additions to the methods of the natural healing arts were now being made very rapidly. Naturopathy was formally introduced in this country approximately 75 years ago.

Naturopathic medicine is practiced throughout the world. Naturopathic medicine is currently recognized in the states of Arizona, Connecticut, Florida, Hawaii, Oregon, Utah, and Washington as well as the Canadian provinces of Alberta, British Columbia, Manitoba, Ontario, and Saskatchewan. Preliminary steps for licensing have been started in several states. In England and other countries of the Commonwealth, professional associations of naturopathic physicians have been in existence for many years. Many European countries grant recognition to naturopathic physicians equal to that of all major healing professions. Germany has some 4,000 naturopathic practitioners. This is truly the medicine of the future.

How to Become a Naturopathic Physician

The first step in becoming a naturopathic physician is admission to an established college of naturopathic medicine. The National College of Naturopathic Medicine is a four-year, N.D. degree-granting institution located at 11231 S.E. Market St., Portland, OR 97216. The Student Recruiting Office will be able to provide you with more information about NCNM's curriculum and admissions procedures.

The four years at The National College of Naturopathic Medicine are spent in a thorough study of the basic medical sciences followed by two years of work in the clinical sciences, in which students see patients in the Outpatient Clinic and develop more specialized expertise in therapeutic modalities, diagnostic procedures, and medical specialties such as obstetrics and gynecology, endocrinology, and the like. The clinical science years are an important transitional period in the

January 27, 1984

Dear Committee Members:

I know that you are concerned with whom in the department of commerce would be qualified to test and properly examine naturopathic applicants for licensure if no Naturopathic Board of Examiners is established at this time. I recommend that the department request form other states that license naturopaths, and from the approved naturopathic schools who teach the subjects being tested, questions and examinations with appropriate answers for use as a resource in Alaska's examinations. Other Naturopathic Licensing Boards and approved naturopathic schools could be consulted for guidelines when the department lacks knowledge reguarding naturopathy. When a pre-established number of naturopaths are licensed in Alaska, a Board of Naturopathic Examiners could then be established which would then consist of licensed naturopaths and public members.

Sincerely,

Patton Pettijohn N.D.

Patton Pettijohn N.D.

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

In the matter of:)
)
)
PATTON D. PETTIJOHN, N.D.)
)
Respondent)

File: ME 84-001

TEMPORARY CEASE AND DESIST ORDER
(AS 08.01.087(b)(1))

TO: Patton D. Pettijohn, M.D.
515 West Northern Lights Boulevard
Anchorage, Alaska 99503

1. As a result of an investigation conducted by the Division of Occupational Licensing, it has been determined that you are engaged in the following activity:

> On and after July 26, 1983, you diagnosed a medical problem of Cheryl Jones, Anchorage. Your examination and diagnosis process included your personally taking a blood sample from Ms. Jones by needle and syringe, and by conducting what Ms. Jones described as a urinalysis. You are alleged to have processed the blood and urinalysis tests at "a lab", and thereafter analyzed and interpreted these tests personally. You advised Ms. Jones that you had diagnosed her problem as vaginitis. You prescribed and sold various vitamins to Ms. Jones and provided her with a diet analysis and diet instructions which Ms. Jones believed to pertain to her general health. For her "vaginitis" you gave her only an excerpt from an unnamed magazine which explained treatment for vaginitis by a natural method. You did not refer her for treatment to any other health care professional.
>
> It has also been determined that during January 1983 you diagnosed a medical problem for one Drew Holt, a north slope employee. Your examination concluded that Mr. Holt had bursitis. You treated him with diathermy and ultrasound, and, on January 19, 1983, you advised his employer that he was again fit to return to work with regular duties.

2. This constitues the practice of medicine as defined under Alaska Statute 08.64.380(2), which states that the practice of medicine means (A) for a fee, donation or other consideration, to diagnose, treat, operate on, prescribe for, or administer to, any human ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition; or to attempt to perform or represent that a person is authorized to perform any of the acts set out in this subparagraph.

3. Investigation reveals that you are practicing without a license issued under AS 08.64. This is in violation of AS 08.64.170.

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
POUCH D, JUNEAU, ALASKA 99811
TELEPHONE: (907) 465-2536

EXHIBIT A

4. Notification has been made to the members of the State Medical Board of the proposed issuance of this Temporary Cease and Desist Order and a majority of the members do not object to its issuance.

IT IS THEREFORE ORDERED pursuant to AS 08.01.087(b) (1) that you immediately CEASE AND DESIST from the further practice of medicine in the State of Alaska until you are properly licensed by the State Medical Board under AS 08.64.

Upon your written request within 15 days of receipt of this order a hearing will be set and thereafter a further order will be entered; if no such request is received, this order shall stand as entered.

This order is effective upon receipt by you.

DATED this 12 day of December 1983, at Juneau, Alaska.

BY ORDER OF

COMMISSIONER
DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT

HARRY TREXGER, Director
Division of Occupational Licensing

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
POUCH D, JUNEAU, ALASKA 99811
TELEPHONE: (907) 465-2536

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 16, 1984

SUBJECT: Regulation of Naturopaths
(CSHB 347 (HESS))

TO: Representative Niilo Koponen

FROM: Tamara Brandt Cook
Deputy Director
Division of Legal Services

TBC

Here is a draft of CSHB 347 (HESS) incorporating the changes that you requested, with one exception. Under Section 08.45.160(b)(2) you asked me to add "drugs" to the prohibition against the use of controlled substances and this I was not able to do in a way that would lead to a sensible or desirable result.

Under this draft that paragraph prohibits a naturopath from prescribing or using ". . .controlled substances as defined in AS 11.81.900(b)(6). . . ." The referenced section in turn refers to another section, AS 11.71.900(4) that includes drugs within the definition of controlled substances:

> "controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190;" (Emphasis added)

By using the term "controlled substance" in this draft, drugs of a type that are regulated under state law have been included, from those deemed most dangerous (schedule IA drugs) to those deemed least dangerous (schedule VIA drugs). In view of the very comprehensive definition of controlled substance, I fear that adding the word "drugs" to the prohibition would have the result of precluding the use by a naturopath of many items available to every other person without a prescription, like aspirin or common over-the-counter cold remedies.

For you information I am including a copy of all of the types of drugs that are controlled substances and, consequently, already covered by this draft. If I can be of further assistance, please let me know.

TBC:ojb
J3/103 Enclosure

NCNM The National College of Naturopathic Medicine

11231 S.E. Market St., Portland, Oregon 97216 503 / 255-4860

NATUROPATHIC MEDICINE

Naturopathic Medicine is a distinct system of healing, a philosophy, science, art and practice which seeks to promote health through education and the rational use of natural agents and processes. As a separate profession, naturopathic medicine in North America traces its origins to Dr. Benedict Lust. Late in the nineteenth century, Lust came to the United States from Germany to practice and teach Hydrotherapy and "Nature-Cure" techniques popularized by Preissnitz, Kneipp and others in Europe. A committee of these practicioners met in 1900 and determined that the practice incorporate all natural methods of healing, including such elements as botanical medicines, homeopathy, nutritional therapy, medical electricity, psychology, and the emerging manipulative therapies. They called their profession "Naturopathy", a term first used by Dr. John H. Scheel, a German Homeopath. The American School of Naturopathy in New York City, founded by Dr. Benedict Lust, graduated its first class in 1902.

Although the name "naturopathic" is of relatively recent origin, the philosophical basis and many of the methods of naturopathic medicine are ancient. The modern naturopathic physician is a true heir to the Hippocratic tradition in Medicine.

PHILOSOPHY

The human body possesses enormous power to heal itself through mechanisms of homeostasis - restoring balance in structure and function and adapting to environmental changes. This vital force, the "vis medicatrix naturae", is the foundation of naturopathic philosophy and practice. The naturopathic physician uses those therapeutic substances and techniques which act in harmony with the body's self-healing processes and avoids treatments which are designed to counteract or supervene them. Ideally, naturopathic methods are applied as a means of assisting and augmenting this "healing power of nature". A cornerstone of natural therapy is cleansing, detoxification and regeneration.

Naturopathic medicine is a wholistic approach to health. By taking into consideration heredity, biochemical, emotional, environmental and psychological factors, disease manifestations are thus acknowledged from a polycausal perspective. Disease as a process rather than disease as an entity is empahsized and an understanding of the individual as an expression of the dynamic process of life is developed.

SCIENCE

The science of naturopathic medicine is a comprehensive body of knowledge derived from traditional and contemporary sources. It is a record of observation and research in diverse cultures and throughout history. Included in this science are the disciplines common to all healing arts; a thorough study of the human organism, how it iss influenced by all aspects of its environment, and techniques of discovering the nature of the disease process. Naturopathic physicians apply the latest research in all branches of medical science and technology to their field, from discoveries of new facts about human physiology, biochemistry and nutrition to the most modern diagnostic tools and techniques.

Beyond these conventional studies, naturopathic medical science also embraces other diagnostic and proven therapeutic techniques which reflect its philosophical principles.

ART

The art of naturopathic medicine is essentially the application of philosophy and science to the individual. The naturopathic physician develops an ability to gain insight into the causes and effects of personal health problems and to use his or her own knowledge and skill to assist patients in finding solutions. Only in the role of teacher - the literal meaning of "doctor" - can a physician practice truly preventative medicine. In helping people to understand how the choices they make about their lives have an effect on their health, naturopathic physicians provide health education. The ultimate role of the physician is to provide each patient with the tools to achieve the highest possible level of health and the encouragement to use these tools.

PRACTICE

The naturopathic physician is trained as a general practitioner, able to provide a wide range of individual, family and community health services to persons of all ages.

Naturopathic treatment of illnesses, injuries, and reversible pathologies embraces the psychological and emotional, nutritional, biochemical, neurological, and physical therapeutic modes. These methods are administered in combination to produce a maximal desired response or therapeutic effect.

The therapies employed by the naturopathic physician include, but are not limited to the following:

1. CHINESE MEDICINE AND ACUPUNCTURE are concerned with the basic concepts of balance in and correct mobilization of the body's internal energy flow.

2. HOMEOPATHY utilizes the natural law of similars (like cures like) in treating highly personalized "symptom pictures" displayed by patients, a health profile that is derived from extensive life histories and life style analysis.

3. PHYSICAL MEDICINE explores the physiological effects and therapeutic use of heat, light, water, electricity, and sound.

4. NUTRITION focuses on diet and the uses of food stuffs, including vitamins, to correct nutritional deficiencies or imbalancees as well as dietary therapies for specific metabolic conditions.

5. BOTANICAL MEDICINE involves a detailed survey of plants and plant knowledge, integrating traditional herbal knowledge with modern pharmacological research.

In all cases, the naturopathic physician emphasizes the patient's responsibility towards his/her own health and well-being.

BECOMING A NATUROPATHIC PHYSICIAN

The first step in becoming a naturopathic physician is application to an established college of naturopathic medicine. The National College of Naturopathic Medicine is a four-year, N.D. degree-granting institution located in Portland, Oregon. The Admissions Office will be able to provide you with more information about NCNM's curriculum and specific admissions procedures.

The four years at The National College of Naturopathic Medicine are spent in a thorough study of the basic medical sciences, followed by two years of work in the clinical sciences. During the latter, students see patients in the Outpatient Clinic, and develop more specialized expertise in therapeutic modalities. The clinical science years are an important transitional period in the development of the student to a practicing naturopathic physician. In addition, NCNM's new curriculum allows a student to concentrate in certain areas of interest including those listed above. Because of extensive contact with patients under the supervision of a licensed naturopathic physician, and the flexibility that permits students to develop specialized skills and knowledge, the clinical years are generally viewed as the most rewarding and exciting--when being a naturopathic physician becomes a reality.

Upon graduation, most naturopathic physicians set up a private, general practice, though some physicians, by choice, limit their practice to certain classes of problems or therapeutic modalities. Since naturopathic medicine is a

re-emerging profession, most physicians need to be "trail blazers" to some degree by establishing themselves independently in a community which may have little understanding of what a naturopathic physician is and what he does. This provides both a personal and a professional challenge, a challenge that is consistently met with enthusiasm.

Opportunities for post-graduate study or specialty training are presently limited. Only a few clinical residencies are available to graduates of NCNM. In the future, when the profession of naturopathic medicine grows and prospers as is inevitable, inpatient hospitals and other long-term care facilities will allow for even greater exposure to a variety of patients and ailments as well as greater opportunity for specialization at a post-graduate level.

In the words of John B. Bastyr, N.D., President Emeritus of NCNM, "It takes a special kind of person to meet the challenges of naturopathic education and practice--one who is dedicated to the service of others through healing and health education, remembering always that he or she is merely a channel for the healing power of nature." If you are such an individual, we would encourage you to pursue a career in naturopathic medicine at NCNM, and again to quote Dr. Bastyr, "brightly light the path to tomorrow's health care."

Further inquiries about naturopathic medicine and the National College of Naturopathic Medicine may be directed to:

ADMISSIONS OFFICE
NATIONAL COLLEGE OF NATUROPATHIC MEDICINE
11231 SE MARKET ST.
PORTLAND, OREGON 97216
503-255-4860

November 1982

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 16, 1984

SUBJECT: Regulation of Naturopaths
(CSHB 347 (HESS))

TO: Representative Niilo Koponen

FROM: Tamara Brandt Cook
Deputy Director
Division of Legal Services

TBC

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For you information I am including a copy of all of the types of drugs that are controlled substances and, consequently, already covered by this draft. If I can be of further assistance, please let me know.

TBC:ojb
J3/103 Enclosure

Sec. 11.71.140.

Schedule IA.

(a) A substance shall be placed in schedule IA if it is found under AS 11.71.120(c) to have the highest degree of danger or probable danger to a person or the public.

(b) Schedule IA includes, unless specifically excepted or listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

(A) raw opium;

(B) opium extracts;

(C) opium fluid extracts;

(D) powdered opium;

(E) granulated opium;

(F) tincture of opium;

(G) codeine;

(H) ethylmorphine;

(I) etorphine hydrochloride;

(J) hydrocodone;

(K) hydromorphone;

(L) metopon;

(M) morphine;

(N) oxycodone;

(O) oxymorphine;

(P) thebaine;

(2) any salt, compound, derivative, or preparation of a substance included in (b)(1) of this section which is chemically equivalent or identical to any of the substances referred to in (b)(1) of this section; however, these substances do not include the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) concentrate of poppy straw which is the crude extract of poppy straw in either liquid solid, or powder form which contains the phennanthrine alkaloids of the opium poppy.

(c) Schedule IA includes, unless specifically excepted or unless listed in another schedule, any of the following opiates,

including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) acetylmethadol;

(2) allylprodine;

(3) alphacetylmethadol;

(4) alphameprodine;

(5) alphamethadol;

(6) alphaprodine;

(7) anileridine;

(8) benzethidine;

(9) betacetylmethadol;

(10) betameprodine;

(11) betamethadol;

(12) betaprodine;

(13) bezitramide;

(14) clonitazene;

(15) dextromoramide;

(16) diampromide;

(17) diethylthiambutene;

(18) difenoxin;

(19) dihydrocodeine;

(20) dimenoxadol;

(21) dimepheptanol;

(22) dimethylthiambutene;

(23) dioxaphetyl butyrate;

(24) diphenoxylate;

(25) dipipanone;

(26) ethylmethythiamutene;

(27) etonitazene;

(28) etoxeridine;

(29) fentanyl;

(30) furethidine;

(31) hydroxpethidine;

(32) isomethadone;

(33) ketobemidone;

(34) levomethorphan;

(35) levomoramide;

(36) levorphanol;

(37) levophenacylmorphan;

(38) meperidine, also known as pethidine;

(39) metazocine;

(40) methadone;

(41) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(42) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

(43) morpheridine;

(44) noracymethadol;

(45) norlevorphanol;

(46) normethadone;

(47) norpipanone;

(48) pethidine, also known as merperidine;

(49) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenyl piperidine;

(50) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carbox-ylate;

(51) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine- 4-carboxylic acid;

(52) phenadoxone;

(53) phenampromide;

(54) phenazocine;

(55) phenomorphan;

(56) phenoperidine;

(57) piminodine;

(58) piritramide;

(59) propheptazine;

(60) properidine;

(61) propiram;

(62) racemethorphan;

(63) racemoramide;

(64) racemorphan;

(65) trimeperidine.

(d) Schedule IA includes, unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever

the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) acetorphine;

(2) acetyldihydrocodeine;

(3) benzylmorphine;

(4) codeine methylbromide;

(5) codeine-n-oxide;

(6) cyprenorphine;

(7) desomorphine;

(8) dihydromorphine;

(9) drotebanol;

(10) etorphine, except hydrochloride salt;

(11) heroin;

(12) hydromorphinol;

(13) methyldesorphine;

(14) methyldihydromorphine;

(15) morphine methylbromide;

(16) morphine methylsulfonate;

(17) morphine-n-oxide;

(18) myrophine;

(19) nicocodeine;

(20) nicomorphine;

(21) normorphine;

(22) pholcodine;

(23) thebacon.

Sec. 11.71.150. SCHEDULE IIA.

(a) A substance shall be placed in schedule IIA if it is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public which is less than substances listed in schedule IA, but higher than substances listed in schedule IIIA.

(b) Schedule IIA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, whether optical, position, or geometric, or salts of isomers whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation:

(1) 4-bromo-2, 5-dimethoxy-amphetamine, also known as 4-bromo-2, 5-dimethoxy-a-methylphenethylamine and 4-bromo-2, DMA;

(2) 2,5-dimethoxyamphetamine, also known as 2,5-dimethoxy-a-methylphenethylamine and 2,5-DMA;

(3) 4-methoxyamphetamine, also known as 4-methoxy-a-methylphenethylamine and paramethoxyamphetamine, PMA;

(4) 5-methoxy-3,4-methylenedioxy-amphetamine;

(5) 4-met[illegible]-dimethoxy-amphetamine, also known as 4-methyl-2,5-dimethoxy-[illegible]ethylphenethylamine;

(6) 3,4-methylenedioxy amphetamine;

(7) 3,4,5-trimethoxy amphetamine;

(8) bufotenine, also known as 3-(B-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine, and mappine;

(9) diethyltryptamine, also known as N, N-diethyltryptamine and DET;

(10) dimethyltryptamine, also known as DMT;

(11) ibogaine, also known as 7-ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido ~~[illegible]~~ (16,26:1,2) azepino ~~[illegible]~~ (5,4-b) indole and tabernanthe iboga;

(12) lysergic acid diethylamide, also known as LSD;

(13) mescaline;

(14) n-ethyl-3-piperidyl benzilate;

(15) n-methyl-3-piperidyl benzilate;

(16) peyote;

(17) analogs of phencyclidine (PCP), including:

(A) ethylamine analog, also known by some trade or other names as follows: N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;

(B) pyrrolidine analog, also known by some trade or other names as follows: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPY, PHP;

(C) thiophene analog, also known as 1-[1-(2-thienyl) cyclohexyl] piperidine and 2-thienylanalog of phencyclidine, TPCP, and TCP;

(18) psilocybine;

(19) psilocyn.

(c) Schedule IIA includes cocaine or coca leaves, and any salt, compound, derivative, mixture, isomer, ester, ether, or preparation of cocaine or coca leaves produced directly or indirectly by extraction from coca leaves, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, including the isomers, salts, and salts of isomers of cocaine and other derivatives of coca leaves whenever the existence of these esters, ethers, isomers or salts is possible, but does not include decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(d) Schedule IIA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) amobarbital;

(2) mandrix or mandrax;

(3) mecloqualone;

(4) methaqualone;

(5) pentobarbital;

(6) phencyclidine, also known as PCP;

(7) secobarbital.

(e) Schedule IIA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the nervous system:

(1) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) methamphetamine, its salts, isomers, and salts of its isomers;

(3) methylphenidate;

(4) phenmetrazine and its salts.

(f) Schedule IIA includes, unless specifically excepted or unless listed in another schedule, any material, mixture, or preparation which contains any quantity of the following substances:

(1) immediate precursor to amphetamine and methamphetamine: phenylacetone also known as phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

(2) immediate precursors to phencyclidine, also known as PCP:

(A) 1-phencylclohexylamine;

(B) 1-piperidinocyclohexanecarbonitrile, also known as PCC.

Sec. 11.71.160. SCHEDULE IIIA.

(a) A substance shall be placed in schedule IIIA if it is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public less than the substances listed in schedule IIA but higher than substances listed in schedule IVA.

(b) Schedule IIIA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers whether optical,

position, or geometric, and salts of these isomers whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) benzphetamine;

(2) chlorphentermine;

(3) clortermine;

(4) mazindol;

(5) phendimetrazine;

(6) any compound, mixture, or preparation in dosage unit form containing any stimulant substance listed in schedule IIA, which compound, mixture, or preparation was listed on August 25, 1971, as an excepted compound under 21 C.F.R. sec. 1308.32, and any other drug of the quantitive composition shown in that list for those substances, or which is the same except that it contains a lesser quantity of any controlled substance.

(c) Schedule IIIA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) amobarbital, secobarbital, or pentobarbital or any salt of these substances, combined with one or more other active medicinal ingredients which are not listed in any other schedule;

(2) amobarbital, secobarbital, or pentobarbital or any salt of these substances, approved by the federal Food and Drug Administration for marketing only as a suppository;

(3) any substance which contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(4) chlorhexadol;

(5) glutethimide;

(6) lysergic acid;

(7) lysergic acid amide;

(8) methyprylon;

(9) sulfondiethylmethane;

(10) sulfonethylmethane;

(11) sulfonmethane.

(d) Schedule IIIA includes nalorphine.

(e) Schedule IIIA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid, in the following quantities:

(1) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) not more than 100 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;

(5) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;

(6) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Schedule IIIA includes

(1) hashish;

(2) hash oil or hashish oil; and

(3) tetrahydrocannabinols.

Sec. 11.71.170. SCHEDULE IVA.

(a) A substance shall be placed in schedule IVA if it is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public which is less than the substances listed in schedule IIIA, but higher than the substances listed in schedule VA.

(b) Schedule IVA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers and salts of isomers whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) barbital;

(2) chloral betaine;

(3) chloral hydrate;

(4) chlordiazepoxide;

(5) clonazepam;

(6) clorazepate;

(7) diazepam;

(8) ethclorvynol;

(9) ethinamate;

(10) flurazepam;

(11) lorazepan;

(12) mebutamate;

(13) meprobamate;

(14) methohexital;

(15) methylphenobarbital, also known as mephobarbital;

(16) oxazepam;

(17) paraldehyde;

(18) petrichloral;

(19) phenobarbital;

(20) prazepam.

(c) Schedule IVA includes any material, compound, mixture or preparation which contains any quantity of the following

substance, including its salts, isomers whether optical, position, or geometric, and salts of these isomers, whenever the existence of these salts, isomers, and salts of isomers is possible: fenfluramine.

(d) Schedule IVA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers whether optical, position, or geometric, and salts of these isomers whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) diethylpropion;

(2) phentermine;

(3) pemoline, including organometallic complexes and chelates of this substance.

(e) Schedule IVA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit, or their salts calculated as the free anhydrous base or alkaloid.

(f) Schedule IVA includes, unless specifically excepted or unless listed in another schedule, any material, compound,

mixture or preparation which contains any quantity of the following substances, including their salts:

(1) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-dephenyl3-methyl-2-propionoxybutane);

(2) pentazocine;

(3) propoxphene.

Sec. 11.71.180. SCHEDULE VA.

(a) A substance shall be placed in schedule VA if it is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public which is less than substances listed in schedule IVA, but higher than substances listed in schedule VIA.

(b) Schedule VA includes any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or their salts, calculated as the free anhydrous base or alkaloid, in limited quantities as specified in (1) - (6) of this subsection, which includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by schedule IA substances alone:

(1) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Schedule VA includes loperamide.

Sec. 11.71.190. SCHEDULE VIA.

(a) A substance shall be placed in schedule VIA if it is found under AS 11.71.120(c) to have the lowest degree of danger or probable danger to a person or the public.

(b) Marijuana is a schedule VIA controlled substance.

OREGON LAW
Relating to Naturopathic Medicine

The practice of naturopathic medicine was first recognized in Oregon law in 1927 and by the United States Congress in 1931.

Oregon Revised Statutes, Chapter 685 (revised 1977), 685.101—685.990, provides the licensing authority for Naturopathic Physicians in the state of Oregon:

Chapter 685

Naturopaths

CROSS REFERENCES

Administrative procedures and rules of state agencies, Ch. 183
Health certificate, signature by physician licensed by Board of Medical Examiners only, 433.010
Legislative review of need for agency, 182.615
Military or naval service persons relieved from payment of fees, 408.450
Naturopaths exempt from jury duty, 10.040
Physician-patient privileged communications, 44.040
Professional corporations, Ch. 58

685.020

Professional designation of licensed naturopath, 676.110

Use of professional designation by unlicensed person prohibited, 676.120

685.050

Falsification of health certificate prohibited, 106.990

685.060

Waiver of educational requirement for admission to examination, 670.010

685.110

Denial, suspension or revocation of license prohibited solely because of criminal conviction, 670.280

Injunction against practicing after suspension or revocation of license, 676.220

685.160

Administrative agencies generally, Ch. 182

Assistant Director for Health as ex officio member of board, 184.835

685.190

Subsistence and mileage allowance for travel, 292.210 to 292.250

685.201

Expenditures without allotment prohibited in certain cases, 291.238

685.210

Attorney General to supervise all legal proceedings for state agencies, 180.220, 180.230

Note: Section 41, chapter 842, Oregon Laws 1977, is operative July 1, 1986, and provides:

Sec. 41. ORS 685.010, 685.020, 685.030, 685.040, 685.050, 685.060, 685.070, 685.080, 685.085, 685.090, 685.100, 685.102, 685.104, 685.106, 685.110, 685.125, 685.160, 685.170, 685.190, 685.201, 685.210 and 685.990 relating to naturopaths are repealed.

GENERAL PROVISIONS

685.010 Definitions. As used in this chapter.

(1) "Board" means the Naturopathic Board of Examiners.

(2) "Drugs" means all medicines and preparations and all substances, except non-poisonous plant substances, food and water, used or intended to be used for the diagnosis, cure, treatment, mitigation or prevention of diseases or abnormalities of man, which are recognized in the latest editions of the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia, official National Formulary, or any supplement to any of them, or otherwise established as drugs.

(3) "Minor surgery" means the use of electrical or other methods for the surgical repair and care incident thereto of supperficial lacerations and abrasions, benign superficial lesions, and the removal of foreign bodies located in the superficial structures; and the use of antiseptics and local anesthetics in connection therewith.

(4) "Naturopathy," which includes physiotherapy and minor surgery, is defined as a system of treating the human body by use of drugless methods, which has for its object the maintaining of the body in, or of restoring it to, a state of normal health.

[Amended by 1953 c.557 §4]

685.020 License required to practice naturopathy; title and abbreviations usable by licentiates. (1) No person shall practice, attempt to practice, or claim to practice naturopathy in this state without first complying with the provisions of this chapter.

(2) Licentiates under this chapter may use any or all of the following terms: "Doctor of Naturopathy" or its abbreviation, "N.D.," "Naturopath" or "Naturopathic Physician." However, none of these terms, or any combination of them, shall be so used as to convey the idea that the physician who uses them practices anything other than drugless therapy.

685.030 Application of chapter. Nothing in this chapter shall be construed to:

(1) Apply to any physician and surgeon, osteopath or chiropractor, or to any Christian Scientist or other person who by religious or

spiritual means endeavors to prevent or cure disease or suffering in accord with the tenets of any church.

(2) Authorize licentiates to practice optometry or administer chiropractic adjustments, or any system or method of treatment not authorized in this chapter, or to administer or write prescriptions for or dispense drugs, or do major surgery.

(3) Prevent one licensed under this chapter from the administration of the anesthetics or antiseptics authorized in subsection (3) of ORS 685.010 or the use of radiopaque substances administered by mouth or rectum necessary for Roentgen diagnostic purposes.

(4) Authorize the administration of any substance by the penetration of the skin or mucous membrane of the human body for a therapeutic purpose.

[Amended by 1953 c.557 §4]

685.040 Application of health laws. Licentiates under this chapter shall observe and are subject to all state, county and municipal laws and regulations relating to public health.

685.050 Execution of birth and death certificates. Licentiates under this chapter are authorized to sign birth and death certificates. Such certificates so signed shall be accepted as fulfilling all the requirements of the laws dealing with such certificates.

LICENSING

685.060 Minimum educational requirements for license. (1) The minimum educational requirements for license under the provisions of this chapter shall be:

(a) A high school education, as shown by diploma or certificate of graduation from a standard high school, or the equivalent of such an education, which shall be certified by a Superintendent of Public Instruction; and

(b) At least two years' satisfactory liberal arts and science study, or either, in a college or university accredited by either the Northwest Association of Secondary and Higher Schools or a like regional association or in a college or university in Oregon approved for granting degrees by the Oregon State Board of Education as evidenced by certificate or transcript of credits from the college or university; and

(c) Graduation from a naturopathic school or college approved by the State Board of Naturopathic Examiners and which requires for graduation a period of actual attendance of four years of at least nine months each, and teaching adequate courses in all subjects necessary to the practice of naturopathy.

(2) The studies required of the applicant for a license to practice naturopathy in this state shall include anatomy, histology, embryology, physiology, chemistry, pathology, bacteriology, public health and hygiene, toxicology, obstetrics and gynecology, diagnosis, theory, practice and philosophy of naturopathy, electrotherapy, hydrotherapy, physiotherapy, clinics, eye-ear-nose-throat, minor surgery, first aid, herbology, proctology, dietetics, jurisprudence, and such other naturopathic subjects as the board may require, except materia medica, pharmacology and major surgery, with a total of not less than 4,000 lecture or recitation hours.

[Amended by 1953 c.557 §4, 1969 c.381 §5]

685.070 Application for examination; license fee. Any person who wishes to practice naturopathy in this state shall make application to the board for an examination for a license to practice naturopathy. The application shall be filed with the board not less than 10 days before the date of the examination upon blanks provided by the board. All persons licensed under this chapter shall pay to the board a license fee of $25, $10 of which must accompany the application for examination. The balance shall be paid when the applicant has been granted a license. Under no condition will the application fee of $10 be returned to the applicant. Affidavits of two reputable citizens of the state attesting the good moral character of the applicant shall be filed with the application for examination.

685.080 Examination of applicants; issuing license. (1) For the purpose of determining the qualifications of applicants for license under this

chapter, the board shall hold meetings and conduct examinations of applicants for licenses at such time and places and under such rules and regulations as a majority of the board may determine. The time and place of holding such an examination shall be published at least 30 days prior to the date of the examination.

(2) At the time and place the board has previously designated, the applicant shall appear before the board to be examined as to his fitness to practice naturopathy. The examination shall be in writing and embrace and be restricted to the subjects listed in ORS 685.060.

(3) If the applicant answers correctly 75 percent of the questions asked on each of the subjects of the examination, the board shall issue to such applicant a license to practice naturopathy. If however, an applicant fails to pass an examination, the applicant shall, without losing credits for subjects passed and without paying another fee, be permitted, within one year from date of failure to pass, to take another examination at the convenience of the board, but the applicant shall, not less than 10 days before the date of the examination, notify the board of his intention to take the examination.

685.085 Reciprocal license. A person licensed to practice naturopathy under the laws of another state who demonstrates to the satisfaction of the board that he possesses qualifications at least equal to those required of persons eligible for licensing under this chapter, may be issued a license to practice in this state without written examination upon payment of the license fee required under ORS 685.100.
[1973 c.469 §2]

685.090 Recording license with county clerk. Before engaging in practice in any part of the state, the holder of a license under this chapter shall present such a license, or a certified copy, for record to the county clerk of the county in which the holder of the license resides. A county clerk is entitled to collect a fee of $1 for recording the license or for making a certified copy of it. Annually, on January 1, county clerks shall, when requested by the board, furnish the board with a list of such licenses on record in their respective counties.

685.100 Annual renewal of license. (1) On or before January 1 of each year, every person holding a license under this chapter shall apply to the board for a certificate of annual registration and at the time of applying shall pay to the board an annual registration fee not to exceed $75, as determined by the board and approved by the Executive Department. A person holding a license under this chapter who is at least 70 years of age and retired from the practice of naturopathy shall apply to the board for a certificate of annual registration and at the time of applying shall pay to the board an annual registration fee not to exceed $30, as determined by the board and approved by the Executive Department. The application shall be made upon a blank form furnished by the board, and shall contain such information as may be necessary to enable the board to identify the applicant for registration and the licensee to be what he claims to be in the application.

(2) Upon receipt of an application for annual registration, accompanied by the annual registration fee, the board shall issue to the applicant a certificate of annual registration. The certificate shall, at all times, be displayed in the office of the person to whom it was issued unless the person is retired from the practice of naturopathy and does not maintain an office.

(3) The failure, neglect or refusal of any person holding a license under this chapter, to pay the annual registration fee as required by subsection (1) of this section shall, after 30 days from January 1 of each year, automatically revoke his license. A revoked license shall not be restored except upon written application therefor and the payment of a restoration fee of $25 for each year the license remains revoked, which is in addition to the annual registration fee for each year the registration fee remains unpaid. An applicant for the restoration of a license so revoked shall not be required to submit to any examination as to his qualification to practice under this chapter. However, the board may deny the restoration of any license for which the required registration fees have not been paid during the years for which they are due if it finds that grounds for refusal to grant or for revocation of the license exist under ORS 685.110.

(4) On or before December 1 of each year the secretary of the board shall notify each person holding a license under this chapter that the annual registration application and fee are due on or before January 1 following.

[Amended by 1967 c.44 §2, 1969 c.26 §2, 1969 c.381 §6; 1973 c.182 §5]

685.102 Continuing education course required; exemptions. (1) Except as provided in subsection (2) of this section, each person holding a license under this chapter shall submit at the time he submits the annual registration fee, evidence satisfactory to the board of his successful completion of an approved program of continuing education in naturopathy, completed in the calendar year preceding the date on which the evidence is submitted.

(2) The board may exempt any person holding a license under this chapter from the requirements of subsection (1) of this section upon an application by him showing evidence satisfactory to the board that he is unable to comply with the requirements because of physical or mental condition or because of other unusual or extenuating circumstances. However, no person shall be exempted from the requirements of subsection (1) of this section more than once in any five-year period.

(3) Notwithstanding subsection (2) of this section, a person holding a license under this chapter may be exempted from the requirements of subsection (1) of this section upon an application by him showing evidence satisfactory to the board that he is or will be in the next calendar year at least 70 years of age and is retired or will retire in the next calendar year from the practice of naturopathy.

(4) A person who is exempted from the requirements of subsection (1) of this section shall not practice naturopathy. A violation of this subsection is grounds for suspension or revocation of the license of the person granted the exemption by the board.

[1969 c.381 §2, 1973 c.829 §67]

685.104 Effect of failure to comply with ORS 685.102; reissuance of registration. (1) The board shall refuse to issue the certificate of annual registration to any person holding a license under this chapter who fails to submit with his annual registration fee proof required under ORS 685.102, unless it has exempted the person from the requirements of subsection (1) of ORS 685.102. The board shall return the annual registration fee to the person.

(2) After January 1 of any year, the board may issue a certificate of annual registration to any holder of a license under this chapter who had been refused such certificate under subsection (1) of this section upon submission of the evidence required under subsection fees for each year the registration fee remains unpaid and a restoration fee of $25 for each year the license remains revoked.

(3) If the person completes an approved program after January 1 to meet the requirementof ORS 685.102 for the year beginning January 1, such completion does not meet the requirements of ORS 685.102 for the subsequent year.

[1969 c.381 §3, 1973 c.182 §6]

685.106 Approval of continuing education programs. (1) The board may offer a program of continuing education in naturopathy to meet the requirements of ORS 685.102. The board may also approve a program to be presented by persons reasonably qualified to do so.

(2) Any person seeking approval of a program of continuing education in naturopathy, to be offered to assist persons holding licenses under this chapter to comply with the requirements of subsection (1) of ORS 685.102, shall submit to the board, at such time as the board may require, copies of courses of study to be offered and proof of such other qualifications as the board may require. Approval granted to any program of continuing education shall be reviewed periodically and approval may be withdrawn from any program that fails to meet the requirements of the board.

(3) Any program of continuing education in naturopathy offered or approved under this section shall consist of at least 20 hours of study covering new, review, experimental, research and specialty subjects in the field of naturopathy.

[1969 c.381 §4]

685.110 Denial or revocation of license by board. The board may refuse to grant or may suspend or revoke a license to practice naturopathy in this state for any of the following reasons:

(1) The use of fraud or deception in securing a license.

(2) The impersonation of another physician.

(3) Practicing naturopathy under an assumed name.

(4) The procuring, aiding or abetting in procuring an abortion, provided, that for the purpose of this subsection an abortion means the removal from the womb of a woman the product of conception at any time prior to delivery of the child; provided further, that nothing in this chapter shall be construed to authorize any licentiate under this chapter to perform an abortion.

(5) The conviction of a crime involving moral turpitude.

(6) Any other reason that renders the applicant or licentiate unfit to perform the duties of a naturopathic physician.

[Amended by 1953 c 555 §2, 1971 c 734 §132]

685.120 [Repealed by 1971 c 734 §21]

685.125 License denial or revocation procedure; promulgation and review of rules and orders. (1) Where the board proposes to refuse to issue or renew a license, or proposes to revoke or suspend a license, opportunity for hearing shall be accorded as provided in ORS 183.310 to 183.500.

(2) Promulgation of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be as provided in ORS 183.310 to 183.500.

[1971 c 734 §134]

STATE BOARD

685.160 Naturopathic Board of Examiners; appointment; confirmation. (1) There hereby is created the Naturopathic Board of Examiners in the Health Division. The board shall consist of three members appointed by the Governor for terms of three years commencing July 1, and until their successors are appointed and qualified. A majority of the members of the board constitutes a quorum. The Governor shall fill all vacancies in the membership of the board. All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. No person shall be appointed to membership on the board, who is not a citizen of the State of Oregon, or who has not been in continuous practice of naturopathy in this state for five years immediately prior to the date of appointment, or who is interested financially in any medical or drugless school or college, or who is connected, directly or indirectly, with the dispensing, prescribing or sale of pharmaceutic drugs.

(2) The board shall carry into effect the provisions of this chapter and is authorized to issue licenses to practice naturopathy in this state. The possession of a common seal by the board hereby is authorized.

[Amended by 1971 c 650 §34, 1973 c 792 §40]

685.170 Officers of board. Annually the board shall elect one of its members president and one of its members secretary, who severally shall have power during their terms of office to summon witnesses, administer oaths and to take testimony and affidavits, certifying thereto, under their hand and the seal of the board. The secretary of the board shall keep a record of all actions of the board, including a detailed register of applicants for license. The board in lieu of electing one of its members as secretary, may employ or appoint a person to act as secretary to the board who shall perform such duties and functions as may be prescribed by the board.

[Amended by 1973 c 829 §68]

685.180 [Repealed by 1973 c 829 §71]

685.190 Compensation and expenses of board members; compensation of secretary. (1) A member is entitled to compensation and expenses as provided in ORS 292.495.

(2) The board may fix the compensation of the secretary subject to ORS 240.245. Such compensation shall not prohibit the secretary from receiving reimbursement for actual and necessary travel and other expenses incurred in the performance of his official duties.

[Amended by 1967 c 44 §3, 1969 c 314 §86]

685.200 [Amended by 1967 c 617 §12, repealed by 1973 c 427 §28 (685.201 enacted in lieu of 685.200)]

685.201 Disposition of receipts. All moneys received by the Health Division under this chapter shall be paid into the General Fund in the State Treasury and placed to the credit of the Health Division Account and such moneys hereby are appropriated continuously and shall be used only for the administration and enforcement of this chapter.

[1973 c 427 §29, (enacted in lieu of 685.200)]

ENFORCEMENT

685.210 Enforcement; employing attorney; jurisdiction. (1) The district attorneys of the state shall prosecute all persons charged with violation of any of the provisions of this chapter. However, the board shall have power to retain its own attorney to prosecute or assist in prosecuting any person so charged and to pay such attorney such sums as may be just for such services from the Naturopathic Fund.

(2) Justice courts, municipal courts and circuit courts have concurrent jurisdiction for the prosecution of offenses under this chapter.

PENALTIES

685.990 Penalties. Violation of any provision of this chapter is punishable, upon conviction, by a fine of not less than $50 nor more than $500.

DIVISION 10

GENERAL

Definitions

850-10-005 As used in rules 850-10-010 to 850-10-200, unless otherwise required by context:

(1) "Board" means Oregon State Board of Naturopathic Examiners.

(2) "Naturopathy" is defined as a system of diagnosing and treating the human body and maintaining or restoring it to a state of normal health, as defined in ORS Chapter 685, and in such other sections thereof as may apply.

(3) "Diagnosis" is a determination of the nature of a disease by the use of all recognized and accepted physical and laboratory examinations, which includes the drawing of blood and taking specimens of body fluids and tissues for microscopic and chemical analysis.

(4) "Prescriptions": Naturopathic physicians shall be allowed to prescribe and dispense nature's agents, forces, processes, and products.

(5) "Non-poisonous plant substance" is any plant substance, taken in relatively small amounts, which would not, by its action on organs or tissue, seriously impair function or destroy life.

(6) "Plant substance" is any medical material taken or removed from a plant.

(7) "Food" is any organic substance taken into the body which helps maintain life, builds or repairs tissue, and sustains growth. This includes the use of ensymes, minerals, vitamins (either in trace amounts or megadoses) and any food products or extracts either processed, refined, or concentrated.

Stat. Auth.: ORS Ch. 685
Hist: NE 3, f. 8-25-66; NE 4, f. 10-9-67, NE 1-1980, f. & ef. 9-11-80

Requirements for Application

850-10-010 (1) Any applicant for examination shall be a high school graduate or equivalent and a graduate of a naturopathic college that offers a resident four-year course of at least 4,000 hours.

(2) Each applicant shall possess a basic science certificate, obtained from the State Board of Higher Education either by reciprocity or by examination.

(3) Each applicant shall submit satisfactory evidence of his having had, prior to his matriculation into a naturopathic college, at least two years Liberal Arts or Science study in a college or university accredited by either the North-West Association of Secondary and Higher Schools or a like regional association or in a college or university in Oregon approved for granting degrees by the Oregon State Board of Education.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Basic Science Examination or Reciprocity

850-10-020 (1) Any applicant desiring the dates of or application blanks for the basic science examination or for reciprocity shall address all inquiries to the Secretary, State Board of Higher Education, P.O. Box 3175, Eugene, Oregon.

(2) The Oregon Basic Science Examinating Committee reciprocates with a like board from each of the following states: Arizona, Arkansas, Colorado, Iowa, Michigan, Minnesota, Nebraska, Nevada, New Mexico, Oklahoma, South Dakota, Tennesee, Texas, Washington, and Wisconsin.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Application for Examination; Filing; Additional Papers

850-10-030 (1) Any applicant for licensure by the Board shall fill out, without alterations, an application furnished by the Board.

(2) The application shall be filed with the Board at least 10 days prior to the date of the examination.

(3) A photostatic copy of the applicant's Oregon basic science certificate and of his naturopathic diploma shall be attached to his application.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Examination Dates

850-10-040 Examinations shall be held by the Board in March and in September of each year or at such other times as may be feasible.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Re-Examination

850-10-050 Any applicant for examination who has failed in one or more subjects shall be permitted, within one year, to submit himself for re-examination in those subjects, without paying an additional fee if he notifies the Board of his intention at least 10 days prior to the examinations.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Temporary Permits

850-10-060 Temporary permits for the practice of naturopathy shall not be issued by the Board.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Reciprocity

850-10-070 Reciprocity in naturopathy with another state cannot be considered by the Board.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Recordation and Display of License

850-10-080 (1) An Oregon licentiate for the practice of naturopathy shall record his license in the office of the county clerk in the county in which he resides.

(2) Each licentiate of the Board shall display in his office, in a conspicuous place, his license and yearly renewal card.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Expiration and Renewal of Licenses

850-10-090 (1) Unless renewed by proper application to the Secretary of the Board on a form provided by the Board, all licenses to practice naturopathy in Oregon automatically expire on January first of each year.

(2) The renewal application shall be accompanied by a specified yearly fee of $75, the practioner's address, and his original license number.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59; NE 2-1980, f. & ef. 9-11-80

Mode of Remittance

850-10-100 (1) The remittance of any application fee, license fee, or yearly renewal fee shall be made by postal money order, postal certificates, express money order, bank draft, or certified check.

(2) The Secretary shall be under no obligation to accept personal checks; however, he may accept them subject to collection only.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Use of Unauthorized Material and Misrepresentations in Obtaining License

850-10-110 (1) Any applicant for a license detected in the act of offering or accepting unauthorized assistance or using unauthorized material while the examinations are in progress shall be excluded from further examination and his or her papers rejected in total.

(2) The Board may refuse to grant a license to any applicant indulging in misrepresentation, fraud, or deception, or to revoke the license granted as a result of these.

(3) The Board shall carefully and rigidly investigate applicants who attempt to obtain naturopathic license by false statements or representations in their applications or otherwise violate these rules.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Illegal Practice

850-10-120 (1) Any applicant for examination shall be prohibited from and prosecuted for any practice of naturopathy while awaiting examination.

(2) Any person convicted of practicing illegally in Oregon or any person who, without a license, makes a diagnosis shall not be admitted to examination by the Board at any time.

(3) It shall be the duty of all licentiates of the Board, in the interests of both the public and the profession, to inform the Board, in writing, fully signed, of anyone practicing naturopathy in Oregon without a license or otherwise in violations of the law.

(4) For the purpose of this rule, naturopathic treatment shall be considered as practicing naturopathy within the meaning of ORS 685.010(4) even though practicing in the office of a licentiate of the Board.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Change of Address

850-10-130 It shall be the duty of any licentiate of the Board to keep the Secretary of the Board informed of any change of address.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Advertising

850-10-140 While constructive educational publicity shall be encouraged, licentiates of the Board shall refrain from using or causing to be used advertising matter which contains misstatements, falsehoods, misrepresentations, distorted, or fabulous statements as to cures.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Public Health Laws

850-10-150 Naturopathic physicians shall be subject to all state, county, and municipal laws and rules relating to public health concerning the diagnosis and reporting of contagious and infectious diseases, as may be required, to the proper health authorities in the respective counties.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

State Industrial Accident Cases

850-10-160 Naturopathic physicians may accept injured workers who are employed under the provisions of the State Industrial Accident Commission, in conformance with the Workers' Compensation Law and the rules of committee.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

State Welfare Cases

850-10-170 Naturopathic physicians may accept welfare cases under the medical plan adopted by the Welfare Commission, April 26, 1946.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Standards

850-10-180 It shall be the object of the Board to foster higher professional standards as rapidly as is consistent with the best intrests of the profession, and in this, it shall not be swayed or influenced by any school or other interests whatsoever.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Denial or Revocation of License

850-10-190 The Board may refuse to grant or may revoke a license to practice naturopathy in the State of Oregon for any of the following reasons:

(1) Commitment to a mental institution. A copy of the record of commitment, certified to by the clerk of the court entering the commitment, is conclusive evidence of the commitment.

(2) Habitual intemperance in the use of ardent spirits, narcotics, or stimulants to such an extent as to incapacitate him from the performance of his professional duties.

(3) Unprofessional or dishonorable conduct.

(4) Representing to a patient that manifestly incurable condition of sickness, disease, or injury can be permanently cured.

(5) The obtaining of any fee through fraud or misrepresentation.

(6) The willful betrayal of a professional secret.

(7) The use of any advertising in which untruthful, improper, misleading, or deceptive statements are made.

(8) The advertising of techniques or modalities to infer or imply superiority of treatment or diagnosis by the use thereof.

(9) Knowingly permitting or allowing any person to use his certificate in the practice of any system or mode of treating the sick or afflicted.

(10) Advertising either in his own name or under the name of another person or clinic or concern, actual or pretended, in any newspaper, pamphlet, circular, or other written or printed paper or document, professing superiority to or a greater skill than that possessed by fellow naturopathic physicians.

(11) Aiding or abetting the practice of any of the healing arts by an unlicensed person.

(12) The use of his name under the designation, "Doctor", "Dr.", "Naturopathy", "Naturopathic Physician", or any similar designation with preference to the commercial exploitation of any goods, wares, or merchandise.

(13) The advertising or holding oneself out to treat diseases or other abnormal conditions of the human body by any secret formula method, treatment, or procedure.

(14) The guaranteeing of a cure or "results" from any treatment.

Stat. Auth.: ORS Ch. 685
Hist: NE 1, f. 11-12-57; NE 3-1980, f. & ef. 9-11-80

Rules of Administrative Procedure in Contested Cases

850-10-200 [Repealed by NE 5, f. 6-1-73, ef. 6-15-73]

850-10-205 [Renumbered to 850-01-005]

Programs of Continuing Education

850-10-210 (1) The following programs of continuing education in naturopathy are approved by the Naturopathic Board of Examiners as meeting the requirements of ORS 685.102, 685.104, and 685.106:

(a) Programs offered by the Oregon Association of Naturopathic Physicians.

(b) Programs offered by the Northwest Naturopathic Physician's convention.

(c) Programs offered by all colleges of Naturopathic Medicine which are recognized by this Board.

(2) A person who desires to offer a program of continuing education in naturopathy other than the programs set forth in section (1) of this rule shall first comply with the provisions of ORS 685.106 (2) and (3) and receive approval of the program from the Board of Naturopathic Examiners.

(3) Any programs of continuing education in naturopathy not authorized or approved by the Board prior to their being offered to naturopathic physicians will not be considered as meeting the requirements of ORS 685.102, 685.104, and 685.106.

Stat. Auth.: ORS Ch. 685

Hist: NE 6, f. 6-1-73, ef. 6-15-73; NE 5-1980, f. & ef. 9-11-80

Drug Enforcement Number

850-10-215 Licentiates requesting approval of this Board to the Federal Food and Drug Administration for the issuance of a Drug Enforcement Number, must be residents of Oregon and in full-time practice.

Stat. Auth.: ORS Ch. 685

Hist: NE 6-1980, f. & ef. 9-11-80

4718 Mills Drive
Anchorage, AK 99508
(907) 276-4246
January 25, 1984

Representative Mae Tischer, Chairperson
House Health, Education and Social Service
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Tischer:

Last Saturday I participated in the teleconference with your committee regarding House Bill 347 relative to the licensing of naturopathic physicians in Alaska. I am not usually an activist; in fact, this is the first time I have even written to a legislator on any subject. This is an issue about which I feel so strongly that I simply must make my opinions known and I'm grateful to have had the opportunity, through the vehicle of the teleconference, to speak out publicly in support of this bill.

One of the major concerns of your committee seems to be the question of how to set up the regulatory body which would license naturopathic physicians and oversee their activities. Why not set up a board consisting of one naturopathic physician from Alaska, one licensed ND from another state, and one layperson. The member from the "outside" state would be a valuable resource from which to draw guidance. In addition, this person would need to travel to Alaska only in unusual circumstances (as in an investigative action, for example) which, I suspect, would occur very infrequently.

During the teleconference the question arose of how to write the licensing exam. Why not simply look to other states for guidance and input. Along a similar line, I see no point in requiring naturopaths already licensed in other states to take Alaska's licensing exam. I believe they should be "grandfathered" in the same manner in which MD and RN boards grant reciprocity to those already licensed elsewhere. often they don't.

I happen to be a registered nurse as well as a very pleased and satisfied consumer of naturopathic treatment. I wish I could speak for all nurses when I urge the legislature to pass HB 347 as soon as possible, but of course I cannot. Judging from the nursing journals, from conversations I have had with other nurses, and from other sources the majority of

my profession know nothing about naturopaths or the alternatives available to the kind of health care normally dispensed by the practitioners of today's "modern medicine."

Finally, I believe there is room in Alaska for both breeds of physician. As was stated by numerous participants in the teleconference, naturopaths often refer their patients to MDs. Moreover, it is well documented that many enlightened MDs are beginning to recognize the merits of alternative approaches to healing and are incorporating more and more of them into their own practices. The passage of HB 347 would stimulate a general interest in naturopathy which can only serve to strengthen both professions. Dialog and exchange of information are sure to grow out of this healthy curiosity as MDs and the public become informed as to what naturopathy is all about. This would naturally result in individuals being able to make intelligent, educated choices about the type of health care they want for themselves and for their families.

I would appreciate it very much if your staff would periodically keep me up to date on HB 347 and its progress.

Thanks again for your attention during the teleconference and for providing the public with the opportunity for speaking out on this most important legislation.

Sincerely,

Kathleen F. Gerstenberger

KATHLEEN F. GERSTENBERGER

cc: Dr. Cary Jasper
Anchorage, Alaska

House District 13 Legislators:
Representative Jerry Ward
Representative Terry Martin

Senate District G Legislators:
Senator George Josephson
Senator Vic Fischer

APR 2 1 1983

April 21, 1983

Representative Mae Tischer
Pouch V
Juneau, AK 99811

Dear Representative Tischer,

I support legislation that will license Naturopathic Doctors to practice medicine in Alaska and urge you to do the same.

Thank you,

Pamela Fuller

Pamela A. Fuller
P.O. Box 1174
Juneau, AK 99802

As co-sponsor of HB 347, you can be assured of my support. Thank you for your comment.

M.T.

In praise of naturopathic medicine

Within a span of six months, my then-two-year-old son Nicholas was hospitalized three times for severe asthma attacks. My wife and I were informed by our pediatric physician (M.D.) that our son would have to be kept on three very strong drugs and a series of allergy shots for perhaps several years. This therapy was designed to keep the bouts with asthma in check, not to address the cause. Our only hope was that someday Nick would outgrow this serious medical problem.

We noticed our son's behavior, growth and general development were being adversly affected by the drugs. I thought our only alternative, without the drugs, was a recurrence of the attacks. I was resigned to the fact; this was the way it was going to be.

I had assumed the care Nick was receiving was the best money could buy in Anchorage. The expense of this care was indeed considerable especially the hospital stays. Fortunately my Teamsters insurance covered virtually all the costs involved.

My wife, however, was not satisfied this therapy was our only alternative. Diane took it upon herself to do a great deal of reading and pertinent question-asking before suggesting we consult a naturopathic physician. I admit at first I was reluctant, but she had done her homework and her arguments had merit.

Nine months have passed since we first went to Dr. Cary Jasper, N.D. My son has not had a single asthma attack and has been completely off drugs for more than six months. His behavior, attentiveness and growth have improved dramatically. Nick is a happy, growing boy again.

Dr. Jasper made some common sense suggestions concerning Nick's diet, gave us some homeopathic preparations (herbal medicines) and offered my wife instruction on how she could "doctor" Nick on her own. The doctor also helped me successfully treat my ulcer in six weeks; it had remained resistant to more "conventional" treatments for more than 1½ years. Our experience with naturopathic medicine helped us to be a much healthier family in all respects.

The purpose of this testimonial is threefold. First, I want to thank my wife Diane for being so persistent and diligent in seeking out a better way. Second, I hope many of the more conscientious M.D.s in town, who might read this, may embark on some diligent research of their own in the area of naturopathic medicine. Third, I would like to suggest to health insurance companies, they might save a great deal of money paid out in claims for the "after the fact symptom-relief" medicine offered by the pharmacologically dominated American Medical Association, by also covering the relatively minor expenses incurred with the "preventative-curative" alternative of naturopathic medicine.

— Steve M. McDermott

COMMITTEE ON TOURISM, PROFESSIONS AND OCCUPATIONS
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2202
(Reference to printed bill)

(a Compiled Model Bill Prepared by Legislative Council in Arizona)

Strike everything after the enacting clause and insert:

"Section 1. Legislative intent

Since naturopathy is a health care system of diagnosing, treating and preventing disease, illness or injury of the human mind and body, it has a direct relationship with the public health. It is essential that the legislature regulate the practice of the profession of naturopathy to safeguard the public health, safety and welfare. It is also a matter of public interest and concern that the practice of the profession of naturopathy merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of the profession of naturopathy.

Sec. 2. Repeal

Title 32, chapter 14, Arizona Revised Statutes, is repealed.

Sec. 3. Title 32, Arizona Revised Statutes, is amended by adding a new chapter 14, to read:

CHAPTER 14

NATUROPATHIC PHYSICIANS

ARTICLE 1. NATUROPATHIC PHYSICIANS BOARD OF EXAMINERS

32-1501. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "BOARD" MEANS THE STATE NATUROPATHIC PHYSICIANS BOARD OF EXAMINERS.

2. "COMPLETED APPLICATION" MEANS AN APPLICATION FOR A REGULAR OR TEMPORARY LICENSE TO PRACTICE NATUROPATHY OR A NATUROPATHIC SPECIALTY WHICH, IN THE OPINION OF THE BOARD, APPEARS ON ITS FACE TO SHOW THAT THE APPLICANT POSSESSES ALL OF THE REQUIREMENTS FOR THE CATEGORY OF LICENSE

APPLIED FOR EXCEPT FOR THE PHYSICAL EXAMINATION OR MENTAL EVALUATION WHICH MAY BE REQUIRED BY THE BOARD AND THE EXAMINATION APPLICABLE TO THE CATEGORY OF APPLICATION CONCERNED.

3. "DIAGNOSING" INCLUDES PHYSICAL, CLINICAL, X-RAY AND LABORATORY EXAMINATIONS, AS TAUGHT IN NATUROPATHIC SCHOOLS AND COLLEGES APPROVED BY THE BOARD, TO DETERMINE THE NATURE OF A PERSON'S CONDITION.

4. "DOCTOR OF NATUROPATHIC MEDICINE" MEANS A NATURAL PERSON LICENSED UNDER THIS CHAPTER.

5. "DRUGS" MEANS PREPARATIONS AND SUBSTANCES, OTHER THAN FOOD AND WATER:

(a) RECOGNIZED, OR FOR WHICH STANDARDS OR SPECIFICATIONS ARE PRESCRIBED, IN THE LATEST REVISION OF THE PHARMACOPOEIA OF THE UNITED STATES, THE LATEST REVISION OF THE NATIONAL FORMULARY OR ANY CURRENT SUPPLEMENT TO EITHER OF THEM.

(b) USED OR INTENDED TO BE USED FOR THE DIAGNOSIS, CURE, TREATMENT, MITIGATION OR PREVENTION OF DISEASES OR ABNORMALITIES OF MAN.

DRUGS DO NOT INCLUDE BARIUM SULFATE USED FOR DIAGNOSTIC PURPOSES, ANTISEPTICS, LOCAL ANESTHETICS OR NONPOISONOUS PLANT SUBSTANCES OR OTHER EXTRACTED, COMPOUNDED OR CONCENTRATED SUBSTANCES OBTAINED FROM AN ANIMAL, A PLANT OR A MINERAL ORIGIN USED OR INTENDED TO BE USED IN THE TREATMENT OR PREVENTION OF DISEASES OR ABNORMALITIES OF MAN BY A NATUROPATHIC PHYSICIAN FOR WHICH STANDARDS OR SPECIFICATIONS ARE PROVIDED BY FEDERAL OR STATE LAWS.

6. "LOCAL ANESTHETIC" MEANS AN AGENT USED TO ABOLISH THE SENSATION OF PAIN WHOSE ACTION IS LIMITED TO AN AREA OF THE BODY AROUND THE SITE OF ITS APPLICATION.

7. "MINOR SURGERY" MEANS MINOR SURGERY AS TAUGHT IN NATUROPATHIC SCHOOLS AND COLLEGES APPROVED BY THE BOARD, INCLUDING:

(a) THE USE OF ELECTRICAL OR OTHER METHODS FOR SURGICAL REPAIR AND CARE INCIDENT TO SURGICAL REPAIR OF MINOR PROCEDURES, SUPERFICIAL LACERATIONS, LESIONS AND ABRASIONS.

(b) THE CLAMPING AND SEVERING OF UMBILICAL CORDS.

(c) THE REMOVAL OF FOREIGN BODIES LOCATED IN SUPERFICIAL STRUCTURES.

(d) THE USE OF ANTISEPTICS, SANITARY MEASURES AND LOCAL ANESTHETICS IN CONNECTION WITH PROCEDURES SET FORTH IN THIS PARAGRAPH.

MINOR SURGERY DOES NOT INCLUDE ABORTIONS BY NATUROPATHIC PHYSICIANS.

8. "NATURAL THERAPEUTIC METHODS" MEANS PROCEDURES, DEVICES AND METHODS FOR TREATING THE HUMAN MIND AND BODY WITHOUT DRUGS AS DEFINED IN PARAGRAPH 5.

9. "NATUROPATHIC SPECIALTY" MEANS ANY FIELD OF NATUROPATHIC PRACTICE WHICH, IN THE JUDGMENT OF THE BOARD, REQUIRES EDUCATIONAL BACKGROUND AND DEMONSTRATED PROFICIENCY IN ADDITION TO THE GENERAL QUALIFICATIONS REQUIRED FOR LICENSING AS A NATUROPATHIC PHYSICIAN.

10. "NATUROPATHY" MEANS A HEALTH CARE SYSTEM OF DIAGNOSING, TREATING AND PREVENTING DISEASE, ILLNESS OR INJURY OF THE HUMAN MIND AND BODY BY THE USE OF NATURAL THERAPEUTIC METHODS, PHYSIOTHERAPY AND MINOR SURGERY AS TAUGHT IN NATUROPATHIC SCHOOLS AND COLLEGES APPROVED BY THE BOARD.

11. "PHYSIOTHERAPY" INCLUDES ALL FORMS OF PHYSIOLOGICAL THERAPEUTICS AS TAUGHT IN NATUROPATHIC SCHOOLS AND COLLEGES APPROVED BY THE BOARD.

12. "UNPROFESSIONAL CONDUCT" INCLUDES THE FOLLOWING ACTS:

(a) INTENTIONAL BETRAYAL OF A PROFESSIONAL SECRET OR INTENTIONAL VIOLATION OF A PRIVILEGED COMMUNICATION EXCEPT AS EITHER OF THESE MAY OTHERWISE BE REQUIRED BY LAW. THIS SUBDIVISION DOES NOT PREVENT MEMBERS OF THE BOARD FROM THE FULL AND FREE EXCHANGE OF INFORMATION WITH THE LICENSING AND DISCIPLINARY BOARDS OF OTHER STATES OR COUNTRIES OR WITH THE ARIZONA NATUROPATHIC MEDICAL ASSOCIATION, INC., OR ANY OF ITS COMPONENT SOCIETIES OR WITH THE NATUROPATHIC MEDICAL SOCIETIES OF OTHER STATES, COUNTIES OR COUNTRIES.

(b) ANY DISHONORABLE CONDUCT REFLECTING UNFAVORABLY ON THE PROFESSION.

(c) COMMISSION OF A FELONY, WHETHER OR NOT INVOLVING MORAL TURPITUDE, OR A MISDEMEANOR INVOLVING MORAL TURPITUDE. IN EITHER CASE CONVICTION BY ANY COURT OF COMPETENT JURISDICTION IS CONCLUSIVE EVIDENCE THEREOF.

(d) HABITUAL INTEMPERANCE IN THE USE OF ALCOHOL.

(e) HABITUAL USE OF NARCOTIC OR HYPNOTIC DRUGS, OR BOTH.

(f) GROSS MALPRACTICE, REPEATED MALPRACTICE OR ANY MALPRACTICE RESULTING IN THE DEATH OF A PATIENT.

(g) IMPERSONATION OF ANOTHER DOCTOR OF NATUROPATHIC MEDICINE OR ANY OTHER PRACTITIONER OF THE HEALING ARTS.

(h) ACTING OR ASSUMING TO ACT AS A MEMBER OF THE BOARD IF SUCH IS NOT THE FACT.

(i) PROCURING OR ATTEMPTING TO PROCURE A LICENSE TO PRACTICE NATUROPATHY BY FRAUD, MISREPRESENTATION OR KNOWINGLY TAKING ADVANTAGE OF THE MISTAKE OF ANOTHER.

(j) HAVING PROFESSIONAL CONNECTION WITH OR LENDING ONE'S NAME TO AN ILLEGAL PRACTITIONER OF NATUROPATHY OR ANY OF THE OTHER HEALING ARTS.

(k) REPRESENTING THAT A MANIFESTLY INCURABLE DISEASE, INJURY, AILMENT OR INFIRMITY CAN BE PERMANENTLY CURED, OR THAT A CURABLE DISEASE, INJURY, AILMENT OR INFIRMITY CAN BE CURED WITHIN A STATED TIME, IF SUCH IS NOT THE FACT.

(l) OFFERING, UNDERTAKING OR AGREEING TO CURE OR TREAT A DISEASE, INJURY, AILMENT OR INFIRMITY BY A SECRET MEANS, METHOD, DEVICE OR INSTRUMENTALITY.

(m) REFUSING TO DIVULGE TO THE BOARD UPON DEMAND THE MEANS, METHOD, DEVICE OR INSTRUMENTALITY USED IN THE TREATMENT OF A DISEASE, INJURY, AILMENT OR INFIRMITY.

(n) GIVING OR RECEIVING, OR AIDING OR ABETTING THE GIVING OR RECEIVING OF, REBATES, EITHER DIRECTLY OR INDIRECTLY.

(o) KNOWINGLY MAKING ANY FALSE OR FRAUDULENT STATEMENT, WRITTEN OR ORAL, IN CONNECTION WITH THE PRACTICE OF NATUROPATHY EXCEPT AS NECESSARY FOR ACCEPTED THERAPEUTIC PURPOSES.

(p) IMMORALITY OR MISCONDUCT THAT TENDS TO DISCREDIT THE NATUROPATHIC PROFESSION.

(q) REFUSAL, REVOCATION OR SUSPENSION OF LICENSE BY ANY OTHER STATE OR COUNTRY, UNLESS IT CAN BE SHOWN THAT SUCH WAS NOT OCCASIONED BY REASONS WHICH RELATE TO THE ABILITY TO SAFELY AND SKILLFULLY PRACTICE NATUROPATHY OR TO ANY ACT OF UNPROFESSIONAL CONDUCT IN THIS PARAGRAPH.

(r) ANY CONDUCT OR PRACTICE CONTRARY TO RECOGNIZED STANDARDS OF ETHICS OF THE NATUROPATHIC PROFESSION OR ANY CONDUCT OR PRACTICE WHICH DOES

OR MIGHT CONSTITUTE A DANGER TO THE HEALTH, WELFARE OR SAFETY OF THE PATIENT OR THE PUBLIC, OR ANY CONDUCT, PRACTICE OR CONDITION WHICH DOES OR MIGHT IMPAIR THE ABILITY TO SAFELY AND SKILLFULLY PRACTICE NATUROPATHY.

(s) FAILURE TO OBSERVE ANY STATE, COUNTY OR MUNICIPAL LAW RELATING TO PUBLIC HEALTH AS A PHYSICIAN IN THIS STATE.

(t) VIOLATING OR ATTEMPTING TO VIOLATE, DIRECTLY OR INDIRECTLY, OR ASSISTING IN OR ABETTING THE VIOLATION OF, OR CONSPIRING TO VIOLATE ANY OF THE PROVISIONS OF THIS CHAPTER.

32-1502. Naturopathic physicians board of examiners; appointment; qualifications; term of office; immunity

A. THERE IS ESTABLISHED A STATE NATUROPATHIC PHYSICIANS BOARD OF EXAMINERS CONSISTING OF THE FOLLOWING EIGHT MEMBERS:

1. FOUR NATUROPATHIC PHYSICIAN MEMBERS APPOINTED BY THE GOVERNOR. EACH NATUROPATHIC PHYSICIAN MEMBER SHALL BE:

(a) A RESIDENT OF THIS STATE FOR FIVE YEARS IMMEDIATELY PRECEDING HIS APPOINTMENT.

(b) A DOCTOR OF NATUROPATHIC MEDICINE WITH A DEGREE FROM A NATUROPATHIC SCHOOL OR COLLEGE APPROVED BY THE BOARD WHO HAS ENGAGED IN THE FULL-TIME PRACTICE OF NATUROPATHY FOR FIVE YEARS IMMEDIATELY PRECEDING HIS APPOINTMENT.

2. TWO PUBLIC MEMBERS APPOINTED BY THE GOVERNOR. EACH PUBLIC MEMBER SHALL:

(a) BE A RESIDENT OF THIS STATE FOR FIVE YEARS IMMEDIATELY PRECEDING HIS APPOINTMENT.

(b) NOT BE CONNECTED, IN ANY MANNER, WITH OR HAVE ANY INTEREST IN A SCHOOL OF MEDICINE, HEALTH CARE INSTITUTION OR ANY PERSON PRACTICING ANY FORM OF HEALING OR TREATMENT OF BODILY OR MENTAL AILMENTS.

(c) DEMONSTRATE AN INTEREST IN THE HEALTH PROBLEMS IN THIS STATE.

3. THE CHAIRMAN OF THE STATE BOARD OF MEDICAL EXAMINERS WHO SHALL SERVE AS AN EX OFFICIO MEMBER OR ANOTHER PROFESSIONAL MEMBER OF THE STATE BOARD OF MEDICAL EXAMINERS DESIGNATED BY THE CHAIRMAN TO SERVE ON THE STATE NATUROPATHIC PHYSICIANS BOARD OF EXAMINERS IN HIS PLACE.

4. THE PRESIDENT OF THE STATE BOARD OF NURSING WHO SHALL SERVE AS AN EX OFFICIO MEMBER OR ANOTHER PROFESSIONAL MEMBER OF THE STATE BOARD OF NURSING DESIGNATED BY THE PRESIDENT TO SERVE ON THE STATE NATUROPATHIC PHYSICIANS BOARD OF EXAMINERS IN HIS PLACE.

B. THE TERM OF OFFICE OF THE NATUROPATHIC PHYSICIAN MEMBERS AND THE PUBLIC MEMBERS IS FIVE YEARS TO BEGIN AND END ON JUNE 30. EACH NATUROPATHIC PHYSICIAN MEMBER AND EACH PUBLIC MEMBER CONTINUE TO HOLD OFFICE UNTIL THE APPOINTMENT AND QUALIFICATION OF THEIR SUCCESSORS, SUBJECT TO THE FOLLOWING EXCEPTIONS:

1. A MEMBER OF THE BOARD, AFTER NOTICE AND A HEARING BEFORE THE GOVERNOR, MAY BE REMOVED FROM OFFICE AND HIS TERM ENDS IF THE GOVERNOR FINDS THE MEMBER NEGLECTED ANY DUTY IMPOSED BY LAW OR WAS GUILTY OF MALFEASANCE, MISFEASANCE OR DISHONORABLE CONDUCT.

2. THE TERM OF ANY MEMBER AUTOMATICALLY ENDS ON HIS DEATH, RESIGNATION OR PERMANENT REMOVAL FROM THIS STATE OR REMOVAL FROM THIS STATE FOR A PERIOD OF MORE THAN SIX MONTHS.

C. MEMBERS OF THE BOARD ARE IMMUNE FROM PERSONAL LIABILITY WITH RESPECT TO ACTS DONE AND ACTIONS TAKEN IN GOOD FAITH WITHIN THE SCOPE OF THEIR AUTHORITY.

32-1503. Organization; meetings; compensation

A. THE BOARD SHALL ANNUALLY ELECT, FROM AMONG ITS MEMBERSHIP, A CHAIRMAN, A VICE-CHAIRMAN AND A SECRETARY-TREASURER, WHO SHALL HOLD THEIR RESPECTIVE OFFICES AT THE PLEASURE OF THE BOARD.

B. THE BOARD SHALL HOLD A REGULAR MEETING AT LEAST SEMIANNUALLY ON A DATE AND AT A TIME AND PLACE IT DESIGNATES. IN ADDITION, THE BOARD MAY HOLD SPECIAL MEETINGS IT DEEMS NECESSARY.

C. A MAJORITY OF THE MEMBERS OF THE BOARD CONSTITUTES A QUORUM AND A MAJORITY VOTE OF A QUORUM PRESENT AT ANY MEETING GOVERNS ALL ACTIONS TAKEN BY THE BOARD, EXCEPT THAT LICENSES SHALL BE ISSUED UNDER THIS CHAPTER ONLY ON THE VOTE OF THE MAJORITY OF THE FULL BOARD.

D. MEMBERS OF THE BOARD ARE ELIGIBLE TO RECEIVE COMPENSATION AS DETERMINED UNDER SECTION 38-611 FOR EACH DAY OF ACTUAL SERVICE IN THE BUSINESS OF THE BOARD. THE BOARD MAY PAY COMPENSATION IN AN AMOUNT AS DETERMINED UNDER SECTION 38-611 TO THE SECRETARY-TREASURER IF HE SERVES AS

THE ADMINISTRATIVE HEAD OF THE BOARD ASSUMING THE DUTIES OF AN EXECUTIVE SECRETARY.

32-1504. Powers and duties

A. THE BOARD SHALL:

1. ADMINISTER AND ENFORCE ALL PROVISIONS OF THIS CHAPTER AND ALL RULES AND REGULATIONS ADOPTED BY THE BOARD UNDER THE AUTHORITY GRANTED BY THIS CHAPTER.

2. COLLECT ALL FEES PROVIDED FOR BY THIS CHAPTER AND MAKE DISPOSITIONS OF THEM AS PROVIDED FOR IN SECTION 32-1505.

3. MAINTAIN AN ACCURATE ACCOUNT OF ALL RECEIPTS, EXPENDITURES AND REFUNDS GRANTED UNDER THIS CHAPTER.

4. MAINTAIN A RECORD OF ITS ACTS AND PROCEEDINGS, INCLUDING THE ISSUANCE, REFUSAL, RENEWAL, SUSPENSION OR REVOCATION OF LICENSES.

5. MAINTAIN A ROSTER OF ALL DOCTORS OF NATUROPATHIC MEDICINE LICENSED UNDER THIS CHAPTER WHICH INDICATES:

(a) THE NAME OF THE LICENSEE.

(b) HIS CURRENT PROFESSIONAL OFFICE ADDRESS.

(c) THE DATE OF ISSUANCE AND THE NUMBER OF HIS LICENSE.

(d) WHETHER THE LICENSE IS IN GOOD STANDING.

6. KEEP ALL APPLICATIONS FOR LICENSURE AS A PERMANENT RECORD.

7. MAINTAIN A PERMANENT RECORD OF THE RESULTS OF ALL EXAMINATIONS IT GIVES.

8. KEEP ALL EXAMINATION RECORDS INCLUDING WRITTEN EXAMINATION RECORDS AND TAPE RECORDINGS OF THE QUESTIONS AND ANSWERS IN ORAL EXAMINATIONS FOR ONE YEAR.

9. KEEP THE RECORDS OF THE BOARD OPEN TO PUBLIC INSPECTION AT ALL REASONABLE TIMES.

10. ADOPT AND USE A SEAL, THE IMPRINT OF WHICH, TOGETHER WITH THE SIGNATURES OF THE CHAIRMAN OR VICE-CHAIRMAN AND THE SECRETARY-TREASURER OF THE BOARD, SHALL EVIDENCE ITS OFFICIAL ACTS.

11. COMPENSATE ITS EXECUTIVE SECRETARY, OTHER PERMANENT AND TEMPORARY PERSONNEL AND COMMISSIONERS ON EXAMINATIONS AS DETERMINED UNDER SECTION 38-611.

B. THE BOARD MAY:

1. MAKE AND ADOPT RULES AND REGULATIONS WHICH ARE NECESSARY OR PROPER FOR THE ADMINISTRATION OF THIS CHAPTER.

2. MAKE AND ADOPT RULES AND REGULATIONS PRESCRIBING CONTINUING EDUCATION REQUIREMENTS FOR THE RENEWAL OF LICENSES ISSUED UNDER THIS CHAPTER.

3. EMPLOY AN EXECUTIVE SECRETARY AND OTHER PERMANENT OR TEMPORARY PERSONNEL IT DEEMS NECESSARY TO CARRY OUT THE PURPOSES OF THIS CHAPTER AND DESIGNATE THEIR DUTIES.

4. APPOINT DOCTORS OF NATUROPATHIC MEDICINE AS COMMISSIONERS ON EXAMINATIONS TO GIVE ANY PART OR ALL OF ANY EXAMINATION PROVIDED FOR UNDER THIS CHAPTER.

5. REQUIRE A BOND, IN AN AMOUNT IT DETERMINES AS APPROPRIATE, FOR THE FAITHFUL DISCHARGE OF THE DUTIES OF ITS EMPLOYEES.

32-1505. Naturopathic physicians board fund

A. ALL MONIES FROM WHATEVER SOURCE WHICH COME INTO THE POSSESSION OF THE BOARD SHALL BE PAID TO THE SECRETARY-TREASURER WHO SHALL, BEFORE THE END OF EACH CALENDAR MONTH, DEPOSIT THEM WITH THE STATE TREASURER WHO SHALL DEPOSIT TEN PER CENT OF SUCH MONIES IN THE STATE GENERAL FUND AND TRANSFER THE REMAINING NINETY PER CENT TO THE NATUROPATHIC PHYSICIANS BOARD FUND.

B. MONIES DEPOSITED IN THE NATUROPATHIC PHYSICIANS BOARD FUND ARE SUBJECT TO SECTION 35-143.01.

ARTICLE 2. LICENSING

32-1521. Persons and acts not affected by this chapter

THIS CHAPTER DOES NOT APPLY TO:

1. THE PRACTICE OF ANY OTHER METHOD, SYSTEM OR SCIENCE OF HEALING BY A PERSON LICENSED UNDER THE LAWS OF THIS STATE.

2. ANY STUDENT OF NATUROPATHY IN THE COURSE OF TAKING AN APPROVED INTERNSHIP, PRECEPTORSHIP OR CLINICAL TRAINING PROGRAM IF THE STUDENT COMPLIES WITH THE APPLICABLE REGISTRATION PROVISIONS OF THIS CHAPTER AND PAYS THE REQUIRED FEES.

3. ANY PERSON ACTING AT THE DIRECTION OR UNDER THE SUPERVISION OF A DOCTOR OF NATUROPATHIC MEDICINE SO LONG AS HE IS ACTING IN A CUSTOMARY CAPACITY, NOT IN VIOLATION OF ANY STATUTE AND DOES NOT HOLD HIMSELF OUT TO THE PUBLIC GENERALLY AS BEING AUTHORIZED TO PRACTICE NATUROPATHY.

4. ANY OUT-OF-STATE NATUROPATHIC PHYSICIAN LICENSED BY ANOTHER STATE OR COUNTRY, IF IN CONSULTATION REQUESTED BY A DOCTOR OF NATUROPATHIC MEDICINE.

32-1522. Qualifications for license

A. TO BE ELIGIBLE FOR A LICENSE TO PRACTICE NATUROPATHY OR A NATUROPATHIC SPECIALTY, THE APPLICANT SHALL:

1. HAVE A HIGH SCHOOL DIPLOMA OR THE EQUIVALENT OF A HIGH SCHOOL DIPLOMA.

2. HAVE AT LEAST SIXTY SEMESTER UNITS OF CREDIT IN LIBERAL ARTS AND SCIENCES FROM AN ACCREDITED COLLEGE OR UNIVERSITY.

3. BE A GRADUATE OF A SCHOOL OF NATUROPATHIC MEDICINE APPROVED BY THE BOARD.

4. HAVE SATISFACTORILY COMPLETED AN INTERNSHIP, PRECEPTORSHIP OR CLINICAL TRAINING PROGRAM IN NATUROPATHIC MEDICINE APPROVED BY THE BOARD.

5. POSSESS A GOOD MORAL AND PROFESSIONAL REPUTATION.

6. BE PHYSICALLY AND MENTALLY ABLE TO SAFELY ENGAGE IN THE PRACTICE OF NATUROPATHY AND SUBMIT TO A PHYSICAL EXAMINATION, MENTAL EVALUATION OR INTERVIEW, OR ANY COMBINATION THEREOF, DEEMED PROPER BY THE BOARD.

7. NOT BE GUILTY OF ANY ACT OF UNPROFESSIONAL CONDUCT OR ANY OTHER CONDUCT WHICH WOULD BE GROUNDS FOR REFUSAL, SUSPENSION OR REVOCATION OF A LICENSE UNDER THIS CHAPTER.

8. NOT HAVE HAD A LICENSE TO PRACTICE NATUROPATHY REFUSED, REVOKED OR SUSPENDED BY ANY OTHER STATE OR COUNTRY FOR REASONS WHICH RELATE TO HIS ABILITY TO SKILLFULLY AND SAFELY PRACTICE NATUROPATHY.

9. FILE THE APPLICATION, PAY THE FEES PROVIDED FOR IN SECTION 32-1529 AND PASS THE EXAMINATION PROVIDED FOR IN SECTION 32-1526.

B. THE BOARD MAY:

1. REQUIRE AN APPLICANT TO SUBMIT CREDENTIALS OR OTHER WRITTEN OR ORAL PROOF.

2. MAKE INVESTIGATIONS IT DEEMS PROPER TO ADEQUATELY ADVISE ITSELF WITH RESPECT TO THE QUALIFICATIONS OF AN APPLICANT.

32-1523. Qualifications for license by reciprocity

TO BE ELIGIBLE FOR A LICENSE TO PRACTICE NATUROPATHY BY RECIPROCITY, THE APPLICANT SHALL:

1. QUALIFY UNDER SECTION 32-1522 EXCEPT FOR PASSING THE WRITTEN EXAMINATION PROVIDED FOR IN SECTION 32-1526.

2. BE LICENSED TO PRACTICE NATUROPATHY BY ANOTHER STATE AFTER PASSING A WRITTEN EXAMINATION, IF THAT STATE ACCORDS LIKE PRIVILEGES TO HOLDERS OF LICENSES ISSUED BY THIS STATE.

3. BE ACTIVELY ENGAGED, FOR THREE YEARS IMMEDIATELY PRECEDING HIS APPLICATION, IN ONE OR MORE OF THE FOLLOWING:

(a) THE ACTIVE PRACTICE OF NATUROPATHY.

(b) AN INTERNSHIP, PRECEPTORSHIP OR CLINICAL TRAINING PROGRAM APPROVED BY THE BOARD.

(c) POSTGRADUATE TRAINING DEEMED BY THE BOARD TO BE EQUIVALENT TO AN APPROVED CLINICAL TRAINING PROGRAM.

(d) THE STUDY OF NATUROPATHY AT A SCHOOL OF NATUROPATHIC MEDICINE APPROVED BY THE BOARD.

4. PASS AN ORAL EXAMINATION PROVIDED FOR IN SECTION 32-1526.

32-1524. Temporary licenses

A. TO BE ELIGIBLE FOR A TEMPORARY LICENSE TO PRACTICE NATUROPATHY, AN APPLICANT SHALL QUALIFY UNDER SECTION 32-1522 EXCEPT FOR PASSING THE WRITTEN EXAMINATION PROVIDED FOR IN SECTION 32-1526.

B. TEMPORARY LICENSES SHALL BE ISSUED FOR A TERM OF SIX MONTHS AND MAY BE RENEWED ONLY ONCE.

C. A TEMPORARY LICENSE EXPIRES ON THE OCCURRENCE OF ONE OF THE FOLLOWING EVENTS:

1. THE EXPIRATION OF THE TERM FOR WHICH THE TEMPORARY LICENSE OR RENEWAL WAS ISSUED.

2. ISSUANCE OF A REGULAR LICENSE TO PRACTICE NATUROPATHY.

3. SUSPENSION OR REVOCATION OF THE TEMPORARY LICENSE.

D. THE HOLDER OF A TEMPORARY LICENSE SHALL PRACTICE WITH A NATUROPATHIC PHYSICIAN LICENSED UNDER THIS CHAPTER AND SHALL NOT OPEN AN OFFICE OR PRACTICE WITHOUT THE SUPERVISION AND DIRECTION OF A NATUROPATHIC PHYSICIAN LICENSED UNDER THIS CHAPTER.

32-1525. Application; hearing on deficiencies in application; interview; withdrawal

A. EACH APPLICANT SHALL FILE A VERIFIED COMPLETED APPLICATION IN THE FORM AND STYLE REQUIRED AND SUPPLIED BY THE BOARD ACCOMPANIED BY THE APPROPRIATE APPLICATION FEE PRESCRIBED IN SECTION 32-1529.

B. THE APPLICATION SHALL BE DESIGNED TO REQUIRE THE SUBMISSION OF EVIDENCE, CREDENTIALS AND OTHER PROOF NECESSARY TO SATISFY THE BOARD THAT IT MEETS THE REQUIREMENTS OF A COMPLETED APPLICATION.

C. THE APPLICATION SHALL CONTAIN THE OATH OF THE APPLICANT THAT:

1. ALL INFORMATION CONTAINED IN THE APPLICATION AND EVIDENCE SUBMITTED WITH IT ARE TRUE AND CORRECT.

2. THE CREDENTIALS SUBMITTED WERE NOT PROCURED BY FRAUD OR MISREPRESENTATION OR ANY MISTAKE OF WHICH THE APPLICANT IS AWARE.

3. THE APPLICANT IS THE LAWFUL HOLDER OF THE CREDENTIALS.

D. ALL APPLICATIONS SUBMITTED TO THE BOARD AND ANY ATTENDANT EVIDENCE, CREDENTIALS OR OTHER PROOF SUBMITTED WITH AN APPLICATION ARE THE PROPERTY OF THE BOARD AND PART OF THE PERMANENT RECORD OF THE BOARD AND SHALL NOT BE RETURNED TO A WITHDRAWING APPLICANT.

E. THE BOARD SHALL PROMPTLY INFORM AN APPLICANT, IN WRITING, OF THE DEFICIENCIES, IF ANY, IN HIS APPLICATION WHICH PREVENT IT FROM BEING A COMPLETED APPLICATION.

F. ANY APPLICANT WHO DISAGREES WITH THE STATEMENT OF DEFICIENCIES AND WHO BELIEVES HE HAS FILED A COMPLETED APPLICATION MAY REQUEST AND ON REQUEST SHALL BE GRANTED A HEARING. THE HEARING SHALL NOT BE HELD LESS THAN THIRTY DAYS AFTER THE RECEIPT OF THE REQUEST BUT SHALL BE HELD AT THE FIRST MEETING OF THE BOARD THEREAFTER. AT THE HEARING THE BURDEN OF PROOF IS ON THE APPLICANT TO SHOW THAT HE HAS FILED A COMPLETED APPLICATION.

G. THE BOARD MAY INTERVIEW THE APPLICANT TO DETERMINE WHETHER THE APPLICATION IS SUFFICIENT OR WHETHER THE APPLICANT OTHERWISE QUALIFIES FOR LICENSURE.

H. APPLICATIONS ARE CONSIDERED WITHDRAWN ON ANY OF THE FOLLOWING CONDITIONS:

1. REQUEST OF THE APPLICANT.

2. FAILURE OF THE APPLICANT TO APPEAR FOR AN INTERVIEW WITH THE BOARD EXCEPT FOR GOOD CAUSE BEING SHOWN.

3. FAILURE TO SUBMIT A COMPLETED APPLICATION WITHIN ONE YEAR FROM THE DATE OF THE MAILING BY THE BOARD OF A STATEMENT TO HIM OF THE DEFICIENCIES IN HIS APPLICATION UNDER SUBSECTION E OF THIS SECTION.

4. FAILURE TO SHOW, AT THE HEARING PROVIDED FOR IN SUBSECTION F OF THIS SECTION, THAT DEFICIENCIES DO NOT EXIST.

5. FAILURE TO SHOW, WITHIN ONE YEAR FROM THE INTERVIEW PROVIDED FOR IN SUBSECTION G OF THIS SECTION, THAT HIS COMPLETED APPLICATION IS TRUE AND CORRECT.

32-1526. Examinations

A. EXAMINATIONS REQUIRED UNDER SECTIONS 32-1522 AND 32-1523 SHALL BE CONDUCTED AT A TIME AND PLACE DESIGNATED BY THE BOARD BUT NO LESS FREQUENTLY THAN SEMIANNUALLY. THE APPLICANTS TO BE EXAMINED SHALL HAVE FIRST FILED A COMPLETED APPLICATION FOUND TO BE TRUE AND CORRECT AND SHALL BE GIVEN AT LEAST THIRTY DAYS' WRITTEN NOTICE OF THE TIME AND PLACE AT WHICH THE EXAMINATION SHALL BE GIVEN.

B. THE EXAMINATION REQUIRED UNDER SECTION 32-1522 SHALL BE WRITTEN BUT MAY ALSO INCLUDE ORAL, CLINICAL OR LABORATORY SECTIONS, OR ANY COMBINATION OF ORAL, CLINICAL OR LABORATORY SECTIONS.

C. THE EXAMINATION REQUIRED UNDER SECTION 32-1523 SHALL BE ORAL AND MAY INCLUDE CLINICAL OR LABORATORY SECTIONS, OR BOTH.

D. EXAMINATIONS FOR LICENSURE UNDER THIS CHAPTER SHALL:

1. BE IN ENGLISH.

2. BE PRACTICAL IN CHARACTER.

3. BE DESIGNED TO ASCERTAIN THE APPLICANT'S KNOWLEDGE OF NATUROPATHY AND HIS FITNESS TO PRACTICE NATUROPATHY.

4. INCLUDE ALL SUBJECTS WHICH ARE GENERALLY ACCEPTED AS NECESSARY TO A THOROUGH KNOWLEDGE OF THE PRACTICE OF NATUROPATHY.

E. THE BOARD SHALL PRESCRIBE RULES AND REGULATIONS FOR CONDUCTING EXAMINATIONS AND SET PASSING GRADES.

F. THE BOARD SHALL REVIEW THE EXAMINATION OF ANY APPLICANT ON THE APPLICANT'S REQUEST. A GRADE ON AN EXAMINATION REVIEWED BY THE BOARD MAY BE CHANGED ONLY BY THE MAJORITY VOTE OF THE MEMBERS OF THE BOARD. AN APPLICANT FAILING TO PASS AN EXAMINATION MAY BE REEXAMINED WITHIN ONE YEAR WITHOUT PAYMENT OF ADDITIONAL FEES.

G. IN A WRITTEN EXAMINATION, APPLICANTS SHALL BE DESIGNATED BY NUMBERS ONLY, AND THE CORRESPONDING NAMES SHALL BE KEPT SECRET UNTIL AFTER THE GRADING OF THE EXAMINATIONS.

H. IN ANY ORAL EXAMINATION OR IN THE ORAL SECTION OF ANY EXAMINATION, A TAPE RECORDING SHALL BE MADE OF ALL QUESTIONS AND ANSWERS.

32-1527. License; issuance; registration; reregistration; cancellation; waiver of fees; registration of exempt persons

A. THE BOARD SHALL ISSUE LICENSES TO APPLICANTS WHO ARE QUALIFIED UNDER THIS CHAPTER.

B. EACH PERSON LICENSED UNDER THIS CHAPTER SHALL REGISTER HIS LICENSE AND PAY THE REGISTRATION FEE PRESCRIBED IN SECTION 32-1529.

C. EACH PERSON HOLDING A REGULAR LICENSE TO PRACTICE NATUROPATHY IN THIS STATE SHALL ANNUALLY REGISTER HIS LICENSE ON OR BEFORE JANUARY 1 OF EACH YEAR BY SUPPLYING THE BOARD WITH INFORMATION IT DEEMS NECESSARY AND PAYING THE ANNUAL REGISTRATION FEE PRESCRIBED IN SECTION 32-1529. IF A LICENSEE FAILS TO REGISTER HIS LICENSE ON OR BEFORE FEBRUARY 1 OF EACH YEAR, HE SHALL PAY THE PENALTY FEE FOR LATE REGISTRATION PRESCRIBED IN SECTION 32-1529. FAILURE TO REGISTER A LICENSE ON OR BEFORE MARCH 1 OF EACH YEAR, WITHOUT ADEQUATE CAUSE SHOWN, IS GROUNDS FOR PROBATION, SUSPENSION OR REVOCATION OF A LICENSE UNDER SECTION 32-1551.

D. A LICENSEE IN GOOD STANDING AND WHOSE LICENSE IS CURRENT MAY, AT ANY TIME, REQUEST AND SHALL BE GRANTED CANCELLATION OF HIS LICENSE.

E. THE BOARD MAY WAIVE THE ANNUAL REGISTRATION FEE IF A LICENSEE PRESENTS EVIDENCE SATISFACTORY TO THE BOARD THAT HE HAS PERMANENTLY RETIRED FROM THE PRACTICE OF NATUROPATHY AND HAS PAID ALL FEES REQUIRED UNDER THIS CHAPTER PRIOR TO WAIVER.

F. IF A RETIRED LICENSEE WHO HAS HAD HIS ANNUAL REGISTRATION FEE WAIVED BY THE BOARD ENGAGES IN THE PRACTICE OF NATUROPATHY HE IS SUBJECT TO THE SAME PENALTIES AS ARE IMPOSED UNDER THIS CHAPTER ON A PERSON WHO PRACTICES NATUROPATHY WITHOUT A LICENSE AND WITHOUT BEING EXEMPT FROM LICENSURE.

G. THE BOARD MAY REINSTATE A RETIRED LICENSEE TO ACTIVE PRACTICE ON PAYMENT OF THE ANNUAL REGISTRATION FEE AND PRESENTATION OF EVIDENCE SATISFACTORY TO THE BOARD THAT HE IS PHYSICALLY AND MENTALLY ABLE TO SAFELY ENGAGE IN THE PRACTICE OF NATUROPATHY AND STILL POSSESSES THE PROFESSIONAL KNOWLEDGE REQUIRED TO ENGAGE IN THE PRACTICE OF NATUROPATHY. THE BOARD MAY

REQUIRE A PHYSICAL EXAMINATION OR A MENTAL EVALUATION AND AN EXAMINATION OF NATUROPATHIC KNOWLEDGE AS IT DEEMS NECESSARY TO DETERMINE THESE QUALIFICATIONS.

H. TO QUALIFY FOR THE EXEMPTION IN SECTION 32-1521, PARAGRAPH 2, NATUROPATHIC STUDENTS SHALL:

1. REGISTER WITH THE BOARD FOR EACH YEAR OF THEIR INTERNSHIP, PRECEPTORSHIP OR CLINICAL TRAINING PROGRAM.

2. SUPPLY THE BOARD WITH WRITTEN PROOF THE BOARD DEEMS NECESSARY TO SATISFY ITSELF THAT THE REQUIREMENTS FOR THE EXEMPTION ARE MET.

3. PAY THE REGISTRATION FEE PRESCRIBED IN SECTION 32-1529.

32-1528. Directory; change of address

A. THE BOARD SHALL ANNUALLY COMPILE AND PUBLISH A DIRECTORY WHICH CONTAINS:

1. THE NAMES, ADDRESSES AND FIELDS OF PRACTICE OF ALL PERSONS HOLDING REGULAR LICENSES ISSUED UNDER THIS CHAPTER.

2. THE NAMES AND ADDRESSES OF THE OFFICERS AND MEMBERS OF THE BOARD.

3. THE RULES OF THE BOARD.

4. A COPY OF THIS CHAPTER.

5. SUPPLEMENTARY INFORMATION THE BOARD DEEMS OF INTEREST AND IMPORTANCE TO DOCTORS OF NATUROPATHIC MEDICINE.

B. EACH PERSON LICENSED UNDER THIS CHAPTER SHALL PROMPTLY AND IN WRITING INFORM THE BOARD OF HIS RESIDENCE AND OFFICE ADDRESSES AND EACH CHANGE OF HIS RESIDENCE AND OFFICE ADDRESSES.

C. A COPY OF THE DIRECTORY SHALL BE GIVEN FREE OF CHARGE TO EACH PERSON LICENSED UNDER THIS CHAPTER AT THE TIME OF INITIAL LICENSURE AND AT THE TIME OF EACH ANNUAL REGISTRATION OF LICENSE. ADDITIONAL COPIES SHALL BE AVAILABLE FOR PURCHASE AT A COST PRESCRIBED IN SECTION 32-1529.

32-1529. Fees

THE BOARD SHALL CHARGE THE FOLLOWING FEES:

1. FOR APPLICATION FOR A LICENSE TO PRACTICE NATUROPATHY OR A NATUROPATHIC SPECIALTY UNDER SECTION 32-1522, A FEE NOT TO EXCEED FOUR HUNDRED DOLLARS.

2. FOR APPLICATION FOR A LICENSE TO PRACTICE NATUROPATHY BY RECIPROCITY UNDER SECTION 32-1523, A FEE NOT TO EXCEED FOUR HUNDRED DOLLARS.

3. FOR APPLICATION FOR A TEMPORARY LICENSE TO PRACTICE NATUROPATHY UNDER SECTION 32-1524, TWO HUNDRED DOLLARS FOR THE INITIAL TERM AND ONE HUNDRED DOLLARS FOR THE RENEWAL TERM.

4. FOR ISSUANCE OF A DUPLICATE LICENSE, ONE HUNDRED DOLLARS.

5. FOR ENDORSEMENT OF AN ARIZONA LICENSE FOR THE PURPOSE OF APPLYING FOR A LICENSE IN ANOTHER STATE, FIFTY DOLLARS.

6. FOR INITIAL REGISTRATION OF LICENSE, FIFTY DOLLARS.

7. FOR ANNUAL REGISTRATION, A UNIFORM FEE OF ONE HUNDRED DOLLARS OR MORE BUT NOT TO EXCEED FOUR HUNDRED DOLLARS TO BE ANNUALLY DETERMINED BY THE BOARD AS NECESSARY TO PROVIDE FUNDS TO CONDUCT ITS BUSINESS.

8. FOR LATE REGISTRATION, A PENALTY OF TWO HUNDRED DOLLARS.

9. FOR ANNUAL REGISTRATION FOR INTERNSHIP, PRECEPTORSHIP OR CLINICAL TRAINING, ONE HUNDRED DOLLARS.

10. FOR THE SALE OF COPIES OF THE ANNUAL NATUROPATHIC DIRECTORY WHICH ARE NOT DISTRIBUTED FREE OF CHARGE UNDER SECTION 32-1528, A FEE NOT TO EXCEED TWENTY-FIVE DOLLARS.

11. FOR SERVICES NOT REQUIRED TO BE PROVIDED BY THIS CHAPTER BUT WHICH THE BOARD DEEMS APPROPRIATE TO CARRY OUT THE INTENT AND PURPOSE OF THIS CHAPTER, A FEE NOT TO EXCEED THE COSTS OF RENDERING THE SERVICES.

ARTICLE 3. REGULATION

32-1551. Grounds for probation, suspension, revocation or refusal to issue license; notice; hearing; appeal

A. THE BOARD ON ITS OWN MOTION MAY INVESTIGATE ANY INFORMATION WHICH APPEARS TO SHOW GROUNDS FOR PROBATION, SUSPENSION, REVOCATION OR REFUSAL TO ISSUE A LICENSE FOR UNPROFESSIONAL CONDUCT. ANY NATUROPATHIC PHYSICIAN OR HEALTH CARE INSTITUTION AS DEFINED IN SECTION 36-401 SHALL, AND ANY OTHER PERSON MAY, REPORT TO THE BOARD ANY INFORMATION THE PERSON MAY HAVE WHICH APPEARS TO SHOW GROUNDS FOR PROBATION, SUSPENSION, REVOCATION OR REFUSAL TO ISSUE A LICENSE. ANY PERSON WHO REPORTS OR PROVIDES INFORMATION TO THE BOARD IN GOOD FAITH IS NOT SUBJECT TO AN ACTION

FOR CIVIL DAMAGES AS A RESULT, AND THE PERSON'S NAME SHALL NOT BE DISCLOSED UNLESS THE PERSON'S TESTIMONY IS ESSENTIAL TO THE DISCIPLINARY PROCEEDINGS CONDUCTED UNDER THIS SECTION. ANY HEALTH CARE INSTITUTION WHICH FAILS TO REPORT AS REQUIRED BY THIS SECTION SHALL BE REPORTED BY THE BOARD TO THE INSTITUTION'S LICENSING AGENCY.

B. IF, IN THE OPINION OF THE BOARD, IT APPEARS THE CHARGE IS OF SUCH MAGNITUDE AS TO WARRANT SUSPENSION OR REVOCATION OF A NATUROPATHIC PHYSICIAN'S LICENSE THE BOARD SHALL SERVE ON THE PHYSICIAN A SUMMONS AND A COMPLAINT FULLY SETTING FORTH THE CONDUCT OR INABILITY CONCERNED AND SETTING THE TIME AND PLACE FOR A HEARING TO BE HELD BEFORE THE BOARD. THE HEARING SHALL NOT BE HELD LESS THAN THIRTY DAYS FROM SERVICE OF THE SUMMONS AND COMPLAINT.

C. IF THE PHYSICIAN WISHES TO BE PRESENT AT THE HEARING IN PERSON OR BY REPRESENTATION, OR BOTH, HE SHALL FILE WITH THE BOARD HIS ANSWER TO THE CHARGES IN THE COMPLAINT. THE ANSWER SHALL BE IN WRITING, VERIFIED UNDER OATH AND FILED WITHIN TWENTY DAYS AFTER SERVICE OF THE SUMMONS AND COMPLAINT.

D. IF THE PHYSICIAN COMPLIES WITH SUBSECTION C, HE MAY BE PRESENT AT THE HEARING WITH COUNSEL AND WITNESSES.

E. THE BOARD SHALL ISSUE SUBPOENAS FOR WITNESSES IT DEEMS NECESSARY AND FOR WITNESSES THE PHYSICIAN REQUESTS. ANY PERSON REFUSING TO OBEY A SUBPOENA SHALL BE CERTIFIED BY THE BOARD TO THE SUPERIOR COURT IN THE COUNTY IN WHICH SERVICE WAS MADE, AND PROCEEDINGS SHALL BE HAD AS FOR CONTEMPT.

F. SERVICE OF THE SUMMONS AND COMPLAINT SHALL BE AS PROVIDED FOR SERVICE OF THE SUMMONS AND COMPLAINT IN CIVIL CASES.

G. SERVICE OF SUBPOENAS FOR WITNESSES SHALL BE AS PROVIDED BY LAW FOR THE SERVICE OF SUBPOENAS GENERALLY.

H. THE BOARD MAY ADMINISTER THE OATH TO ALL WITNESSES AND SHALL KEEP A WRITTEN TRANSCRIPT OF ALL ORAL TESTIMONY SUBMITTED AT THE HEARING AND THE ORIGINAL OR A COPY OF ALL OTHER EVIDENCE SUBMITTED. THE BOARD MAY WAIVE THE TECHNICAL RULES OF EVIDENCE AT ANY HEARING CONDUCTED UNDER THIS SECTION.

I. IF THE BOARD FINDS, AFTER A HEARING CONDUCTED UNDER THIS SECTION, THAT SUFFICIENT GROUNDS EXIST TO MERIT PROBATION, SUSPENSION, REVOCATION OR DENIAL OF A LICENSE, THE BOARD SHALL TAKE THE APPROPRIATE ACTION.

J. COPIES OF THE WRITTEN TRANSCRIPT AND ALL OTHER EVIDENCE SUBMITTED SHALL BE AVAILABLE AT THE PHYSICIAN'S EXPENSE TO ANY PHYSICIAN APPEALING A DECISION OF THE BOARD AND WITHOUT CHARGE TO THE COURT IN WHICH AN APPEAL IS TAKEN.

K. AN APPEAL TO THE SUPERIOR COURT OF MARICOPA COUNTY MAY BE TAKEN FROM DECISIONS OF THE BOARD PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

32-1552. Reinstatement of a suspended license; reissuance of a revoked license

A. A PHYSICIAN WHOSE LICENSE TO PRACTICE NATUROPATHY HAS BEEN SUSPENDED FOR AN INDEFINITE PERIOD OF TIME, OR REVOKED, MAY APPLY TO THE BOARD FOR THE TERMINATION OF THE SUSPENSION OR REISSUANCE OF THE REVOKED LICENSE UNDER THE FOLLOWING TERMS AND CONDITIONS:

1. THE APPLICATION SHALL BE SUBMITTED IN WRITING, VERIFIED UNDER OATH AND SHALL CONTAIN OR HAVE ATTACHED TO IT SUBSTANTIAL EVIDENCE SHOWING THAT THE BASIS FOR SUSPENSION OR REVOCATION HAS BEEN REMOVED AND THAT THE TERMINATION OF SUSPENSION OR REISSUANCE OF THE REVOKED LICENSE WILL NOT CONSTITUTE A THREAT TO THE PUBLIC HEALTH OR SAFETY.

2. IF IT IS AN APPLICATION FOR THE TERMINATION OF A SUSPENSION FOR AN INDEFINITE PERIOD, THE APPLICANT HAS NOT APPLIED FOR TERMINATION MORE FREQUENTLY THAN ONCE IN ANY SIX MONTH PERIOD.

3. IF IT IS AN APPLICATION FOR THE REISSUANCE OF A REVOKED LICENSE, THE APPLICANT HAS NOT APPLIED FOR REISSUANCE MORE FREQUENTLY THAN ONCE IN ANY TWENTY-FOUR MONTH PERIOD.

B. THE BOARD MAY INTERVIEW AN APPLICANT UNDER SUBSECTION A.

C. THE BOARD SHALL MAKE ITS DETERMINATION ON EACH APPLICATION AS IT DEEMS CONSISTENT WITH THE PUBLIC HEALTH AND SAFETY AND JUST IN THE CIRCUMSTANCES.

32-1553. Insurers to report malpractice claims and actions

A. ANY INSURER PROVIDING PROFESSIONAL LIABILITY INSURANCE TO A NATUROPATHIC PHYSICIAN LICENSED BY THE BOARD SHALL REPORT TO THE BOARD,

WITHIN THIRTY DAYS OF ITS RECEIPT, ANY WRITTEN OR ORAL CLAIM OR ACTION FOR DAMAGES FOR PERSONAL INJURIES CLAIMED TO HAVE BEEN CAUSED BY AN ERROR, OMISSION OR NEGLIGENCE IN THE PERFORMANCE OF THE INSURED'S PROFESSIONAL SERVICES, OR BASED ON A CLAIMED PERFORMANCE OF PROFESSIONAL SERVICES WITHOUT CONSENT OR BASED UPON BREACH OF CONTRACT FOR PROFESSIONAL SERVICES BY A NATUROPATHIC PHYSICIAN.

B. REPORTS REQUIRED BY SUBSECTION A SHALL CONTAIN:

1. THE NAME AND ADDRESS OF THE INSURED.

2. THE INSURED'S POLICY NUMBER.

3. THE DATE OF THE OCCURRENCE WHICH CREATED THE CLAIM.

4. THE DATE OF CLAIM IF SUIT IS NOT SIMULTANEOUSLY FILED.

5. THE DATE SUIT IS FILED.

6. A SUMMARY OF THE OCCURRENCE WHICH CREATED THE CLAIM AS STATED BY THE CLAIMANT.

7. SUCH OTHER REASONABLE INFORMATION RELATED TO THE CLAIM AS THE BOARD MAY REQUIRE.

C. EVERY INSURER REQUIRED TO REPORT TO THE BOARD UNDER THIS SECTION SHALL ALSO BE REQUIRED TO ADVISE THE BOARD OF ANY SETTLEMENTS OR JUDGMENTS AGAINST A NATUROPATHIC PHYSICIAN WITHIN THIRTY DAYS AFTER THE SETTLEMENT OR JUDGMENT OF ANY TRIAL COURT.

D. THE BOARD SHALL MAINTAIN THE REPORTS FILED IN ACCORDANCE WITH THIS SECTION AS CONFIDENTIAL RECORDS. STATISTICAL DATA DERIVED FROM THESE REPORTS SHALL BE RELEASED ONLY FOR BONA FIDE RESEARCH OR EDUCATIONAL PURPOSES.

E. THE BOARD SHALL INSTITUTE PROCEDURES FOR AN ANNUAL REVIEW OF ALL RECORDS KEPT IN ACCORDANCE WITH THIS CHAPTER IN ORDER TO DETERMINE WHETHER IT IS NECESSARY FOR THE BOARD TO TAKE REHABILITATIVE OR DISCIPLINARY MEASURES PRIOR TO THE RENEWAL OF A NATUROPATHIC PHYSICIAN'S LICENSE TO PRACTICE.

F. THE BOARD SHALL ANNUALLY REPORT TO THE DIRECTOR OF INSURANCE THE FOLLOWING STATISTICAL INFORMATION REPORTED BY INSURERS:

1. THE NUMBER OF CLAIMS.

2. THE DATES OF THE ACTS OR OMISSIONS WHICH FORM THE BASIS OF CLAIMS.

3. THE FINAL DISPOSITION OF CLAIMS.

G. THERE IS NO LIABILITY ON THE PART OF AND NO CAUSE OF ACTION ARISES AGAINST ANY INSURER REPORTING OR ITS AGENTS OR EMPLOYEES, OR THE BOARD OR ITS REPRESENTATIVES, FOR ANY ACTION TAKEN BY THEM IN GOOD FAITH UNDER THIS SECTION.

32-1554. Observance of public health laws and regulations

NATUROPATHIC PHYSICIANS LICENSED UNDER THIS CHAPTER SHALL OBSERVE AND ARE SUBJECT TO ALL STATE, COUNTY AND MUNICIPAL LAWS AND REGULATIONS RELATING TO PHYSICIANS AND TO PUBLIC HEALTH AS REQUIRED FOR PHYSICIANS OF OTHER SCHOOLS OF HEALING.

32-1555. Unlawful acts

IT IS UNLAWFUL FOR ANY PERSON:

1. TO PRACTICE, ATTEMPT TO PRACTICE OR CLAIM TO PRACTICE NATUROPATHY OR ANY BRANCH OF NATUROPATHY WITHOUT COMPLYING WITH THIS CHAPTER.

2. NOT LICENSED UNDER THIS CHAPTER TO USE THE DESIGNATION "DOCTOR OF NATUROPATHIC MEDICINE", "DOCTOR OF NATUROPATHY", "NATUROPATH", "NATUROPATHIC PHYSICIAN" OR THE USE OF ANY OTHER WORDS, INITIALS, SYMBOLS OR COMBINATION THEREOF WHICH WOULD LEAD THE PUBLIC TO BELIEVE SUCH PERSON WAS LICENSED TO PRACTICE AS A NATUROPATHIC PHYSICIAN.

3. TO SELL OR FRAUDULENTLY OBTAIN OR FURNISH ANY NATUROPATHIC DEGREE OR DIPLOMA.

4. TO OPERATE A SCHOOL, COLLEGE OR EDUCATIONAL INSTITUTION GRANTING A DEGREE, DIPLOMA OR CERTIFICATE IN NATUROPATHY UNLESS IT HAS BEEN APPROVED BY THE BOARD.

5. TO REPRESENT THAT A SCHOOL, COLLEGE OR EDUCATIONAL INSTITUTION GRANTING A DEGREE, DIPLOMA OR CERTIFICATE IN NATUROPATHY IS APPROVED BY THE BOARD IF THE SCHOOL, COLLEGE OR EDUCATIONAL INSTITUTION HAS NOT BEEN APPROVED BY THE BOARD.

6. TO SECURE OR ATTEMPT TO SECURE A LICENSE TO PRACTICE NATUROPATHY UNDER THIS CHAPTER BY FRAUD OR DECEIT.

32-1556. Prosecution for violations

THE COUNTY ATTORNEY OF EACH COUNTY OR THE ATTORNEY GENERAL SHALL PROSECUTE ALL PERSONS CHARGED WITH VIOLATING THIS CHAPTER, BUT THE BOARD

MAY RETAIN ITS OWN ATTORNEY OR INVESTIGATORS TO AID IN PROSECUTING A VIOLATOR. IF THE BOARD OBTAINS INVESTIGATORS OR LEGAL ASSISTANCE TO PROSECUTE OR AID IN THE PROSECUTION FOR A VIOLATION OF THIS CHAPTER, PAYMENT FOR THESE SERVICES SHALL BE MADE FROM THE NATUROPATHIC PHYSICIANS BOARD FUND.

32-1557. Violation; classification

A PERSON WHO VIOLATES ANY PROVISION OF THIS CHAPTER IS GUILTY OF A CLASS 5 FELONY.

32-1558. Injunction

A. AN INJUNCTION MAY BE ISSUED TO ENJOIN THE PRACTICE OF NATUROPATHY BY EITHER OF THE FOLLOWING CLASSES OF PERSONS:

1. ONE NOT LICENSED TO PRACTICE NATUROPATHY NOR EXEMPT FROM THE LICENSING REQUIREMENT UNDER THIS CHAPTER.

2. A NATUROPATH WHOSE CONTINUED PRACTICE WILL OR MAY CAUSE IRREPARABLE DAMAGE TO THE PUBLIC HEALTH AND SAFETY.

B. IN A PETITION FOR INJUNCTION UNDER SUBSECTION A, PARAGRAPH 1 IT IS SUFFICIENT TO CHARGE THAT THE RESPONDENT ON A DAY CERTAIN IN A NAMED COUNTY ENGAGED IN THE PRACTICE OF NATUROPATHY WITHOUT A LICENSE AND WITHOUT BEING EXEMPT FROM THE LICENSING REQUIREMENT UNDER THIS CHAPTER. FOR THE PURPOSE OF THIS SUBSECTION DAMAGE OR INJURY AS A RESULT OF SUCH PRACTICE IS PRESUMED.

C. A PETITION FOR INJUNCTION SHALL BE FILED IN THE NAME OF THIS STATE BY THE BOARD OR AT THE REQUEST OF THE ATTORNEY GENERAL IN THE COUNTY WHERE THE RESPONDENT RESIDES OR MAY BE FOUND.

D. ISSUANCE OF AN INJUNCTION DOES NOT RELIEVE THE RESPONDENT FROM BEING SUBJECT TO ANY OTHER PROCEEDINGS UNDER LAW PROVIDED FOR IN THIS CHAPTER OR OTHERWISE. VIOLATION OF AN INJUNCTION SHALL BE PUNISHED AS FOR CONTEMPT OF COURT.

E. IN ALL OTHER RESPECTS INJUNCTION PROCEEDINGS UNDER THIS SECTION SHALL BE CONDUCTED IN THE SAME MANNER AS OTHER INJUNCTIONS.

Sec. 4. Section 41-2362, Arizona Revised Statutes, is amended to read:

41-2362. Schedule for termination July 1, 1982

The following agencies shall terminate on July 1, 1982:

WE PETITION YOU

AS OUR LEGISLATOR TO RECOGNIZE BY LAW, THE NATUROPATHIC PROFESSION. WE FEEL IT IS OUR CONSTITUTIONAL RIGHT TO BE ABLE TO MAKE OUR OWN CHOICE IN SELECTING THE TYPE OF DOCTOR AND THE TYPE OF TREATMENT FOR US OR OUR FAMILY. WE WOULD PREFER TO BE ABLE TO CHOOSE BECAUSE OF AVAILABILITY, FROM ALL OF THE DIFFERENT TYPES OF TREATMENT AND ESPECIALLY AT TIMES, THE NATURAL METHOD OR NATUROPATHIC SYSTEM. WE THE UNDERSIGNED HAVE USED OR WOULD LIKE TO USE NATUROPATHIC SERVICES. WOULD YOU ACT IN OUR BEHALF TO ASSURE US OF OUR CONTINUED FREEDOM OF CHOICE?

NAME	ADDRESS	DATE
Deborah Brookins	4202 Hayes Anch. 99503	3/4/81
Gretchen Dawalecki	3234 Linden Dr. Anch 99502	3-5-81
Stephanie Howard	3-1 Bunnell 99504	3-5-81
Doris Alexander	2606 Hamilton	3-5-81
Kim Caldwell	P.O. Box 3258 Palmer AK 99645	3-5-81
Lindsay Marquiss	815 N. Park #2 Anchorage 99504	3-5-81
Linda Biagas	Box 43 Nage. Ak	3-5-81
Scarlet Rickmeyer	BOX 545 GIRDWOOD AK	3-5-81
Karen Kalles	General Delivery Akiak, AK 99552	3/6/81
Lee Olson	3922 Apollo Dr Anchorage 99504	3-6-81
Pamela Davis	19360 Wickersham Dr. Anch. Ak.	3/6/81
Dr. M Rubio	Box 1062 Anch Ak. 99510	3/6/81
Pauline Wells	1351 Falcon Ct Anch AK 99504	
Joan Kaltenbach	Box 635 Eagle River Ak 9957	
Katy Mann	7401 Cloud St Anchorage Ak 99502	
Diane Pelo	510 Tyee Circle Anchorage AK 99503	
Anna Thompson	3830 Mayflower Dr Anch. AK 99502	
Kristin M. Fanding	3404 Oregon Dr. Anch. AK 99503	
Terri L. Nichols	2949 E. 88th Anch 99507	3/6/81
Dan S White	5901 S L St #57 Anch 99504	3-9-81
Leona Clarke	1940 Lovell Lane Anch 99507	3-10-81
Cathleen Horwath	4998 Klondike Ak 99504	3/10
Jerri J. Clark	8800 CORDELL CIRCLE APT #4 ANCHORAGE ALASKA 99502	3/9/81
David Mooney	5630 SILVERADO WAY #11 Anchorage AK	
Cathe L. Stevens	5124 407-A Anchorage AK	3/10/81

WE PETITION YOU

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NAME	ADDRESS		DATE
✓ Con Bierking	1035 W. 20th	Anchorage AK	3/10/81
✓ Nancy Rojas	2907 La Honda Dr. #6	Anch 99503	3/10/81
✓ Janet Embry	2910 W. 34th Ave	Anchorage 99503	3/10/81
✓ Lisa Bibb	HRH Box 9250	Palmer AK	3/10/81
✓ Margaret Patten	1570 Mansfield	Anchorage	3/10/81
✓ Sharon S Jayne	5110 E 5TH	ANCH AK	3/10/81
✓ Lawrence D. Moshkin	241 N Park	Anch, AK 99504	3/10/81
✓ Susan Faulk, President of Better Natural Body Experiences	Box 4-381	Anchorage AK 99509	3/10/81
✓ Peter Raynor	5132 W. 72nd	Anchorage AK 99502	3/11/81
✓ Roberta L Travers	1303 W 39th	Anch. AK 99503	3/11/81
✓ Marcie Matthews	6930 Aitoona Dr.	Anch AK 99502	3/11/81
✓ [illegible]	[illegible]	[illegible]	[illegible]
✓ Nancy Richmond	P.O. Box 6091	Anchorage 99502	3-11-81
✓ Lori M Wicks	4500 Greenfield	Anch AK 99503	3-12-81
✓ Juliana K Reid	460 W. 11th St. Apt 1	Anch. AK	3/10/81
✓ Laura Kammerdiener	Box 3	Nenana, AK 99665	3/10
✓ [illegible]	Box 3	Nenana AK 99665	3/12
✓ Beverly Kavanaugh Lee	BOX 326	Diamond AK 99587	
✓ Scott Lee	Box 326	Diamond AK 99587	3/12/81
✓ [illegible]	SR 15 Box 5046	Wasilla AK 99687	12 Mar 1981
✓ Kathleen Whitson	4040 Folker St.	Anch. AK 99504	3/12/81
✓ David Christensen	"	"	"
✓ LARRY G. NELSON	1611 DIMOND DR.	ANCH AK 99503	3/12/81
✓ Pauline Titus	SRA Box 498	Anch AK 99577	3/12/81
✓ Ken Cook	SR 1503	Eagle River AK	99577 3/12/81

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NAME	ADDRESS	DATE
[illegible]	612 Chugach St.	March 13, 1981
Nadine Caldesweed	7900 Kanayansbe Dr.	March 13, 1981
[illegible]	1414½ Eagle	3/13/81
Dawn Palmer	P.O. Box 4-294 Anch 99509	3/13/81
Adrienne Bové	4343 Dew Roberts #4, 99504	3/13/81
Crishial D. Bennett	720 W 15th Hue Apt 99503	3-13-81
Carol Rhodes	1061 E. 17th Ave Anch 99501	3-13-81
[illegible]	1061 E. 17th. Anchorage, Ak. 99501	3/13/81
Dana Pace	SRA 191 Anchorage AK. 99502	3/13/81
Celia Bodyguard	1908 W. HILLCREST ANCH., AK.	3-13-81
[illegible] Calder	SRA Box 19 Anch 99507	3/16/81
[illegible]	721 W 88th Anch 99502	3/16/81
Janet Stewart		
Linda Arnett	10281 Scott, Anch, 99501	3/16/81
[illegible]	1417 W. 7th Apt 6 Anch 99503	3/16/81
[illegible]	3520 Wentworth 99504	3/17/81
Susan J Clark	8800 Cordell Cir. Apt C1	3/17/81
Constance M. Walker	2103 W. 45th, Anch 99503	3/17/81
Billie J. Perkins	SR Box 21002-M Wasilla AK	March 17, 1981
Karen Jasper	16141 Jewel Lake Road	March
Mary Kerkin	7800 Dr Brown Rd, #520	3/18/81
Kim Stec	7011 Boxwood 99503	3/18/81
Faith Donohue	1200 Dimond #202 99502	3-18-81
Shirley M Hansen	1621 Diamond Dr. Anch 99507	3-18-81

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NAME	ADDRESS	DATE
Dickie Wood	Sk'lt Box 1313 Clinic 99502	3-19-81
[illegible]	Box 495-C SRA Eagle Rd	3-19-81
Tom Cotter	SRT Box 2940 Wasilla AK 99654	3-19-81
Linda L Boren	P.O. Box 3-2558 ECB Anch. Ak.	3-19-81
ALLAN Sheonard	PO Box 113, Anchorage	3-19-81
HAL HODGES	P.O. BOX 9424 ANCHORAGE AK	3-19-81
Cathy Pettijohn	2308 Jefferson	3-19-81
Clare Lange	Box 6513 Anchorage	3-19-81
Cathie Zellman	SRA Box 1750-B Anch AK	3-20-81
Janette Cirotta	4110 Lake Bawn Rd Spenard Anch AK	3-20-81
Linda L Brodigan	8982 Waldoon Dr. Anch. AK	3-20-81
Janice Hinkley	SRA Box 2572 Anch. AK 99501	3-20-81
Chris Lange	917 W. 13th 99501	3-20-81
Michelle M Davis	Box 8104 Anch. AK. 99508	3-20-81
Lauren L. Lantstrom	P.O. Box 8104 ANCH, AK 99508	3/20/81
Donna Thompson	2805 Dawson Anch AK 99503	3/20/81
Mary A Thompson	905 Muldoon Apt 2 99504	3/21/81
David A Pettijohn	2308 Jefferson ANC 99503	3-23-81
Eileen Vessrinks	1112 E. 14th #4 99501	3/23/81
Melinda J. Kreklow	SRA Box 6105A3 Palmer, AK	3-23-81
Patti Phillips	Girdwood Ak	3-23-81
Gwen R Love	Wasilla, ak	3-23-81
Lynn Hall	Box 4-1764 Anchorage 99509	3-24-81
Elaine Thomas	Box 1372 Eagle River ak 99577	3-24-81
Mariann Peidlow	1014 E. 11th #4 Anchorage 99501	3-24-81

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NAME	ADDRESS	DATE
✓ Mark Grindle	1924 Stonegate Cr.	3/24/81
✓ Diana Lay	705 Muldoon Sp 9	3/24/81
✓ Kara Rice	1509 W. 45th Apt 4	3-24-81
Nuhah Blakemore	801 airport Hts #375	3-24-81
✓ ERIC H. AKOLA	1260 FRIENDLY LN.	3/25/81
✓ Karen Butler	PO Box 1582	3/25/81
✓ Judy Means	234 East 15th Ave ANCH 99501	3/25/81
✓ Kathy Crandall	830 W 26TH #5 ANCH. 99503	3/26/81
✓ Bonita & Annabelle	PO Box 1622 Palmer AK 99645	3/26/81
✓ ANDRE PEKARSKI	Box 461 GIRDWOOD 99587	3/26/81
✓ Allie Stacey	S/E 87616 Indian Ak 99540	3/26/81
✓ Dave Silt	Box 116 Girdwood 99587	3/26/81
✓ Kris Kelly	P. Box 4-520 ANCHORAGE, AK 99509	3/27/81
✓ Harland Noble	301 - L. Bragaw Anchorage AK 99504	
✓ Anna Crandall	830 W 26TH #5 ANCH	3/27/81
✓ Audrey Towarna	P.O. Box 6343 Anch. AK 99502	3-27-81
✓ Earle Fardig	2404 Oregon Anch AK 99503	3-27-81
✓ Ruth Adler	1110 W 6th Ave Anch Ak 99501	
✓ Susan M. Brown	7733 Honeysuckle Anch. Ak 99502	3/3
✓ Michael Schmucker	130 EAST 8TH ANCH AK 99501	3/30/81
✓ Mary R Crisswell	130 E 8th Anch AK 99501	3/30/81
✓ Kelly A Towarna	926 W 11th Apt 10 Anch Ak 99501	3/30/81
✓ Ruth Hall	3601 W. 11th Anch	3/30/81
✓ Mrs (Carolyn) Greene	P.O. Box 251 Eagle River, AK 99577	3/31/81
✓ Carrie Cole	SRA Box 1740-C Anch AK 99507	3-31-81

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NAME	ADDRESS	DATE
✓ [illegible]		
✓ Kelly P Blevins	4127 Wright Anch	3/30/81
✓ [illegible] Mabin	647 E 78th St Apt B-4 Anch AK	4/1/81
✓ Vanessa L Mabin	647 E 78th Ave, # B-4 Anch Ak	4/1/81
✓ Columbine Wild	Blk 9 Lot 1 Robe River Sub. Box 796 Valdez, Ak	4/1/81
✓ Lori Strid	8250 Bennett #1 Anch	4/2/81
✓ Connie R. Dion	3581 Heartwood Pl.	4/3/81
✓ Carl G. Goode	4041 Foker #11	4/6/81
✓ [illegible] Mabrey	General Delivery Eagle River, Alaska	4/6/81
✓ Kathleen Watson	4040 Foker #11	4/7/81
✓ [illegible]	SR 5077 Wasilla AK	
✓ Patty Beck	Box 743 Girdwood, AK	
✓ [illegible]	SRA Box 1765-H, Anch, AK 99507 349-[illegible]	4/7/81
✓ Carol E. Edwards	SRA Box 1765-H, Anch, AK 99507	4/7/81
✓ [illegible]	SR Box 721 Palmer Alaska	4-8-81
✓ Jennifer A. Sowinski	1637 Stanley AK. 99502	4/8/81
✓ K. Audrey Rinard	3903 Seaforth Pl. Anchorage, Ak.	4/8/81
✓ [illegible]	524 - Lawn Ct #3 " "	4-8-81
✓ [illegible]	524 - Lawn Ct #3 " " "	"
✓ Army P. Palmer	P.O. Box [illegible] 3794 Anch. AK 99510	
✓ James M. Brookins	4202 Hayes St Anchorage Alaska 99503	4/8/81
✓ [illegible]	5205 E 26th, Anch AK 99504	
✓ [illegible]	700 Linn Anch AK 99501	
✓ [illegible]	1405 Summit Lane, Anch, AK. 99504	

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NAME	ADDRESS	DATE
✓ Lita Matthies	Box 269 Kenai, AK 99611	283-4637
✓ Carol Bolden	1725 W 11th St Apt 2 Anch AK 99501	
✓ Cynthia Lee	3501 Wyoming Anch. 99503	4-8-81
✓ [illegible]	3407 N. Star Dr, Anch 99503	4-11-81
✓ Kathleen J. Brown	Gen Del, Chugiak 99567	4-11-81
✓ Larry L Knock	Gen Del, Eagle River 99577	4-11-81
✓ Inger Schoon	Box 192 TRAPPER CREEK, AK 99688	5-10-81
✓ Donald M. Brown	2800 DeBarr #431 Anchorage 99504	5/13/81
✓ Thomas D. Miller	4308 Baxter Rd #6 Anc AK. 99504	5/14/81
✓ Cheryl Brown	4328 Laurel Rd.	5/14/81
✓ Amy Newton	Box 17049 Big Lake 99657	5/14/81
✓ Brijinder Rai	2021 Tudor Hill Dr 99507	5/14/81
✓ Marilyn Johnson	PO Box 3298 Palmer AK 99645	5-14-81
✓ Bea Mattes	2400 Chandalar 99504	5-15-81
✓ Dawna Burleson	827 West 26 99503	5-15-81
✓ Ellie M. Wilson	Box 3684 Kenai 99611	5-22-81
✓ Marlee Wilson	Box 3684 Kenai 99611	5-22-81
moved ✓ Dawn W. Schmidt	1424 E 27th St Anc AK	5-22-81
✓ Pamela L. Meyers	3704 IOWA DR ANCH. AK	243-8814
✓ Margaret [illegible]	4937 F. 43rd St A SC	337-3465
[illegible] E. Bergmeister	8411 E. 5th Anch AK 99504	337-0143 at time of 81
✓ Nancy D Kroon	SRA Box 1732-L Anch AK 99507	344-4650
✓ JoAnn Belmont	SR Box 5046 Wasilla AK 99687	376-2138
✓ Karen Rios	1509 E 45th #4 Anch. 99503	272-6740

WE PETITION YOU

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NAME	ADDRESS	DATE
[illegible] S. Dettrich	[illegible]	4-10-81
Roberta Power	1407 TIKCHIK CIR ANCH AK 99504	4-10-81
Gill Gould	SRA BOX 1506J Anch. 99507	4/10/81
[illegible]	15-34 H ST. Anch. AK 99501	4/10/81
[illegible]	6730 Altoona Dr #2 Anch AK 99502	4/10/81
[illegible]	7800 DeBarr Anch, AK 99504	4-13-8
[illegible]	SRA Box 330-W Anch. AK. 99507	
Blanche M Nelson	2616 McRae Anch, AK 99503	
KATHLEEN T. GRAVES	5402 BUCKNER Anch. AK. 99504	
Class Timler	3705 Lois Drive Anch AK 99503	
[illegible]	SRB 7811 Palmer AK 99645	
[illegible]	1619 Cliff Apt H Anch 99504	4-16-81
Beverly Bradham	2051 Tudor Hills Dr. Anch 99507	4-15-81
[illegible]	7524 Golden Crest Anch 99502	4/15/81
[illegible]	2310 Forest Park Dr. Anch 99503	4/15/81
Beverly Beatt	530 LAKERIDGE DR. EAGLE RIVER AK	4/1
[illegible]	530 Lake Ridge Dr. Eagle River AK	4/15/81
[illegible]	4133 W. 89th Anch. AK. 99502	4-15-81 345-7781
[illegible]	509 E 76 Anch AK 99503	4/15/81
[illegible]	7800 DeBarr Anch, AK 99504	4/15/81
[illegible]	P.O. Box 1357 Wasilla, AK 99687	4/1
[illegible]	SRA Box 1703-C Anch 99507	
William D Dallas Jr.	1936 Wickersham Dr Anchorage, AK. 99507	4/17
[illegible]	5001 Chena Ave Anch AK 99504	4/17

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NAME	ADDRESS		DATE
Andrea Jones	8460 Jamison St.		4/20/81
Jim Clark	1973 Debarr Dr		4-20-81
Ruth Jones	1400 Diamond Blvd.		4-20-81
Donald Caldwell	1240 Ellen		4-21-81
Marlene Abbott	Box 10-AFVN	No card	4/21/81
Mark Wood	1738 W. 11th Apt A		4/21/81
[illegible]	4511 Laurel Apt 146		4/21/81
Barbara Smith	3321 Eagle		4-21-81
Ruth Kilpatrick	P.O. Box 6761	Anchorage 99504	4-22-81
Debra Jedrich	9599 Brayton Dr #43	Anch. 99507	4-22-81
Le Roy Fredrickson	P.O. Box 679	Anch AK 99510	4-23-81
Cindy Wittstock	P.O. 43 - Clunjiak, Ak	99567	4-23-81
Schmidt Malone	9801 170th Anchorage AK	99502	4-23-81
Debra Smith	8307 Dulen St #1	Anch AK 99504	4-23-81
[illegible]			
[illegible]	8301 Rovanian Dr	99504	4-24-81
Claudia Trendelenburg	2512 Mile Hill Way	99501	11-24-81
Ellen Welch	2635 Rogers Drive	Anchorage 99503	4-25-81
E. Dittrich	2308 Woodland Parkway	99502	4-25-81
Helen Chaisson	P.O. Box 10-09	Anch AK 99511	4-27-81
Catherine Nichols	4150 Reka #E-11	Anch AK 99504	4-27-81
Gail Hardie	1053 W. 26th Ave. #6	Anch 99503	4/27/81
Joan Kirk		Bangor AK	
Linda Reynolds	SRA Box 80-T	Anch. 99507	4/27/81
David Solomon	4640 Folker #4	99504	4/27/81

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NAME	ADDRESS	DATE
Marilyn Kelmwald	3189 Indian Cove Rd. Juneau AK 99801	4/27
[illegible]	Box 153 Clam Gulch AK [illegible]	4/28/81
Karen Dunford	6331 Wooded Circle, Anchorage, AK 99502	
Pat Ray	1601 Wolverine Anchorage 99504	
Mary Burr	Box 85D1 Bird Creek, AK 99540	
Janice Manning	401 E. 6th Ave #1107 Anch AK 99501	
[illegible] Bohannon	PO Box 10-388 Anchorage AK 99511	
Lynda J. Ugen	4860 Wesleyan Anchorage AK 99504	
[illegible]	[illegible] Anch AK 99502	
Peggy Bohannon	Box 10-388 Anch AK 99511	
C. F. Bohannon	Box 10-388 " " 99511	
Karen Hartindahl	Box 287 Girdwood 99587	
[illegible]	Box 3134 [illegible] Anchorage 99501	
[illegible]	730 Aurora Eagle River AK 99577	
Linda Stafford	Box 3366 Kenai, AK 99611	
[illegible]	4005 [illegible] Anch 99503	5/1/81
[illegible] Johnson	1108 [illegible] Anch 99504	
[illegible] Horner	SR1 Bx 7389 Birchwood Chugiak 99567	
[illegible]	Box 10-388 Anch 99511	
[illegible]	[illegible] Anchorage 99504	
[illegible]	SRA 3562 [illegible] Anchorage 995[illegible]	
[illegible]	SRA [illegible] Anchorage AK	
[illegible] J. Brannon	1430 [illegible] Anchorage AK 99504	

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NAME	ADDRESS	DATE
Katharine Schlicht	1931 Bretton Park	5-29-81
[illegible]	8224 REARBERRY PL 99502	5-29-81
Diane Jones	4110 DEBORA SP 13-B 99504	5/29/81
Catherine Nickey	P.O. Box 3144 3440 W. 34th Anchorage 99510	5/29/81
Martha Weiland	P.O. Box 4-772 Anc AK 99509	6/1/81
Howard Graham	2045 Dimmick Ave ANC AK 99504	6/1/81
[illegible]	3925 Arctic St. Anch. 99504	6/1/81
Karen Lindahl	Box 287 Girdwood 99587	6-1-81
Francis VanSkiver	BOB 2061 Palmer 99645	6-1-81
Joann M Barker	Box 11694 Anchorage 99511	6-1-81
K. Peterson	P.O. Box I-4184 Anc. Ak. 99501	6-1-81
Doris Peterson	P.O. Box 4-1, Chugiak 99567	6/02/81
Doris Bernard	2907 La Honda #11 Anch	
Shelley R. Parker	120 W. 24th #4 Anch	6/1/81
Sally Howell	SR Box 498	
Sarah Rachael Salyer	1250 W. Dimond #202 Anchorage	9950? 6/3/81
Ellen Salyer	4039 E. 42nd St C-5 Anc AK. 99504	6/3/81
Marie Austin	3921 Meadowlark Anc Ak 99504	6/3/81
Steven R Hansen	1211 W 34th Ave Anch 99503	6-5-81
Kirsten Nelson	3418 MT. VIEW DRIVE Anchorage	99504 6 June
Beatrice Hanes	SR. Bx 2570 Indian Ak. 99540	
Harriet Hankins	P.O. Box 3-4013 ECB Anch. AK 99501	
[illegible]		
Carol Washima	3916 47th SW Seattle WA 98	
Katrina B. Ossa	6141 Jewell Ct. Anch 99502	

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NAME	ADDRESS		DATE
ER Brauned	2378 Goat Gate Drive		6/5/81
Dixie Miller	2910 W. 29th #1		6/5/81
Enid Greenwalt	Girdwood, AK		6/9/81
Wm Ute O	4403 Fireweed Pl #12		6/9/81
Judith Cobb	3323 Gile #5		6/10/81
Frances L. Mason	4502 Lake Otis Pkwy		6/10/81
Ruth M. Hagen	2300 Huntington Ct #202	99504	6/10/81
Ruth "			
Debra W Brown	P.O. Box 2333 Palmer, AK	99645	6-10-81
James D Brown	PO Box 2333 Palmer AK		6/10/81
Michael Bennett	720 W 19th Ave Anch AK		6-10-81
Gary Manville	1250 E. 17th #137		6-10-81
Mary Pearson	3303 Lois Dr. Apt 2		6-11-81
Mary Davis	601 N Bunn	99504	6-11-81
Ellen M Wickett	4500 Garfield	99503	6-11-81
Rev A. Holt	1006 E. Fireweed Ln. Apt 9	99503	6-11-81
Mary-Claudia Pearce	1243 Alpine St.	99504	6-11-81
James Pearce	4116 W 88th #1	99502	6-11-81
Ronnie Moore	"	"	6-11-81
JIM BAKER	137 W. 15th	99501	6-12-81
Marilyn Pettit	SRA. Box 4233	99502	6-15-81
Louise Simmons	A-1 Chugiak, AK	99567	6/15/81
Adriane Boré	4343 Don Roberts #4 Anch	99504	6/15/81
Mary Shier	PO Box 10-788 Anch	99511	6-15-81
DONA IVERSON	SRA Box 116 "A"	INCH AK 99502	6/16/81

WE PETITION YOU

AS OUR LEGISLATOR TO RECOGNIZE BY LAW, THE NATUROPATHIC PROFESSION. WE FEEL IT IS OUR CONSTITUTIONAL RIGHT TO BE ABLE TO MAKE OUR OWN CHOICE IN SELECTING THE TYPE OF DOCTOR AND THE TYPE OF TREATMENT FOR US OR OUR FAMILY. WE WOULD PREFER TO BE ABLE TO CHOOSE BECAUSE OF AVAILABILITY, FROM ALL OF THE DIFFERENT TYPES OF TREATMENT AND ESPECIALLY AT TIMES, THE NATURAL METHOD OR NATUROPATHIC SYSTEM. WE THE UNDERSIGNED HAVE USED OR WOULD LIKE TO USE NATUROPATHIC SERVICES. WOULD YOU ACT IN OUR BEHALF TO ASSURE US OF OUR CONTINUED FREEDOM OF CHOICE?

NAME	ADDRESS	DATE
Jack Hosman	1502 W. 45th	6/16/81
Donald L Ramsey	3701 Eureka Sp. 12-C Anchorage 99503	6/16/81
Russell D. Dixon	2206 W 45	6-16-81
Elizabeth A. DeLoria	Gen. Del. Chugiak AK 99567	6-17-81
Kenneth K. Robinson	7031 Oakmont Dr.	6-17-81
Barbara Dyrud	2536-Forest Pk. Dr.	6/17/81
Mark E. Thatcher	SRA Box 1561E Anchorage, Alaska	6/17/81
Minnie Kreamies	1400 Airport Hts. Dr. Anch	6/17/81
Rebecca Dow	817 N Flower Anch	6/17/81
Doris Johnson	4510 Lynwood Rd. Anch.	6/17/81
Ann Lovelund	8050 E. 18th Ave	6-18-81
Bill Ward	SRA Box 1506 J 99507	6/18/81
Patricia Miller	7834 Knik Anchorage 99502	6/18/81
Heather Stuart	" " "	"
Catherine Tesdell	Star Rte. Box 860 Birchwood Ak 99540	6/18/81
R C DAVIS	SRA-BOX 495-C. Anch 99507	6/19/81
Cathy Dunbar	90 hm x 137	Wasilla 6-19-81
Lou Jacobson	1401 Chugach St. Rich. AK	6/19/81
Kathleen Vanderwerth	6371 Old Seward #202 Anch AK	6/19/81
Joyce David	8801 W. 9th Anchorage 99503	6/19/81
Jeanne Kolisky	710 Arcot Anch 99502	6/19/81
Dennis Wheeler	2949 E. 88th 99507	6/19/81
Marion Kuhl		
Rev. A. McPherson	1531 W. 12th ave. Anch. 99501	6/22/81
Cora Rawls	2202 Roosevelt Anch. 99503	6/22-81

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NAME	ADDRESS	DATE
Virginia K. Zimmerman	601 N. Bunn "A"	06-23-81
[illegible]	1280 E 17th Ave Apt 137	6/23/81
[illegible]	13th Millcreek	6/24/81
[illegible]	[illegible] Sparrow Hogan Palmer 99645	6-23-81
Dawn Wiederholt	2523 Kona Jane Anch.	99503 6/25/81
[illegible]	[illegible]	6-25-81
[illegible]	3110 Dalta Dr. Anchorage AK	99502 6-25-81
[illegible]	5917 Franklin St Anch. AK	99503 6-26-81
[illegible]	PO Box 3298 Palmer AK	99645 -6-26-81
D. Freeman	SRA 1750-B Anch. AK	99507 6/28/81
Charles Dittl	SRA Box 4332 Anchorage	99502 6/29/81
Cheryl L Dixon	2206 W. 45 Anchorage	99503 6/29/81
Ann Cooper	SRA Box 4349 "	99502 6-29-81
Derby Pearce	801 Erickson, Apt 4	99501 6-29-81
Michelle Keeper	9431 Dundee Cir.	99502 6-30-81
[illegible]	Box 5252 Stony Point 2	99567 6-30-81
[illegible]	Box 5252 Stony Point 2	99567 6-30-81
Michael Yaple	P.O. Box 2407 Anch.	99510 7-1-81
Irma E Brunner	SR2 Box 5252 Chugiak	99567
[illegible]	SR 5072 Wasilla AK	99687 7/2/81
Tim Kamm	SR Box 1783I Anch. AK	99507 7/3/81
Cindi Shaw	2101 W 20th ANCH A	99503 7/3/81
Rita Hamilton	P.O. Box 155 Chugiak	99567 Ak 7/6/81
Susan Baker	4001 Merrill Anchorage	99503 AK. 7/6/81
[illegible]	P.O. Box A-1, Chugiak Alas.	99567 - 7/6/81

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NAME	ADDRESS	DATE
[illegible]	140 Eagle #101	7/6/81
[illegible]	140 Eagle #101	7/6/81
[illegible]	SRA 6105 A-5 PALMER	7-6-81
[illegible]	3601 Lynn	7-8-81
[illegible]	Box 218 3601 Cedar Ave	7-8-81
[illegible]	Box 134 Palmer AK 99645	7/8/81
[illegible]	Box 3592 Palmer AK 99645	7/8/81
[illegible]	7917 W 24th Anchorage	7/10/81
[illegible]	P.O. Box 1471 Palmer AK 99645	7/10/81
[illegible]	S R 1 Box 2389 Kincheloe Church	
[illegible]	2601 W 32nd Ave Anch AK	7/10/81
[illegible]	560 Box 150-B Chuck AK	99502
[illegible]	Box 155 Chuck 99567 AK	7/13/81
[illegible]	Box 4-1764 Anchorage 99509	7/13/81
[illegible]	2600 Hapsuclane Anchorage 99517	7/15/81
[illegible]	PC Box 2378 99510	7-15-81
[illegible]	1053 W 26th Ave #4 Anch, AK 503	7/14/81
[illegible]	1303 W 31st #1 Anch. 99503	7/14/81
[illegible]	10611 OREGAN ANCH. AK. 99507	7/14/81
[illegible]	700 Hollywood Dr. AK 99501	7/14/81
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	1241 Valley St Anch. 99504	7-15-81
[illegible]	1241 Valley St. Anch. 99504	7-15-81

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NAME	ADDRESS	DATE
Charles Hedelund	SRA 476-H Bayview	7-16-81
Barbara Solomon	Box 40 Nikiski	7-16-81
M Reed (Penn)	3616 Lois Dr.	7-16-81
Mary L Nelson	1321 Kinnikinnick St.	7-17-81
Paul D Parker		
Inger Parker		
Karen M Dunford	6731 Wooded Circle	7-20-81
[illegible]	Box Del. Eagle River	7-20-81
Jim Solomon	SRA 476 H	7-21-81
Gary Betts	P.O. BOX 1053 Anch, AK.	7/21/81
Richard V. Buzzelli	General Delivery Anchorage AK	7/22/81
Peter P. Gardner	% P.O. Box 1207 ANCH, AK	7/22/81
Carrie Smith	332 Moonlake Apt D Anch, Ak	7/23/81
Kimberly Ann Caldwell	P.O Box 3298 Palmer AK 99645	7-23-81
Christine Parker	6140 Aurora Anch AK 99502	7-23-81
Sharon K McDonald	4133 W 87th Anch AK 99502	7-24-81
Jeff Morris	SRA 6654 B Palmer AK	99645 7-27-81
Lloyd Peters	[illegible]	[illegible]
[illegible]	2935 Spruce Dr #1 Anch AK 9504	7-28-81
Eleanor Carter	1600 Otter St Anchorage - 99504	7/28/81
Virginia Smith	1600 Otter St. Anch. AK. 99504	7-28-81
Robert Tilley	325 North Dale Anch AK 99504	7/28/81
[illegible]		
[illegible]	1722 Arctic 99504	7-28-81
Judith Russell	Box 593 Sterling AK	7-30-81

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NAME	ADDRESS	DATE
Anthony R Quinn	7530 Beluga Cir. Anch. AK.	7/30/81
Stephen Astrid Funk	530 E. 46th Pl. Anch. AK	7/30/81
Kathy Pontius	Box 1706 Valdez AK	7/30/81
Debra Cote'	1200 W. Dimond, sp 1430 Anch. Ak	7/31/81
Linda		
Glen Coulthard		
Dawn Groat	801 Airport Hts #115 Anch. Ak	8/3/81
D. Lynn Cannon	2208 Roosevelt Dr Anch	8-4-81
Bettie Haines	3201 Eureka 19-D	8-4-81
Glenn Linton	3303 Tennessee Rd Lot	8/4/81
Wendy Linton	2907 W. 32nd Anchorage AK	8-4-81
Thomas A Campbell	Pouch 511 Lutak H-81201	8-5-81
Linda L Crawford		8/5/81
Mrs. Robert Hirsch	9117 Lund Circle	8/5/81
Norma Vanover	SRA Box 116 "M"	8/5/81
Henry Vanover	SRA Box 116 "M"	8/5/81
Ed Leonard	9780 Powell	8/6/81
Dawn Lekan	7720 Mason Pl	8/7/81
Sylvia Lekan	7720 Mason Pl.	8/7/81
Tyra E. Hale	Box 88 Talkeetna ak	8-7-81
Rep. Dick Randolph	9170 685 [illegible]	8-7-81
[illegible]	[illegible]	8-7-81
Dawn Groat	801 Airport Hts #115 Anch. Ak	8-10-81

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NAME	ADDRESS	DATE
WAYNE CUTLIP	4220 PETERKIN #E [illegible]	8/12/81
Bill Gould	SRA Box 150 J 07	8/13/81
Myra Remings	1004 W. 45th St	8/13/81
[illegible]	130 E 8TH ANCH AK	8/14/81
Tom Holbrook	SRA Box 478-P Anch Ak	8/14/81
Mary E Holbrook	SRA Box 478-P Anch AK	8/14/81
[illegible]	SRA Box 1436 Palmer [illegible]	8/17/81
Wm A Robertson	P.O. Box 10-289 99511	8/17/81
Phillip Blackwell	S.R. Box 20620 FBKS, AK. 99701	8-18-81
Rosalie Beeks	P.O. Box 3026 Kenai ak.	8-18-81
Carol Hill Freeman	1410 Medora St Anch AK	8/18/81
Mark Keller	SRA BX 2354 Anch AK	8/19/81
Christa Moore	4121 Lange Pl #3	Anch Ak 8/19/81
Jane Coutts	P.O Box 3638 Anch. AK	8/1981
Patricia Dublin	SRA Box 8705	Indian, ak 8/19/81
[illegible]	S.R. Box [illegible]	[illegible] 8/19/81
Lisa Ryan	2413 Spruce wood	Anchorage AK 8/20/81
MARK RHODES	SRA Box 1715	NEW - Difficult to read 8/20/81
Lee Maywood	2702 W. 29th	Anchorage, Alaska 8/20/81
Dr. Kim (Jessie) Caldwell	PO Box 3298	Palmer AK 8-20-81
MARVIN C SMITH	4010 CHUCK DR	ANC 8/21/81
Nadine Calderwood	7900 Homerwood Dr	Anch 8/21/81
M. KUHNAM	21-716 D. Fin	EAFB 8/21/81
Bethany Schuh-Blatz	9599 Brayton #469 99507	8/21/81
Nancy Coppola	Green Bay Steven Pt Wisconsin	715-344-7516

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NAME	ADDRESS	DATE
	8010 Boundary Ave - Anchorage	8/31/81
Maj. David G Hanson	530 E 46th Place - Anch	9 Sept 81
	2504 CLOVERLANE #5	9 Sept 81
	P.O. BOX 1307, WASILLA, AK 99687	9/10/81
DICK DONOHOE	1200 DIMOND BLVD. #1202 ANCHORAGE	9/11/81
	3333 W 81st Ave Anch 99502	9-11-81
	SRA Box 33-D Anch. 99507	9-14-81
	2378 Captain Lee Dr. 99503	9-14-81
	2711 Britain 99504	9-14 81
	3116 Delta D. 99502	9-15-81
	1600 Otter Anch AK 99504	9-16-81
	1720 W. 11th Anch. 99501	9-21-81
	2704 Fair Banks Anch. 99502	9-21-81
	3931 Cranson Cir Anch AK 99508	9-21-81
	3303 Lois Dr. Anch AK 99503	277-9822 9-22-81
	Box 11-283 Muldoon Anch 99504	22 Sept
	P.O. Box 10 [1371] Anch 99511	9-23-81
	1647 E 27th Anchorage 99504	9-23-81
	Star Route Box 20279 Fairbanks AK 99701	9-24-81
	1000 W 32nd Anch AK 99503	9/26/81
	1635 Delina Dr " 99504	
	SRA 1721 H Anchorage AK	9-28-81
	SRA Box 998W Anchorage Alaska 99507	9/30
JOHN A. MEACHER	4455 Juneau St #C-8 Anch. AK. 99503	9-81
JACK W. DOSE	4611 FOLKER 36A ANCH AK 99501	10/1

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NAME	ADDRESS	DATE
Deborah Brookins	2905 Turnagain St. Anch 99503	10/5/81
Bonnie Schramm	SRA Box 1703-C Anch 99507	10-5-81
[illegible]	2249 E. 88th Anch 99507	10-5-81
Janice Bird	3110 Delta Dr. Anch. 99502	10-5-81
Ronald Hutchinson	248 Smith Dr. Anchorage, AK 99503	10-5-81
Julia Pethiohn	SE Box 2940 Wasilla AK 99687	10/5/81
Gail Cardo	1918 Central Fairbanks, Alaska 99701	10/16/81
Lucile Clark	2121 Lake George Drive Anch, 99504	10/20/81
Cristina Lorance	P.O. Box 1261 Kenai AK 99611	10/24/81
Rose Eggleston	P.O. Box 125 Willow AK 99688	10/26/81
Nancy Kleine	SRA Box 474-U Anchorage 99507	10/23/81
[illegible]	[illegible]	[illegible]
[illegible] Woods	Box 37 Sutton, AK 99674	10/27/81
Lonnie Woods	Box 37 Sutton AK 99674	10/27/81
[illegible] Reynolds	Box 2709 PALMER 99645	10/27/81
Darlene Dunn	P O Box 163 Eagle River AK 99577	10-27-81
[illegible] Rumfelt	PO Box 247 Eagle River, AK 99577	10/28/81
Karen K Redstone	1509 W 45th #3 99503	10/29/81
Robert C Redstone	1509 W 45TH #3 99503	10/29/81
Wayne C [illegible]	Box 10241 Correll FBKS 99701	10-30
[illegible] Dunn	9479 Braxton Dr. 99507	11-3-81
Krissel Forde	5835 Kennyhill Dr. Anch 99501	11-3-81
Audrey Tarquin	P.O. Box 6343 Anchorage 99502	11-3-81
[illegible] Turner	SR2 Box 6258 HOMESTEAD CRUSIAK 99603	11-3-81
Rita + Michael Roxwell	3925 Parkside St Anch 99504	11-5-81

: in penalties under the AECA would
oactive and to allow adequate time to
ient the change in pricing for train-
; other sections would be effective on
r 1, 1983.

S. 638

enacted by the Senate and House of
ntatives of the United States of
: in Congress assembled, That this
y be cited as the "Special Security
ition Act of 1983".

TARY SALES AND RELATED PROGRAMS

)1. (a) In addition to amounts other-
de available for the fiscal year 1983
guaranties under section 24(a) of
s Export Control Act, $425,000,000
principal are authorized to be so
ed during such fiscal year.
addition to amounts otherwise
ailable for the fiscal year 1983 to
t the provisions of section 503 of
ign Assistance Act of 1961, there is
ed to be appropriated $142,000,000
out such provisions for such fiscal

ECONOMIC SUPPORT FUND

2. In addition to amounts otherwise
d to be appropriated for the fiscal
3 to carry out the provisions of
of part II of the Foreign Assist-
of 1961, there is authorized to be
ted $82,000,000 to carry out such
s for such fiscal year.

TIONAL ORGANIZATIONS AND PROGRAMS

3. In addition to amounts otherwise
ilable for the fiscal year 1983 to
the provisions of chapter 3 of part
Foreign Assistance Act of 1961,
uthorized to be appropriated for
year 1983 $4,500,000 to carry out
sions, for payment to the Interna-
mic Energy Agency.

Section Analysis of the Proposed Special Security Cooperation Act

I. INTRODUCTION

posed Special Security Coopera-
1983 contains freestanding provi-
der to authorize supplemental in-
l security assistance to meet
us for fiscal year 1983.

II. PROVISIONS OF THE BILL

101. Military sales and related programs

tion authorizes an increase of
) in the limit established in P.L.
the total principal amount of
which guaranties may be issued
al year 1983 under section 24(a)
A.
n, this section authorizes an in-
appropriations of $142,000,000
mount made available in P.L. 97-
l year 1983 to carry out the mili-
ance program. Although the
budget for fiscal year 1984 re-
supplemental appropriation of
to carry out the military assist-
m for fiscal year 1983, section
ly provides authorization to ap-
t part of the budget request
which is proposed to be used
ement to the Department of
defense articles, defense serv-
ary education and training pre-
n down pursuant to section

102. Economic support fund

its budget for fiscal year 1984
supplemental appropriation of
for the Economic Support
l year 1984. This section in-
creases by $82,000,000 the authorization of appropriations for fiscal year 1983 for this Fund, made by P.L. 97-113. The amounts appropriated in P.L. 97-377 for this Fund for fiscal year 1983 were $62,500,000 less than the amount authorized by P.L. 97-113.

Section 103. International organizations and programs

This section authorizes an increase in appropriations of $4,500,000 above the amount made available in P.L. 97-377 for fiscal year 1983 to carry out Chapter 3 of part I of the Foreign Assistance Act of 1961, as amended. These funds will be used for payments to the International Atomic Energy Agency.

S. 639

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 1. This Act may be cited as the "Lebanon Emergency Assistance Act of 1983".

ECONOMIC SUPPORT FUND

SEC. 2. (a) It is hereby determined that the national interests of the United States would be served by the authorization and appropriation of additional funds for economic assistance for Lebanon in order to promote the economic and political stability of that country and to support the international effort to strengthen a sovereign and independent Lebanon.

(b) Accordingly, in addition to amounts otherwise authorized to be appropriated for fiscal year 1983 to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, there is authorized to be appropriated $150,000,000 to carry out such provisions.

(c) The amounts appropriated pursuant to this section are authorized to remain available until expended.

MILITARY SALES AND RELATED PROGRAMS

SEC. 3. (a) In order to support the rebuilding of the armed forces of Lebanon, the Congress finds that the national security interests of the United States would be served by the authorization and appropriation of additional funds to provide training for the Lebanese armed forces and to finance procurements by Lebanon of defense articles and defense services for its security requirements.

(b) In addition to amounts otherwise made available for the fiscal year 1983 to carry out the provisions of chapter 5 of part II of the Foreign Assistance Act of 1961, there are authorized to be appropriated for the fiscal year 1983 $1,000,000 to carry out such provisons.

(c) In addition to amounts otherwise made available for the fiscal year 1983 for loan guarantees under section 24(a) of the Arms Export Control Act, $100,000,000 of loan principal are authorized to be so guaranteed during such fiscal year.

Section-by-Section Analysis of the Proposed Lebanon Emergency Assistance Act of 1983

I. INTRODUCTION

The proposed Lebanon Emergency Assistance Act of 1983 ("the Bill") contains freestanding provisions in order to authorize supplemental international security assistance for the fiscal year 1983 for Lebanon. The amounts which would be authorized in the Bill represent the total amounts which are proposed to be allocated to Lebanon in fiscal year 1983 from amounts made available pursuant to this Bill and Public Law 97-377 for the Economic Support Fund, the International Military Education and Training program, and the Foreign Military Sales Credit program.

II. PROVISIONS OF THE BILL

Section 1. Short title

This section provides that the Bill may be cited as the "Lebanon Emergency Assistance Act of 1983".

Section 2. Economic support fund

This section consists of three subsections, as follows:

(a) This subsection states the determination of Congress that the national interests of the United States would be served by the authorization and appropriation of additional funds for economic assistance to promote the economic and political stability of Lebanon and to support the international effort to strengthen its sovereignty and independence.

(b) This subsection authorizes the appropriation of $150,000,000 for economic support pursuant to chapter 4 of Part II of the Foreign Assistance Act, in addition to amounts otherwise authorized for that chapter by Public Law 97-133.

(c) This subsection provides that the amounts appropriated pursuant to this section are authorized to remain available until expended.

Section 3. Military sales and related programs

This section consists of three subsections as follows:

(a) This subsection is a finding by the United States Congress, in support of the rebuilding of the armed forces of Lebanon, that the authorization and appropriation of supplemental funds for military sales and related programs would serve the national security interests of the United States. These additional funds would be used to provide training for the Lebanese armed forces and to finance procurements by Lebanon of defense articles and defense services for its security requirements.

(b) This subsection authorizes the appropriation of an additional $1,000,000 for the fiscal year 1983 for the International Military Education and Training (IMET) program. This authorization is in addition to the amounts made available for the IMET program by Public Law 97-377

(c) This subsection authorizes an increase of $100,000,000 is the limit established in Public Law 97-377 on the total principal amount of loans for which guaranties may be issued during fiscal year 1983 under section 24(a) of the Arms Export Control Act.●

By Mr. DOLE (by request):

S. 640. A bill to amend the Internal Revenue Code of 1954 to provide for the inclusion of certain employer contributions to health plans in an employee's gross income; to the Committee on Finance.

S. 641. A bill to provide for voluntary private alternative coverage for medicare beneficiaries, and for other purposes; to the Committee on Finance.

S. 642. A bill to restructure the medicare hospital insurance program; to the Committee on Finance.

S. 643. A bill to make improvements in the medicare and medicaid programs, and for other purposes; to the Committee on Finance.

HEALTH INCENTIVES REFORM LEGISLATION

● Mr. DOLE. Mr. President, I am introducing today, at the request of the administration, the major components of the health incentives reform program. There are five components of the package, one of which—the pro-

change in penalties under the AECA would be retroactive and to allow adequate time to implement the change in pricing for training. All other sections would be effective on October 1, 1983.

S. 638

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Special Security Cooperation Act of 1983".

MILITARY SALES AND RELATED PROGRAMS

SEC. 101. (a) In addition to amounts otherwise made available for the fiscal year 1983 for loan guaranties under section 24(a) of the Arms Export Control Act, $425,000,000 of loan principal are authorized to be so guaranteed during such fiscal year.

(b) In addition to amounts otherwise made available for the fiscal year 1983 to carry out the provisions of section 503 of the Foreign Assistance Act of 1961, there is authorized to be appropriated $142,000,000 to carry out such provisions for such fiscal year.

ECONOMIC SUPPORT FUND

SEC. 102. In addition to amounts otherwise authorized to be appropriated for the fiscal year 1983 to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, there is authorized to be appropriated $82,000,000 to carry out such provisions for such fiscal year.

INTERNATIONAL ORGANIZATIONS AND PROGRAMS

SEC. 103. In addition to amounts otherwise made available for the fiscal year 1983 to carry out the provisions of chapter 3 of part I of the Foreign Assistance Act of 1961, there is authorized to be appropriated for the fiscal year 1983 $4,500,000 to carry out such provisions, for payment to the International Atomic Energy Agency.

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED SPECIAL SECURITY COOPERATION ACT OF 1983

I. INTRODUCTION

The proposed Special Security Cooperation Act of 1983 contains freestanding provisions in order to authorize supplemental international security assistance to meet urgent needs for fiscal year 1983.

II. PROVISIONS OF THE BILL

Section 101. Military sales and related programs

This section authorizes an increase of $425,000,000 in the limit established in P.L. 97-377 on the total principal amount of loans for which guaranties may be issued during fiscal year 1983 under section 24(a) of the AECA.

In addition, this section authorizes an increase in appropriations of $142,000,000 above the amount made available in P.L. 97-377 for fiscal year 1983 to carry out the military assistance program. Although the President's budget for fiscal year 1984 requested a supplemental appropriation of $167,000,000 to carry out the military assistance program for fiscal year 1983, section 506(c) already provides authorization to appropriate that part of the budget request ($25,000,000) which is proposed to be used for reimbursement to the Department of Defense for defense articles, defense services and military education and training previously drawn down pursuant to section 506(a).

Section 102. Economic support fund

The President's budget for fiscal year 1984 requested a supplemental appropriation of $144,500,000 for the Economic Support Fund for fiscal year 1983. This section increases by $82,000,000 the authorization of appropriations for fiscal year 1983 for this Fund, made by P.L. 97-113. The amounts appropriated in P.L. 97-377 for this Fund for fiscal year 1983 were $62,500,000 less than the amount authorized by P.L. 97-113.

Section 103. International organizations and programs

This section authorizes an increase in appropriations of $4,500,000 above the amount made available in P.L. 97-377 for fiscal year 1983 to carry out Chapter 3 of part I of the Foreign Assistance Act of 1961, as amended. These funds will be used for payments to the International Atomic Energy Agency.

S. 639

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 1. This Act may be cited as the "Lebanon Emergency Assistance Act of 1983".

ECONOMIC SUPPORT FUND

SEC. 2. (a) It is hereby determined that the national interests of the United States would be served by the authorization and appropriation of additional funds for economic assistance for Lebanon in order to promote the economic and political stability of that country and to support the international effort to strengthen a sovereign and independent Lebanon.

(b) Accordingly, in addition to amounts otherwise authorized to be appropriated for fiscal year 1983 to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, there is authorized to be appropriated $150,000,000 to carry out such provisions.

(c) The amounts appropriated pursuant to this section are authorized to remain available until expended.

MILITARY SALES AND RELATED PROGRAMS

SEC. 3. (a) In order to support the rebuilding of the armed forces of Lebanon, the Congress finds that the national security interests of the United States would be served by the authorization and appropriation of additional funds to provide training for the Lebanese armed forces and to finance procurements by Lebanon of defense articles and defense services for its security requirements.

(b) In addition to amounts otherwise made available for the fiscal year 1983 to carry out the provisions of chapter 5 of part II of the Foreign Assistance Act of 1961, there are authorized to be appropriated for the fiscal year 1983 $1,000,000 to carry out such provisons.

(c) In addition to amounts otherwise made available for the fiscal year 1983 for loan guarantees under section 24(a) of the Arms Export Control Act, $100,000,000 of loan principal are authorized to be so guaranteed during such fiscal year.

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED LEBANON EMERGENCY ASSISTANCE ACT OF 1983

I. INTRODUCTION

The proposed Lebanon Emergency Assistance Act of 1983 ("the Bill") contains freestanding provisions in order to authorize supplemental international security assistance for the fiscal year 1983 for Lebanon. The amounts which would be authorized in the Bill represent the total amounts which are proposed to be appropriated to Lebanon in fiscal year 1983 from amounts made available pursuant to this Bill and Public Law 97-377 for the Economic Support Fund, the International Military Education and Training program, and the Foreign Military Sales Credit program.

II. PROVISIONS OF THE BILL

Section 1. Short title

This section provides that the Bill may be cited as the "Lebanon Emergency Assistance Act of 1983".

Section 2. Economic support fund

This section consists of three subsections, as follows:

(a) This subsection states the determination of Congress that the national interests of the United States would be served by the authorization and appropriation of additional funds for economic assistance to promote the economic and political stability of Lebanon and to support the international effort to strengthen its sovereignty and independence.

(b) This subsection authorizes the appropriation of $150,000,000 for economic support pursuant to chapter 4 of Part II of the Foreign Assistance Act, in addition to amounts otherwise authorized for that chapter by Public Law 97-133.

(c) This subsection provides that the amounts appropriated pursuant to this section are authorized to remain available until expended.

Section 3. Military sales and related programs

This section consists of three subsections as follows:

(a) This subsection is a finding by the United States Congress, in support of the rebuilding of the armed forces of Lebanon, that the authorization and appropriation of supplemental funds for military sales and related programs would serve the national security interests of the United States. These additional funds would be used to provide training for the Lebanese armed forces and to finance procurements by Lebanon of defense articles and defense services for its security requirements.

(b) This subsection authorizes the appropriation of an additional $1,000,000 for the fiscal year 1983 for the International Military Education and Training (IMET) program. This authorization is in addition to the amounts made available for the IMET program by Public Law 97-377.

(c) This subsection authorizes an increase of $100,000,000 is the limit established in Public Law 97-377 on the total principal amount of loans for which guaranties may be issued during fiscal year 1983 under section 24(a) of the Arms Export Control Act.●

By Mr. DOLE (by request):

S. 640. A bill to amend the Internal Revenue Code of 1954 to provide for the inclusion of certain employer contributions to health plans in an employee's gross income; to the Committee on Finance.

S. 641. A bill to provide for voluntary private alternative coverage for medicare beneficiaries, and for other purposes; to the Committee on Finance.

S. 642. A bill to restructure the medicare hospital insurance program; to the Committee on Finance.

S. 643. A bill to make improvements in the medicare and medicaid programs, and for other purposes; to the Committee on Finance.

HEALTH INCENTIVES REFORM LEGISLATION

● Mr. DOLE. Mr. President, I am introducing today, at the request of the administration, the major components of the health incentives reform program. There are five components of the package, one of which—the pro-

posed Medicare Prospective Payment Rates Act—was introduced on February 23, 1983.

The following four bills are those that are being introduced today: First, limitation on exclusion for employer health plan payments; second, the Medicare Voucher Act of 1983; third, the Medicare Catastrophic Hospital Cost Protection Act; and, fourth, the Health Care Financing Amendments of 1983.

NEED FOR ACTION

As many of my colleagues are aware, health care costs continue to escalate at an alarming rate, far exceeding the increase in prices overall.

This year the Federal Government will spend approximately $57 billion on the medicare program. At the same time, we expect to spend $19 billion on services for the poor under the medicaid program.

Rising health care costs are a problem that affects all of us. As the President pointed out in the letter of transmittal accompanying the health incentives reform program, increasing costs affect the elderly who are covered by medicare, and face the threat of increasing out of pocket costs. The poor continue to see medicaid coverage reduced as States and the Federal Government are forced by rising costs to make cutbacks. Workers with employment-based health insurance have received lower cash wages because of the unchecked cost increases for health benefits.

The President's package of health care program reform measures is designed to address each of these areas. The Senator from Kansas is particularly pleased to note the inclusion of the provision limiting the exclusion for employer health plan payments.

Under the proposal contained in the administration's fiscal year 1984 budget, employer contributions to accident or health plans for an employee would be included in the employee's income to the extent they exceed, first, $175 per month—$2,100 per year—if the plan covers the employee and his family, or second, $70 per month—$840 per year—if the plan covers only the employee. The provision would apply for taxable years beginning after December 31, 1983. The $175 and $70 amounts would be indexed to adjust for inflation.

Amounts included in the employee's income under the proposals would also be subject to social security taxes.

There would be a transition rule to exempt premiums paid under collective-bargaining agreements signed before January 31, 1983.

The total exclusion from employees' income for employer paid medical coverage is the second largest, statutory fringe benefit in the Tax Code. The largest is the exclusion from income of pension contributions and earnings.

The revenue loss estimate for this total exclusion from income is estimated to be $18.6 billion in fiscal year 1983 and $21.3 billion in fiscal year 1984.

The administration's proposal would reduce this revenue loss by $2.3 billion in fiscal year 1984 and $4.4 billion in fiscal year 1985. Therefore, even after a cap on the exclusion, the tax benefit for receiving part of your compensation in the form of health care would be very substantial.

Many experts believe that our present tax treatment of employer provided health benefits has been a contributing factor in the trend toward excessive coverage and escalating medical cost

We will h[ave] to decide whether a dollar cap o[n] on from an employee's inc[ome] hange consumer behavi[or] le way. For example, wi[ll] age copayments and m[ore] health care, or will some [such] as low-income individual[s] ve insufficient coverage?

Even if we decide to limit employer paid tax free medical insurance, there are still a number of questions to be resolved with respect to a so-called tax cap. These include the level at which the cap is set. For instance, should there be a national cap or one which varies in different areas of the country, thereby recognizing differing costs of care; how often should the limit be updated; and how do we prevent adverse selection—the case where all the healthy choose low option insurance and the sick, high option. Another obvious question is how to deal with self-insured plans which are increasing in number.

It is not likely that we on the Federal level would attempt to establish a minimum benefits package in conjunction with a tax cap. That is clearly the jurisdiction of the State insurance commissioners and in the lands of labor and business.

CONCLUSION

Medicare is a program which has grown at an alarming rate since its creation 17 years ago. The trust fund is rapidly approaching a period of time in which it will no longer have sufficient funds to finance program expenditures. Something must be done to prevent this potential insolvency. The President's proposals are an attempt to address this problem and others. The Senator from Kansas urges his colleagues to give these bills their serious consideration.

Mr. President, I request that a summary of each bill be included in the record following my comments.

There being no objection, the summaries were ordered to be printed in the RECORD, as follows:

S. 640—LIMITATION ON EXCLUSION FOR EMPLOYER HEALTH PLAN PAYMENTS

GENERAL EXPLANATION

Current law

All employer contributions to health insurance plans for employees are excluded from the employees income and wages for purposes of income and employment taxes. This tax treatment generally applies to all insurance coverage, regardless of cost, and to all medical benefits, no matter how extensive. The same rule generally applies to amounts paid by an employer to or on behalf of an employee under a self-insured medical plan.

Reasons for change

Excluding employer contributions to health plans from gross income creates an inequity between individuals covered by employer health plans and those who are not so covered. The latter group must pay for their health care with after tax dollars, while the health care of the former group is provided with before tax dollars. For example, an employee with $23,000 of total compensation consisting of $20,000 of cash wages and $3,000 of health insurance coverage will pay $804 less in Federal income and Social Security taxes than one with $23,000 of cash wages.

The preferential treatment of employer paid health benefits encourages employees to receive large amounts of their compensation in that form. This has led to a significant decline in the amount of compensation subject to tax and indirectly has led to higher tax rates on cash wages.

From a health policy viewpoint, many employees have such generous insurance plans that they bear very little, if any, of the cost of doctors' visits or hospital services. They therefore tend to overuse doctor and hospital services and medical tests. The very rapid increase in health care costs in recent years can be attributed at least in part to this tax-induced incentive to demand additional health care with little or no regard to its actual costs.

Proposal

Employer contributions to a health plan would be includible in gross income to the extent that they exceed $70 per month ($840 per year) for an individual employee, or $175 per month ($2,100 per year) for family coverage.

The proposal will generally be effective January 1, 1984. However, in order to allow renegotiation of existing contracts, the proposal will not be effective with respect to employer contributions to employer health plans, the amounts of which are fixed by a legally binding contract entered into on or before January 31, 1983, until the earlier of January 31, 1986, or the first date after January 31, 1983 on which such amounts cease to be fixed by the contract.

Effects of proposal

The amount of employer contributions is determined, in the case of an insured plan, on the basis of the premiums charged for such insurance. The insurance premiums paid by the employer on behalf of employees will be divided by the number of covered employees. If the employer maintains different plans covering different groups of employees, each plan will be treated separately in determining employer costs per employee.

In the case of noninsured plans, the amount of the employer contributions will be based on the costs of providing coverage under the plan. Costs of providing coverage may be determined based on reasonable estimates of such costs.

To the extent that employer contributions exceed the $70 individual/$175 family monthly ceilings, the excess would be includible in the income of the covered employee. Even if employer health plan payments exceed the $70 individual/$175 family monthly amounts, only the excess will be included in the employee's gross income. For example, if the employer paid $185 per month for family health coverage for an

employee, $10 per month would be included in the employee's gross income. Thus, $10 would be subject to income tax and FICA and FUTA taxes (if applicable). Most current employees will pay no additional tax because those employees have insurance coverage costing less than the applicable ceiling amount.

Revenue estimate

Fiscal years:	Billions
1984	$2.1
1985	4.2
1986	6.0
1987	8.0
1988	10.7

LIMITATION ON EXCLUSION FOR EMPLOYER HEALTH PLAN PAYMENTS

TECHNICAL EXPLANATION

Summary of the proposal

Employer contributions to a health plan would be includible in gross income to the extent that they exceed $70 per month ($840 per year) for an individual employee, or $175 per month ($2100 per year) for family coverage.

Detailed description

Under the proposal, the amount of any excess employer contributions to a health plan with respect to coverage of an employee during the payroll period will be included in the employee's gross income. Employer contributions for a payroll period are excess employer contributions to the extent they exceed the monthly dollar limit for such employee, prorated to reflect the length of the payroll period. For 1984, the monthly dollar limit is $70 for an employee with individual coverage under the plan and $175 for an employee with family coverage under the plan. For years after 1984, the monthly dollar limit will be adjusted to reflect changes in the Consumer Price Index. An employee will be treated as having individual coverage unless the employee has a spouse or a dependent who is covered under the plan.

The employer contribution to a health plan with respect to an employee will be the cost of coverage of the employee under the plan reduced by the amount of the employee's contributions for such coverage. The annual cost of coverage with respect to an employee will be the aggregate annual cost of providing coverage for all employees with the same type of coverage (individual or family) under the plan as that of the employee, divided by the number of such employees. The cost of coverage with respect to an employee for a payroll period will be the annual cost of coverage prorated to reflect the length of the payroll period. Any cost of providing coverage under a plan which is allocable to workmen's compensation or to a purpose other than providing medical care is not taken into account in determining the cost of coverage under the plan.

The annual cost of providing coverage under an insured plan (or any insured part of a plan) will be determined based on the net premium charged by the insurer for such coverage. The annual cost of providing coverage under a noninsured plan (or any noninsured part of a plan) will be based on the costs incurred with respect to the plan, including administrative costs. In lieu of using actual administrative costs, an employer may treat 7 percent of the plan's incurred liability for benefit payments as the administrative costs with respect to the plan. A plan will be a noninsured plan to the extent the risk under the plan is not shifted from the employer to an unrelated third party.

The cost of coverage under the plan must be determined in advance of the payroll period and must be redetermined not less often than once every 12 months. The cost of coverage must be redetermined whenever there are significant changes in the coverage provided under the plan or in the composition of the group of covered employees. The cost of coverage is determined separately for each separate plan of the employer. Coverage of a group of employees is a separate plan if such coverage differs from the coverage of another group of employees. Where the actual cost of coverage cannot be determined in advance, reasonable estimates of the expected cost of coverage are to be used. Where the cost of coverage fluctuates each year depending on the experience of the employer under the plan, an average annual cost of coverage will be used.

If an estimate is determined not to be a reasonable estimate, the employer will be liable for the income taxes (at the maximum rate applicable to individuals) and the employment taxes (both the employer's and the employee's share) that would have been imposed on the additional amount that would have been included in the income of employees as excess employer contributions if the actual cost of coverage had been used to determine the amount of excess employer contributions.

In the case of multiemployer plans to which an employer makes contributions, the multiemployer plan is to be treated as the employer for purposes of determining the cost of coverage and the liability for errors in estimates of the cost of coverage. Each employee's excess employer contributions will be determined based on this cost of coverage. However, for purposes of the employer's obligations to withhold from wages and to pay employment taxes, the amount of excess employer contributions will be considered to be a portion of each contribution made by the employer to the plan. The portion of each contribution to be treated as an excess employer contribution will be based on the ratio of the plan's excess employer contributions per employee per month to the total monthly employer contribution per employee.

Effective date

In general, the proposal would apply to employer contributions made with respect to payroll periods beginning after December 31, 1983. However, the proposal will not apply to employer contributions to employer health plans, the amounts of which are fixed by a legally binding contract entered into on or before January 31, 1983, until the earlier of January 31, 1986, or the first date after January 31, 1983 on which such amounts cease to be fixed by the contract.

S. 641—SUMMARY OF PROPOSED MEDICARE VOUCHER ACT OF 1983

Section 1 would assign the draft bill the short title "Medicare Voucher Act of 1983".

Section 2 would permit the Secretary to contract with health benefits organizations (HBOs) (a broad range of health insurers and health services providers, including health maintenance organizations (HMOs) and competitive medical plans (CMPs)) to provide private alternative coverage for Medicare beneficiaries (other than individuals suffering from end-stage renal disease, or who are working and are 65 years of age or older but under 70) who chose to participate in such a private plan. Section 2 would also enact additional amendments to current provisions of law concerned with Medicare contracts with such organizations to—

Establish a single, coordinated open enrollment period during August and September of each year (but only for that number of new enrollees, in order of applications filed, previously specified by an HBO); and to enable the Secretary, to the extent feasible, to provide for individuals who move from the area served by one HBO to an area served by another (similar to the system used by the health benefits program for Federal employees);

Preclude new enrollments for individuals receiving only Supplementary Medical Insurance (SMI) benefits;

Preclude new cost-based contracts;

Permit HBOs to offer separate benefit packages for employer-based groups;

Permit HBOs to offer one or more benefit packages as long as each package covered at least those services for which Medicare pays and covered inpatient hospital services for every day of hospitalization, which benefit levels, coinsurance, and deductibles to be set by the HBO;

Eliminate current requirements as to premium levels and benefits, and require only that the average cost-sharing for the portion of benefits for which Medicare pays not exceed the average cost-sharing (including amounts above the Medicare reasonable charge) under Medicare;

Permit HBOs to provide annual rebates of up to $500 (instead of charging premiums), not consider those rebates as income for purposes of Medicaid, Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, Low-Income Home Energy Assistance, or low-income housing programs, and treat those rebates as Social Security benefits for purposes of the Federal income tax laws; and

Preempt provisions of State or local law requiring benefits more extensive that those under section 2.

Section 3 would enact conforming amendments that would—

Repeal the requirement for the Secretary to conduct a study of additional benefits that are required under existing law (but not under the provisions of section 2); and

Require payments to HBOs under section 2 to take into account services furnished by physician assistants or nurse practitioners if Medicare would pay for those services when furnished by a physicians.

Section 4 would make the provisions of section 2 applicable to services furnished after 1984. Section 4 would also—

Retain the transitional provisions enacted in 1982 when Congress amended the provisions of law providing for payments to HMOs;

Permit any enrollee of an HMO or CMP at the end of 1984 not already covered by those earlier transition provisions to continue his enrollment under the provisions of law then current if either the HMO or CMP had a cost-based contract with the Secretary or if the enrollee was enrolled for Medicare SMI (but not Hospital Insurance (HI) benefits), unless the Secretary found that the new provisions should apply to all members of an HMO or CMP because of administrative costs or other administrative burdens; and

Apply the provisions of section 2 to enrollees who also receive benefits under Medicaid only after the Secretary finds that it is administratively feasible.

S. 642—SUMMARY OF PROPOSED MEDICARE CATASTROPHIC HOSPITAL COST PROTECTION ACT

Section 1 would assign the draft bill the short title "Medicare Catastrophic Hospital Cost Protection Act".

Section 2 would restructure benefits under the Medicare Hospital Insurance program. Under current law, Medicare covers only the first 90 days of a hospitalization during any spell of illness, plus a lifetime reserve of 60 additional days. An inpatient hospital de-

Oregon Board of Naturopathic Examiners

Procedures for Colleges Applying for Approval under ORS 685.060

Naturopathic colleges seeking approval by the Board of Naturopathic Examiners in order that graduates may be eligible to take the licensing examinations should submit the following information to document compliance with the standards of OAR . Four(4) copies of all materials are required.

1) Current institutional catalog, brochures, and other information provided to students and the public.

2) Institutional self-evaluation for accreditation, if any.

3) Statements or documents described below, corresponding to sections of rule , Standards. Reference may be made to the appropriate sections of 1) and 2) above.

   1) Objectives. List the objectives of the college.

   2) Organization. Submit copies of Articles of Incorporation, By-laws, and the names of all Directors or Trustees.

   3) Administration. Submit resumes of all administrators, organization chart and position descriptions.

   4) Financial Condition. Submit current audited financial statement, current budget and projected budget for t he next fiscal period.

   5) Records and Educational Credentials. Describe record-keeping policies and procedures, submit sample degree and transcript.

   6) Catalog. Indicate the location of each required item in the catalog.

   7) Admissions. Describe the admissions policies, requirements and procedures. List the names of the Admissions Committee members. Submit a copy of the application form(s) used.

   8) Attendance. Describe the college's attendance policy.

   9) Curriculum. Submit a synopsis of the curriculum showing the number of clock hours for each course. Submit a course outline for each course.

   10) Academic Standards. Describe how students are evaluated and the standards by which they are evaluated. Provide representative tests.

over

11) Faculty. Submit resume for each member of the faculty as described. Provide a narrative description on faculty participation in other areas specified. Submit copies of policies on hiring, compensation, etc. as listed.

12) Library. Submit all information as listed in Standards.

13) Clinical Training. Provide a narrative description of clinic facilities, major equipment, details of clinic procedures, rules of conduct, resumes of clinic staff, and any other pertinent data on the student's clinical experience.

14) Physical Plant. Describe in detail the college's physical plant and equipment.

15) Cancellation and Refund Policy. Submit a copy of the college's policy on refund of tuition and fees.

The following information should be made available to the Board's inspection committee during its visit.

a) Minutes of all board of control meetings
b) Administrative reports to the board of control
c) Minutes of faculty meetings
d) Student personnel records and financial accounts

DIVISION 10

GENERAL

Definitions

850-10-005 As used in rules 850-10-010 to 850-10-200, unless otherwise required by context:

(1) "Board" means Oregon State Board of Naturopathic Examiners.

(2) "Naturopathy" is defined as a system of diagnosing and treating the human body and maintaining or restoring it to a state of normal health, as defined in ORS Chapter 685, and in such other sections thereof as may apply.

(3) "Diagnosis" is a determination of the nature of a disease by the use of all recognized and accepted physical and laboratory examinations, which includes the drawing of blood and taking specimens of body fluids and tissues for microscopic and chemical analysis.

(4) "Prescriptions": Naturopathic physicians shall be allowed to prescribe and dispense nature's agents, forces, processes, and products.

(5) "Non-poisonous plant substance" is any plant substance, taken in relatively small amounts, which would not, by its action on organs or tissue, seriously impair function or destroy life.

(6) "Plant substance" is any medical material taken or removed from a plant.

(7) "Food" is any organic substance taken into the body which helps maintain life, builds or repairs tissue, and sustains growth. This includes the use of ensymes, minerals, vitamins (either in trace amounts or megodoses) and any food products or extracts either processed, refined, or concentrated.

Stat. Auth.: ORS Ch. 685
Hist: NE 3, f. 8-26-66; NE 4, f. 10-9-67; NE 1-1980, f. & ef. 9-11-80

Requirements for Application

850-10-010 (1) Any applicant for examination shall be a high school graduate or equivalent and a graduate of a naturopathic college that offers a resident four-year course of at least 4,000 hours.

(2) Each applicant shall possess a basic science certificate, obtained from the State Board of Higher Education either by reciprocity or by examination.

(3) Each applicant shall submit satisfactory evidence of his having had, prior to his matriculation into a naturopathic college, at least two years Liberal Arts or Science study in a college or university accredited by either the North-West Association of Secondary and Higher Schools or a like regional association or in a college or university in Oregon approved for granting degrees by the Oregon State Board of Education.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Basic Science Examination or Reciprocity

850-10-020 (1) Any applicant desiring the dates of or application blanks for the basic science examination or for reciprocity shall address all inquiries to the Secretary, State Board of Higher Education, P.O. Box 3175, Eugene, Oregon.

(2) The Oregon Basic Science Examinating Committee reciprocates with a like board from each of the following states: Arizona, Arkansas, Colorado, Iowa, Michigan, Minnesota, Nebraska, Nevada, New Mexico, Oklahoma, South Dakota, Tennesee, Texas, Washington, and Wisconsin.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Application for Examination; Filing; Additional Papers

850-10-030 (1) Any applicant for licensure by the Board shall fill out, without alterations, an application furnished by the Board.

(2) The application shall be filed with the Board at least 10 days prior to the date of the examination.

(3) A photostatic copy of the applicant's Oregon basic science certificate and of his naturopathic diploma shall be attached to his application.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Examination Dates

850-10-040 Examinations shall be held by the Board in March and in September of each year or at such other times as may be feasible.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Re-Examination

850-10-050 Any applicant for examination who has failed in one or more subjects shall be permitted, within one year, to submit himself for re-examination in those subjects, without paying an additional fee if he notifies the Board of his intention at least 10 days prior to the examinations.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Temporary Permits

850-10-060 Temporary permits for the practice of naturopathy shall not be issued by the Board.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Reciprocity

850-10-070 Reciprocity in naturopathy with another state cannot be considered by the Board.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Recordation and Display of License

850-10-080 (1) An Oregon licentiate for the practice of naturopathy shall record his license in the office of the county clerk in the county in which he resides.

(2) Each licentiate of the Board shall display in his office, in a conspicuous place, his license and yearly renewal card.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Expiration and Renewal of Licenses

850-10-090 (1) Unless renewed by proper application to the Secretary of the Board on a form provided by the Board, all licenses to practice naturopathy in Oregon automatically expire on January first of each year.

(2) The renewal application shall be accompanied by a specified yearly fee of $75, the practioner's address, and his original license number.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59; NE 2-1980, f. & ef. 9-11-80

Mode of Remittance

850-10-100 (1) The remittance of any application fee, license fee, or yearly renewal fee shall be made by postal money order, postal certificates, express money order, bank draft, or certified check.

(2) The Secretary shall be under no obligation to accept personal checks; however, he may accept them subject to collection only.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Use of Unauthorized Material and Misrepresentations in Obtaining License

850-10-110 (1) Any applicant for a license detected in the act of offering or accepting unauthorized assistance or using unauthorized material while the examinations are in progress shall be excluded from further examination and his or her papers rejected in total.

(2) The Board may refuse to grant a license to any applicant indulging in misrepresentation, fraud, or deception, or to revoke the license granted as a result of these.

(3) The Board shall carefully and rigidly investigate applicants who attempt to obtain naturopathic license by false statements or representations in their applications or otherwise violate these rules.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Illegal Practice

850-10-120 (1) Any applicant for examination shall be prohibited from and prosecuted for any practice of naturopathy while awaiting examination.

(2) Any person convicted of practicing illegally in Oregon or any person who, without a license, makes a diagnosis shall not be admitted to examination by the Board at any time.

(3) It shall be the duty of all licentiates of the Board, in the interests of both the public and the profession, to inform the Board, in writing, fully signed, of anyone practicing naturopathy in Oregon without a license or otherwise in violations of the law.

(4) For the purpose of this rule, naturopathic treatment shall be considered as practicing naturopathy within the meaning of ORS 685.010(4) even though practicing in the office of a licentiate of the Board.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Change of Address

850-10-130 It shall be the duty of any licentiate of the Board to keep the Secretary of the Board informed of any change of address.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Advertising

850-10-140 While constructive educational publicity shall be encouraged, licentiates of the Board shall refrain from using or causing to be used advertising matter which contains misstatements, falsehoods, misrepresentations, distorted, or fabulous statements as to cures.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Public Health Laws

850-10-150 Naturopathic physicians shall be subject to all state, county, and municipal laws and rules relating to public health concerning the diagnosis and reporting of contagious and infectious diseases, as may be required, to the proper health authorities in the respective counties.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

State Industrial Accident Cases

850-10-160 Naturopathic physicians may accept injured workers who are employed under the provisions of the State Industrial Accident Commission, in conformance with the Workers' Compensation Law and the rules of committee.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

State Welfare Cases

850-10-170 Naturopathic physicians may accept welfare cases under the medical plan adopted by the Welfare Commission, April 26, 1946.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Standards

850-10-180 It shall be the object of the Board to foster higher professional standards as rapidly as is consistent with the best intrests of the profession, and in this, it shall not be swayed or influenced by any school or other interests whatsoever.

Stat. Auth.: ORS Ch. 685
Hist: NE 2, f. 6-7-59

Denial or Revocation of License

850-10-190 The Board may refuse to grant or may revoke a license to practice naturopathy in the State of Oregon for any of the following reasons:

(1) Commitment to a mental institution. A copy of the record of commitment, certified to by the clerk of the court entering the commitment, is conclusive evidence of the commitment.

(2) Habitual intemperance in the use of ardent spirits, narcotics, or stimulants to such an extent as to incapacitate him from the performance of his professional duties.

(3) Unprofessional or dishonorable conduct.

(4) Representing to a patient that manifestly incurable condition of sickness, disease, or injury can be permanently cured.

(5) The obtaining of any fee through fraud or misrepresentation.

(6) The willful betrayal of a professional secret.

(7) The use of any advertising in which untruthful, improper, misleading, or deceptive statements are made.

(8) The advertising of techniques or modalities to infer or imply superiority of treatment or diagnosis by the use thereof.

(9) Knowingly permitting or allowing any person to use his certificate in the practice of any system or mode of treating the sick or afflicted.

(10) Advertising either in his own name or under the name of another person or clinic or concern, actual or pretended, in any newspaper, pamphlet, circular, or other written or printed paper or document, professing superiority to or a greater skill than that possessed by fellow naturopathic physicians.

(11) Aiding or abetting the practice of any of the healing arts by an unlicensed person.

(12) The use of his name under the designation, "Doctor", "Dr.", "Naturopathy", "Naturopathic Physician", or any similar designation with preference to the commercial exploitation of any goods, wares, or merchandise.

(13) The advertising or holding oneself out to treat diseases or other abnormal conditions of the human body by any secret formula method, treatment, or procedure.

(14) The guaranteeing of a cure or "results" from any treatment.

Stat. Auth.: ORS Ch. 685
Hist: NE 1, f. 11-12-57; NE 3-1980, f. & ef. 9-11-80

Rules of Administrative Procedure in Contested Cases

850-10-200 [Repealed by NE 5, f. 6-1-73, ef. 6-15-73]

850-10-205 [Renumbered to 850-01-005]

Programs of Continuing Education

850-10-210 (1) The following programs of continuing education in naturopathy are approved by the Naturopathic Board of Examiners as meeting the requirements of ORS 685.102, 685.104, and 685.106:

(a) Programs offered by the Oregon Association of Naturopathic Physicians.

(b) Programs offered by the Northwest Naturopathic Physician's convention.

(c) Programs offered by all colleges of Naturopathic Medicine which are recognized by this Board.

(2) A person who desires to offer a program of continuing education in naturopathy other than the programs set forth in section (1) of this rule shall first comply with the provisions of ORS 685.106 (2) and (3) and receive approval of the program from the Board of Naturopathic Examiners.

(3) Any programs of continuing education in naturopathy not authorized or approved by the Board prior to their being offered to naturopathic physicians will not be considered as meeting the requirements of ORS 685.102, 685.104, and 685.106.

Stat. Auth.: ORS Ch. 685

Hist: NE 6, f. 6-1-73, ef. 6-15-73; NE 5-1980, f. & ef. 9-11-80

Drug Enforcement Number

850-10-215 Licentiates requesting approval of this Board to the Federal Food and Drug Administration for the issuance of a Drug Enforcement Number, must be residents of Oregon and in full-time practice.

Stat. Auth.: ORS Ch. 685

Hist: NE 6-1980, f. & ef. 9-11-80

OREGON EDUCATIONAL COORDINATING COMMISSION
PROPOSED AMENDMENTS TO OREGON ADMINISTRATIVE RULES
CHAPTER 583, DIVISION 30

NOTE: Matter underlined is new; matter [*italic and bracketed*] is existing language to be omitted.

STANDARDS AND PROCEDURES FOR APPROVAL OF DEGREE REQUIREMENTS IN CERTAIN OREGON PRIVATE AND ALL OUT-OF-STATE INSTITUTIONS

Scope and Purpose

583-30-005 (1) ORS 348.83[illegible] provides that certain Oregon private and all out-of-state institutions of learning shall not confer or offer to confer any degree in recognition of the attainment or proficiency of a person without first having submitted the requirements for the degree to the Oregon Educational Coordinating Commission and having obtained the Commission's approval. This applies to each degree program at each location proposed by an institution.

(2) The purpose of this rule is to provide standards and procedures for submission of requirements and for Commission review and approval of the same, and to assure that institutions covered by this rule meet minimum standards of quality in their operation and conferral of degrees. It is also the purpose of these rules to help prevent deception of the public resulting from the conferring and use of fraudulent or substandard degrees. Regulation of degree requirements as evidence of academic achievement is in the public interest.

Stat. Auth.: ORS Ch. 348
Hist: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80

Exemptions

583-30-010 This rule shall not apply to:

(1) Any school or institution of learing which has been established and conducted within Oregon, and has conferred degrees for a period of 15 years prior to March 4, 1935;

(2) Any school conducted under the public educational system of the State of Oregon;

(3) Any Oregon school which is a member in good standing of the Northwest Association of Schools and Colleges;

[*(4) Any school which confers degrees only for proficiency in any system or method of healing;*]

[*(5) Any school now conferring the degree of doctor of optometry;*]

(4)[*(6)*] Schools of theology operating on a post-baccalaureate degree level.

Stat. Auth.: ORS Ch. 348
Hist: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80

Definitions as Used in OAR 583-30-005 to 583-30-045

583-30-015 (1) "Institution of Learning" or "Institution" means post-secondary educational institution subject to this rule.

(2) "Degree" means any academic or honorary title of designation mark, appelation, series of letters or words, such as, but not limited to, associate, bacheior, master, doctor, or fellow which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic program of study beyond the secondary school level or a recognized title conferred for meritorious recognition which may be used for any purpose whatsoever. "Degree" does not include certificate, diploma, license, report, document, or title which signifies satisfactory completion of requirements of a non-degree program.

(3) "Confer" includes awarding, granting, bestowing, or giving of a degree.

(4) "Good Standing" means full accreditation with the Northwest Association of Schools and Colleges.

(5) "Commission" means the Oregon Educational Coordinating Commission.

(6) "Out-of-State" or "Foreign" educational institution means either a public or private institution which is not an Oregon school.

(7) "Attainment" or "Proficiency" means the completion and mastery of a program or field of study or competence in the skills generally required in the profession or field of study.

(8) "Advertising" means any form of public notice used in school recruiting and promotional activities, however disseminated including, but not limited to, catalogues and other school publications, signs, mailing pieces, radio or television advertisement, and audiovisual material.

(9) "Oregon School" means any school or institution of learning which initially establishes operations solely in oregon and Continuously maintains its main headquarters in Oregon.

(10) "Part-time faculty" means teaching staff employed by an institution less than full-time throughout the academic year.

(11) "Credit for prior learning" means credit which is awarde[illegible]or learning which is not sponsored by an institution and occ[illegible] prior to matriculation.

Stat. [illegible]h.: ORS Ch. 348
Hist: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80

Exercise of Commission Authority

583-30-020 (1) After initial approval by the Commission for an institution to grant a certain degree (or degrees), periodic reports may be required. Failure to conform to the established standards may result in loss of Commission approval. No institution shall receive approval for a period longer than five years. Prior to the expiration of the five-year period, or any lesser period designated by the Commission at the time of approval, the institution must initiate the reevaluation process by making application to the Commission for renewal of its authority. The Commission upon review and evaluation of the application shall make a final decision of approval or disapproval in not less than two nor more than 11 months.

(2) If any institution of learning fails to maintain the required standards or fails to report significant institutional changes within 90 days of the change including the offering of approved degree programs at new locations either within Oregon or elsewhere, the Commission may revoke its approval subject to rule 583-30-045 of these rules. The Commission may make periodic contact and/or send a representative or qualified examining or evaluation committee to an institution to gather information as authorized under rule 583-30-040. All costs of an evaluation shall be borne by the institution requesting approval.

Stat. Auth.: ORS Ch. 348
Hist: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80

Eligibility to Apply

583-30-025 In order to make application for the review of its degree-granting authority, an institution subject to this rule must have a representative in Oregon residence and a headquarters with a physical location and address in Oregon and identify its agent for the transaction of business with the Commission; or, if a foreign or out-of-state institution, it must designate a responsible agent within the State of Oregon and provide his/her name, address, and telephone number.

Stat. Auth.: ORS Ch. 348
Hist: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80

Application Procedure

583-30-030 Institutions making application shall do so on a form provided by the Commission, which shall be designed to meet the standards in rule 583-30-035.

Stat. Auth.: ORS Ch. 348
Hist: ECC 22, f. & ef. 12-22-75

Standards

583-30-035 The following standards shall be used by the Commission in determining the completeness of an application and in its review of the degree-granting authority of an institution:

(1) Objectives. The objectives of the institution shall be clearly stated; they should make evident the ends which the institution hopes to achieve; and their implementation should be obvious in the administration of the institution, individual course objectives, and the total program which has been planned for students.

(2) Curriculum and Academic Standards. The institution shall make known the standards of excellence, mastery, and competence for its programs and courses of study and shall validate the effectiveness of its instruction by evaluating the proficiency of its students in their particular field of study before the granting of degrees. Special training for a given profession or vocation shall be sufficient in extent and quality to insure that recipients of the degree can perform acceptably the duties of the particular profession or vocation involved.

(3) Administration. The education and experience of directors, administrators, supervisors, and instructors should be sufficient to insure that the student will receive educational services consistent with institutional objectives. The administration of the institution shall be such that the lines of authority are clearly drawn. The institution shall present with its application a catalog and a brief, narrative explanation of how the administration of the institution is or is to be organized and how the administrative responsibility for each of the following is or is to be managed:

(a) Faculty and staff recruitment;

(b) Personnel records management;

(c) Faculty pay scale and policies;

(d) Standards and practices relating to evaluation, improvement of instruction, promotion, retention, and tenure;

(e) Admissions policies including procedures used to solicit students;

(f) Development and administration of policies governing rejection and retention of students, job placement, and student counseling and advising services;

(g) Curriculum requirements;

(h) Tuition and fee policies; and

(i) Financial management policies.

(4) Faculty. Faculty members of any institution conferring degrees shall be qualified by training and experience to give effective instruction in the particular fields involved. There shall be submitted to the Commission a resume for each faculty member participating in a program in Oregon, including the following information:

(a) Academic rank or title;

(b) Degree or degrees held, the institution(s) that conferred the degree(s), the dates(s) thereof, and whether earned or honorary;

(c) The faculty members' assignments by course number and title and the number of students involved in each course;

(d) Where faculty members have responsibilities for other than teaching, the nature of these responsibilities and the proportion of the faculty member's time required for them;

(e) Full-time equivalency; and

(f) The length of time each faculty member has been with the institution. Institutions which primarily employ part-time faculty must show how the following are provided:

(a) Faculty participation in the development of curriculum to afford continuity and stability in the educational program.

(b) Opportunity, for counseling and informal association between students and faculty.

(5) Student Recruitment, Selection, and Retention. Recruitment and selection policies and practices shall be such as to assure that the personal goals and abilities of prospective students are compatible with the institution's purpose and academic standards and that student retention practices are consistent with the institution's objectives. The data submitted to the Commission shall include the following:

(a) A statement of the institution's recruitment, selection, and retention policies;

(b) The number of applicants for admission, number admitted, and the number enrolled during the past year, the attrition rate compared to the total school enrollment, and the reasons for students' leaving if known; and

(c) The distribution of students in each of the various years in school and in each degree program.

(6) Financial Condition:

(a) The institution shall demonstrate to the satisfaction of the Commission its financial solvency and stability by submitting certified audit reports, the posting of an adequate bond, or other appropriate evidence.

(b) The potential of a proposed program for retaining students over time will be a factor in assessing projected financial stability.

(7) Physical Plant, Materials, and Equipment. Instructional space, equipment, laboratories, recreational facilities, gymnasiums, health centers, and instructional materials shall be adequate to achieve all institutional and program objectives. Institutions without the educational resources of a traditional campus and out-of-state domiciled institutions shall furnish evidence that provisions are made for faculty and student access to all necessary teaching and learning resources.

(8) Library Resources:

(a) The library resources shall be adequate to support the instruction, research, and services pertinent to the institution's goals and courses of study. Evidence for evaluation shall include:

(A) Financial support;

(B) Circulation;

(C) Number of volumes exclusive of documents;

(D) list of periodicals;

(E) List of reference books;

(F) List of instructional media available; and

(G) List of special collections.

(b) Institutions that do not maintain an on-site library shall furnish evidence that provisions have been made for faculty and student access to adequate library services.

(9) Entrance Requirements. Entrance requirements for post-secondary degree studies shall include graduation from a secondary school or its equivalent or such other requirements as are generally employed by institutions offering similar degrees.

(10) Educational Credentials:

(a) Upon satisfactory completion of educational or training and the payment of all tuition and fees owed by the student to the institution, the student shall be given appropriate educational credentials by the institution indicating that the course or courses of instruction or study have been satisfactorily completed by the student.

(b) In addition, for each student who graduates or withdraws, the institution shall prepare, permanently file, and make available a transcript that specifies all courses completed, provided that all tuition and fees owed by the student to the institution have been paid. Each course entry shall include a title, the number of credits awarded, and a grade. The transcript shall separately identify all credits awarded by transfer and for prior learning experience, correspondence courses, and credit by examination.

(11) Records:

(a) In addition to the transcript requirement provided for under section (10), the institution shall maintain adequate records to document the performance and progress of each student. The records and accounts pertaining to each period of

enrollment of each student shall be kept intact and in good condition by the educational institution for a period of at least three years following the termination of such enrollment period.

(b) The records to be retained shall include, but not necessarily be limited to, any of the following information that does not appear on permanently filed transcripts:

(A) Records and accounts which are evidence of tuition and fees charged to and received from or on behalf of all students.

(B) Records of previous education or training of students at the time of admission and records of credit, if any, granted by the institution at the time of admission.

(C) Records of the student's grades and progress.

(D) Individual instructor's class records.

(E) Records of interruption for unsatisfactory progress or conduct.

(F) Records of refunds of tuition, fees, and other charges made to the student.

(c) Institutions shall maintain and have available for inspection for a period of three years following their use complete records and copies of all advertising, sales, and enrollment materials used by or on behalf of the institution.

(d) If any educational institution proposes to discontinue its operation, the chief administrative officer of the institution shall file with the Oregon Educational Coordinating Commission the original or legible true copy of all such information as is customarily required by colleges when considering students for transfer or advanced study, including but not necessarily limited to, all records required in section (10) and subsection (a) of this section. In the event it appears to the Commission that any such records of an educational institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the Commission, the Commission may seek a court order to protect and, if necessary, take possession of the records. The Commission shall select at appropriate permanent location for such records.

(12) Advertising:

(a) The institution and its agents shall not utilize advertising of any type which is false or misleading, either by actual statement, omission, or insinuation.

(b) References to accreditation will be limited to accreditation currently held by the school through nationally recognized accrediting agencies as listed by the United States Department of Education.

(c) When an institution advertises that it is accredited it must identify the accrediting agency.

(d) An institution shall have records available to document any statements made through its advertising including salary and placement claims.

(e) An institution shall not advertise that it is in any way licensed, endorsed, recommended, approved, or accredited by the Oregon Educational Coordinating Commission.

(f) The insitution shall provide students and other interested parties with a brochure or catalog. The brochure or catalog must be revised and published at least every two years.

The following may be included in the brochure or catalog: "This institution has met the requirements of the Oregon Educational Coordinating Commission to grant degrees."

If any of the following items of information are not included in the catalog or brochure, it shall refer to other specific documents containing the omitted information:

(A) Name and address of the school;

(B) Date of publication;

(C) Admission requirements and procedures;

(D) A statement of tuition and other student charges related to enrollment such as deposits, fees, books and supplies, tools and equipment, and other charges for which a student may be responsible. This information may be presented as an addendum or insert to the main publication;

(E) A description of the extent and nature of part-time or full-time job placement assistance, if any, available to students or graduates;

(F) Specifics describing the availability of student housing, counseling and other student services, if any;

(G) A school calendar including beginning and ending dates of classes and programs, holidays, and other dates of importance;

(H) A statement of the objectives of the institution;

(I) A list of all institutional administrators and faculty members, including their titles and academic qualifications;

(J) A statement of institutional policy relative to standards of progress required of the student. This policy shall describe the grading system of the school, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress, a description of the probationary period, if any, and conditions for re-entrance for those students dismissed for unsatisfactory progress. A statement shall be made regarding progress records kept by the institution and furnished to the student;

(K) A statement of institutional cancellation and refund policy;

(L) A description of the available space, facilities and equipment;

(M) A description of the objectives, requirements, and length of each program offered.

(N) For each program or field of study that prepares students for a licensed or certified occupation, a statement that indicates whether or not the appropriate agency or association recognizes the program for purposes of licensing or certification in that occupation. For all such programs, this information must be provided at the beginning of each program description in the catalog, brochure, and supplementary publications.

(O) Policy and procedures relative to the granting of credit for prior learning if offered.

(P) A statement explaining the arrangements, or lack thereof, for transfer of the institution's credits to other institutions.

(Q) A description of the types of financial assistance available to students enrolled in the institution.

(R) Any other material facts concerning the school and the instruction which are reasonably likely to affect the decision of the potential student;

(13) Credit for Prior Learning:

(a) Institutions awarding credit for prior learning shall have clearly state policies relating to administrative responsibility, student eligibility, means of assessment, recording of results and transcripts, storage of documentation, student fees and maximum number of credits allowable.

(b) Credit for prior learning normally should be awarded in subject matter fields in which the institution offers comparable courses or curriculum and has available faculty expertise or where nationally validated examinations or other procedures for establishing credit equivalency can be relied upon. However, credit may be accepted when appropriately evaluated through contractual or other means.

(c) Systematic and rigorous procedures for assessing prior learning shall be used. They shall insure that learning is carefully articulated, documented, and measured in the context of the role of the institution and the educational objective of the student. Requirements must be specific that each student must demonstrate the learning achieved before credit is awarded.

(14) Requirements for all Associate, Baccalaureate and graduate degrees shall provide for an appropriate balance of credits between those earned in the major discipline and in general education. These requirements shall be in keeping with those generally employed by institutions offering similar degrees.

(15) Cancellation and Refund Policy. The institution shall maintain a fair and equitable policy in reference to refund of the unused portion of tuition fees and other charges in the event the student fails to enter the course, or withdraws at any time prior to completion of the course. Such a policy shall be in keeping with generally accepted practices of institutions of higher education.

(16) Other Information. The applicant shall provide any other information about the institution and its programs required by the Commission.

Stat. Auth.: ORS Ch. 348
Hist: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80

Review Procedures

583-30-040 (1) The Commission may send a representative or an examining or evaluation committee to inspect any institution of learning subject to ORS 348.835. The examining committee shall be comprised minimally of a Commission staff reviewer, or a designee; an institutional representative of a college accredited by the Northwest Association of Schools and Colleges; and a third party drawn from the general professional field of the institution undergoing review. In those instances in which a representative of the Commission or an examining committee has been assigned to inspect an institution, the representative's or committee's report shall be submitted as part of the documentation necessary for Commission action.

(2) In lieu of a review in accordance with part of the standards used by the Commission as listed in OAR 583-30-035, the Commission may acknowledge the adequacy of accreditation by an association recognized by the United States Department of Education.

(3) Final action for approval by the Commission will be held open to the public and the applicant institution shall be invited to attend.

Stat. Auth.: ORS Ch. 348
Hist: ECC 22, f. & ef. 12-22-75; ECC 26, f. & ef. 6-8-77; ECC 2-1980, f. & ef. 4-14-80

Revocation of Approval

583-30-045 Approval obtained under ORS 348.835 may be revoked for proper cause by the Commission at its discretion, after a hearing. Such hearing shall be held only after the institution of learning involved has been given 20 days' notice in writing of the time and place of such hearing.

Stat. Auth.: ORS Ch. 348
Hist: ECC 22, f. & ef. 12-22-75

HB

389

AMENDMENT

HB 389 (regulation of real estate brokers and salesmen)

ON page 2, at line 18:
INSERT a new *Sec 3 to read:

*Sec. 3. AS 08.88.081 is amended to read;
sec. 08.88.081. COMMISSION REGULATIONS.
The comm shall adopt regulations pertaining to the responsibilities of persons licensed under this chapter and the grounds for revoking or suspending a license. The comm shall also adopt regulations to carry out the other purposes of this chapter.

Renumber secs. of bill accordingly

((an alternative which would mean more changes in the bill [illegible] to conform)
OR (a) + (b) + (c) + new language as follows))

Introduced: 4/30/83
Referred: Labor & Commerce

AMENDED

IN THE HOUSE BY FURNACE

HOUSE BILL NO. 389

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of real estate brokers and salesmen."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.88.071(a)(3) is amended to read:

(3) after hearing, have the authority to reprimand a licensee or suspend or revoke the license of a licensee who

(A) with respect to a real estate transaction

(i) made a substantial misrepresentation;

(ii) made a false promise likely to influence, persuade, or induce;

(iii) in the case of a real estate broker, pursued a flagrant course of misrepresentation or made a false promise through an agent, associate real estate broker, or real estate salesman;

(iv) has engaged in conduct that is fraudulent or dishonest;

(v) violates AS 08.88.391;

(B) procures a license by deceiving the commission, or aids another to do so;

(C) has engaged in conduct in which the commission had no knowledge at the time the licensee was licensed demonstrating the licensee's unfitness to engage in the business for which the licensee is licensed;

(D) knowingly authorizes, directs, connives at or aids

in publishing, distributing, or circulating a material false statement or misrepresentation concerning the licensee's business or concerning real estate for sale in the licensee's business in this or any other state;

(E) if a real estate broker, wilfully violates AS 08.-88.171(d) or 08.88.291;

(F) if an associate real estate broker, claims to be a real estate broker, or, if a real estate salesman, claims to be a real estate broker or associate real estate broker;

(G) if a real estate broker, employs an unlicensed associate real estate broker or real estate salesman;

(H) if an associate real estate broker or real estate salesman, fails immediately to turn money collected in a real estate transaction over to the employing real estate broker;

* Sec. 2. AS 08.88.071(a)(3) is amended by adding a new subparagraph to read:

(I) violates a provision of this chapter;

* Sec. 3. AS 08.88.091 is amended by adding a new subsection to read:

(b) The commission may charge a fee for informational material published under this section to a person or organization that obtains more than five copies of the publication. The charge may not exceed the cost of publishing the copies and no charge may be required for the first five copies obtained.

* Sec. 4. AS 08.88.161 is amended by adding a new paragraph to read:

(9) for compensation, manage commercial or residential ~~real estate~~ homeowners association, condominium association, or similar organization.

* Sec. 5. AS 08.88.251(a) is amended to read:

(a) A licensee with active status [PERSON LICENSED BY THE COMMISSION] may obtain [BECOME] inactive status by completing [RETURNING

TO THE COMMISSION THE PERSON'S LICENSE CERTIFICATE AND] a form provided by the commission and submitting the form with the required fee to the commission. In the form, the licensee [PERSON] shall state the date on which the licensee [PERSON] intends to become inactive. The licensee's [PERSON'S] inactive status begins on the date stated. [THE COMMISSION SHALL ISSUE THE PERSON AN INACTIVE LICENSE CERTIFICATE.]

* Sec. 6. AS 08.88.251(c) is amended to read:

(c) A licensee with [PERSON WHO IS] inactive status may obtain [BECOME] active status by applying for [AN] active status with the commission [LICENSE] and paying the required fees. In the application form the licensee [PERSON] shall state the date on which the licensee [PERSON] intends to become active. The licensee's [PERSON'S] active status begins on the date stated. [THE COMMISSION SHALL SEND THE PERSON A LICENSE CERTIFICATE.] A licensee [PERSON] is entitled to change from an inactive to an active status without examination if the licensee [PERSON] has not been inactive more than three years. If the licensee [PERSON] has been inactive more than three years, the licensee [PERSON] is required to take an examination.

* Sec. 7. AS 08.88.291 is amended to read:

Sec. 08.88.291. LOCATION. A licensed real estate broker shall register with [INFORM] the commission [OF] the broker's principal office and [OF] any branch offices the broker maintains by completing and submitting a form provided by the commission [HAS]. The broker and each person with a license issued under this chapter who [THE ASSOCIATE REAL ESTATE BROKERS AND REAL ESTATE SALESMEN] the broker employs may do business only from [IN OR OUT OF] the broker's principal or branch [OFFICE AND THE BROKER'S BRANCH] offices. Failure of a real estate broker to maintain a place of business or inform the commission of its location and the names and addresses of all li-

censees employed by [UNDER] the broker [BROKER'S JURISDICTION] at the location are grounds for the suspension or revocation of the broker's license.

* Sec. 8. AS 08.88.331 is amended to read:

Sec. 08.88.331. MAKING OF TRANSACTIONS. A real estate salesman or associate real estate broker may make a real estate transaction only through the real estate broker who employs the real estate salesman or associate real estate broker. All money collected on behalf of the broker shall immediately be turned over to the broker or the broker's agent. All transactions in real estate by a real estate salesman or associate real estate broker shall be processed through the real estate salesman's or the associate real estate broker's employing real estate broker's office and shall be supervised by the real estate broker, whether the transactions are for the real estate salesman's or associate real estate broker's own use or the use of a client.

* Sec. 9. AS 08.88.351 is amended by adding a new subsection to read:

(b) The records required under this section of transactions that are for the broker or an employee of the broker shall be similar to and as complete as records of transactions for clients.

* Sec. 10. AS 08.88.421 is amended by adding new paragraphs to read:

(11) the developer of commercial or residential ~~real estate~~ condominium when acting as manager of the ~~real estate~~ A condominium ASSOCIATION;

(12) a member of the board of directors of a homeowner's association, condominium association, or similar organization when managing the real estate in the course of performing duties as a member of the board of directors.

* Sec. 11. AS 08.88.455(a) is amended to read:

(a) A licensed real estate broker, [OR] associate broker, or

$125.00

salesman when obtaining or renewing a real estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission in addition to the license fee, a bond fee not to exceed $125 [, AND A LICENSED SALESMAN, WHEN OBTAINING OR RENEWING A LICENSE, IN LIEU OF OBTAINING A CORPORATE SURETY BOND, SHALL PAY TO THE COMMISSION IN ADDITION TO THE LICENSE FEE, A BOND FEE NOT TO EXCEED $40]. After the fund reaches $250,000 the commission shall by regulation adjust the bond fees so that, taking into account anticipated expenditures for claims against the fund and real estate educational purposes, the fund is maintained at a level not less than $250,000.

* Sec. 12. AS 08.88.460 is amended by adding a new subsection to read:

(c) A claimant under this section shall pay a filing fee of $100 to the commission at the time the claim is filed. The filing fee shall be refunded if the commission makes an award to claimant from the real estate surety fund.

* Sec. 13. AS 08.88.261 is repealed.

Introduced: 4/30/83
Referred: Labor & Commerce

IN THE HOUSE BY FURNACE

HOUSE BILL NO. 389

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of real estate brokers and salesmen."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.88.071(a)(3) is amended to read:

(3) after hearing, have the authority to reprimand a licensee or suspend or revoke the license of a licensee who

(A) with respect to a real estate transaction

(i) made a substantial misrepresentation;

(ii) made a false promise likely to influence, persuade, or induce;

(iii) in the case of a real estate broker, pursued a flagrant course of misrepresentation or made a false promise through an agent, associate real estate broker, or real estate salesman;

(iv) has engaged in conduct that is fraudulent or dishonest;

(v) violates AS 08.88.391;

(B) procures a license by deceiving the commission, or aids another to do so;

(C) has engaged in conduct in which the commission had no knowledge at the time the licensee was licensed demonstrating the licensee's unfitness to engage in the business for which the licensee is licensed;

(D) knowingly authorizes, directs, connives at or aids

in publishing, distributing, or circulating a material false statement or misrepresentation concerning the licensee's business or concerning real estate for sale in the licensee's business in this or any other state;

(E) if a real estate broker, wilfully violates AS 08.-88.171(d) or 08.88.291;

(F) if an associate real estate broker, claims to be a real estate broker, or, if a real estate salesman, claims to be a real estate broker or associate real estate broker;

(G) if a real estate broker, employs an unlicensed associate real estate broker or real estate salesman;

(H) if an associate real estate broker or real estate salesman, fails immediately to turn money collected in a real estate transaction over to the employing real estate broker;

* Sec. 2. AS 08.88.071(a)(3) is amended by adding a new subparagraph to read:

(I) violates a provision of this chapter;

* Sec. 3. AS 08.88.091 is amended by adding a new subsection to read:

(b) The commission may charge a fee for informational material published under this section to a person or organization that obtains more than five copies of the publication. The charge may not exceed the cost of publishing the copies and no charge may be required for the first five copies obtained.

* Sec. 4. AS 08.88.161 is amended by adding a new paragraph to read:

(9) for compensation, manage commercial or residential real estate.

* Sec. 5. AS 08.88.251(a) is amended to read:

(a) A licensee with active status [PERSON LICENSED BY THE COMMISSION] may obtain [BECOME] inactive status by completing [RETURNING

TO THE COMMISSION THE PERSON'S LICENSE CERTIFICATE AND] a form provided by the commission and submitting the form with the required fee to the commission. In the form, the licensee [PERSON] shall state the date on which the licensee [PERSON] intends to become inactive. The licensee's [PERSON'S] inactive status begins on the date stated. [THE COMMISSION SHALL ISSUE THE PERSON AN INACTIVE LICENSE CERTIFICATE.]

* Sec. 6. AS 08.88.251(c) is amended to read:

(c) A licensee with [PERSON WHO IS] inactive status may obtain [BECOME] active status by applying for [AN] active status with the commission [LICENSE] and paying the required fees. In the application form the licensee [PERSON] shall state the date on which the licensee [PERSON] intends to become active. The licensee's [PERSON'S] active status begins on the date stated. [THE COMMISSION SHALL SEND THE PERSON A LICENSE CERTIFICATE.] A licensee [PERSON] is entitled to change from an inactive to an active status without examination if the licensee [PERSON] has not been inactive more than three years. If the licensee [PERSON] has been inactive more than three years, the licensee [PERSON] is required to take an examination.

CLEAN UP

* Sec. 7. AS 08.88.291 is amended to read:

Sec. 08.88.291. LOCATION. A licensed real estate broker shall register with [INFORM] the commission [OF] the broker's principal office and [OF] any branch offices the broker maintains by completing and submitting a form provided by the commission [HAS]. The broker and each person with a license issued under this chapter who [THE ASSOCIATE REAL ESTATE BROKERS AND REAL ESTATE SALESMEN] the broker employs may do business only from [IN OR OUT OF] the broker's principal or branch [OFFICE AND THE BROKER'S BRANCH] offices. Failure of a real estate broker to maintain a place of business or inform the commission of its location and the names and addresses of all li-

censees employed by [UNDER] the broker [BROKER'S JURISDICTION] at the location are grounds for the suspension or revocation of the broker's license.

* Sec. 8. AS 08.88.331 is amended to read:

Sec. 08.88.331. MAKING OF TRANSACTIONS. A real estate salesman or associate real estate broker may make a real estate transaction only through the real estate broker who employs the real estate salesman or associate real estate broker. All money collected on behalf of the broker shall immediately be turned over to the broker or the broker's agent. All transactions in real estate by a real estate salesman or associate real estate broker shall be processed through the real estate salesman's or the associate real estate broker's employing real estate broker's office and shall be supervised by the real estate broker, whether the transactions are for the real estate salesman's or associate real estate broker's own use or the use of a client.

* Sec. 9. AS 08.88.351 is amended by adding a new subsection to read:

(b) The records required under this section of transactions that are for the broker or an employee of the broker shall be similar to and as complete as records of transactions for clients.

* Sec. 10. AS 08.88.421 is amended by adding new paragraphs to read:

(11) the developer of commercial or residential real estate when acting as manager of the real estate;

(12) a member of the board of directors of a homeowner's association, condominium association, or similar organization when managing the real estate in the course of performing duties as a member of the board of directors.

* Sec. 11. AS 08.88.455(a) is amended to read:

(a) A licensed real estate broker, [OR] associate broker, or

salesman when obtaining or renewing a real estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission in addition to the license fee, a bond fee not to exceed $125 [, AND A LICENSED SALESMAN, WHEN OBTAINING OR RENEWING A LICENSE, IN LIEU OF OBTAINING A CORPORATE SURETY BOND, SHALL PAY TO THE COMMISSION IN ADDITION TO THE LICENSE FEE, A BOND FEE NOT TO EXCEED $40] After the fund reaches $250,000 the commission shall by regulation adjust the bond fees so that, taking into account anticipated expenditures for claims against the fund and real estate educational purposes, the fund is maintained at a level not less than $250,000.

* Sec. 12. AS 08.88.460 is amended by adding a new subsection to read:

(c) A claimant under this section shall pay a filing fee of $100 to the commission at the time the claim is filed. The filing fee shall be refunded if the commission makes an award to the claimant from the real estate surety fund.

* Sec. 13. AS 08.88.261 is repealed.

125.00 BROKER
125.00 SALESMAN

New § 3 of bill + renumber

add to .01: "The county shall also adopt regs to carry out the purposes of this chapter."

Collateral references. — 12 Am. Jur. 2d, Brokers, §§ 18-22. 58 Am. Jur. 2d, Occupations, Trades and Professions, §§ 21-23.
C.J.S., Brokers, §§ 6-24.

Sec. 08.88.161. License required. Unless licensed as a real estate broker, associate real estate broker, or real estate salesman, a natural person, foreign or domestic corporation, or partnership, or limited partnership, or other entity may not

(1) sell, exchange, rent, lease, auction, or purchase real estate;

(2) list real estate for sale, exchange, rent, lease, auction, or purchase;

(3) collect rent for the use of real estate;

(4) as a business, buy, sell, or deal in

(A) options in real estate; or

(B) options in improvements to real estate;

(5) assist in or direct the procuring of prospective buyers or the negotiation of a transaction which results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate;

(6) hold out to the public as being engaged in the business of doing any of the things listed in this section;

(7) attempt or offer to do any of the things listed in this section.

(8) Repealed by § 4, ch. 28, SLA 1982. (§ 1 ch 95 SLA 1964; am § 321 ch 108 SLA 1970; am § 324 ch 28 SLA 1974)

Cross references. — As to activities in aid of housing for minority groups, see AS 18.80.215.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 08.88.171. Entitlement to license. (a) A person is entitled to a real estate broker license if the person is a resident of the state, if the person passes the real estate brokers examination, if the person applies for a license within six months after the person has taken the real estate brokers examination, if the person has had at least 24 months of active and continuous experience as a licensed real estate salesman, if the person is not under indictment for, or seven years have elapsed since the person has completed a sentence imposed upon conviction of, forgery, theft, extortion, conspiracy to defraud creditors, or any other felony involving moral turpitude, and if the person is an owner of a real estate business or employed as a real estate broker by a corporation or a partnership, and if that corporation or partnership does not have an existing licensed broker. Unless the broker fails to pay the biennial renewal fee or unless the broker's license is suspended or revoked under AS 08.88.071(a)(3), the real estate broker's license continues in

Sec. 08.88.431. Definitions. In AS 08.88.011 — 08.88.500

(1) "real estate" means an interest or estate in land, corporeal or incorporeal;

(2) "commission" means the Real Estate Commission;

(3) Repealed by § 42 ch 167 SLA 1980.

(4) "lease" includes a lease that is a part of another transaction.

(5) "resident manager" means a person who resides on real property and manages it for the benefit of another person. (§ 1 ch 95 SLA 1964; am § 58 ch 218 SLA 1976; am §§ 32, 2 ch 167 SLA 1980)

Effect of amendments. — The 1980 amendment repealed paragraph (3), and added paragraph (5).

Article 4. General Provisions.

Section
421. Exceptions
431. Definitions

Sec. 08.88.421. Exceptions. AS 08.88.011 — 08.88.500 do not apply to

(1) a person who is not licensed under AS 08.88.011 — 08.88.500 who makes a real estate transaction with respect to real estate he owns or on his own behalf, unless the transaction involves land defined in AS 34.55.044(6) which is not in Alaska;

(2) an attorney in fact under a power of attorney authorizing the consummation of a specific real estate transaction; an attorney in fact may not act as such for more than two transactions in a calendar year;

(3) a lawyer performing his duties as a lawyer;

(4) a public official in the conduct of his official duties;

(5) a person acting as receiver, trustee, administrator, executor, or guardian;

(6) a person acting under court order;

(7) a person acting under the authority of a will or trust instrument;

(8) a person dealing in mineral rights transactions;

(9) each of the following:

(A) a domestic or foreign corporation, or a general or limited partnership; or

(B) a partner or regular employee of a domestic or foreign corporation or a general or limited partnership, when performing an act described in AS 08.88.161 in the regular course, or as an incident to, the management, sale or other disposition of real estate owned by the corporation or partnership; the exemption provided in this subparagraph does not apply to a person who performs an act described in AS 08.88.161 either as a vocation or for compensation if the amount of the compensation is dependent upon or directly related to the value of the real estate with respect to which the act is performed.

(10) a resident manager of rented real estate if his duties are limited to the negotiation of leases and rental agreements and the collection of rent for the use of the real estate and if he is

(A) employed by the owner of the real estate; or

(B) employed by, or engaged under contract with, a licensed real estate broker. (§ 1 ch 95 SLA 1964; am § 1 ch 38 SLA 1969; am § 19 ch 28 SLA 1974; am §§ 29—31 ch 167 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "who is not licensed under AS 08.88.011 — 08.88.500 who makes" for "making" near the beginning of paragraph (1), added "which is not in Alaska" at the end of paragraph (1); in paragraph (9), restructured the paragraph into present subparagraphs (A) and (B), added the introductory phrase, "each of the following", inserted "or a" preceding "general" in subparagraph (A), substituted a semicolon for a comma following "limited partnership" at the end of subparagraph (A), substituted "a domestic or foreign corporation or a general or limited partnership" for "one of these," and "an act" for "acts", deleted "however" following "the corporation or partnership", inserted "exemption provided in this subparagraph does not apply to a", and substituted "who performs an act described in AS 08.88.161 either" for "may not perform these acts", all near the middle of subparagraph (B), and substituted "act is" for "acts are" at the end of subparagraph (B); and added paragraph (10).

Amendments for HB-389

Page 2 Line 26 Add ", or a condominium Association, community Association, or any other type organization which manages commercial or residential real estate."

Page 4 Line 23 Add " or condominium Association, community Association or similar organization."

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 389
Title: Regs. of real estate brokers & salesme
Sponsor: Furnace
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Develop.
Program Category Affected: Public Protection
BRU, Program of Subprogram(s) Affected:
Real Estate Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE (to surety fund)	0	123.8	123.8	123.8	123.8	123.8

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: James L. Magowan, Executive Directo
Phone: 272-5508
Division: Real Estate Commission
Date:

Approved by Commissioner: Richard A. Lyon
Date: 5/10/83
Department: Commerce & Economic Development

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

3/8/83

FISCAL NOTE ANALYSIS OF HB 389

The surety fund is a self-sustaining fund not supported by general revenues. Fees are set by regulation, up to a maximum statutory limit, to cover expenditures and appropriations from the fund. The fund is currently showing a slight negative balance between revenue and expenditures.

Licenses issued and renewed remains the same as currently is the case.

This bill raises the maximum surety payment by salesmen to $125.00 which is what brokers currently pay.

These fees are for surety fund and educational programs only. The actual fees will be set by regulation to cover the expenditures of the fund. It is estimated that the actual fee will be $100.00 The estimated increase in revenue is $123,250 per year. In the event that heavy losses due to claims should deplete the fund, the fees could be adjusted to bring in (at current licensee numbers) 337,500 per year - an increase of 191,250 over current revenues.

CALCULATIONS OF REVENUES

Based on 2500 salesmen and 700 broker renewals plus 2000 new salesman licenses and 200 new broker licenses per biennium.

Current Revenues ($40 per salesman, $125 per broker)

Salesman Renewals	$100,000
Broker Renewals	87,500
New Salesmen	80,000
New Brokers	25,000
	$292,500/biennium
	$146,250/annualized

Projected Revenues @$100 uniform fee
- $540,000/biennium
- $270,000 annualized
- $123,750 annualized increase

Projected Revenues @$125 (the maximum) uniform fee
- $675,000/biennium
- $337,500 annualized
- $191,250 annualized increase

HB

426

MEMORANDUM State of Alaska

TO: Kenneth C. Moore
Director, Division of Insurance

DATE: May 26, 1983

FILE NO:

TELEPHONE NO:

FROM: Jim Jordan
Insurance Market Analyst

SUBJECT: HB 426 - comments

In the most part, the bill as introduced is substantially the same as my original draft. Some re-ordering was done but does not change the substance. However, I would recommend that four changes be made. Two of the changes, if not made, would make no difference in the meaning but are suggested to add more clarity. However, the other two suggested changes need to be made.

Suggested Amendments

1. p. 1., line 10; immediately following the word "A" add the word "group". (Not critical but would add more clarity.)

2. p. 1., line 14; following the word "unions" add the following words ", or by one or more employers and labor unions".

   (This is a necessary change to recognize the combination of employers and labor unions which represent the employees of that employer(s).)

3. p. 1., line 18; between the words "insurability" and "imposed" insert the words "as may be".

   (This is not critical but it adds more clarity. Without the amendment, it might appear that an insurer must apply evidence of insurability standards. Many group life contracts are issued without any requirements that evidence of insurability or good health be provided for each group member. It is a basic tenet of group insurance that with a large enough group of insureds a sufficient spread of risk is realized, thus obviating the necessity of individually, medically underwriting each person. I don't believe we want to impose this on the public or insurers when it is an actuarially sound principal.)

4. p. 1., line 28; change the cite "AS 21.48.070" to the correct cite "AS 21.48.170".

   (This is a necessary change. The citation in HB 426 is incorrect.)

HB 426 leaves in the specific criteria for debtor groups (AS 21.48.060) and for credit union groups (AS 21.48.070). The original draft did the same thing. This was done because of the unique nature of these types of groups and their specific relationship to AS 21.57. This is particularly the case for debtor groups.

I am attaching a marked up copy of HB 426, which includes the suggested amendments, as well as copies of my memoranda of November 26, 1982 to you and of May 18, 1983 to Jeff Day, and of my original draft.

Introduced: 5/25/83
Referred: Labor & Commerce

IN THE HOUSE BY HAYES

HOUSE BILL NO. 426

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to group life insurance; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.48.010(a) is amended to read:

(a) A group [NO] life insurance policy may not be delivered in this state insuring the lives of more than one individual unless

(1) the policyholder was formed for purposes other than obtaining insurance, or is a trust established by one or more employers or labor unions; or by one or more employers and labor unions

(2) the policy covers at least two individuals at the date of issue;

(3) an individual eligible for coverage is subject to uniformly applied standards of insurability imposed by the insurer; as may be

(4) amounts of group life insurance are determined based on some plan that will preclude individual selection; and

(5) the group life insurance contract is in compliance with the other applicable provisions of this chapter [DELIVERED TO ONE OF THE GROUPS AS PROVIDED FOR IN SECS. 20 - 60 OF THIS CHAPTER, AND UNLESS IN COMPLIANCE WITH THE OTHER APPLICABLE PROVISIONS OF THIS CHAPTER].

* Sec. 2. AS 21.48.010 is amended by adding new subsections to read:

(c) Insurance under a group life insurance policy may be extended to insure dependents. Notwithstanding AS 21.48.070, 170 only one certificate need be issued for delivery to an insured person if a

statement concerning a dependent's coverage is included in the certificate.

(d) In this section, "dependents" means the spouse and dependent children of an employee or member of the group.

* Sec. 3. AS 21.48.020 - 21.48.050 and AS 21.48.090 are repealed.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

MEMORANDUM State of Alaska

TO: Kenneth C. Moore, Director

DATE: November 26, 1982

FILE NO:

TELEPHONE NO:

FROM: Jim Jordan

SUBJECT: Group Life Insurance
Proposed Legislated Changes

Attached, please find the draft of the Act which amends AS 21.48, Group Life Insurance.

The proposed amendments to AS 21.48 accomplish the following:

1) The definition regarding who constitutes a duly formed group for the purposes of group life insurance is liberalized;
2) The ceiling on amounts of group life insurance for dependents is removed;
3) The group definitions applicable to group disability insurance contracts are indirectly liberalized pursuant to AS 21.54.060(4);
4) The provisions requiring some premium contribution by an employer/policyholder are eliminated; and
5) AS 21.48.060, debtor groups, and AS 21.48.070, credit union groups, remain intact and unchanged due to their unique character and relationship to credit life and credit disability (AS 21.57).

Of course, the underlying intent of the proposal is to provide for expanded availability of group life insurance. Conceiveably, a broader based portion of our population will have expanded means of acquiring life insurance coverage on an economical basis.

In my opinion, this proposal will not require increased appropriations for administration. In fact it may result in increased premium tax revenue. Master group contracts heretofore delivered in other states, covering Alaskan residents, in order to circumvent unfavorable provisions in our law, may, in the future, be issued in this state. By so doing, taxable, Alaska premiums could increase.

It should be noted that some unfavorable federal income tax implications could arise in the area of dependent group life. For amounts of dependent group life insurance provided by an employer in excess of $2,000, the premiums paid by the employer for such coverage would be taxed as income to the employee.

Opposition, if any, to this proposal would most likely come from the life insurance agent specializing in the sale of individual life insurance products. This opposition would be primarily "protectionist" in nature and easily countered.

Let me know if you would like to discuss this proposal in greater detail.

MEMORANDUM State of Alaska

TO	Mr. Jeff Day Assistant to the Speaker	DATE:	May 18, 1983
THRU:	Kenneth C. Moore Director of Insurance	FILE NO:	
THRU:	Richard Lyon Commissioner of Commerce & Economic Development	TELEPHONE NO:	
FROM:	Jim Jordan Insurance Market Analyst III	SUBJECT:	Proposed Group Life Insurance Legislation

Per our telephone conversation of May 10, 1983, the following will serve to explain certain defects in the current law which the proposed legislation is intended to rectify.

AS 21.48.010-230 set forth the various criteria regarding group life insurance. Similarly, AS 21.54.010-070 sets forth the criteria which apply to group disability insurance. Each of these chapters respectively establishes what types of entities or collections of persons constitutes a duly formed group. It is only these defined entities that may have a group master contract issued to it within the state. Most frequently, group life insurance and group accident and health insurance is marketed and issued as a "package".

AS 21.48 is constructed to define those eligible groups of persons within very narrow parameters. Conversely AS 21.54 is constructed so that a broader range of entities form duly constituted groups. In other words, it is possible for some types of groups to be proper groups for the purposes of group accident and health but not be eligible for group life insurance. An example of this situation is an "association" group for which group accident and health coverage may be legally written (AS 21.54.060(2)) but may not be eligible for group life insurance (AS 21.48.040).

This holds true for associations that are comprised of members who may not be necessarily employers. Examples of such associations could be bar associations, medical associations, pilots associations, or commercial fishermans associations. When interested in obtaining group insurance coverages, these types of associations are able to obtain coverage. This is accomplished by joining other associations outside of Alaska that have such coverages provided via group master contracts delivered in other jurisdictions. Alaska's insurance laws do not extend extra-territorially, so residents covered under these arrangements lose, to a certain degree, the local regulatory protection. (However, they may go to the insurance department in the state in which the master contract is delivered for consumer assistance.) Additionally, such arrangements may also result in less premium taxes being collected in Alaska.

AS 21.48.090 imposes maximum amounts of group life insurance which may be extended to the dependents of covered employees or members of a group. The amount is scheduled and increases by the age of the family member from $100 at under the age of 6 months to a maximum of $2,000 at

ages 5 years and older. These amounts were established by law in 1966 and certainly inflationary pressures alone would dictate the maximum amounts of coverage be increased. The proposed language would remove all maximums. Group insurance is primarily an employee benefit and may be subject to collective bargaining. It was felt that the insurance laws should not impose any artificial barriers in the negotiation or determination of employee benefits. Again, an employer may provide amounts of dependents group life insurance greater than that allowed by Alaska law by joining a multiple employer trust located in state allowing higher amounts. (We know this has been done.) Many states exist which have no such maximum for dependents group life insurance. One of the reasons for limiting the amount of dependent group life to $2,000 is due to federal income tax implications. In the situation where an employer pays the entire premium for dependents group life insurance, the IRS has ruled that so long as the coverage amount is incidental, no additional taxable income is incurred by the employee. The amount determined by the IRS as being incidental is up to a maximum of $2,000. (The same holds true for the amounts of group life insurance provided to employees except that no federal income tax liability accrues until the amounts of coverage exceeds $50,000.)

In general, AS 21.48 requires that the premium can not be entirely paid by employee contributions. The proposed language removes this requirement. This change was included for several reasons. First, an employer can in effect make this meaningless by contributing only 1¢ toward the premium cost for each employee. Second, some employee benefit programs contain a basic amount of group life insurance paid for entirely by the employer and an optional amount paid for entirely the employee. Current construction of AS 21.48 forces such coverages to be underwritten by one insurer in one master group contract. This may impede competition to a certain degree, particularly for larger employers. An example of this could be the State of Alaska plan for its employees where the various segments of the benefit package go out to competitive bid. One insurer may submit the lowest bid for the optional group life but may not be the lowest bidder on the basic group life. Therefore, the state could not award the contract for the optional group life to that insurer who is the lowest bidder and award a separate contract to another insurer who was the lowest bidder on the basic group life. Third, again,, an employer may circumvent this situation by joining an association or multiple employer trust sitused in another state. Last, AS 21.54 imposes no such requirement for group accident and health coverages.

It is felt that the proposed changes would help facilitate the extension of life insurance protection to a broader section of our population with no material loss in regulatory protection. Typically, group insurance is less costly than individual insurance contracts due to the administrative economies realized. Therefore, this proposal should help to provide a broader base of coverage at a cost more beneficial to the Alaskan resident.

Also, for your information, the proposed language is patterned after Colorado's group life law.

Please let me know if I may be of any further assistance.

Sincerely,

James J. Jordan
Insurance Market Analyst

JJJ/gw

HB

457

MAY 4, 1984

TO: JOHN

FROM: KEN

RE: HB 457 " MAKING AN APPROPRIATION TO THE IDITAROD TRAIL COMMITTEE.

HB 457 WAS FIRST INTRODUCED AS AN APPROPRIATION TO THE IDITAROD TRAIL COMMITTEE AS A GRANT FOR THE 1984 RACE. BY REQUEST OF THE SPONSORS, THE AMOUNT OF THE GRANT HAS BEEN INCREASED FROM 65 THOUSAND TO 72 THOUSAND AND THE DIRECTED TOWARD NEXT YEARS IDITAROD. THE TRAIL COMMITTEE HAS SUPPLIED A BRIEFING PAPER EXPLAINING HOW THE MONEY WOULD BE USED.

IDITAROD TRAIL COMMITTEE, INC

May 1, 1984

Mr. Ken Johnson
Administrative Assistant, Rep. John Cowdery
House Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Johnson,

Enclosed is a complete breakdown of our request for funding for the 1985 Iditarod Trail Sled Dog Race, classified under HB 457.

We appreciate the State's assistance in the past, as without it I don't believe Iditarod could have grown to be the international spectacle it has become.

A fact that should interest you is that data was gathered during this year's Race for a professional research firm which has volunteered its services to prepare an economic impact study for us. Rough estimates indicate that we generate around $3,000,000 in additional revenue for the State, alot of that benefitting the communities we pass through. A final accurate report should be completed by early next year.

Your assistance in the passage of HB 457 is greatly appreciated.

Sincerely yours,

Greg Bill

Greg Bill
Executive Director

GB/jp
Enclosure

Pouch X, Wasilla, Alaska 99687 — (907) 376-6166

1985 Iditarod Sled Dog Race Request

1. Trail

Each year ITC breaks and marks the Iditarod Trail from Settler's Bay to Shageluk or Ruby. We must find volunteers to complete, at cost, this project. Many different groups use the trail when it is opened. We need monies for machine rentals, expenses, gas, food, labor, and markings.

$14,000

2. Dog Care and Treatment

Last year over one thousand (1000) dogs left Fourth Avenue in Anchorage. About 700 arrived in Nome. All up the trail we have Veterinarians stationed to care for the dogs. Each Veterinarian has medication and equipment to treat emergencies and to preform autopsies if necessary. They also help the mushers keep their teams in top health. Veterinarians also check for illegal drugs, sending the samples to Cornell University for analysis. For Veterinarian expenses (food, lodging, transportation), medical supplies, autopsies, and sample analysis.

$13,000

3. Iditarod Air Force

Each year Aviation Insurance cost raises. The Iditarod Trail Committee must be protected, so we take out this Insurance for a month and a half. We purchase gas and oil for our planes on the trail. This does put money in the local economy. We request funding for pilot expenses (food, lodging) gas, oil, and Aviation Insurance.

$20,000

4. Liability Insurance

We must have protection for spectators, municipalities, Bureau of Land Management, our volunteers, and Iditarod Trail Committee. Our dog truck is also insured.

$ 8,000

5. Brochures and Press Packets

Because of increasing race exposure, we are getting more requests, year round, for information on Iditarod. We would like to put together an "Amateur's Guide to Iditarod". This would include the whys, whens, and how comes of the Iditarod Sled Dog Race. For the press packets we try to provide them with interesting information and facts about the race. We also inform the uninformed the trials and tribulations of traveling up the trail.

$ 5,000

6. Race Personnel Identification

With all the spectators and press following the race, it is hard to identify our race personnel. Not only is it confusing for mushers, but many times we end up with unauthorized charges on our accounts.

$ 2,000

7. Office Equipment and Expenses

The cost of operating our office year round is expensive. We would like to include general office supplies in this request.

Also included is one (1) word processor and one (1) electric typewriter.

$10,000

TOTAL REQUEST $72,000

HB

475

CURRENT LINE

Vol. 4, No. 5 Palmer, Alaska

MATANUSKA ELECTRIC ASSOCIATION, INC.

January 20, 1983

FROM THE BOARD ROOM

In its regular meeting of January 11, 1983 the Board of Directors took the following action:

*approved a contract with D. A. Vaughn Company, Real Estate Investors of Eagle River to market the unused Eagle River building and land.

*approved the Association's new Equity Management Plan which will see capital credits retirement checks mailed this year for the first time in MEA history.

*agreed to meet January 25 in a special meeting to consider the rate design and Annual meeting items. The APUC has given the Association a February 15 deadline for action on rate design.

*appointed the 1983 nominating committee. Committee members are: Don Savage, 376-4719; Linda Olson, 745-3355; Dorothy Jones, 733-2395, E. L. "Turk" Mayfield, 495-6413; Dale Briggs, 694-2311; Lorry Pollock, 745-4036; and Mac Stevens, 733-2281.

*approved the write-offs of uncollectable accounts for December making the total for 1982 $68,448.79.

*declined to approve the removal of Director Sandvik from the Board of Directors as requested by Director Staudenmaier.

*set the next regular meeting of the Board as Tuesday, February 22, 1983 at 7:00 p.m.

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PERSONNEL POINTERS

"Your Indirect Paycheck" for 1983

This information is intended to give you an idea of what MEA pays its nonunion personnel in addition to your salary. This "indirect paycheck" very often goes unnoticed and as a result, unused. They represent a real part of your total compensation which you should be aware of.

For purposes of conceptualizing these programs, an exempt employee was imagined who has worked four years at MEA, and makes $30,000 per year. All variations were excluded, such as overtime, salary increases, program changes, price increases or decreases, etc. Exact percentages and figures will vary. If you would like to know what your figures would be, Personnel would be happy to compute them for you.

PROGRAM	RATES ON $30,000 SALARY	ANNUAL $ AMOUNT IN ADDITION TO AN EMPLOYEE'S BASE SALARY OF $30,000
1. NRECA Retirement Pays 2% X salary X # of years worked	16.8%	$ 5,040
2. Required Employer Costs		
A. FICA: Social Security costs 6.7% of wages up to $35,700	6.7%	$ 2,010
B. FUTA: Federal Unemployment insurance costs .7% of wages up to $6,000 =$42.00 ÷ $30,000 =	.14%	$ 42
C. Alaska Unemployment Insurance costs 1.66% on wages up to $20,000 = 335 ÷ $30,000 =	1.12%	$ 335
D. Workmen's Comp Insurance for exempt employees costs .69% of 1st $400 of weekly wages: $400 X 52 X .0069 = 144 ÷ $30,000 =	.48%	$ 144

ERS (continued from page 2)

3.	Alaska Public Utility Insurance Trust Group health plans includes health, vision, dental & dependents life insurance	7.32%	$ 2,197
4.	NRECA Long Term Disability Pays 50% of your salary while disabled	1.31%	$ 393
5.	NRECA Savings Plan MEA required payments	1.00%	$ 300
6.	NRECA Life and AD&D Pays 2X salary	.82%	$ 246
7.	MEA Self-Insured Short-Term Disability Pays $75 per week for 13 weeks. Present cost unknown but would have averaged in the past about .14% for this employee.	.14%	$ 42
8.	Miscellaneous Benefits Employee training, physical exams, jury duty, etc. are estimated to be at least 1%	1.00%	$ 300
	TOTALS	36.83%	$11,049

$11,049 ÷ $30,000 = 36.83% means MEA pays 36% in additon to this employee's wage.

Annual Leave While payments for time away from work won't increase the amount paid to this employee, such payments significantly increase overall costs. If this employee was a temporary employee, not eligible for leave, this benefit could be valued as follows:

MEA 4 year leave accrual rate = 24 days X 8 hours = 192 hours per year. $30,00 ÷ 2080 = 14.42 hours X 192 = $2,769.21 ÷ $30,000 = 9.23%

PERSONNEL POINTERS (continued from page 3)

This means annual leave could be valued by this employee at $2,769 per year and constitutes approximately 9.23% of his/her compensation.

Similarly, Holiday Pay could be viewed as follows:

MEA holidays = 11 days per year X 8 = 88 hours per year X $14.42 hourly rate = $1,269 per year ÷ $30,000 = 4.22%. Holiday pay could be considered to constitute 4% of this employee's pay and be worth $1,269 annually.

If you add these percentages to the above figures, (36.83% + 9.33% + 4.22% = 50.38), an employee could consider receiving the equivalent to one-half of his or her salary in the form of employee benefits. The costs for this example would be approximately $15,087.

For a $20,000 per year employee MEA pays an additional $9,042 per year, or 41.3%. When leave is considered the amount is $11,734 or 54.76%.

For a $40,000 per year employee MEA pays an additional $13,537 or 33.85%. With leave considered, the additional amount is $18,921 or 47.31%.

For a $50,000 per year employee MEA would pay $15,645 or 31.27%. When leave is added the amount would be $22,375 or 44.73%.

These figures, when averaged, equal 35.81% or $12,318, without leave or holidays. With leave and holidays added the averages are 49.29% or $17,029.

The buying power of these group benefits significantly increases their value as well. We attempted to price a comparative private group health plan and were given such widely varying rates, (from $400 up per month) that comparisons were impossible. There appears to be no private dental plans available anywhere. Most of these figures are not subject to taxes, thus increasing the value of them substantially.

MEA is pleased to be able to contribute these benefits in appreciation for the skilled and dedicated service received from our all employees. If you have any questions on what these figures mean or how you can obtain the maximum benefit from the varied coverage provided for you, please contact the Personnel Office.

COMMENDATIONS

Please join us in applauding these employees for doing an outstanding job. Their efforts have earned glowing words of praise from our members. We need to give as much attention to compliments as we do to complaints.

Employee	Member Compliments
Bill West, Eng. Tech II	"An A+ in public relations and professional expertise"
Ernie Jameson, General Foreman	"Mr. Jameson was very courteous and helpful"
Larry McDuffey, Foreman Larry Corcoran, Lineman Dennis Illies, Apprentice	"...could not believe how nice everyone had been to him..."
Terry Smith, ROW Agent II	"...thoroughly impressed with the professionalism Terry used in solving the problem.

New employees

Please join us in welcoming these new employees:

John Parker, Manager of Administration will start February 9, 1983.

Joan Bennett and Donna Mathena, Work Experience trainees, who started first week of January.

Adam Heller, Brian Shandler and Sherry Thom, high school trainees in Operations, who started January 17, 1983.

Also new in Operations: three temporary journeymen linemen; Bill J. Parker, Tony Tessaro, and John Donovan. Our new apprentice lineman Mike Hodsdon took Mike Thrasher's spot; he's now a journeyman. New apprentice Lee Stevens fill Larry Schnell's spot. Larry is now attending apprenticeship school.

Retirement Planning Seminar I'm sorry to report that the seminar we had planned for Saturday, January 22nd had to be cancelled. We could not recruit enough participation to cover the fixed expenses. We do hope to reschedule this seminar and we are considering inviting employees from a couple of other organizations so that participation will be higher. Thank you for your interest. Personnel will contact employees again when we have a new date.

To ALL HEA Personnel

A thank you is not enough but ---- thanks to everyone for all your help and support. You're a great bunch of people!!!

Bill

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FIRST AID TO BURN VICTIMS

The care of a burn victim depends on the percentage of burned body surface involved. In no instance should grease (butter, lard, vaseline, mineral oil, or other ointments) be applied to a burn. For first and second degree burns:

1. Immerse the burned part in cold water for two to five minutes.
2. Cover the burn with a sterile dressing or clean sheet.
3. Use cool, wet applications for relief of pain.
4. Transport the patient to a hospital.

If the victim has third degree burns, cover the burned area with a sterile dressing or a clean sheet. Use cool wet applications for relief of pain and be prepared to treat the victim for shock. Cover the victim with a blanket and elevate his feet. Get the victim to a hospital as soon as possible.

Joanie's Feline Orphanage Going Out of Business!

Due to overcrowded conditions at home I MUST sever my affectionate association with four of my cattiest friends: FREE TO GOOD HOMES Momma cat, now neutered; Punkin, intact female 8 month old kitten. She's grey and gold like a crazy quilt, but great personality. Also intact female, very pretty Siamese looking, about 6 months old, affectionate and gentle Crystal. Photos are available in the hall outside Personnel. I dread the worst fate for them so if you would ask around, I'd appreciate it. Or better yet, take one yourself, they make wonderful pets.

"...and right now I'm 'specially thankful we've got an automatic 10-cycle all-electric dish-washer."

INTRO TO ELECTRIC UTILITY CIRCUITS

Jim Hall is presently teaching a class on Intro to Electric Utility Circuits each Wednesday from 4-6 p.m. until mid-March. Anyone wishing to attend this class should contact Jim at X66.

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NANCY DOLLARD'S CHEESE FILLED COFFEE CAKE

1 pkg. dry yeast
1/4 cup lukewarm water
1 teaspoon honey
1 egg lightly beaten
3/4 cup margarine
2 cups flour
1/4 teaspoon salt

Filling

2 pkgs. (8 ounces each) cream cheese
1/2 cup honey
1/2 teaspoon vanilla
1 teaspoon fresh lemon juice

Mix yeast, water and honey. Let stand for 10 minutes. Add egg. Cut margarine into flour and salt and mix well. Add yeast mixture and blend completely. Divide into 2 balls and roll each into 8 x 10 inch rectangles.

Filling

Combine cream cheese, honey, vanilla and lemon juice. Spread half of filling on each rectangle and fold by taking each long side toward the middle, making sure the sides overlap a little. Fold the ends up about 1 1/2". Bake immediately at 375° for 25 minutes. Serve warm. Makes 10 - 15 servings.

(Nancy was a temporary employee in Consumer Accounts and mailed us this recipe.)

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CAR OPERATING COST

Americans spent an average $2,790 last year to operate a car, equal to 34.5 cents a mile for an estimated 8,081 miles traveled, a Hertz Corp. study shows.

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December 7, 1982

To: Robert L. Husted, President
Matanuska Electric Association, Inc.

From: Elden Sandvik, Chairman
Board Compensation Committee

Subject: Committee Recommendations

The following are our recommendations regarding MEA's compensation programs and practices.

1) Discontinue the practice of offering exempt employees paid time off in return for overtime hours worked (comp time). We recommend that compensatory time for exempt employees be eliminated and that the General Manager establish appropriate means of alternate compensation for unique circumstances.

2) In order to protect the tax exempt status of the Deferred Compensation program, it needs to be limited to department managers and the General Manager. This change should be made effective on January 1, 1983. Those employees who are in the program as of that date will have "grandfather rights" in the plan. Also effective January 1, 1983, MEA should not prepay an employee's yearly deferred compensation contribution. It should now be paid on a quarterly basis. MEA should continue to pass on its reduced benefit costs to deferred compensation participants using NRECA formulas.

3) The present savings program is structured such that all employees are enrolled in it. We recommend the installation of a participation requirement of a minimum of one (1) percent for the savings plan. This change permits MEA to switch from paying the entire cost at the start of the year to paying throughout the year and should result in a cost savings of approximately $11,550 (per TB&A report). This $11,550 should be applied to offset benefit cost increases resulting from our following recommendations.

4) MEA presently has duplicate employee coverage in life insurance and accidental death and dismemberment programs. Employees presently have two times annual salary in life and accidental death program from NRECA. They also have $2,000 in life insurance and $4,000 in accidental death from Alaska Public Utilities Insurance Trust (APUIT). The APUIT programs are comparatively expensive when compared to their small benefit. APUIT also offers an accident and sickness program which pays $75.00 per week for thirteen weeks in the event of a non-work related injury or sickness. The monthly cost per employee is $5.30 for the above benefits.

It is our recommendation to drop the above APUIT programs and apply the funds to improvements in APUIT's dental coverages as follows:

A)	Increase the annual maximum dental benefit from $1,500 to $2,000; cost $1.07/employee/month.	$1.07
B)	Increase dental coverage from 80% to 90%; cost $4.54/employee/month.	4.54
		$5.61

This represents an increase of $.31 per month per employee ($5.61 - 5.30 = $.31).

It should be noted that the Board of Trustees of APUIT recently increased the vision benefit schedule by ten percent at a cost of $.50 per month per employee.

It is our recommendation that we self-insure the accident and sickness program until an alternate program can be developed. MEA's leave policy presently provides coverage for a portion of this area and NRECA's long-term disability program provides coverage after thirteen weeks. It is our recommendation that we self-insure to the $75.00 level that APUIT provided and utilize the same requirements. It is anticipated that a program can be developed which provides coverages for emergency leave situations for a reasonable cost.

5) MEA incurs an extensive financial unfunded liability when an employee does not utilize their vacation accruals. It is our recommendation we require employees to take at least ten working days off per year and provide a maximum accrual of 60 days.

6) We recommend improving the NRECA Retirement Program in order to increase the rewards for long service to the Association. The improvements are:

   1) Add a cost-of-living allowance which maintains an employee's retirement income at a uniform level regardless of inflation.
   2) Add a thirty year and out or retirement at 62 feature. This means someone starting to work at MEA at age 20 could retire at age 50 or anyone can retire at age 62.

      This program can be made effective on January 1, 1984, and increase costs by about $10,000 or about .5% of payroll. This increase can be offset by the next recommendation.

7) In an effort to save money, the presently distressed Social Security System is now using a strict definition of total disability. A person now has to be unable to do any type of work to be totally disabled. In the past they have used a more liberal definition. MEA's present NRECA Long-Term Disability program pays 50% of an employee's salary. Social Security payments, if any, are added to that 50%. It appears that many of our employees would now be unable to rely on any income from Social Security if they were totally disabled for more than thirteen weeks.

It is our recommendation that MEA select NRECA's LTD program which increases the percentage paid to employees from 50% to 66 2/3%. Social Security payments, if any, would be subtracted from NRECA payments. The most an employee could make while disabled would be 66 2/3% of prior salary to a maximum of $4,500 per month. By selecting the increased rate, many future employees should receive a greater benefit than is now provided.

In those cases when an employee receives money from Social Security, NRECA saves that amount. That potential savings is passed on to MEA in a reduction in LTD rates of about 1.36%. That savings can be applied to the improvements in the retirement plan and other cost increases resulting from our recommendations. Therefore, it can be noted that the overall savings between items six and seven is .86% (.5% - 1.36% = .86%). We recommend this change be made as soon as NRECA programs permit.

8) We recommend MEA adopt the attached October-November 1982 salary survey and the resultant 1983 salary plan. We recommended that the overall organizational comp-ratio for MEA not exceed an average of .98. This does not mean employees will be restricted to this level, but that the General Manager is responsible for assuring that the average comp-ratio for the overall organization does not exceed .98. Fiscal considerations and member realities require MEA to take a conservative approach to its compensation programs. The .98 comp-ratio will also help establish a level of competance required in the activities of the Association employees. This area can be monitored by the Board, as a monthly report will be provided to the Board of Directors.

9) We recommend continuing to use the performance guide presently in use, copy attached for your information. This guide sets possible percentages given to employees who achieve various levels of performance. Increases in these figures cannot be supported by the CPI. Decreases at this time would cause MEA wages to fall behind the prevailing market.

10) We recommend discontinuing immediately lump sum payments for COLA, performance increases, and salary increases. We further recommend no change in policy regarding leave cash-in and commendation awards providing such commendation awards are only considered for extremely unique situations.

11) We also recommend that staff be directed to prepare the necessary policy revisions to implement the above changes as may be approved by the Board of Directors.

cc: Committee Members - Harvey Bowers
Tamie Miller

1982 Salary Survey

October/November 1982

Completed by

MEA Personnel Office

1. Position descriptions were summarized and approved by employees and supervisors.

2. Thirteen comparable firms were contacted to gain assistance and position questionaires mailed out.

3. Follow-up included individual meetings and phone calls.

4. Position matches were mutually determined with the comparable firms. Actual salaries were then obtained and averaged to establish the new mid-point for each grade level.

Organizations Surveyed

1. Copper Valley Electric
2. Golden Valley Electric
3. Kodiak Electric
4. Homer Electric
5. Matanuska Telehone
6. Chugach Electric
   (no data returned)
7. Municipality of Anchorage
   (ML&P)
8. Municipality of Fairbanks
   (ML&P)
9. Mat-Su Borough
10. Mat-Su School District
11. State of Alaska
12. Alascom
13. Retherford & Associates
    (now International
    Engineering)

In the following report each organization is referred to by an alphabetical letter to protect the salary confidentiality of the survey participants.

1982 Salary Survey

Establishing Grade I

Benchmark Positions	Actual Salaries Reported Matching Our Position	
General Accounting Clerk	$20,700	Employer A
	22,464	Employer C
	23,192	Employer I
General Office Clerk II	$25,750	Employer D
	22,464	Employer I
	18,832	Employer L

Average of above $22,233

Present mid-point $22,300

Recommend increasing Grade I as follows:

1. $22,300 new mid-point
   22,300 old mid-point

   $ 000 grade increase

2. Plus 4% of the 1982 rates to allow for 1983 wage increases.

1983 Recommended Grade I:

Minimum: $19,700 Mid-point: $23,100 Maximum: $26,700

1982 Salary Survey

Establishing Grade II

Benchmark Positions	Actual Salaries Reported Matching Our Position	
Billing Clerk	$28,059	Employer D
Cashier	$20,700	Employer A
	28,059	Employer D
Engineering Clerk	$24,900	Employer A
	24,252	Employer B
	22,283	Employer L
General Office Clerk III	$22,464	Employer I
Purchasing Assistant	$26,208	Employer I
Receptionist/PBX Operator	$17,184	Employer A
	27,653	Employer D
Word Processing Operator	$23,425	

Average of above $24,107

Present mid-point $23,600

Recommend increasing Grade II as follows:

1. $24,100 new mid-point
   23,600 old mid-point

   $ 500 grade increase

2. Plus 4% of the 1982 rates to allow for 1983 wage increases.

1983 Recommended Grade II:

Minimum: $21,320 Mid-point: $25,000 Maximum: $28,80?

982 Salary Survey

Establishing Grade III

Benchmark Positions	Actual Salaries Reported Matching Our Position	
Accounts Payable Clerk	$24,900	Employer A
	27,643	Employer D
	27,144	Employer I
	23,100	Employer L
Payroll Clerk	$33,100	Employer A
	26,208	Employer I
	23,100	Employer L

Average of above $26,456

Present mid-point $25,800

Recommend increasing Grade III as follows:

1. $26,400 new mid-point
   25,800 old mid-point
   $ 600 grade increase

2. Plus 4% of the 1982 rates to allow for 1983 wage increases.

1983 Recommended Grade III:

Minimum: $23,500 Mid-point: $27,400 Maximum: $31,500

1982 Salary Survey

Establishing Grade IV

Benchmark Positions	Actual Salaries Reported Matching Our Position	
Engineering Tech II	$30,784	Employer I
	32,460	Employer M
Draftsman	$34,529	Employer B
	32,073	Employer D
	30,000	Employer I
	28,080	Employer M

Average of above $31,320

Present mid-point $29,600

Recommend increasing Grade IV as follows:

1. $31,300 new mid-point
   29,600 old mid-point

   $ 1,700 grade increase

2. Plus 4% of the 1982 rates to allow for 1983 wage increases.

1983 Recommended Grade IV:

Minimum: $27,600 Mid-point: $32,500 Maximum: $36,800

1982 Salary Survey

Establishing Grade A

Benchmark Positions	Actual Salaries Reported Matching Our Position	
Consumer Service Supervisor	$28,828	Employer B
	28,205	Employer C
Credit Officer	$25,875	Employer B
	33,500	Employer I
Personnel Assistant	$33,900	Employer B
	22,000	Employer I

Average of above $28,718

Present mid-point $33,900

Recommend increasing Grade A as follows:

No change indicated.

1983 Recommended Grade A:

Minimum: $27,100 Mid-point: $33,900 Maximum: $40,700

1982 Salary Survey

Establishing Grade B

Benchmark Positions	Actual Salaries Reported Matching Our Positions	
Field Engineer	$38,584	Employer I
General Accounting Supervisor	$41,000	Employer A
	31,512	Employer B
	47,822	Employer D
	36,500	Employer I

Average of above $39,083

Present mid-point $38,500

Recommend increasing Grade B as follows:

1. $39,000 new mid-point
   38,500 old mid-point

   $ 500 grade increase

2. Plus 4% of the 1982 rates to allow for 1983 wage increases.

1983 Recommended Grade B:

Minimum: $32,500 Mid-point: $40,500 Maximum: $48,500

1982 Salary Survey

Establishing Grade C

Benchmark Positions	Actual Salaries Reported Matching Our Position	
Chief, Accounting Services	$39,300	Employer B
Chief, Computer Services	$50,000	Employer I
Construction Engineer	$50,833	Employer I
Personnel Officer	$42,800	Employer I
Purchasing Agent	$46,100	Employer A
	44,886	Employer E
	43,200	Employer L
Right of Way Agent III	$38,600	Employer A
	38,000	Employer I
	42,000	Employer L
Warehouse Superintendent	$49,727	Employer D
	49,900	Employer L

Average of above $44,695

Present mid-point $44,200

Recommend increasing Grade C as follows:

1. $44,700 new mid-point
   44,200 old mid-point

   $ 500 grade increase

2. Plus 4% of the 1982 rates to allow for 1983 wage increases.

1983 Recommended Grade C:

Minimum: $37,300 Mid-point: $46,400 Maximum: $55,600

1982 Salary Survey

Establishing Grade D

Benchmark Positions	Actual Salaries Reported Matching Our Position	
Distribution Engineer	$54,270	Employer B
	46,846	Employer D
	55,000	Employer I
	55,600	Employer L
General Foreman	$67,170	Employer B
	53,726	Employer D
	53,803	Employer E
	54,000	Employer I
	53,400	Employer L

Average of above $54,868

Present mid-point $52,300

Recommend increasing Grade D as follows:

1. $54,800 new mid-point
   52,300 old mid-point

   $ 2,500 grade increase

2. Plus 4% of the 1982 rates to allow for 1983 wage increase.

1983 Recommended Grade D:

Minimum: $46,000 Mid-point: $56,900 Maximum: $67,900

1982 Salary Survey

Establishing Grade E

Benchmark Positions	Actual Salaries Reported Matching Our Position	
Manager of Administration	$62,500	Employer A
	59,460	Employer B
	62,500	Employer I
Manager of Electric Operations	$70,380	Employer B
	59,898	Employer E
Manager of Engineering	$58,000	Employer A
	67,140	Employer B
	61,000	Employer I
	65,700	Employer L

Average of above $62,953

Present mid-point $61,500

Recommend increasing Grade E as follows:

1. $62,900 new mid-point
   61,500 old mid-point

   $ 1,400 grade increase

2. Plus 4% of the 1982 rates to allow for 1983 wage increases.

1983 Recommended Grade E:

Minimum: $52,600 Mid-point: $65,400 Maximum: $78,200

MATANUSKA ELECTRIC ASSOCIATION, INC.

SALARY PLAN

Exempt Positions

Effective: 1/1/83

	MEA GRADE	EVALUATION POINTS	SALARY RANGE ($000's) MINIMUM	MID-POINT	MAXIMUM
MANAGEMENT					
General Manager	N/A	N/A	Determined by Contract		
Manager of Administration Manager of Electric Operations Manager of Engineering Services	E	900+	$52,600	$65,400	$78,200
ADMINISTRATIVE - PROFESSIONAL - SUPERVISORY - TECHNICAL					
Distribution Engineer Manager, District Office Manager, Member & Public Relations General Foreman Real Estate & Properties Officer Substation/Transmission Engineer	D	700-899	46,000	56,900	67,800
Chief of Accounting Services Chief of Computer Services Construction Engineer District Engineer Engineering Office Coordinator Executive Secretary Personnel Officer Purchasing Agent Right of Way Agent III Right-of-Way Clearing & Maintenance Officer Staff Engineer Warehouse Superintendent	C	550-699	37,300	46,400	55,600
Consumer Accounts Supervisor Field Engineer General Accounting Supervisor	B	450-549	32,500	40,560	48,500
Consumer Service Supervisor Credit Officer Personnel Assistant Right of Way Agent II	A	300-449	27,100	33,900	40,700

APPROVED BY MEA BOARD OF DIRECTORS, Robert L. Husted

Robert L. Husted, President

DATE OF APPROVAL: December 7, 1982

DATE EFFECTIVE: January 1, 1983

MATANUSKA ELECTRIC ASSOCIATION, INC.

SALARY PLAN

Non-Exempt Positions

Effecti.e: 1/1/83

	MEA GRADE	EVALUATION POINTS	SALARY RANGE ($000's) MINIMUM	MID-POINT	MAXIMUM
Engineering Tech II Draftsman	IV	710+	$27,600	$32,500	$36,800
Accounts Payable Clerk Computer Specialist Distribution Engineering Clerk Payroll Clerk Plant Accountant Senior Billing Clerk Staff Accountant Work Order Clerk	III	560-709	23,500	.7,700	31,500
Billing Clerk Cashier Computer Service Clerk Consumer Accounts Clerk Consumer Services Clerk District Services Clerk Engineering Clerk Engineering Technician I General Office Clerk IV General Office Clerk III Member Relations Assistant Operations Clerk Purchasing Assistant Receptionist/PBX Operator Word Processing Operator	II	460-559	21,320	25,000	28,800
Data Entry Clerk General Accounting Clerk II General Office Clerk II General Office Clerk I Service Records Clerk	I	410-459	19,700	23,100	26,700
Trainee (Minimum Wage)	T	$3.85 hr. +			

APPROVED BY MEA BOARD OF DIRECTORS, Robert L. Husted

Robert L. Husted, President

DATE OF APPROVAL: December 7, 1982

DATE EFFECTIVE: January 1, 1983

SALARIES OF
STATE OFFICIALS
and
EXEMPT POSITIONS

July 1983

GOVERNOR/LT. GOVERNOR'S OFFICE

CLASS. CODE	TITLE	RANGE	STEP	SALARY
	GOVERNOR.....	30	F	$81,648
	LT. GOVERNOR.....	28	F	76,188
1016	Legislative Assistant.....	26	A	59,532
1017	Special Assistant I.....	19	A	38,316
1018	" " II.....	22	A	46,800
1019	" " III.....	24	A	53,568
1158	Executive Resident Manager.....	16	A	31,032
1008	Election Supervisor I.....	21	A	43,788
1009	" " II.....	24	A	53,568
1010	" Deputy Director.....	24	A	53,568

LEGISLATURE

	LEGISLATORS.....	22	A	46,800
	Ombudsman.....	28	E	73,620

COURT SYSTEM

	Supreme Court Justices.....	30	F	81,648
	Superior Court Judges.....	28	E	73,620
	District Court Judges.....	26	C	63,636

COMMISSIONERS

	COMMISSIONERS (Cabinet Level)..	28	E	73,620
	Deputy Commissioners.....	28	A	63,636
1980	Assistant Commissioners.....	27	A	61,548
1917	Special Asst. to Commissioner I	21	A	43,788
1918	" " " " II	23	A	50,040
	Public Utility Commissioners...	26	C	63,636
	Transportation Commissioners...	26	C	63,636

DIRECTORS

	Division Directors.....	26	A	59,532
2202	Office Director.....	26	A	59,532
2203	Asst. Office Director.....	24	A	53,568
2170	Dep. Director-Housing Assistance	22	A	46,800

4S SENTOR BASE SALARIES 60,662.50

4S CONGRESSMEN SALARIES 69,800.00

EXECUTIVE DIRECTORS *

1012	Public Offices Commission.....	22	A	46,800
1013	" " " Asst.	18	A	35,760
1943	Public Broadcast Commission.....	26	A	59,532
1998	Older Alaskans Commission.....	24	A	53,568
1999	Council on Domestic Violence....	24	A	53,568
2327	Real Estate Commission.....	18	A	35,760
2348	Public Utilities Commission.....	26	A	59,532
3509	Historical Commission.....	26	A	59,532
3510	Arts Council.....	23	A	50,040

MISCELLANEOUS

1151	Secretary I.....	10	A	21,084
1152	" II.....	11	A	22,452
1155	Executive Secretary I.....	12	A	23,796
1154	" " II.....	14	A	27,024
1156	" " III.....	16	A	31,032
1157	" " IV.....	18	A	35,760
1981	Pioneer Home Manager.....	20	A	40,932
4204	Human Rights Field Rep. I.....	13	A	25,332
4206	" " " " II.....	16	A	31,032
4207	" " " " III.....	18	A	35,760
4208	" " " " IV.....	20	A	40,932
4209	" " " " V.....	21	A	43,788
4205	" " Technician.....	12	A	23,796
6199	Chief - Subsistence.....	24	A	53,568
7110	Associate Attorney I.....	17	A	33,252
7111	" " II.....	19	A	38,316
7795	Training Coordinator (Police Standards Council.....	19	A	38,316
8665	Deputy Pipeline Coordinator.....	25	A	57,384

* Exec Directors for:
Alaska Housing Finance
" Industrial Authority
" Resources Corp.

Their salaries are set by their Board of Directors. Not locked into state system.

MATANUSKA ELECTRIC ASSOCIATION, INC.
Palmer, Alaska

COMPOSITION OF TOTAL PAYROLL

1984 BUDGET

UNION PAYROLL: (55 Positions)		
Direct Wages	$	2,588,922
Annual Leave Accrual		201,159
Sub - Total		2,790,081
Other Fringe Benefits Employer's Payroll Tax Expense (FICA, ESC, FUTA)		164,397
Workmen's Compensation Insurance		47,895
IBEW Benefits (Health & Welfare, Training, Pension)		452,285
Total	$	3,454,658
NON-UNION PAYROLL: (131 Positions)		
Direct Wages	$	4,095,047
Annual Leave Accrual		318,185
Sub-Total		4,413,232
Other Fringe Benefits- Employer's Payroll Tax Expense (FICA, ESC, FUTA)		260,036
Workmen's Compensation Insurance		75,758
Health Insurance & NRECA Benefits (Pension, Life Insurance, LTD, Savings)		921,386
Total	$	5,670,412*
Grand Total	$	9,125,070*

* Revised 12/83

MATANUSKA ELECTRIC ASSOCIATION, INC.
Palmer, Alaska

COMPOSITION OF TOTAL PAYROLL
1983 BUDGET

UNION PAYROLL:	
Direct Wages	$ 2,058,134
Annual Leave Accrual	181,940
Subtotal	2,240,074
Other Fringe Benefits -	
Employer's Payroll Tax Expense (FICA, ESC, FUTA)	127,399
Workmen's Compensation Insurance	62,155
IBEW Benefits (Health & Welfare, Training, Pension)	369,023
Total	$ 2,798,651
NON-UNION PAYROLL:	
Direct Wages	2,721,767
Annual Leave Accrual	240,604
Subtotal	$ 2,962,371
Other Fringe Benefits -	
Employer's Payroll Tax Expense (FICA, ESC, FUTA)	168,477
Workmen's Compensation Insurance	82,197
Health Insurance & NRECA Benefits (Pension, Life Insurance, LTD, Savings)	667,375
Total	$ 3,880,420

1984 - 9,125,070
1983 - 6,679071 1983 6,679.71
2,445,999 Diff 1984

November 24, 1982

To: James F. Palin
General Manager

From: D. C. Schneider
Personnel Officer

Subject: Monthly Report - Personnel Office

November's activity centered around our annual salary survey and trying to encourage targeted survey participants to promptly furnish requested data. For a wide spectrum of excuses about half of the participants have not promptly furnished requested material. The survey will be finalized at the end of November.

Other activities in November included:

1. An NRECA employee benefit workshop, which covered recent changes and practices in NRECA programs;

2. Planning activities for the holiday season, such as the Christmas party and a community service activity;

3. Preliminary preparation of a training program for the contract dispatchers.

In addition, work was done on benefit programs, policies and job descriptions.

Total Employees as of October 31:		Total Employees anticipated on November 30:	
Non-union	68	Non-union	68
Union	30	Union	30
	98		98
On Leave	1	On Leave	1
	99		99
Temporary		Temporary	
Non-union	7	Non-union	7
Union	9	Union	4
	115		110

MATANUSKA ELECTRIC ASSOCIATION, INC.

Palmer, Alaska

GENERAL MANAGER

1984 BUDGET

DESCRIPTION	AMOUNT
NRECA/CFC Annual Meeting San Francisco, Ca.	$ 300
NRECA/CFC Region IX (District 9) Annual Meetings- San Diego, Ca.	300
ARECA Annual Meeting-Anchorage	300
ARECA Interim Meeting-Juneau	1,000
REA Visits, Washington, D.C. (4 Trips)	800
Legislative Session-Juneau (2)	1,200
In-State Meetings (Other than above)	2,000
Miscellaneous Itemized Business Expenses	2,000
Contingency	3,000
TOTAL	$ 10,900

MATANUSKA ELECTRIC ASSOCIATION, INC.

Palmer, Alaska

EMPLOYEE EDUCATIONAL/TRAVEL BUDGET - 1984
COMBINED

DESCRIPTION		1984
General Manager's Office	$	16,400
Electric Operations		9,500
Engineering Services		8,000
Administrative Services		12,100
TOTAL	$	46,000

MATANUSKA ELECTRIC ASSOCIATION, INC.
Palmer, Alaska

EXPENSE BUDGET - 1983
GENERAL MANAGER

DESCRIPTION	AMOUNT
NRECA/CFC Annual Meetings - Las Vegas, Nevada	$ 1,400
NRECA/CFC Region IX (District 9) Annual Meetings - Salt Lake City, Utah	1,100
ARECA Annual Meeting - Cordova	400
ARECA Interim Meeting - Juneau	600
REA Vists, Washington, D.C. (2 Trips)	4,000
Legislative Session - Juneau (1)	500
In-State Meetings (Other Than Above)	2,000
Miscellaneous Itemized Business Expenses	3,000
Contingency	3,000
TOTAL ESTIMATED EXPENDITURES	$ 16,000

Note - Above Estimated Expenditures Exclude Labor

APPROVED:

_____
Robert L. Husted, President
Matanuska Electric Association, Inc.

Date: _____

MATANUSKA ELECTRIC ASSOCIATION, INC.

Palmer, Alaska

BOARD OF DIRECTORS

1984 BUDGET

DESCRIPTION	AMOUNT
NRECA/CFC Annual Meeting San Francisco, Ca. (5 Directors)	$ 11,250
NRECA/CFC Region IX Annual Meeting San Diego, Ca. (4 Directors)	7,000
ARECA Annual Meeting-Anchorage-(5 Directors)	2,200
ARECA Interim Meeting-Juneau-(4 Directors)	3,800
NWPPA Annual Meeting - (2 Directors)	2,800
NRECA/NWPPA Seminar/Conference-(3 Directors)	4,950
Regular Monthly Board of Directors Meetings, Including Mileage; 12 meetings - (7 Directors)	2,200
Special Board of Directors Meetings, Including Mileage; 8 Meetings - (7 Directors)	1,500
In-State Meetings (Other than above)	8,000
Miscellaneous Expenses	1,000
Contingency	2,000
TOTAL	$ 46,700

MATANUSKA ELECTRIC ASSOCIATION, INC.
Palmer, Alaska

EXPENSE BUDGET - 1983
BOARD OF DIRECTORS

DESCRIPTION		AMOUNT	
NRECA/CFC Annual Meetings - Las Vegas, Nevada (3 Directors)	$2166.00	$ 6,500	Dif 766.66
NRECA/CFC Region IX (District 9) Annual Meetings - Salt Lake City, Utah (3 Directors)	$2833.00	8,500	$1733.00
ARECA Annual Meeting - Cordova (4 Directors)	950.00	3,800	550.00
ARECA Interm Meeting - Juneau (3 Directors)	666.00	3,200	466.00
NWPPA Annual Meeting - Kalispell, Montana (2 Directors)	1250.00	2,500	
NRECA/NWPPA Seminar/Conference (2 Directors)	2000.00	4,000	
Regular Monthly Board of Directors Meetings, Including Mileage; 12 Meetings (7 Directors)		2,200	
Special Board of Directors Meetings, Including Mileage; 8 Meetings (7 Directors)		1,500	
In-State Meetings (other than above)		4,000	
Miscellaneous Expenses		2,000	
Contingency		2,000	
TOTAL ESTIMATED EXPENDITURES		$40,200	

APPROVED:

_____
Robert L. Husted, President
Matanuska Electric Association, Inc.

Date: _____

MATANUSKA ELECTRIC ASSOCIATION, INC.

Palmer, Alaska

PROFESSIONAL SERVICES

1984 BUDGET

DESCRIPTION		AMOUNT
Wholesale & Retail Rate Consultants		
COS - W/HEA	$ 15,000	
Additional	15,000	
Contingency	10,000	
		$ 40,000
Certified Public Accountants		
Audit	20,000	
General	7,000	
		27,000
Engineering Consultants		
Power Supply Study W/HEA	20,000	
Subdivision/Extension Design	500,000	
System Improvements	40,000	
SCADA	170,000	
		730,000
General Counsel		
Wholesale Power Matters	20,000	
APUC Matters	8,000	
Labor Matters	15,000	
General	40,000	
		83,000
TOTAL		$ 880,000

MATANUSKA ELECTRIC ASSOCIATION, INC.
Palmer, Alaska

EXPENSE BUDGET - 1983
CONSULTANT SERVICES

DESCRIPTION		AMOUNT
Rate and Administrative Consultants		
Rate -	$30,000	
Administrative -	15,000	
		$ 45,000
Legal Consultants		
Labor Matters	15,000	
General	60,000	
		75,000
Certified Public Accountants		
Audit	25,000	
Miscellaneous	2,000	
		27,000
TOTAL		$147,000

MATANUSKA ELECTRIC ASSOCIATION, INC.
Palmer, Alaska

MEMBER AND PUBLIC RELATIONS ACTIVITIES

1984 BUDGET

DESCRIPTION		AMOUNT
Publications		* 8,000
Advertising		5,000
Ruralite		48,960
Lamplighter/Bill Stuffers		24,920
Film and Photos		500
Equipment Rental		800
School Programs		4,000
Annual Meeting -		
Postage	$ 6,800	
Professional Fees	15,000	
Publications and Ballots	12,000	
Advertising	3,000	
Film and Photos	100	
Rentals	1,000	
Other (Refreshments, Child Care, etc.)	3,000	
		40,900
Member Advisory Committee -		
Consultant Fees	$ 5,000	
Mileage	500	
Postage	1,000	
Materials	575	
		7,075
Miscellaneous		5,000
TOTAL		* $145,155

ACCOUNT	FIRST	SECOND	THIRD	FOURTH	TOTAL
Customer Service & Info. Expense	$ 25,200	$ 25,289	$ 25,289	$ 25,289	$101,155
Administrative & General Expense	10,000	33,000	500	500	44,000
TOTAL	$ 35,200	$ 50,289	$ 25,789	$ 25,789	$145,155

* The Above Amounts do not Include Labor for MEA Staff

MATANUSKA ELECTRIC ASSOCIATION, INC.

P.O. BOX 1148

PALMER, ALASKA 99645

TELEPHONE
(907) 745-3231

MEMBER INFORMATION BULLETIN 84-3

February 15, 1984

TO: ALL MEMBER-CONSUMERS

FROM: MEMBER AND PUBLIC RELATIONS OFFICE

SUBJECT: APUC APPROVED RATES

SINGLE-PHASE SERVICE

Facilities Charge[(1)]: $15.00 per month

Energy Charge: First 1300 kWh at 7.505¢* per kWh
Over 1300 kWh at 5.804¢* per kWh

THREE-PHASE SERVICE

Facilities Charge $40.00 per month

Demand Charge: $3.61 per kW

Energy Charge: All kWh at 4.483¢* per kWh

SEASONAL SINGLE-PHASE SERVICE

Annual Facilities Charge: $180.00
Energy Charge: As outlined under single-phase service

*Add to the stated rate a wholesale power cost rate adjustment of 0.917¢ (9.17 mills) per kWh approved by the Alaska Public Utilities Commission.

(1) FACILITIES CHARGE: The facilities charge is made by the Association to help cover costs to the Association which are not directly related to energy sales. These fixed costs include interest on debt, depreciation and cost of building equity. In 1980, the test year on which the facilities charge is based, these costs amounted to approximately $5.4 million annually for single-phase service. When these costs are equally allocated to each single-phase account, they amount to approximately $38 per month per account. The facilities charge recovers part of that $38.

For more information contact one of these offices:

Palmer District Office
745-3231

Eagle River District Office
694-2161

Big Lake District Office
892-6021

Matanuska Electric Association, Inc.
P. O. Box 1148
Palmer, Alaska 99645

December 12, 1983

To: James F. Palin
General Manager

From: John Parker
John Parker
Manager of Administration

Subject: Tom Staudenmaier's Request for Rate Information

The following is a recap of single-phase rates in effect during 1983 and a brief description of why they changed.

1. Rates effective 1/1/83:

Facilities charge	$20.00
1st 1300 kWh	5.325¢/kWh
over 1300 kWh	3.834¢/kWh
WPCRA	1.390¢/kWh

These rates reflect the interim increase received in U-82-60, MEA's rate case filed in September 1982.

2. No change in regular rates. WPCRA increased to 1.43¢/kWh. This change was effective March 11. The rate changed because of the reconciliation of wholesale power for the fourth quarter of 1982.

3. No change in regular rates. WPCRA changed to .033¢/kWh. This reflects the first quarter 1983 reconciled rate of 3.084¢/kWh for wholesale power and a change in the base rate from 1.6202¢/kWh to 3.051¢/kWh.

4. Single-phase rates effective June 24, 1983:

Facilities Charge	$15.00
1st 1300 kWh	7.393¢/kWh
over 1300 kWh	5.723¢/kWh
WPCRA	0.033¢/kWh (no change)

This change in the permanent rates reflects the increase allowed in Bench Order, U-82-60. This increase was granted subject to reconsideration of one or two items in the rate case.

MATANUSKA ELECTRIC ASSOCIATION, INC.
Palmer, Alaska

MEMBER AND PUBLIC RELATIONS ACTIVITIES
1983 BUDGET

Publications		$ 1,200
Advertising		9,500
Ruralite		32,400
Lamplighter		11,000
Film and Photos		500
Equipment Rental		700
School Programs		2,000
Annual Meeting -		
Postage	$ 5,300	
Professional Fees	5,000	
Publications and Ballots	6,000	
Advertising	3,000	
Film and Photos	100	
Rentals	1,000	
Other (Refreshments, Child Care, etc.)	5,000	25,400
Member Advisory Committee -		
Consultant Fees	$ 5,000	
Mileage	750	
Postage	100	5,850
Miscellaneous		2,800
TOTAL		$ 91,350

Account	First	Second	Third	Fourth	Total
Customer Service & Informational Expense	$14,950	$14,950	$14,950	$14,950	$59,800
Administrative & General	14,238	14,238	1,537	1,537	31,550
Total	$29,188	$29,188	$16,487	$16,487	$91,350

MATANUSKA ELECTRIC ASSOCIATION, INC.

P.O. BOX 1148

PALMER, ALASKA 99645

TELEPHONE
(907) 745-3231

March 13, 1984

Mr. Thomas G. Staudenmaier
Box 1603
Soldotna River, Alaska 99577

Dear Mr. Staudenmaier:

Subject: Recall Petition

In reference to the recall petition which you submitted to MEA on February 14, 1984, on behalf of the Staudenmaier Electric Merger Committee, please be advised that the Board has reviewed Attorney Roger Kemppel's legal opinion dated March 1, 1984. A copy was provided to you with my letter of March 5. In addition, at its regular monthly meeting on March 13, 1984, the Board accepted Mr. Kemppel's ruling that the recall petition does not contain valid charges, and rejected the petition for this reason, as well as for other reasons mentioned in the attorney's letter.

Should you desire to pursue or contest this decision, I suggest that you have your attorney contact Mr. Kemppel so that the petitioners and the Association can seek judicial resolution of any disputes.

Sincerely,

Elden Sandvik
Secretary-Treasurer

JFP/cmb

cc: Board of Directors
Roger Kemppel

MATANUSKA ELECTRIC ASSOCIATION, INC.

P.O. BOX 1148

PALMER, ALASKA 99645

TELEPHONE
(907) 745-3231

CERTIFICATE

I, Elden Sandvik, do hereby certify that I am Secretary-Treasurer of Matanuska Electric Association, Inc., and that on the 14th day of February, 1984, the attached petition for removal of Matanuska Electric Association, Inc. Board members, Robert L. Husted, Barbara J. Miller, Elden Sandvik, Joy M. Foster, Wm. Harvey Bowers, Phil O'Neill and Robert C. Johnson, 115 pages, was personally delivered to me as Secretary of the cooperative by Tom Staudenmaier, MEA member.

3-1-84

ELDEN SANDVIK, SECRETARY-TREASURER
MATANUSKA ELECTRIC ASSOCIATION, INC.

MATANUSKA ELECTRIC ASSOCIATION, INC.
P.O. BOX 1148
PALMER, ALASKA 99645
TELEPHONE
(907) 745-3231

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 5, 1984

Mr. Thomas G. Staudenmaier
P. O. Box 408
Eagle River, Alaska 99577

Dear Mr. Staudenmaier:

In reference to the recall petition which you submitted to MEA on February 14, 1984, on behalf of the Staudenmaier Electric Merger Committee, please be advised of the following:

1. We have verified that the petition contains an adequate number of member signatures, in accordance with MEA's Bylaws; and

2. At a special meeting of the Board of Directors of Matanuska Electric Association, Inc., held on February 23, 1984, the Board advised management to provide you a copy of MEA General Counsel Roger Kemppel's legal opinion as soon as it was available and, further, that the Board would officially accept Mr. Kemppel's legal opinion at the March 13, 1984 Board meeting.

3. A copy of Mr. Kemppel's opinion letter dated March 1, 1984 is enclosed. On page 11, Mr. Kemppel advised the Board that the recall petition does not contain valid charges and that the Board may consider rejecting this recall petition for this reason, as well as for other reasons mentioned in the letter. Based on Mr. Kemppel's letter, I believe that the Board will reject the recall petition.

You will note in the opinion letter that Mr. Kemppel suggests that you have your attorney contact him should you decide to contest the Board's action, so that the petitioners and the Association can seek judicial resolution of any disputes.

Please feel free to contact Mr. Kemppel or me if you have any questions.

Sincerely,

James F. Palin
General Manager

Enclosure

cc: MEA Board of Directors
Roger Kemppel, General Counsel

Law Offices of
Kemppel, Huffman & Ginder
255 E. Fireweed Lane, Suite 200
Anchorage, Alaska 99503

Roger R. Kemppel
Richard R. Huffman
Peter C. Ginder
Ronald L. Baird
Darrel J. Gardner

March 1, 1984

Telephone
(907) 277-1604
(907) 276-1605

Board of Directors
Matanuska Electric Association, Inc.
P.O. Box 1148
Palmer, Alaska 99645

Re: Recall Petition

Dear Board Member:

The Association received a recall petition from the Staudenmaier Electric Merger Committee on February 14, 1984, calling for the removal of the entire Board of Matanuska Electric Association, Inc. This petition purports to bring the following charges against the present Board of Directors of the Association:

"Charge 1: With failing to conduct the business of Matanuska Electric Cooperative, Inc. in a manner as to prevent an unreasonable increase in the electric bills and charges of the members and that you have entered into a course of action as to be unfamiliar with any alternative to the unreasonable burden placed upon the members, in particular senior citizens and parties of low fixed incomes.

"Charge 2: You have allowed the management of the corporation (MEA) to communicate incorrect and misleading information with the intent to subvert the election process (1983 Ballot for Directors). Marion Bowen Pippel officially withdrew in writing from running as a candidate for the Board of Directors of said Cooperative (MEA). Marion Bowen Pippel's name was deliberately placed on the 1983 MEA Ballot by management for the purpose of splitting the vote. Marion Bowen Pippel received 249 votes.

"Charge 3: You have allowed said Cooperative (MEA) General Manager James F. Palin a salary increase from $73,800.00 to $78,000.00 per year--a $4,200.00 per year increase, at the April 12th, 1983 Board Meeting.

"Charge 4: You have lost the trust and confidence of Matanuska Electric Association Co-op owners."

Reid 3-5-84

action of the director to constitute "cause," that action must be wrongful or malfeasance in office. In a similar electric cooperative case, the Ohio court ruled that the above language in effect required that there be cause, and went on to define what actions on the part of a cooperative board of directors amounted to cause. In Neal Taylor, et al., Plaintiffs, vs. Buckeye Rural Electric Cooperative, et al., Defendants, 79-CL108 (Ohio 1979), the court found:

> An examination of the instant charges, however, indicates a failure to direct any specific charge of malfeasance, misfeasance, or nonfeasance against any board member. All charges read the same against every board member, and, in effect, constitute disagreement with the policies of the trustees in operation of the business. But such disagreement with policy is the basic reason for the election of the trustees at regular annual meetings. The section entitled 'Removal' indicates a more radical and emergency type of procedure and not a method by 135 members to completely replace all of the trustees and officers of a multi-million dollar business. The resulting chaos can well be imagined.... Defendants claim all trustees, otherwise lawfully in office, can be replaced at a special meeting without any cause being stated. This section interpretation would make an annual meeting and election of trustees meaningless. Any faction constituting 10% of the company membership could, at any special meeting, replace the whole board of trustees of the company and therefore, the whole company management. This could go on indefinitely. The words 'removal' and 'charges' and 'present evidence' indicate that no such intention

> But unless the officer has been guilty of some acts of misfeasance or nonfeasance he is not subject to removal, nor is a director subject to removal by reason of acts committed in another office.... Of course a director cannot be removed on the ground of incompetency where the facts show the contrary. 2 W. Fletcher, Cyclopaedia of the Law of Private Corporations, §356 (1982).

As the Buckeye case, supra, indicated, there is no power to remove a director if the basis of the charge is that the person bringing the charge disagrees with the policies of the director. Such disagreement does not rise to the level of cause. If shareholders were to attempt to remove a director merely because they disagree with policies which that director supports, then the special relationship that a director has with the corporation would cease to exist. That relationship has been described by courts as that of a trustee or fiduciary:

> While the ordinary rules of law relating to an agent are applicable in considering the acts of a board of directors in behalf of a corporation when dealing with third persons, the individual directors making up the board are not mere employees but a part of an elected body of officers constituting the executive agents of the corporation. They hold such office charged with the duty to act for the corporation according to their best judgment, and in so doing they cannot be controlled in the reasonable exercise and performance of such duty. As a general rule, the stockholders cannot act in relation to the ordinary business of the corporation, nor can they control the directors in the exercise of the judgment

As long as the members of the board of directors use their best business judgment to make a decision for the benefit of a corporation as a whole, that action is not a breach of their fiduciary or trust responsibility to the membership, even though a significant number of members may have voted differently on a particular issue. Proper charges, as required by Article IV, Section 5, of the Association's Bylaws, require more than mere disagreement. As the court stated in the case of Fox v. Codey, 252 N.Y. Supp. 395:

> Removal may not be based upon whim or caprice. Mistake or misunderstanding probably will not suffice. Substantial grounds showing breach of trust must be shown.

Clearly the law does not permit the stockholders to create a sterilized board of directors. Manson v. Curtis, 119 N.E. 559 (N.Y. 1918); Fells v. Katz, 175 N.E. 516, 517 (N.Y. 1931). Accordingly, a director cannot be removed merely because the majority of the association members who attend the meeting happen to disagree with a particular policy.

Turning to the charges presented by the above petition, it should be noted at the outset that identical charges are being brought against each and every member of the Board of Directors. This of itself is not dispositive (since it is at least possible that each member of the Board may have committed identical acts of malfeasance in office), but it does at least lead to the suggestion that these charges are more in the nature of a purge or takeover rather than bona fide charges of individual misconduct as required by law.

The first charge contained in the attached petition alleges that the directors failed to prevent an unreasonable increase in electric bills and charges. This charge does not allege any specific examples of mismanagement or other misconduct. The case law makes it clear that when the shareholders attempt to remove a director for cause, there must be service of

> SECTION 8. Manager. The Board may appoint a manager who may be, but who shall not be required to be, a member of the Association. The manager shall perform such duties and shall exercise such authority as the Board may from time to time vest in him.

The setting of salaries is a policy decision which is reserved by statute and the Bylaws of the Association to the Board of Directors. Article VI, Section 10(a), of the Association's Bylaws provides:

> SECTION 10. Compensation. (a) The powers, duties and compensation of officers, agents and employees shall be fixed by the Board subject to the provisions of these Bylaws with respect to compensation for a board member. [Emphasis added]

As noted earlier, only the Board of Directors has the power and the right to manage the business and affairs of the Association. The power to set and establish salaries is an essential part of this right to manage the business and affairs of the Association. Unless it is alleged that the setting of salaries is done fraudulently, the members of the Association may not review this type of decision by recall petition. Again, this charge merely represents a disagreement with the Board of Directors as to the proper level of the general manager's salary. Such a disagreement clearly does not constitute legal cause for removal of a Board member.

The fourth charge states that the Board has "lost the trust and confidence of Matanuska Electric Association Co-op owners." Once again, this charge is vague and so broad as to effectively deny the Directors charged the opportunity of meeting the accusation. Auer v. Dressel, supra; Campbell v. Loew's, Inc., supra. This charge in effect alleges a widespread "disagreement" with the presently-seated Board. Again, mere disagreement with the policies of the Board does not constitute

Should the Board resolve to reject the above petition as insufficient at law, I would suggest that you immediately arrange to provide Staudenmaier's petition committee with a copy of this opinion and request that that committee have its attorney contact me as soon as possible if it decides to contest the Board's action. It is important that the Staudenmaier Electric Merger Committee and the Association seek judicial resolution of any outstanding disagreement at the earliest possible time in order not to delay the Association's annual membership meeting scheduled to be held April 27, 1984, and in order to ensure the widest possible notice and membership participation at that meeting.

Sincerely,

KEMPPEL, HUFFMAN & GINDER

Roger R. Kemppel

Roger R. Kemppel
Counsel for Matanuska Electric Association, Inc.

RRK:la

Attachment: Copy of February 1984 Petition

cc: James F. Palin
General Manager, MEA

STAUDENMAIER'S

ELECTRIC MERGER COMMITTEE

P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-2322

Help us cut your electric bill 67% to 80% per month

How?

Full Implementation of

STAUDENMAIER'S ELECTRIC MERGER PLAN

Sign

RECALL PETITION

Removal — Seven (7) Members of

Matanuska Electric Association

Board of Directors

The above sponsor is duly authorized to circulate the petition

the best and brightest ideas energizing in Alaska!

STAUDENMAIER'S

ELECTRIC MERGER COMMITTEE

P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-2322

PETITION FOR REMOVAL—Seven (7) Members of Matanuska Electric Association Board of Directors

Authority Cited — MEA bylaws. ARTICLE IV Board Members. ***Section 5. removal of board member by members.*** (Alaska Statutes) ***Title 10*** Chapter 25 Electric and Telephone Co-operative Act. ***Article 1. Sec. 10.25.140*** (Board of Directors).

We, the undersigned members of Matanuska Electric Association, Inc. do hereby bring the following charges against the hereinafter listed Directors of Matanuska Electric Co-operative, Inc. (sometimes referred to as Officers or Trustees) and request the removal of such Directors by reason thereof. We hereby direct you, **Elden Sandvik,** Secretary-Treasurer to inform said Director, **Robert L. Husted,** President (MEA), **Barbara T. Miller, Phil O'Neill, Harvey Bowers, Joy Foster** and **Robert C. Johnson** in writing, of the charges hereinafter set out so that the President of MEA, Robert L. Husted shall call a special meeting of the members pursuant to **Article III Section 2 Special Meetings** of the By-Laws of Matanuska Electric Co-operative, Inc. affording said Directors an opportunity at the meeting to be heard in person or by counsel and to present evidence in respect to the charges, granting us the undersigned the same opportunity.

After said meeting and pursuant to Section 2 of Article III of the By-Laws of said Co-operative, we, the undersigned members of said Co-operative (MEA) petition **Robert L. Husted, President** of said Corporation, to call a special meeting of the members and cause notice of such meeting to be given as provided in said By-Laws for the purpose of voting on the question of removal of said Directors pursuant to Section 3 of Article III aforesaid.

That the following Directors are charged by the undersigned members. . .

CHARGE 1: With failing to conduct the business of Matanuska Electric Co-operative, Inc. in a manner as to prevent an unreasonable increase in the electric bills and charges of the members and that you have entered into a course of action as to be unfamiliar with any alternative to the unreasonable burden placed upon the members, in particular, senior citizens and parties of low fixed incomes.

CHARGE 2: You have allowed the management of the corporation (MEA) to **communicate incorrect** and **misleading information** with the intent to **subvert** the **election process** (1983 Ballot for Directors.) Marion Bowen Pippel officially withdrew in writing from running as a candidate for the Board of Directors of said Co-operative (MEA) Marion Bowen Pippel's name was deliberately placed on the 1983 MEA Ballot by management for the purpose of **splitting the vote.** Marion Bowen Pippel received **249** votes.

CHARGE 3: You have allowed said Co-operative (MEA) GENERAL MANAGER **James F. Palin a salary increase from $73,800.00 to $78,000.00 per year —a $4,200.00 per year increase,** at the April 12th, 1983 Board Meeting.

CHARGE 4: You have lost the trust and confidence of Matanuska Electric Association Co-op owners.

That these charges are brought against the following Directors and the removal of all of the following named Directors, the same being all of the Directors, (sometimes referred to by the Company as Trustees or Officers) are hereby requested and petitioned to be removed to wit:

Robert L. Husted, P.O. Box 132, Talkeetna, Alaska 99676. **Barbara T. Miller,** P.O. Box 151, Wasilla, Alaska 99687. **Phil O.O'Neill,** P.O. Box 2229, Palmer, Alaska 99645. **Harvey Bowers,** P.O. Box 1960, Wasilla, Alaska 99687. **Joy Foster,** P.O. Box 274, Wasilla, Alaska 99687. **Robert C. Johnson.** P.O. Box 456, Eagle River, Alaska 99577. **Elden Sandvik,** P.O. Box 512, Palmer, Alaska 99645.

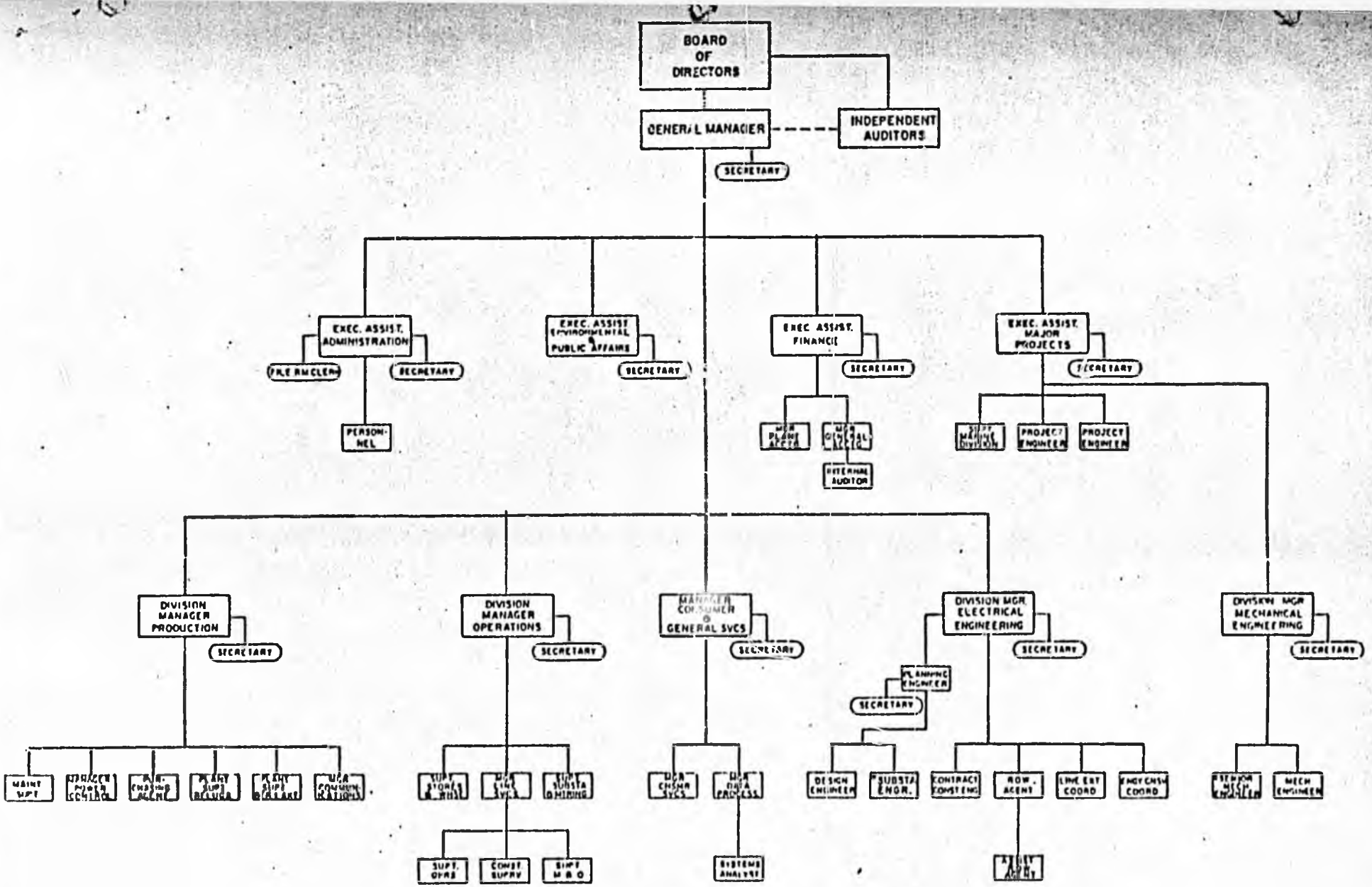
PLEASE PRINT! This Information Has To Be Verified. THANK YOU!

	Date	Print Full Name	Signature	Full Residence Address	Mailing Address	Phone Number
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						

Petition must be Returned to: Staudenmaier's Electric Merger Committee, P.O. Box 1603, Eagle River, Alaska 99577 — Phone 694-2322

Don't you be a DEAD BEAT! Get involved. Help cut your electric bill 67% to 80% per month.

the best and brightest ideas energizing in Alaska!



ORGANIZATIONAL CHART

Chugach ELECTRIC ASSOCIATION, INC

* Position to be filled

OFFICERS

1. Report below the name, title, office address, and salary for the year of each general officer of the respondent. Report the information also for each other employee whose annual salary is $25,000* or more. The information required by this schedule may be omitted for assistant general officers whose duties do not embrace important executive or policy functions, and whose salaries are less than $25,000* per year. (*$35,000, if respondent's annual operating revenues are $50,000,000 or more.)

2. If any officer or other employee reported in this schedule received remuneration from respondent, directly or indirectly, other than the salary reported in column (d), such as commissions, bonuses, shares in profits, moneys paid, set aside or accrued pursuant to any pension, retirement, savings or similar plan *(exclusive of plans qualified under Section 401 of the Internal Revenue Code of 1954)* including premiums paid for retirement annuities, or life insurance where the respondent is not the beneficiary, or any other advantageous arrangement which constitutes a form of compensation, give the essentials of the plans not previously reported, the basis of determining the ultimate benefits receivable, and the payments or provisions made during the year with respect to each person reported herein. If the word 'none' correctly states the facts with respect to the matters referred to in this instruction, so state ..... N/A per. #7 .....

3. State the annual benefits estimated to be payable to each of the three highest paid officers named herein in the event of retirement at normal retirement date pursuant to any pension or retirement plan.
..... N/A per #7 .....
.....
.....

4. Describe all transactions since the beginning of the year in which any person who was an officer of the respondent at any time during the year received remuneration, directly or indirectly, from the respondent in the form of securities, options, warrants, rights or other property, or through the exercise or disposition thereof. As to options, warrants or rights granted or extended, give the information under this caption on page 106. If the response "none" correctly states the facts with respect to the matters referred to in this instruction, so state. N/A per. #7

5. State briefly any arrangement under which any officer is insured or indemnified against liability which he may incur in his capacity as an officer. If there are no such arrangements, so state ..... N/A per. #7 .....

6. If a change was made during the year in the incumbent of any position, show name and address and total remuneration of the previous incumbent and date change in incumbency was made.

7. Utilities which are not required to file copies of this report with the Securities and Exchange Commission may omit the data called for by instructions 2, 3, 4, and 5. Omission of responses to such instructions for this reason should be stated.

Title (a)	Name of Officer (b)	Principal Business Address (City and State) (c)	Salary for Year * (d)
Employees:			$
General Manager	LeRoy J. Schultz	P.O. Box 3518, Anch.99501	145,008.00
Asst. Assist. Admin.	Audrey E. Larson	Alaska	46,476.00
Asst. Assist. Environmental & Pub. Affairs	Lawrence D. Markley		70,810.07
V.P. Mar. Elect. Eng	Ted Wellman		82,236.00
V.P. Mar. Production	Thomas S. Kolasinski		87,000.00
V.P. Mar. Operations	Robert M. Braukus		64,922.00
Asst. Assist. Major Projects	John Polyansky		70,584.00
V.P. Mar. Mech. Eng.	Eric J. Haemer		32,608.80

Continued 104.1 through 104.4

* "Salary for year" as provided by individual represents compensation paid those individuals by Chugach during their period of employment at Chugach within calendar year 1981.

I hereby certify that this is a true copy of an original document in the Files of the Alaska Public Utilities Commission.

By: C. Nielsen

Date: 11/18/83

CHUGACH

son who performs similar policymaking functions.

2. If a change was made during the year in the incumbent of

pages) should be the same size as this page.

Line No	Title (a)	Name of Officer (b)	Salary for Year (c)
1			
2	1. General Manager	Walter V. Truitt, Jr. (1)	$56,230
3			
4	2. Division Manager - Production	Thomas S. Kolasinski (2)	$109,449
5			
6			
7	3. Executive Assistant - Administration	Audrey E. Larson (3)	$35,013
8			
9			
10	4. Executive Assistant - Major Projects	John Polyansky (4)	$90,943
11			
12			
13	5. Division Manager - Operations	Robert M. Braukus (5)	$61,481
14			
15			
16			
17	6. Executive Assistant - Finance	James C. Anderson (6)	$50,257
18			
19			
20	7. Manager of System Planning	Eric J. Haemer	$81,000
21			
22			
23	8. Executive Assistant - Environment & Public Affairs	Lawrence D. Markley	$70,440
24			
25			
26			
27	9. Manager of Transmission & Distribution	Ted Wellman (7)	$90,456
28			
29			
30			
31	10. Executive Assistant to General Manager	John E. Smith, Jr. (8)	$16,705
32			
33			
34	(1) Employment Date - June 8, 1982. (Annual Salary $99,500.)		
35	(2) Also, Acting-General Manager until June 8, 1982. (Annual Salary $95,700.)		
36	(3) Terminated - July 2, 1982. (Annual Salary $53,446.)		
37	(4) Terminated - October 1, 1982. (Annual Salary $81,876.)		
38	(5) Terminated - September 15, 1982. (Annual Salary $73,611.)		
39	(6) Employment Date - January 25, 1982. (Annual Salary $53,666.)		
40	(7) Annual Salary $79,092. During 1982 paid for leave not taken.		
41	(8) Employment Date - September 27, 1982. (Annual Salary $63,000.)		
42			
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44			

I hereby certify that this is a true copy of an original document in the files of the Alaska Public Utilities Commission.

By: D. Pretzman

Date: 11/18/83

Line No	Classification	Direct Payroll Distribution	Allocation of Payroll Charged for Clearing Accounts	Total
	(a)	(b)	(c)	(d)
1	Electric			
2	Operation			
3	Production	$2,245,227		
4	Transmission	194,050		
5	Distribution	1,060,302		
6	Customer Accounts	1,574,406		
7	Customer Service and Informational	45,081		
8	Sales	-0-		
9	Administrative and General	640,276		
10	TOTAL Operation (Enter Total of lines 3 thru 9)	5,759,342		
11	Maintenance			
12	Production	1,148,055		
13	Transmission	169,081		
14	Distribution	1,216,543		
15	Administrative and General	207,687		
16	TOTAL Maintenance (Enter Total of lines 12 thru 15)	2,741,366		
17	Total Operation and Maintenance			
18	Production (Enter Total of lines 3 and 12)	3,393,282		
19	Transmission (Enter Total of lines 4 and 13)	363,131		
20	Distribution (Enter Total of lines 5 and 14)	2,276,845		
21	Customer Accounts (Transcribe from line 6)	1,574,406		
22	Customer Service and Informational (Transcribe from line 7)	45,081		
23	Sales (Transcribe from line 8)	-0-		
24	Administrative and General (Enter Total of lines 9 and 15)	847,963		
25	TOTAL Operation and Maintenance (Total of lines 18 thru 24)	8,500,708	-0-	$8,500,708
26	Gas			
27	Operation			
28	Production—Manufactured Gas	N/A		
29	Production—Natural Gas (Including Expl. and Dev.)	N/A		
30	Other Gas Supply	N/A		
31	Storage, LNG Terminating and Processing	N/A		
32	Transmission	N/A		
33	Distribution	N/A		
34	Customer Accounts	N/A		
35	Customer Service and Informational	N/A		
36	Sales	N/A		
37	Administrative and General	N/A		
38	TOTAL Operation (Enter Total of lines 28 thru 37)	N/A		
39	Maintenance			
40	Production—Manufactured Gas	N/A		
41	Production—Natural Gas	N/A		
42	Other Gas Supply	N/A		
43	Storage, LNG Terminating and Processing	N/A		
44	Transmission	N/A		
45	Distribution	N/A		
46	Administrative and General	N/A		
47	TOTAL Maintenance (Enter Total of lines 40 thru 46)	N/A		

I hereby certify that this is a true copy of an original document in the files of the Alaska Public Utilities Commission.

By: D. Mintun

Date: 11/18/83

49	Production—Manufactured Gas *(Enter Total of lines 28 and 40)*	N/A		
50	Production—Natural Gas (Including Expl. and Dev.) *(Total of lines 29 and 41)*	N/A		
51	Other Gas Supply *(Enter Total of lines 30 and 42)*	N/A		
52	Storage, LNG Terminaling and Processing *(Total of lines 31 and 43)*	N/A		
53	Transmission *(Enter Total of lines 32 and 44)*	N/A		
54	Distribution *(Enter Total of lines 33 and 45)*	N/A		
55	Customer Accounts *(Transcribe from line 34)*	N/A		
56	Customer Service and Informational *(Transcribe from line 35)*	N/A		
57	Sales *(Transcribe from line 36)*	N/A		
58	Administrative and General *(Enter Total of lines 37 and 46)*	N/A	N/A	N/A
59	TOTAL Operation and Maint. *(Total of lines 49 thru 58)*	N/A	N/A	N/A
60	Other Utility Departments			
61	Operation and Maintenance			
62	TOTAL All Utility Dept. *(Total of lines 25, 59, and 61)*	$8,500,708	-0-	$8,500,708
63	Utility Plant			
64	Construction (By Utility Departments)			
65	Electric Plant	2,731,968	-0-	2,731,968
66	Gas Plant	N/A	N/A	N/A
67	Other	N/A	N/A	N/A
68	TOTAL Construction *(Enter Total of lines 65 thru 67)*	2,731,968	-0-	2,731,968
69	Plant Removal (By Utility Department)			
70	Electric Plant	37,181	-0-	37,181
71	Gas Plant	N/A	N/A	N/A
72	Other	N/A	N/A	N/A
73	TOTAL Plant Removal *(Enter Total of lines 70 thru 72)*	37,181	-0-	37,181
74	Other Accounts *(Specify)*:			
75	Annual Leave			1,047,460
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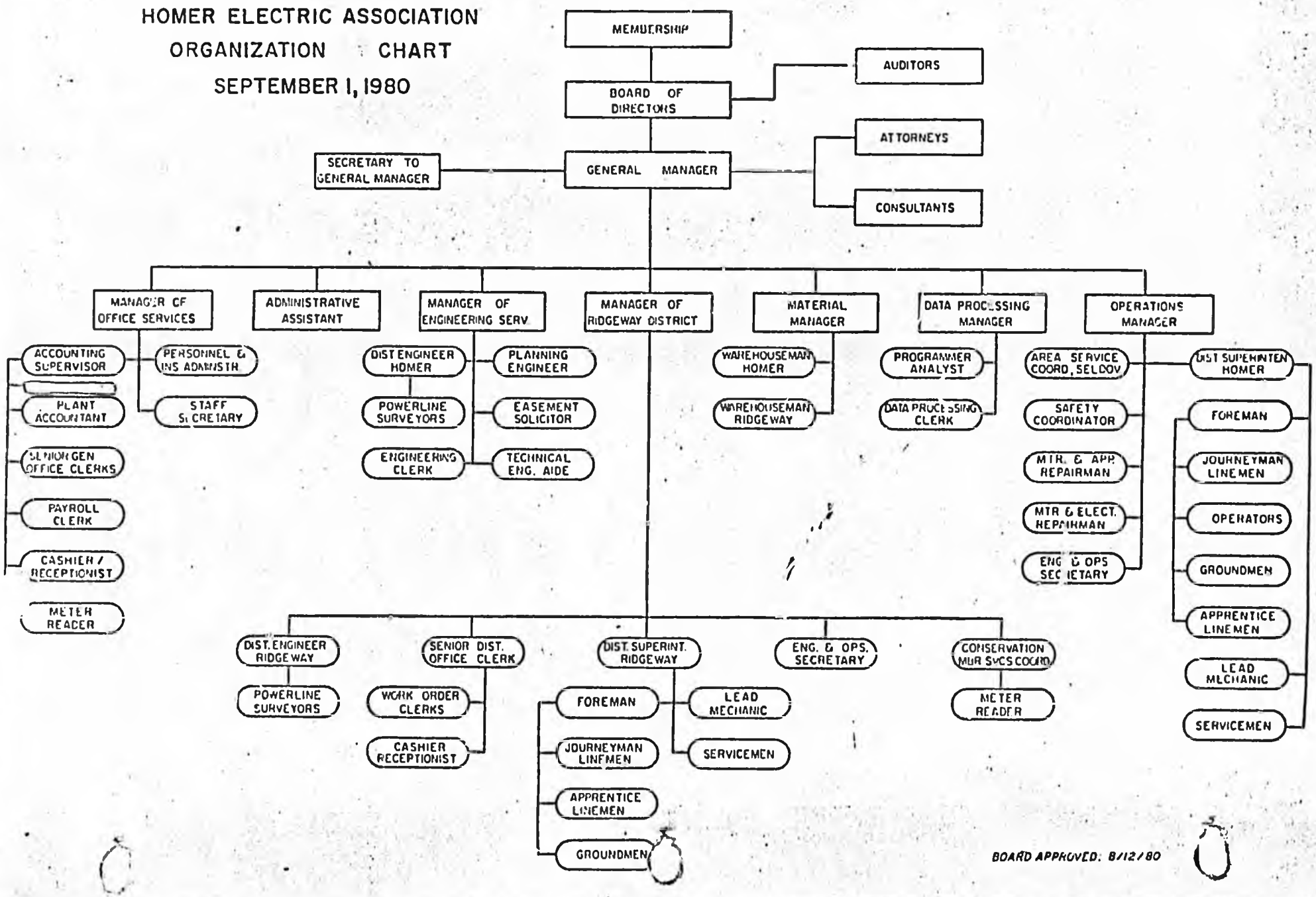
95	TOTAL Other Accounts	$3,816,609	-0-	$3,816,609
96	TOTAL SALARIES AND WAGES	$12,317,315	-0-	$12,317,315

I hereby certify that this is a true copy of an original document in the files of the Alaska Public Utilities Commission.

By: D. Mielke

Date: 11/18/83

HOMER ELECTRIC ASSOCIATION
ORGANIZATION CHART
SEPTEMBER 1, 1980



BOARD APPROVED: 8/12/80

Home 2

Line No	Title (a)	Name of Officer (b)	Salary for Year (c)
1	General Manager	B. Kent Wick	77,390
2	Administrative Assistant	Scot E. Land	54,984
3	Manager, Eng. Services	S.C. Matthews	67,304
4	Manager, Materials	Norman L. Story	50,627
5	Manager, Office Services	Thomas H. Keffer	59,163
6	Manager, Operations	Clifford G. Stewart	69,422
7	District Manager	Eugene R. Collins	65,916
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Line No	Classification	Distribution	Payroll Charged for Clearing Accounts	Total
	(a)	(b)	(c)	(d)
1	Electric			
2	Operation			
3	Production 546-550	610.28		
4	Transmission 560-567	98.92		
5	Distribution 580-589	28,830.21		
6	Customer Accounts 901-905	33,426.94		
7	Customer Service and Informational 907-910	6,230.47		
8	Sales 911-916	.00		
9	Administrative and General 920-931	26,817.23		
10	TOTAL Operation *(Enter Total of lines 3 thru 9)*	96,014.05		
11	Maintenance			
12	Production 551-557	.00		
13	Transmission 568-573	967.56		
14	Distribution 590-598	49,090.26		
15	Administrative and General 932	1,508.92		
16	TOTAL Maintenance *(Enter Total of lines 12 thru 15)*	51,566.74		
17	Total Operation and Maintenance			
18	Production *(Enter Total of lines 3 and 12)*	610.28		
19	Transmission *(Enter Total of lines 4 and 13)*	1,066.48		
20	Distribution *(Enter Total of lines 5 and 14)*	77,920.47		
21	Customer Accounts *(Transcribe from line 6)*	33,426.94		
22	Customer Service and Informational *(Transcribe from line 7)*	6,230.47		
23	Sales *(Transcribe from line 8)*	.00		
24	Administrative and General *(Enter Total of lines 9 and 15)*	28,326.15		
25	TOTAL Operation and Maintenance *(Total of lines 18 thru 24)*	147,580.79		
26	Gas			
27	Operation			
28	Production-Manufactured Gas	-		
29	Production-Natural Gas (Including Expl. and Dev.)	-		
30	Other Gas Supply	-		
31	Storage, LNG Terminaling and Processing	-		
32	Transmission	-		
33	Distribution	-		
34	Customer Accounts	-		
35	Customer Service and Informational	-		
36	Sales	-		
37	Administrative and General	-		
38	TOTAL Operation *(Enter Total of lines 28 thru 37)*	-		
39	Maintenance			
40	Production-Manufactured Gas	-		
41	Production-Natural Gas	-		
42	Other Gas Supply	-		
43	Storage, LNG Terminaling and Processing	-		
44	Transmission	-		
45	Distribution	-		
46	Administrative and General	-		
47	TOTAL Maintenance *(Enter Total of lines 40 thru 46)*			

Production—Natural Gas (Including Expl. and Dev.) *(Total of lines 29 and 41)*	–		
Other Gas Supply *(Enter Total of lines 30 and 42)*	–		
Storage, LNG Terminaling and Processing *(Total of lines 31 and 43)*	–		
Transmission *(Enter Total of lines 32 and 44)*	–		
Distribution *(Enter Total of lines 33 and 45)*	–		
Customer Accounts *(Transcribe from line 34)*	–		
Customer Service and Informational *(Transcribe from line 35)*	–		
Sales *(Transcribe from line 36)*	–		
Administrative and General *(Enter Total of lines 37 and 46)*	–		
TOTAL Operation and Maint. *(Total of lines 49 thru 58)*	–		
Other Utility Departments			
Operation and Maintenance			
TOTAL All Utility Dept. *(Total of lines 25, 59, and 61)*	–		
Utility Plant			
Construction (By Utility Departments)			
Electric Plant	–		
Gas Plant	–		
Other	–		
TOTAL Construction *(Enter Total of lines 65 thru 67)*	–		
Plant Removal (By Utility Department)			
Electric Plant	–		
Gas Plant	–		
Other	–		
TOTAL Plant Removal *(Enter Total of lines 70 thru 72)*	–		
Other Accounts *(Specify):*			
TOTAL Other Accounts			
TOTAL SALARIES AND WAGES			

I hereby certify that this is a true copy of an original document in the files of the Alaska Public Utilities Commission.

By: D. Nielsen

Date: 11/15/83

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. _____

TOM STAHR

From: Mayor

Meeting Date:

Subject: Cost of Living Adjustment for Executive Pay Plan

AO 81-28, as further amended by AO 82-53, provides for annual adjustment to the pay plan for Executive Employees as defined under AMC 3.30.171B based on the U.S. Department of Labor's Anchorage Consumer Price Index for All Urban Consumers for the prior year. For the prior year that index increased 5.3%.

Applying the Cost of Living adjustment formula outlined in AO 82-53, the Municipal Pay Ranges for Executive Employees for 1984 are as follows:

E-I	$32,000 - $55,000
E-II	$42,000 - $67,000
E-III	$52,000 - $78,000

Tom Stahr

72,737.00 Base Sal

25 094.00 Benes

97,831.00

Prepared by:

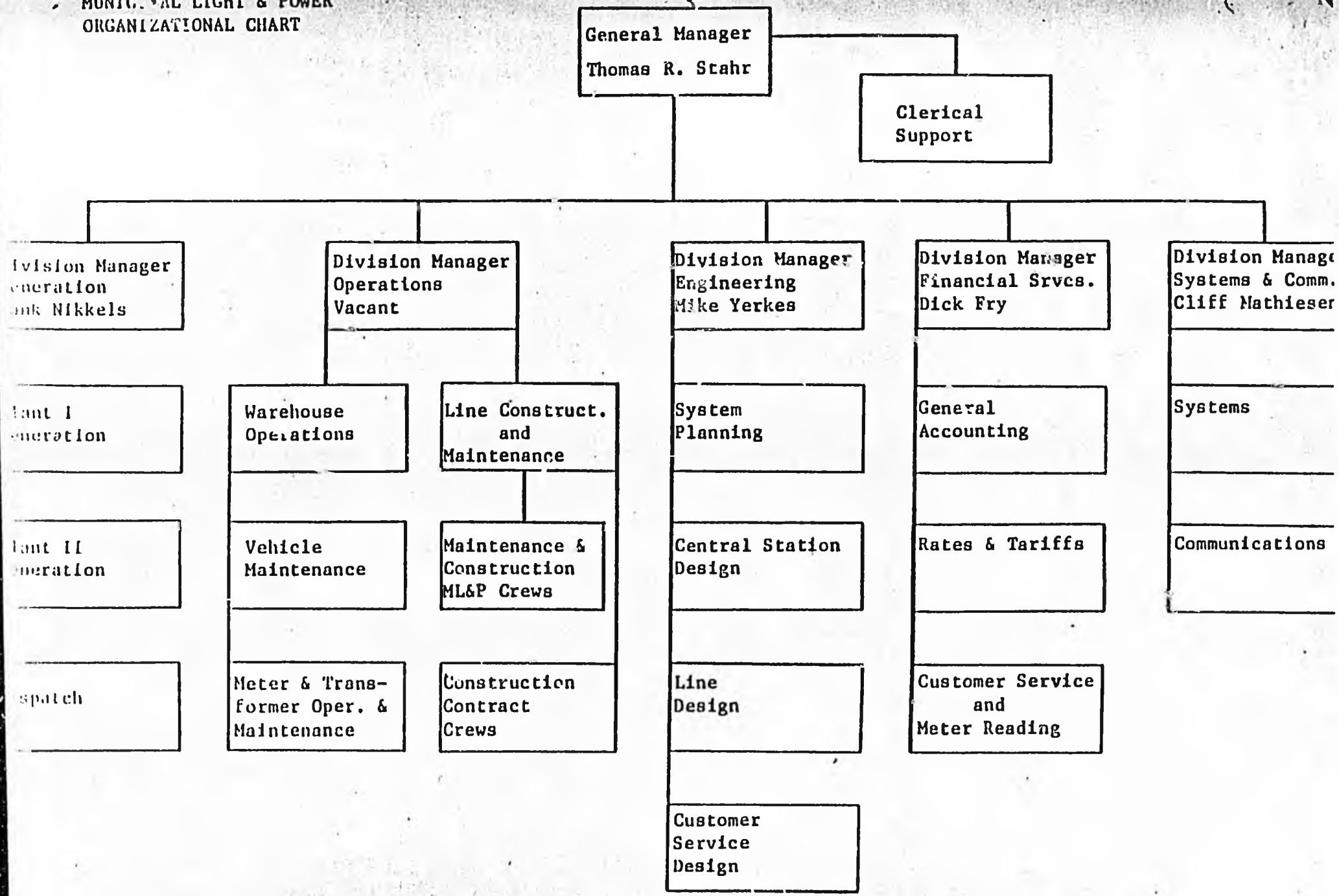
Frank Austin
Director, Human Resources Department

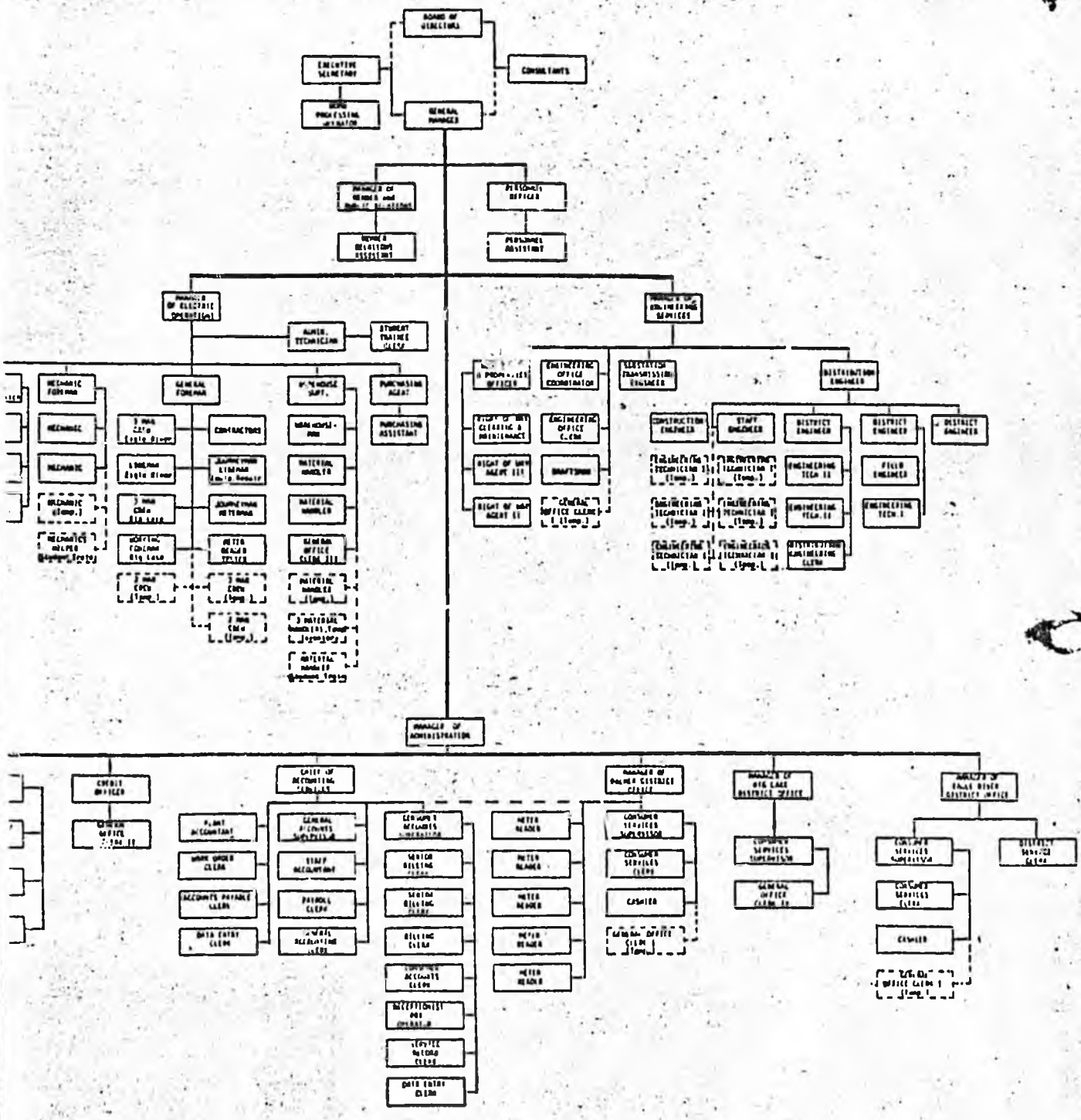
Respectfully submitted:

34.5 %

Tony Knowles
Mayor

MUNIC. AL LIGHT & POWER
ORGANIZATIONAL CHART





ORGANIZATION CHART

Matanuska Electric Association, Inc.

Palmer, Alaska

Effective Date: January 1, 1983

MATANUSKA

2. If a change was made during the year in the incumbent of

Line No	Title (a)	Name of Officer (b)	Salary for Year (c)
1			
2	General Manager	James F. Palin	$ 73,800
3			
4			
5			
6			
7			
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9			
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13			
14	Under existing M.E.A. Policy we	are unable to provide individual	salaries
15	without written consent of the	employee involved. However, if	ordered by th
16	A.P.U.C., MEA would be willing	to supply salary information by	employee on t
17	condition that the imformation	be held strictly confidential.	
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I hereby certify that this is a true copy of an original document in the files of the Alaska Public Utilities Commission.

By: D. Mia Thun

Date: 11/18/83

Line No.	Classification (a)	Direct Payroll Distribution (b)	Allocation of Payroll Charged for Clearing Accounts (c)	Total (d)
1	Electric			
2	Operation			
3	Production	48,332		
4	Transmission	1,345		
5	Distribution	364,731		
6	Customer Accounts	592,343		
7	Customer Service and Informational	-		
8	Sales	-		
9	Administrative and General	557,860		
10	TOTAL Operation *(Enter Total of lines 3 thru 9)*	1,564,611		
11	Maintenance			
12	Production	-		
13	Transmission	61		
14	Distribution	414,535		
15	Administrative and General	9,716		
16	TOTAL Maintenance *(Enter Total of lines 12 thru 15)*	424,312		
17	Total Operation and Maintenance			
18	Production *(Enter Total of lines 3 and 12)*	48,332		
19	Transmission *(Enter Total of lines 4 and 13)*	1,406		
20	Distribution *(Enter Total of lines 5 and 14)*	779,266		
21	Customer Accounts *(Transcribe from line 6)*	592,343		
22	Customer Service and Informational *(Transcribe from line 7)*	-		
23	Sales *(Transcribe from line 8)*	-		
24	Administrative and General *(Enter Total of lines 9 and 15)*	567,576		
25	TOTAL Operation and Maintenance *(Total of lines 18 thru 24)*	1,988,923	-	1,988,923
26	Gas			
27	Operation			
28	Production--Manufactured Gas	-		
29	Production--Natural Gas (Including Expl. and Dev.)	-		
30	Other Gas Supply			
31	Storage, LNG Terminaling and Processing	-		
32	Transmission	-		
33	Distribution	-		
34	Customer Accounts	-		
35	Customer Service and Informational	-		
36	Sales	-		
37	Administrative and General	-		
38	TOTAL Operation *(Enter Total of lines 28 thru 37)*	-		
39	Maintenance			
40	Production--Manufactured Gas	-		
41	Production--Natural Gas	-		
42	Other Gas Supply	-		
43	Storage, LNG Terminaling and Processing	-		
44	Transmission	-		
45	Distribution	-		
46	Administrative and General	-		
47	TOTAL Maintenance *(Enter Total of lines 40 thru 46)*	-		

50	Production—Natural Gas (Including Expl. and Dev.) *(Total of lines 29 and 41)*	-		
51	Other Gas Supply *(Enter Total of lines 30 and 42)*	-		
52	Storage, LNG Terminaling and Processing *(Total of lines 31 and 43)*	-		
53	Transmission *(Enter Total of lines 32 and 44)*	-		
54	Distribution *(Enter Total of lines 33 and 45)*	-		
55	Customer Accounts *(Transcribe from line 34)*	-		
56	Customer Service and Informational *(Transcribe from line 35)*	-		
57	Sales *(Transcribe from line 36)*	-		
58	Administrative and General *(Enter Total of lines 37 and 46)*	-	-	-
59	TOTAL Operation and Maint. *(Total of lines 49 thru 58)*	-	-	-
60	Other Utility Departments			
61	Operation and Maintenance	-	-	-
62	TOTAL All Utility Dept. *(Total of lines 25, 59, and 61)*	-	-	-
63	Utility Plant			
64	Construction (By Utility Departments)			
65	Electric Plant	1,514,183	-	-
66	Gas Plant	-	-	-
67	Other	-	-	-
68	TOTAL Construction *(Enter Total of lines 65 thru 67)*	1,514,183	-	1,514,183
69	Plant Removal (By Utility Department)			
70	Electric Plant	22,293	-	-
71	Gas Plant	-	-	-
72	Other	-	-	-
73	TOTAL Plant Removal *(Enter Total of lines 70 thru 72)*	22,293	-	22,293
74	Other Accounts *(Specify):*			
75				
76	Other Property & Investment			
77	Current & Accrued Assets			421,752
78	Deferred Debits			307,102
79	Annual Leave			410,441
80				
81				
82				
83				
84				
85				
86				
87				
88				
89				
90				
91				
92				
93				
94				
95	TOTAL Other Accounts			1,139,295
96	TOTAL SALARIES AND WAGES			4,664,694

2. If a change was made during the year in the incumbent of

Line No	Title (a)	Name of Officer (b)	Salary for Year (c)
1	Utility Div. Mgr. II	Bowen, George	60,653.00
2	Utility Div. Mgr. II	Massin, Michael E.	65,478.00
3	Utility Div. Mgr. I	Mathiesen, Clifford	52,000.00
4	Utility Div. Mgr. II	Nikkels, Hank	64,272.00
5	General Manager	Stahr, Thomas R.	67,974.00
6	Utility Div. Mgr. I	Tisher, William M.	53,019.00
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
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20			
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41			
42			
43			
44			

No.	Classification (a)	Distribution (b)	Payroll Charged for Clearing Accounts (c)	Total (d)
1	Electric			
2	Operation			
3	Production	1,489,092		
4	Transmission	27,867		
5	Distribution	1,284,263		
6	Customer Accounts	353,541		
7	Customer Service and Informational	77,194		
8	Sales			
9	Administrative and General	1,034,811		
10	TOTAL Operation *(Enter Total of lines 3 thru 9)*	4,266,768		
11	Maintenance			
12	Production	439,544		
13	Transmission	1,623		
14	Distribution	740,276		
15	Administrative and General			
16	TOTAL Maintenance *(Enter Total of lines 12 thru 15)*	1,181,443		
17	Total Operation and Maintenance			
18	Production *(Enter Total of lines 3 and 12)*	1,928,636		
19	Transmission *(Enter Total of lines 4 and 13)*	29,490		
20	Distribution *(Enter Total of lines 5 and 14)*	2,024,539		
21	Customer Accounts *(Transcribe from line 6)*	353,541		
22	Customer Service and Informational *(Transcribe from line 7)*	77,194		
23	Sales *(Transcribe from line 8)*	-0-		
24	Administrative and General *(Enter Total of lines 9 and 15)*	1,034,811		
25	TOTAL Operation and Maintenance *(Total of lines 18 thru 24)*	5,448,211	374,735	5,862,946
26	Gas			
27	Operation			
28	Production--Manufactured Gas			
29	Production--Natural Gas (Including Expl. and Dev.)			
30	Other Gas Supply			
31	Storage, LNG Terminaling and Processing			
32	Transmission			
33	Distribution			
34	Customer Accounts			
35	Customer Service and Informational			
36	Sales			
37	Administrative and General			
38	TOTAL Operation *(Enter Total of lines 28 thru 37)*			
39	Maintenance			
40	Production-Manufactured Gas			
41	Production--Natural Gas			
42	Other Gas Supply			
43	Storage, LNG Terminaling and Processing			
44	Transmission			
45	Distribution			
46	Administrative and General			
47	TOTAL Maintenance *(Enter Total of lines 40 thru 46)*			

I hereby certify that this is a true copy of an original document in the files of the Alaska Public Utilities Commission.

By: D. Mick

Date: 11/8/83

50	Production—Natural Gas (Including Expl. and Dev.) *(Total of lines 29 and 41)*			
51	Other Gas Supply *(Enter Total of lines 30 and 42)*			
52	Storage, LNG Terminaling and Processing *(Total of lines 31 and 43)*			
53	Transmission *(Enter Total of lines 32 and 44)*			
54	Distribution *(Enter Total of lines 33 and 45)*			
55	Customer Accounts *(Transcribe from line 34)*			
56	Customer Service and Informational *(Transcribe from line 35)*			
57	Sales *(Transcribe from line 36)*			
58	Administrative and General *(Enter Total of lines 37 and 46)*			
59	TOTAL Operation and Maint. *(Total of lines 49 thru 58)*			
60	Other Utility Departments			
61	Operation and Maintenance			
62	TOTAL All Utility Dept. *(Total of lines 25, 59, and 61)*			
63	Utility Plant			
64	Construction (By Utility Departments)			
65	Electric Plant	1,560,014		
66	Gas Plant			
67	Other			
68	TOTAL Construction *(Enter Total of lines 65 thru 67)*			
69	Plant Removal (By Utility Department)			
70	Electric Plant			
71	Gas Plant			
72	Other			
73	TOTAL Plant Removal *(Enter Total of lines 70 thru 72)*			
74	Other Accounts *(Specify):*			
75				
76				
77				
78				
79				
80				
81				
82				
83				
84				
85				
86				
87				
88				
89				
90				
91				
92				
93				
94				
95	TOTAL Other Accounts			
96	TOTAL SALARIES AND WAGES			

The future

ow long will electricity remain a 'bargain'?

Electricity from gas-fired generators cheap

Continued from Page A-1

But in parts of Alaska where electricity from gas or hydropower is not available, the cost of keeping the lights on was considerably higher,in many cases. In Fairbanks 1000 kwh cost $121; in Kodiak, $160; and in Port Lions, a small fishing community near Kodiak, $612.63. Port Lions has the distinction of having the most expensive juice in the state.

Chugach Electric Association is the largest utility in the state. It distributes electricity to 50,000 users in the Anchorage bowl and sells [illegible] to utilities serving an addi[illegible]. It could go higher, however, if the [illegible]

Gas burned at Bernice Lake, International and Knik Arm power stations is not the bargain Beluga River methane is. It is purchased from Enstar and it costs $1.12 per thousand cubic feet.

According to an initial draft study of available Cook Inlet gas reserves done for the state by Battelle Pacific Northwest Laboratories, the weighted average price of all the gas used by Chugach is 42 cents per thousand cubic feet. Over the next 13 years, the study predicts, that average cost will increase to $1.32.

Utilities argue fault

JAN. 11, 1984

By JIM ERICKSON
Daily News reporter

A Chugach Electric Association spokesman Monday denied reports that a massive weekend power failure could have been avoided if the utility had not cut loose from Municipal Light and Power electrical supplies shortly after the Chugach system began to falter. [illegible]

pokesman disputes claim power outage could have been avoided

[illegible] this problem," he said about Monday's outage. "It's not something that won't happen again."

In contrast, Kolasinski said the fuel-delivery gremlin that caused complete shutdown of the Chugach main power plant at Beluga was "a one-time affair."

"We suspect that the main gas regulator station had wa[illegible] main gas regulator said.

"In our preli[illegible] tigation we fou[illegible] to be normal,' and [illegible] Monitoring de[illegible] there was "no[illegible] (in the deliver[illegible] and during the[illegible] he said.

Both Chevror[illegible] are investigatin[illegible] the plant shutdow[illegible]

He and other municipal officials will meet with ML&P and Chugach administrators today to discuss a plan to improve communications between the utilities and the public in emergencies.

Under the proposal, Knowles said the municipal Emergency Operations Center will try to deal with public [illegible] cold snap of 1983 had Anchorage residents reaching for their thermostats.

ML&P and Chugach officials said a record amount of power was used Monday, breaking marks set only a few days before. Chugach spokeswoman Lynn Marlin said demand surged to 370 megawatts at about 6 p.m. Monday, up from a previous [illegible] forecast was for more [illegible] same throughout the w[illegible]

The low temperatur[illegible] chorage International [illegible] Monday was minus [illegible] stantially warmer th[illegible] record for Jan. 10 of m[illegible] set in 1972. But at 7:[illegible] wind chill pegged th[illegible] tive temperature at mi[illegible]

In Palmer, winds [illegible] to 40 mph dropped te[illegible]

Power restored, but blackout still makes its mark

By LARRY CAMPBELL
Daily News reporter

The vast power outage that struck Southcentral Alaska on Sunday continued to raise havoc on Monday, only after power had been restored.

Hindered by another outage Monday, though of much less duration and area, some shivering residents were thwarted in attempts to get heat into their homes through frozen water pipes. Others fought water back as pipes burst from freezing water inside, spewing a soppy, icy mess.

Police and fire officials reported numerous incidents related to the outage and resulting vulnerability to the cold. Anchorage police responded to about 30 minor auto accidents Monday while firefighters answered over 35 weather related calls, including burst water pipes and minor fires.

A house fire at 1021 Boston St. about midnight Sunday began when a candle fell on a bed. Damage in that fire was estimated at $3,000. Another fire at the Northern Lights Inn, caused by a heating duct, resulted in only $100 damage.

Diners at Nikko Gardens in the Denali Tower rushed from the restaurant just after noon Monday when a fire sprinkler line burst and showered water through the ceiling tile and down the walls.

"We heard this pop, then the water started coming through the tile and down onto the aisle," said Stephan

See Back Page, BLACKOUT

Chugach sues over

By DON HUNTER
Daily News reporter

Chugach Electric Association chose Pearl Harbor Day to launch a new legal offensive in its decade-old territorial war with Municipal Light and Power and the Alaska Public Utilities Commission.

At the crux of the suit filed Tuesday in Superior Court is the commission's interpretation of a 1979 Alaska Supreme Court ruling and a subsequent order from a Superior Court judge.

Both the earlier case and the current suit focus on a 1973 APUC order that established boundaries for Chugach and city-owned ML&P. Both utilities provide electrical service to Anchorage residents, and in the 1973 order the APUC defined which parts of town each utility would serve.

Since the utilities had, in some cases, built distribution lines and transmission facilities in the same areas, the territorial exchange required the exchange of some customers and equipment.

The order first was challenged by Chugach in 1974. The Supreme Court's 1979 opinion directed a Superior Court judge to remand the issue to the APUC for further consideration of "the retirement and transfer of Chugach's facilities to ML&P."

Chugach officials contend the Supreme Court opinion also allows the APUC to consider changing the boundary lines that were drawn in 1973, but, because of the association's lawsuit, never enforced.

When the APUC held public hearings this fall on the "retirement and transfer" issue, Chugach attempted to introduce testimony and evidence in support of its contention that the 1973 boundaries are unfair. But APUC Chairwoman Carolyn Guess denied the request, saying the Supreme Court's opinion restricts the commission from changing the boundaries.

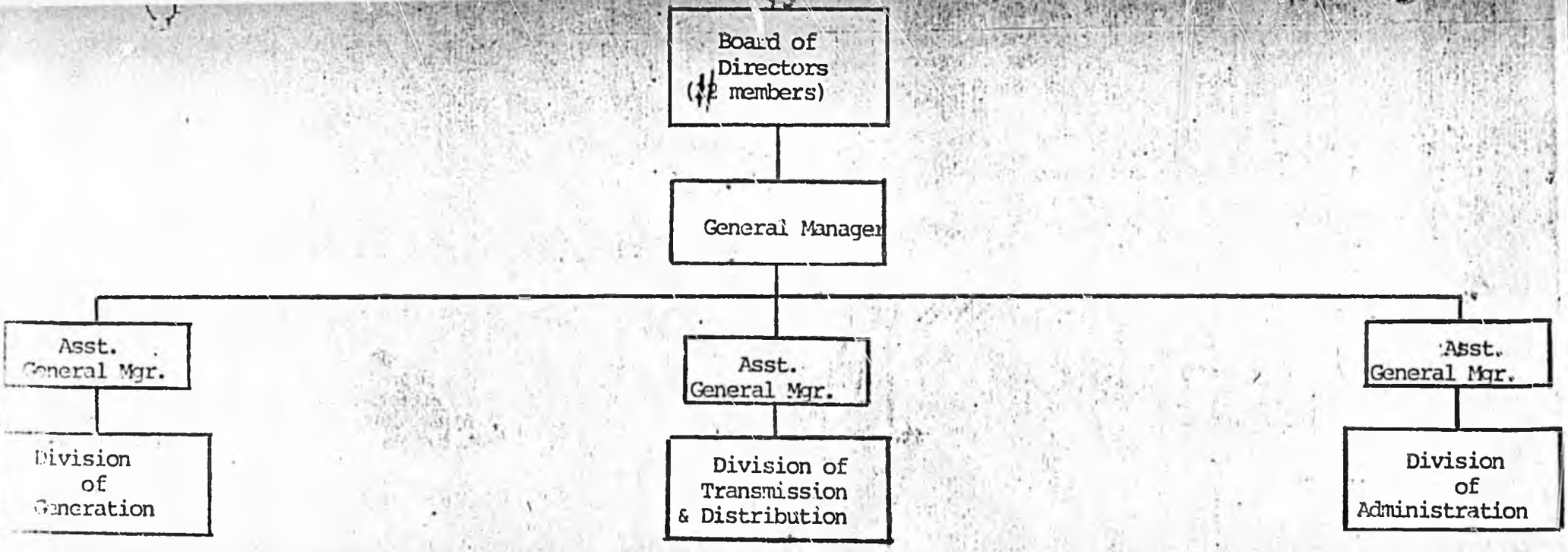
The commission is expected to take rebuttal testimony from its staff next month. Attorney William Moran, representing Chugach, has requested expedited handling of the lawsuit.

"As far as Chugach is concerned, the purpose (of the suit) is to facilitate" the commission's handling of the territorial case, "not to delay it," Moran said.

Chugach contends enactment of the 1973 boundaries would require it to give up about 10,000 customers, while ML&P would lose only about 1,000. Chugach general manager Walter Truitt has said such a transfer deficit would cause an unwarranted financial drain on the association, which already is reeling from mounting debts incurred to pay for new generation equipment.

Anchorage Daily News Thursday, December 9, 1982

ML&P territory dispute



ALASKA SOUTHCENTRAL ELECTRIC CO-OP

STAUDENMAIER'S
ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2322

IMMEDIATE NEWS RELEASE 9/21/82

COST STUDY OF RATE REDUCTIONS BY MERGING
CHUGACH ELECTRIC, MATANUSKA ELECTRIC, HOMER ELECTRIC, MUNICIPAL L & P
BASED ON 1981 ACTUALS AND 1982 PROJECTIONS WHERE POSSIBLE

POSSIBLE SAVINGS

	EXPENSES	INTEREST	DEBT RETIREMENT	TOTALS	OPERATING REVENUES	TOTAL DEBTS
JGACH ECTRIC		28,423,103	3,624,965	32,048,068	42,020,067	360,266,522
ANUSKA RIC	5,633,281	3,528,798	8,188,401	17,350,480	17,499,967	69,050,666
IER ECTRIC	2,531,861	1,922,752	1,247,640	5,702,253	13,125,519	46,199,304
NICIPAL GHT AND WER	2,862,400 11,027,542	4,733,180 38,607,933	4,361,000 17,422,000	11,956,580	27,418,730	101,683,472
				67,057,381	100,064,283	577,199,964

L LIGHT BILLS COULD BE CUT 67%. SINCE THE RATES ARE UNEVEN AND THE OBJECT IS EVEN UP ALL RATES, I WOULD SUGGEST CUTTING CHUGACH RATES BY APPROXIMATELY % AND THE OTHERS BY VARYING AMOUNTS UP TO 80% ON THE INITIAL SURVEY.

RENE FOMBY
TAX CONSULTANT

TOM STAUDENMAIER
DIRECTOR OF THE BOARD
MATANUSKA ELECTRIC ASSOCIATION

STAUDENMAIER'S
ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2322

Complete Payoff according to document filed with the Alaska Public Utility Commission.

ANNUAL REPORT YEAR ENDED DECEMBER 31, 1981

Chugach Electric Association, Inc.	$309,178,050
Matanuska Electric Association, Inc.	67,851,604
Homer Electric Association, Inc.	49,117,072
Municipal Light and Power	73,000,000
Golden Valley	120,616,040
Kodiak Electric Association, Inc.	25,788,843
Barrow Utilities and Electric Cooperative, Inc.	4,976,193
Alaska Village Electric Coopertive, Inc.	25,182,921
Copper Valley Electric, Inc.	80,028,851
Nushagak Electric Cooperative, Inc.	4,196,550
Kotzebue Electric Association	4,263,777
Tlingit-Haida REA	4,757,169
TOTAL PAYOFF FROM THE GENERAL FUND	768,957,070

October 15, 1982

TOM STAUDENMAIER
DIRECTOR OF THE BOARD
MATANUSKA ELECTRIC ASSOCIATION
P. O. Box 1603
EAGLE RIVER, AK 99577

Dear Mr. Staudenmaier:

Thank you for your correspondence of September 10, 1982. Needless to say, your letter contains a number of provocative and compelling proposals that deserve complete examination.

You raise a number of points which deserve active consideration and research. They include:

a) a commitment to a plan to reduce the cost of electric power throughout South Central Alaska;

b) administrative and clerical overhead costs at managerial levels are rising "explosively";

c) after the November election, the next governor will undoubtedly face a declining commitment at the Federal level from the Rural Electrification Administration. The State of Alaska will inevitably reassess its financial relationship with the REA and devise alternative schemes of financing utility expansion and improvement;

d) retiring the indebtedness with the REA is certainly one viable alternative that warrants active consideration; and

continued on page two --

e) finally, I wholeheartedly agree that electric bills are atrociously high throughout this State, and any plans to reduce monthly electric bills will be more than welcome, both by my campaign and by my administration.

Tom, I think you would be the first to agree with me that any plan that could potentially involve a State commitment of a billion dollars requires serious consideration, active deliberation, a full study of opportunity costs, a reassessment of our revenue projections, a full-scale legislative commitment, and an articulated, comprehensive statement of policy. These will be my duties as Governor, and I will never take them lightly. I will support any plan that can survive this tough screening process.

Thanks again for providing me with the input. I anxiously await the day when Alaska can witness a reduction in power rates instead of the chain of increases that we have had for so many years.

Best regards.

Yours very truly,

Bill Sheffield

BILL SHEFFIELD

jes

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

October 19, 1982

Mr. Tom Staudenmaier
Director of the Board
Matanuska Electric Association
P. O. Box 1603
Eagle River, Alaska 99577

Dear Tom:

Thank you for the material on your proposal to merge the four Southcentral Alaska Electric Power Distributors. The concept is certainly an interesting one, and the potential benefits as you've outlined them exciting. It most definitely merits investigation.

My immediate reaction to the fiscal implications include the very substantial commitment of state funds, and the various uncertainties which attend that concern. Quite obviously, state revenue projections come in for serious examination. They are uncertain at best, and many experts see them declining below present levels. At the same time, there seems little likelihood of a decline in the demands being made upon them; quite in fact we must anticipate continuing increases in demand.

Two principal and major probabilities of such commitment are the Susitna and other hydroelectric projects and the potential capital move. Major activity in either of those spheres could derail a plan to retire the utilities' REA debts by quite some time; in fact, assistance even to maintenance of those debts could be difficult.

On the other hand, should the capital move fail, another scenario would come into view. Given the likelihood of declining REA assistance to Alaskan hydro projects, that would leave those as a very major demand on available revenues.

All these things are speculative, quite obviously. I think none of them should discourage efforts to develop your plan. At the same time, I feel you should pursue aggressively the development of as firm as possible figures concerning savings through the merger alone, even without the debt retirement. With that as a first step, the debt retirement might become a much more publicly attractive idea. I can

fully appreciate the virtue of using the debt retirement scheme as a way to share a major portion of the state's oil wealth with a high percentage of the population, and to establish some equity with the subsidy the state is presently providing for electric power in remote communities.

You most assuredly may count on my active support after the merger with respect to investigating the viability and financibility of the plan. If the public can be persuaded to accept it in exchange for some of its other wants and needs, or if our revenue picture brightens dramatically in the future, I certainly would support the plan itself.

I appreciate you sharing your idea with me and hope you will keep me apprised in timely fashion of developments respecting the merger and of figures you develop in both areas.

Very truly yours,

Joe Hayes
Speaker

7931 Old Seward Highway, Suite 2, Anchorage, Alaska 99502 (907) 349-6506

September 28th, 1982

Tom Staudenmaier
Electric Merger Committee
P.O. Box 1603
Eagle River, AK 99577

Dear Tom,

Your idea to merge the electric utilities of South Central Alaska appears to be a good one. I would certainly support paying off the outstanding loans from the Rural Electric Association if I am convinced that the utilities will be run properly and efficiently and further debt would not be incurred.

Thank-you for the information and I wish you success in the "merger."

Sincerely,

Jan Faiks

STAUDENMAIER'S
ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2322

September 13, 1982

Dear Mr. Martin:

I speak for a group of Matanuska Electric Association, Chugach Electric Association, and Homer Electric Association members seeking your commitment to a plan to reduce the cost of electric power throughout South Central Alaska. Our plan is highly advantageous to us economically. We believe it politically advantageous to you.

I was elected to the Board of Directors of the Matanuska Electric Association this past April on a write in vote. The reason, to cut the cost of high electric bills. The next step in our strategy is to promote a merger vote on behalf of Matanuska Electric Association (MEA), Homer Electric Association (HEA), Chugach Electric Association (CEA), and Municipal Light and Power (MLP). The new name of the four merged organizations will be Alaska South Central Electric Co-op. The new Board of Directors could be apportioned using the State of Alaska 1982 Reapportionment and Redistributing Plan. Upon voter approval the Board could be make up of 11 members using the senate plan or 22 members using the house plan.

The proposed merger would reduce our administrative and clerical overhead costs, which are now rising explosively. Incidentally, we were driven to action not by union costs of power production and distribution but by exorbitant increases in management costs, high salaries, mismanagement and duplicity in their work. We have no quarrel with Labor.

When you are in the Legislature after the November election, and the merger vote is successful, will you assist us in legislation to payoff with a State Grant all outstanding loans from the Rural Electric Association throughout the State. What better way could we use some of the excess oil revenue. We ask your active support after the merger. Now we want your commitment to the idea.

We believe this plan will pull the vote of every homeowner and businessmen from Talkeetna to Homer. The production and distribution of electric power at reasonable rates is an Alaska necessity. Ours is a plan that should please everyone.

The end result of this merger plan would be a streamline debt free utility in South Central Alaska, thereby reducing the average electric bill between 50-85% per month.

Can we count on your active support after the merger? (YES) NO

Sincerely,

Tom Staudenmaier
Director of the Board
Matanuska Electric Association

Very interesting concept. Needs to be pursued to get maximum benefits to the consumer.

Chugach ELECTRIC ASSOCIATION, INC.

GAMBELL AT EIGHTH • P.O. BOX 3518 • Anchorage, Alaska 99501 • PHONE: 907 276-3500

TELEX: Chugach AHG
(090) 25 265

April 11, 1984

Mr. Tom Staudenmaier
P. O. Box 8-8110
Anchorage, Alaska 99503

Dear Mr. Staudenmaier:

Listed below is the information you requested:

1. The total long-term indebtedness of Chugach as of December 31, 1983 is $301,591,812.

2. The monthly bill for an average home using 750 KWH is $50.72.

   Note: This amount includes a Fuel Cost Rate Adjustment (FCRA) of $.00457/KWH.

3. The average cost to generate a KWH at all power plants was approximately 1.574¢ in 1981, 1.748¢ in 1982, and 1.894¢ in 1983.

If you require additional information, please contact me.

Very truly yours,

T. S. Kolasinski

Thomas S. Kolasinski
General Manager

TSK/smm

Chugach ELECTRIC ASSOCIATION, INC.

GAMBELL AT EIGHTH • P.O. BOX 3518 • Anchorage, Alaska 99501 • PHONE: 907 276-[illegible]0

TELEX: Chugach AHG
(090) 25 265

April 6, 1982

Mr. Tom Staudenmaier
P. O. Box 8-8110
Anchorage, Alaska 99503

Dear Mr. Staudenmaier:

The Beluga Gas Sales Agreement is in effect until January 1, 1998.

Chugach is currently paying $.2015/MCF and for every MCF approximately $.06 is added for taxes to the State. The last increase was in 1982 and will increase $.01 for each two-year period thereafter.

Very truly yours,

T. S. Kolasinski

Thomas S. Kolasinski
Acting General Manager

TSK/smm

United States Department of Agriculture | Rural Electrification Administration | Washington D.C. 20250

AUG 0 6 1982

Mr. Robert C. Johnson, President
Matanuska Electric Association, Inc
P. O. Box 1148
Palmer, Alaska 99645

Dear Mr. Johnson:

A loan in the amount of $1,134,000 from the Rural Electrification and Telephone Revolving Fund at an interest rate of 5 percent per annum has been approved for your organization on the condition that a satisfactory concurrent loan in the amount of $512,000 will be obtained by your organization from the National Rural Utilities Cooperative Finance Corporation.

This loan is to finance the balance of the cooperative's construction program included in the "AK6" loan application.

The loan agreement and other documents will be forwarded in the near future for execution. This loan is approved with the understanding that the loan agreement will be authorized and executed by your organization and returned to us by the date which will be set forth in the letter transmitting the loan agreement.

Sincerely,

Harold V. Hunter
Administrator
cc:
CFC

Original retained in General Manager's Office (master file)
Copies to: Board of Directors
Attorney Roger Kemppel
General Manager
Manager of Administration
Manager of Member & Public Relations

MATANUSKA ELECTRIC ASSOCIATION, INC.
P.O. BOX 1148
PALMER, ALASKA 99645
TELEPHONE
(907) 745-3231

October 18, 1982

Mr. Thomas G. Staudenmaier
P. O. Box 408
Eagle River Alaska 99577

Dear Tom:

Reference: Your telephone question to staff concerning the retirement of REA loans.

Please understand that each year the Association makes the required payments on all outstanding loans. In that effort, principal and interest payments are made on each loan; none have priority or must be paid ahead of any other, except as provided by due dates during the calendar year.

When making extra principal payments, however, the earlier loans must receive those payments or be paid off first, unless a special waiver was approved by REA. In other words, extra principal payments sent to REA would be applied to earlier, lower interest loans until they were eliminated. If loans were to be paid off, a 1950 loan would be paid off before a 1960 loan.

We hope this answers your question.

Sincerely,

James F. Palin
General Manager

BG/mb

MATANUSKA ELECTRIC ASSOCIATION, INC.

P.O. BOX 1148

PALMER, ALASKA 99645

TELEPHONE
(907) 745-3231

May 19, 1982

Mr. Thomas G. Staudenmaier
P. O. Box 408
Eagle River, Alaska 99577

Dear Tom:

In my letter of May 13, I advised you that we would be sending you some information separately. Enclosed are copies of the invoices and MEA checks for payments made to Kemppel, Huffman & Ginder for the following years:

YEAR	AMOUNT
1978	1,632.64
1979	5,761.68
1980	17,444.65
1981	40,845.82
1982 (paid through 4/82)	14,836.99

67,392.00

Please note that there are a total of 181 copies.

There appears to be some questions as to your intentions concerning your $20.00 director fee for regular and special board meetings. It was my understanding that you do not wish to be reimbursed for mileage when you use your personal vehicle for Board authorized purposes and for attending Board meetings. It is also my understanding that you do not desire to receive any $20.00 director fees, even though it is allowed by the Bylaws of MEA. If we do not hear from you, we will assume that the above clarifies your intentions and our Accounting Services Section will be so advised. If my understanding is incorrect, please advise and we will make the appropriate changes. Also, if we are to issue any payments to you as a director, we will need your social security number for Internal Revenue Service purposes.

Also, during your visit to this office on May 14, you requested the monthly KWh consumption history for Bob Husted. May I suggest that you submit a written request for this information in accordance with

RECEIVED
MAR 10 1982

Law Offices of
Kemppel, Huffman & Ginder
255 E. Fireweed Lane, Suite 200
Anchorage, Alaska 99503

Roger R. Kemppel
Richard R. Huffman
Peter C. Ginder
Ronald L. Baird

Telephone
(907) 277-1604
(907) 276-1605

March 8, 1982

Matanuska Electric Association
Post Office Box 1148
Palmer, Alaska 99645

Subject: Notification of Increase in Billing Rates

Attn: James Palin, General Manager

This letter is to notify you that effective April 1, 1982, an increase in our hourly rates for attorney's time will be implemented as follows:

Partnership Rates	$100 - $115/hour
Associate Rates	75 - 90/hour
Paralegal/Law Clerk Rates	30 - 50/hour

We regret the need for increases in professional fees, but as in all other aspects of the economy, we have also realized significant increased costs for which we must account. We will continue to implement time-saving procedures which we hope may result in off-setting increased hourly fees. The fees quoted above have been broken into different categories depending upon the degree of involvement, experience, skill, and specialization involved in your representation.

We will continue in our efforts to itemize fees and costs as closely as possible and to accord you the best possible professional service in as inexpensive a manner as we can. If you have questions, please feel free to contact us.

Sincerely,

KEMPPEL, HUFFMAN & GINDER

Roger R. Kemppel

Roger R. Kemppel

RRK/jw

Original to General Mgr.
Copy to Accounting 3/10/82

1982 CONSULTANTS-FORM 7A

NAME AND ADDRESS	TYPE OF SERVICE	AMOUNT
Kemppel Huffman and Ginder 255 East Fireweed Lane Anchorage, Alaska 99503	Legal Consultant	$ 67,396
John R. Snodgrass P.O. Box 600 Palmer, Alaska 99645	Legal Consultant	$ 772
Dryden and LaRue P.O. Box 10-1008 Anchorage, Alaska 99511	Engineering Consultant	$ 16,254
James R. Hendershot Box 3-3828 Anchorage, Alaska 99501	Rate Consultant	$ 4,900
Theodore Barry and Associates 1520 Wilshire Boulevard Los Angeles, California 90017	Management Consultant	$109,813
Touche Ross and Associates 510 L Street Suite 600 Anchorage, Alaska 99501	Certified Public Accountants	$ 19,434
Burns and McDonnell P.O. Box 27-102 Kansas City, Missouri 64180	Engineering Consultant	$ 9,974
		228,543.00

Utility officials lash out at joint electric board

by Cary Virtue
Times Writer

A group that would coordinate electric power planning in South-central would be a "monster" that would haunt the utility world, critics said Thursday.

In short, neither city officials nor representatives from the Matanuska and Homer electric associations support creating such a board, which was proposed by the Chugach Electric Association early this fall.

Specific makeup and duties of the joint planning board have not been determined, but Chugach officials hope the board has some muscle to enforce its decisions on members. But uncertainty over the board's role has created fears that Chugach may try to dominate the board, a charge Chugach officials deny.

"The organization they (Chugach) have proposed is neither necessary nor desirable," Tom Stahr, Municipal Light and Power general manager, told about 100 people attending a breakfast meeting of the Resource Development Council. "It could well become a monster that would destroy rational power planning."

Stahr, who said he was expressing personal opinions, said there already are several organizations involved in power planning, and another one is not needed. Such a board could have too much power, and it could become expensive for consumers to support, he said.

But Joyce Murphy, president of the Chugach board of directors, said Chugach proposed the concept for a joint panel to promote communication between the different electrical utilities. For too long, she said, the utilities have argued, bickered and battled over turf.

"We need joint planning," she said. "We want to cooperate with our sister co-ops."

At stake is the future role of Chugach, the largest cooperative in the state with 58,000 retail customers. It also sells power to both Matanuska and Homer electric associations.

City utility officials are urging Chugach to merge with ML&P, though financial implications of such a merger have not been discussed. A joined utility would not include Homer and Matanuska electric associations.

Meanhwile, both Matanuska and Homer electric associations are urging Chugach not to merge.

Jim Parm, MEA general manager, reiterated Thursday that Chugach should transfer ownership and control of its five power plants to a new authority that would be responsible for producing power for the three cooperatives. This proposal — known as the generation and transmission proposal — would not include the city's electric utility.

The G&T proposal, however, would give Homer and Matanuska co-ops more say in decisions on how much power to produce and what rates to charge. They also say it would help Chugach save money by reducing interest payments it would have to make to pay off a $292 million deficit.

So far, the Chugach board of directors has said it does not want to merge with the city or form a separate G&T authority. However, Murphy said that if the joint planning board agreed to one of those options Chugach would be willing to consider it.

Friday, October 14, 1983, The Anchorage Times D-5

MATANUSKA ELECTRIC ASSOCIATION, INC.
P.O. BOX 1148
PALMER, ALASKA 99645
TELEPHONE
(907) 745-3231

November 11, 1982

NEWS FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION CONTACT:

Budd Goodyear
Manager, Member and Public Relations

The Matanuska Electric Association, Inc. (MEA) has received approval from the Alaska Public Utilities Commission (APUC) to increase the wholesale power cost component of consumers' bills by .713¢ per kilowatt hour to 1.39¢ per kilowatt hour on bills rendered after November 9, 1982.

This adjustment is necessary because of the third quarter 1982 reconciliation of generation and transmission costs to Chugach Electric Association, Inc., (CEA) MEA's energy supplier, and because of MEA's share of interest and depreciation expense of CEA's Beluga 8 generating unit which was brought on line September 30. The wholesale power cost rate adjustment (WPCRA) is added to the existing interim rate approved by the APUC on October 10 when computing energy bills.

The new WPCRA (flow-through) will affect sample bills as noted below.

SINGLE PHASE SERVICE

kWh	Before Increase	After Increase	% Change
100	$ 26.01	$ 26.72	2.7
500	50.02	53.58	7.1
1,000	80.03	87.15	8.9

kWh	Before Increase	After Increase	% Change
2,000	$129.63	$143.47	11.0
4,000	219.87	248.35	13.0
THREE PHASE SERVICE (Estimated Demand)			
10,000	$ 495.50	$ 566.70	14.4
20,000	951.01	1,093.41	15.0
50,000	2,317.52	2,673.52	15.4

END

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue
Pouch 6-614
Anchorage, Alaska 99502
[907] 333-9561

February 16, 1984

Mr. Thomas G. Staudenmaier
Box 1603
Eagle River, Alaska 99577

Dear Mr. Staudenmaier:

As you requested, the following information as to the Anchorage School District's budgeted electricity costs for 1983-84 has been summarized for your use. If you need any additional information please contact me or Melvin J. Greaves Jr., Budget Director at 269-2351.

Budgeted Electricity Costs
1983-84

Administrative and Support Units	$ 175,450
Elementary Schools	1,119,300
Special Education/Special Services Units	37,800
Secondary Schools	1,594,000
Reserve for Rate Increases	95,000
	$ 3,021,550

The following summarizes the budgeted electricity by source.

Chugach Electric	$ 980,900
Municipal Light and Power	1,458,750
Matanuska Electric	394,400
U.S. Government (On-Base Schools)	92,500
	2,926,550
Reserve for Rate Increases	95,000
	$ 3,021,550

Sincerely,

E. E. (Gene) Davis

E.E. (Gene) Davis, Ed.D.
SUPERINTENDENT

EED/MJG/pa

MATANUSKA-SUSITNA BOROUGH SCHOOL DISTRICT
BOX AB • PALMER, ALASKA 99645 1646 • PHONE 745-4892

KENNETH J. KRAMER
SUPERINTENDENT OF SCHOOLS

December 17, 1982

Thomas G. Staudenmaier
Box 1603
Eagle River, Alaska 99577

Dear Mr. Staudenmaier,

This is to advise you, as per your request, that the Matanuska-Susitna Borough School District has budgeted $489,643.00 for electricity for the fiscal year July 1, 1982 to June 30, 1983. This figure includes budgeted amounts for all schools and buildings under the School District's operation, excluding Skwentna, which is powered by a generator.

Thank you for your interest.

Sincerely,

Gary E. Epperson
Business Manager

GEE/mk

FRANK H. MURKOWSKI
ALASKA

COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
COMMITTEE ON VETERANS' AFFAIRS

United States Senate
WASHINGTON, D.C. 20510

WASHINGTON OFFICE:
(202) 224-6665
ANCHORAGE OFFICE:
701 C STREET, BOX 1
(907) 271-3735
JUNEAU OFFICE:
FEDERAL BUILDING, BOX 1647
(907) 586-7463
FAIRBANKS OFFICE:
101 12TH AVENUE, BOX 7
(907) 452-6227

January 10, 1983

Mr. Tom Staudenmaier
Director
Board of the Matanuska Electric Association
P.O. Box 1603
Eagle River, Alaska 99577

Dear Mr. Staudenmaier:

Thank you for your letter requesting Senator Murkowski's intervention in securing a General Accounting Office (GAO) audit into the activities of Chugach Electric Association.

Senator Murkowski is presently in Alaska, and I will bring your letter to his attention as soon as possible. In the meantime, I will continue to discuss this issue with you, and will attempt to have a complete response at the earliest possible date.

I appreciate your taking the time to contact Senator Murkowski about this issue.

Sincerely,

David Garman
Legislative Assistant
Senator Murkowski

MEMORANDUM

MATANUSKA ELECTRIC ASSOCIATION, INC.
P.O. BOX 1148
PALMER, ALASKA 99645

PHONE (907) 745-3231

TO: Joyce

DATE: April 23, 1982

FROM: Deannine
Deannine

SUBJECT: NRECA Director coverage and ID cards

At the May 4 meeting the new Director's need only pencil in the information underlined in red. The date of hire should be the date they are sworn in. A sample of beneficiary wording is attached to each form to assist them in their choice. I will type the official form and have it ready for signature at their regular 5/11/82 meeting. Each Director is covered by $25,000 24 hours accident coverage and $100,000 Business Travel insurance. Our Manager's, Officer's & Director's Liability Insurance (MODL) coverage is $10,000,000. Fiduciary Liability Insurance coverage is $1,000,000. After enrollment I will be sending each Director (new) a participation card from NRECA indicating their 24 hour and Business Travel coverage.

Please return the completed ID card information to me with an indication of where I may reach each new Director to make arrangements for the issuance of the ID card.

Please provide me with a formal copy of the proposition that expanded our Board to 7 members. I will need to send this to NRECA with enrollments so they can expand our MODL insurance coverage.

Tom, for your information/jg

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

COMPARATIVE BALANCE SHEET
LIABILITIES & OTHER CREDITS

	Beginning of Year Balance	End of Year Balance
Proprietary Capital		
Common Stock Issued	$ -	$ -
Preferred Stock Issued	-	-
Capital Stock Subscribed	-	-
Stock Liability for Conversion	-	-
Premium on Capital Stock	-	-
Memberships	192,925	215,480
Installments Received on Capital Stock	-	-
Discount on Capital Stock	-	-
Capital Stock Expense	-	-
Patronage Capital and other equities	9,285,340	8,733,965
Unappropriated Undistributed Subsidiary Earnings	-	-
Reacquired Capital Stock	-	-
Total Proprietary Capital	$ 9,478,265	$ 8,949,445
Long Term Debt		
Bonds	$ -	$ -
Advances from Associated Companies	-	-
Other Long Term Debt	214,343,610	259,041,646
Unamortized Premium on Long Term Debt	-	-
Unamortized Discount on Long Term Debt- Dr.	-	-
Total Long Term Debt	$ 214,343,610	$ 259,041,646
Current & Accrued Liabilities		
Notes Payable	$ 23,900,000	$ 29,000,000
Accounts Payable	5,282,290	6,003,530
Payables to Associated Companies	-	-
Customer Deposits	1,349,075	1,637,595
Taxes Accrued	533,785	535,624
Interest Accrued	-	-
Dividends Declared	-	-
Matured Long Term Debt	-	-
Matured Interest	-	-
Tax Collections Payable	-	-
Miscellaneous Current & Accrued Liabilities	981,950	1,063,007
Total Current & Accrued Liabilities	$ 32,047,100	$ 38,239,756
Deferred Credits		
Customer Advances for Construction	$ 2,063,554	$ 2,632,102
Accumulated Deferred Investment Tax Credits	-	-
Deferred Gains from Disposition of Utility Plant	-	-
Other Deferred Credits	358,826	287,286
Unamortized Gain on Reacquired Debt	-	-
Accumulated Deferred Income Taxes	-	-
Total Deferred Credits	$ 2,422,380	$ 2,919,388
Operating Reserves		
Property Insurance Reserve	$	$
Injuries & Damages Reserve		
Pensions & Benefits Reserve		
Miscellaneous Operating Reserves	29,661	27,815
Total Operating Reserves	$ 29,661	$ 27,815
Total Liabilities & Other Credits	$258,321,016	$309,178,050

COMPARATIVE BALANCE SHEET
LIABILITIES & OTHER CREDITS

	Beginning of Year Balance	End of Year Balance
Proprietary Capital		
Common Stock Issued	$ 4,266,733	$ 5,167,806
Preferred Stock Issued	61,390	66,970
Capital Stock Subscribed		
Stock Liability for Conversion		
Premium on Capital Stock		
Other Paid-in Capital	3,766	4,619
Installments Received on Capital Stock		
Discount on Capital Stock		
Capital Stock Expense		
Retained Earnings		
Unappropriated Undistributed Subsidiary Earnings		
Reacquired Capital Stock		
Total Proprietary Capital	$ 4,331,889	$ 5,239,395
Long Term Debt		
Bonds	$	$
Advances from Associated Companies		
Other Long Term Debt	48,880,706	56,033,509
Unamortized Premium on Long Term Debt		
Unamortized Discount on Long Term Debt- Dr.		
Total Long Term Debt	$ 48,880,706	$ 56,033,509
Current & Accrued Liabilities		
Notes Payable	$ 1,318,880	$ -
Accounts Payable	2,621,480	3,449,132
Payables to Associated Companies	-	-
Customer Deposits	431,829	443,215
Taxes Accrued	131,796	137,800
Interest Accrued		
Dividends Declared		
Matured Long Term Debt		
Matured Interest		
Tax Collections Payable	272	-
Miscellaneous Current & Accrued Liabilities	462,547	489,224
Total Current & Accrued Liabilities	$ 4,966,804	$ 4,519,371
Deferred Credits		
Customer Advances for Construction	$	$
Accumulated Deferred Investment Tax Credits		
Deferred Gains from Disposition of Utility Plant		
Other Deferred Credits	1,216,461	1,679,750
Unamortized Gain on Reacquired Debt		
Accumulated Deferred Income Taxes		
Total Deferred Credits	$ 1,216,461	$ 1,679,750
Operating Reserves		
Property Insurance Reserve	$	$
Injuries & Damages Reserve		
Pensions & Benefits Reserve	275,181	379,579
Miscellaneous Operating Reserves		
Total Operating Reserves	$ 275,181	$ 379,579
Total Liabilities & Other Credits	$ 59,671,041	$ 67,851,604

COMPARATIVE BALANCE SHEET
LIABILITIES & OTHER CREDITS

	Beginning of Year Balance	End of Year Balance
Proprietary Capital		
Common Stock Issued	$ 3,128,482	$ 3,729,101
Preferred Stock Issued		
Capital Stock Subscribed		
Stock Liability for Conversion		
Premium on Capital Stock		
Other Paid-in Capital	5,258	9,169
Installments Received on Capital Stock		
Discount on Capital Stock		
Capital Stock Expense		
Retained Earnings		
Unappropriated Undistributed Subsidiary Earnings		
Reacquired Capital Stock		
Total Proprietary Capital	$ 3,133,740	$ 3,738,270
Long Term Debt		
Bonds	$ 563,000	$ 510,000
Advances from Associated Companies		
Other Long Term Debt	35,253,158	40,809,883
Unamortized Premium on Long Term Debt		
Unamortized Discount on Long Term Debt- Dr.		
Total Long Term Debt	$ 35,816,158	$ 41,319,883
Current & Accrued Liabilities		
Notes Payable	$ 3,500,000	$ 1,150,320
Accounts Payable	1,478,426	1,351,117
Payables to Associated Companies		
Customer Deposits	452,534	585,970
Taxes Accrued	224,069	233,297
Interest Accrued	8,877	9,240
Dividends Declared		
Matured Long Term Debt		
Matured Interest		
Tax Collections Payable	32,295	33,636
Miscellaneous Current & Accrued Liabilities	406,573	434,871
Total Current & Accrued Liabilities	$ 6,102,774	$ 3,798,451
Deferred Credits		
Customer Advances for Construction	$	$
Accumulated Deferred Investment Tax Credits		
Deferred Gains from Disposition of Utility Plant		
Other Deferred Credits		
Unamortized Gain on Reacquired Debt	212,498	211,511
Accumulated Deferred Income Taxes		
Total Deferred Credits	$ 212,498	$ 211,511
Operating Reserves		
Property Insurance Reserve	$	$
Injuries & Damages Reserve		
Pensions & Benefits Reserve		
Miscellaneous Operating Reserves	56,845	48,957
Total Operating Reserves	$ 56,845	$ 48,957
Total Liabilities & Other Credits	$ 45,322,015	$ 49,117,072

COMPARATIVE BALANCE SHEET
ASSETS AND OTHER DEBITS

		Beginning of Year Balance	End of Year Balance
Utility Plant			
Utility Plant		$ 122,326,336	$ 125,736,805
Construction Work in Progress		938,918	816,479
Total Utility Plant		$ 123,265,254	$ 126,553,284
Less: Accum. Provision for Depreciation, Amortization, and Depletion		20,369,816	23,520,484
Net Utility Plant		$ 102,895,438	$ 103,032,800
Utility Plant Adjustments		$	$
Other Property & Investments			
Non-utility Property (Net)		$ 124,330	$ 124,330
Investment in Associated Companies		1,993,976	2,248,399
Investment in Subsidiary Companies			
Other Investments		1,000	1,000
Special Funds		316,443	417,646
Total Other Property & Investments		$ 2,435,749	$ 2,791,375
Current & Accrued Assets			
Cash		$ 1,852,955	$ 4,810,551
Special Deposits		4,655	
Working Funds		5,200	5,250
Temporary Cash Investments		799,997	
Notes & Accounts Receivable (Net)		5,378,612	5,682,155
Receivables from Associated Companies			
Materials & Supplies		3,529,011	3,778,263
Prepayments		164,510	73,146
Interest & Dividends Receivable			
Rents Receivable			
Accrued Utility Revenues			
Miscellaneous Current & Accrued Assets		109,729	96,590
Total Current & Accrued Assets		$ 11,844,669	$ 14,445,955
Deferred Debits			
Unamortized Debt Expense		$	$
Extraordinary Property Losses			
Preliminary Survey & Investigation Charges	A/C 183	431,590	201,794
Clearing Accounts	184	1,015	(9,245)
Temporary Facilities	186	210,115	153,361
Miscellaneous Deferred Debits			
Deferred Losses from Disposition of Utility Plant			
Research & Development Expenditures			
Unamortized Loss on Reacquired Debt			
Accumulated Deferred Income Taxes			
Total Deferred Debits		$ 642,720	$ 345,910
Total Assets & Other Debits		$ 117,818,576	[redacted]

KODIAK ELECTRIC ASSOCIATION, INC.

Annual Report of.....Year Ended 12/31/82

COMPARATIVE BALANCE SHEET
LIABILITIES & OTHER CREDITS

	Beginning of Year Balance	End of Year Balance
Proprietary Capital		
Common Stock Issued	$ 2,214,714	$ 2,199,938
Preferred Stock Issued		
Capital Stock Subscribed		
Stock Liability for Conversion		
Premium on Capital Stock		
Other Paid-in Capital	47,026	48,421
Installments Received on Capital Stock		
Discount on Capital Stock		
Capital Stock Expense		
Retained Earnings		
Unappropriated Undistributed Subsidiary Earnings		
Reacquired Capital Stock		
Total Proprietary Capital	$ 2,261,740	$ 2,248,359
Long Term Debt		
Bonds	$	$
Advances from Associated Companies		
Other Long Term Debt	17,434,840	15,013,722
Unamortized Premium on Long Term Debt		
Unamortized Discount on Long Term Debt- Dr.		
Total Long Term Debt	$ 17,434,840	$ 15,013,722
Current & Accrued Liabilities		
Notes Payable	$ 550,000	$ 2,949,566
Accounts Payable	781,228	739,583
Payables to Associated Companies		
Customer Deposits	72,505	97,705
Taxes Accrued	64,796	70,284
Interest Accrued	9,729	
Dividends Declared		
Matured Long Term Debt		
Matured Interest		
Tax Collections Payable	177	20,637
Miscellaneous Current & Accrued Liabilities	192,615	225,507
Total Current & Accrued Liabilities	$ 1,671,050	$ 4,103,282
Deferred Credits		
Customer Advances for Construction	$ 15,587	$ 4,154,180
Accumulated Deferred Investment Tax Credits		
Deferred Gains from Disposition of Utility Plant		
Other Deferred Credits	85,419	96,314
Unamortized Gain on Reacquired Debt		
Accumulated Deferred Income Taxes		
Total Deferred Credits	$ 101,006	$ 4,250,494
Operating Reserves		
Property Insurance Reserve	$	$
Injuries & Damages Reserve		
Pensions & Benefits Reserve		
Miscellaneous Operating Reserves	62,689	172,986
Total Operating Reserves	$ 62,689	$ 172,986
Total Liabilities & Other Credits	$ 21,531,325	$ 25,788,843

Annual Report of BARROW UTILITIES AND ELECTRIC COOPERATIVE, INC. Year Ended DEC 31 1981

COMPARATIVE BALANCE SHEET
LIABILITIES & OTHER CREDITS

	Beginning of Year Balance	End of Year Balance
Proprietary Capital		
Common Stock Issued	$ 23,275	$ 25,850
Preferred Stock Issued	0	0
Other Paid-in Capital	969,076	2,989,371
Installments Received on Capital Stock	0	0
Discount on Capital Stock	0	0
Capital Stock Expense	0	0
Retained Earnings	667,186	1,324,359
Unappropriated Undistributed Subsidiary Earnings	0	0
Reacquired Capital Stock	0	0
Noncorporate Proprietorship	0	0
Total Proprietary Capital	$ 1,659,537	$ 4,339,580
Long Term Debt		
Bonds	$	$
Advances from Associated Companies		
Other Long Term Debt		
Unamortized Premium on Long Term Debt		
Unamortized Discount on Long Term Debt- Dr.		
Total Long Term Debt	$ 0	$ 0
Current & Accrued Liabilities		
Notes Payable	$ 0	$ 0
Accounts Payable	69,189	447,875
Payables to Associated Companies	0	0
Customer Deposits	21,863	30,988
Taxes Accrued	29,834	37,776
Interest Accrued	0	0
Other Current & Accrued Liabilities	29,620	76,582
Total Current & Accrued Liabilities	$ 150,506	$ 593,221
Deferred Credits		
Customer Advances for Construction	$ 112,373	$ 43,392
Accumulated Deferred Investment Tax Credits	0	0
Deferred Gains from Disposition of Utility Plant	0	0
Other Deferred Credits	240,859	0
Unamortized Gain on Reacquired Debt	0	0
Accumulated Deferred Income Taxes	0	0
Total Deferred Credits	$ 353,232	$ 43,392
Operating Reserves		
Property Insurance Reserve	$	$
Injuries & Damages Reserve		
Pensions & Benefits		
Miscellaneous Operating Reserves		
Total Operating Reserves	$ 0	$ 0
Total Liabilities & Other Credits	$ 2,163,275	$ 4,976,193

Alaska Village Electric Cooperative, Inc.

Annual Report of.....Year Ended...December 31, 1981.....

COMPARATIVE BALANCE SHEET
LIABILITIES & OTHER CREDITS

	Beginning of Year Balance	End of Year Balance
Proprietary Capital		
Common Stock Issued - Memberships	$ 17,475.	$ 15,845.
Preferred Stock Issued - Pat. Cap. & Cur. Year Marg.	1,480,868.	1,398,035.
Capital Stock Subscribed - Operating Margins	(82,832.)	782,310.
Stock Liability for Conversion		
Premium on Capital Stock		
Other Paid-in Capital	5,466,040.	5,466,040.
Installments Received on Capital Stock		
Discount on Capital Stock		
Capital Stock Expense		
Retained Earnings		
Unappropriated Undistributed Subsidiary Earnings		
Reacquired Capital Stock		
Total Proprietary Capital	$ 6,881,551.	$ 7,662,230.
Long Term Debt		
Bonds	$	$
Advances from Associated Companies		
Other Long Term Debt	16,235,945.	16,861,165.
Unamortized Premium on Long Term Debt		
Unamortized Discount on Long Term Debt- Dr.		
Total Long Term Debt	$16,235,945.	$ 16,861,165.
Current & Accrued Liabilities		
Notes Payable	$ -0-	$ -0-
Accounts Payable	185,169.	469,990.
Payables to Associated Companies	-0-	-0-
Customer Deposits	410.	450.
Taxes Accrued	10,867.	194,332.
Interest Accrued		
Dividends Declared		
Matured Long Term Debt		
Matured Interest		
Tax Collections Payable	618.	-0-
Miscellaneous Current & Accrued Liabilities	186,431.	-0-
Total Current & Accrued Liabilities	$ 383,495.	$ 664,772.
Deferred Credits		
Customer Advances for Construction	$ 456.	$ 456.
Accumulated Deferred Investment Tax Credits	-0-	-0-
Deferred Gains from Disposition of Utility Plant	-0-	-0-
Other Deferred Credits		(5,702.)
Unamortized Gain on Reacquired Debt		
Accumulated Deferred Income Taxes		
Total Deferred Credits	$ 456.	$ (5,246.)
Operating Reserves		
Property Insurance Reserve	$	$
Injuries & Damages Reserve		
Pensions & Benefits Reserve		
Miscellaneous Operating Reserves		
Total Operating Reserves	$	$
Total Liabilities & Other Credits	$23,501,447.	$25,182,921.

COMPARATIVE BALANCE SHEET
LIABILITIES & OTHER CREDITS

	Beginning of Year Balance	End of Year Balance
Proprietary Capital		
Common Stock Issued	$ 9,490	$ 9,775
Preferred Stock Issued	-0-	-0-
Capital Stock Subscribed	-0-	-0-
Stock Liability for Conversion	-0-	-0-
Premium on Capital Stock	-0-	-0-
Other Paid-in Capital	2,608	2,643
Installments Received on Capital Stock	-0-	-0-
Discount on Capital Stock	-0-	-0-
Capital Stock Expense	-0-	-0-
Retained Earnings	776,860	435,404
Unappropriated Undistributed Subsidiary Earnings	-0-	-0-
Reacquired Capital Stock	-0-	-0-
Total Proprietary Capital	$ 788,958	$ 447,822
Long Term Debt		
Bonds	$ -0-	$ -0-
Advances from Associated Companies	-0-	-0-
Other Long Term Debt	39,738,863	75,632,664
Unamortized Premium on Long Term Debt	-0-	-0-
Unamortized Discount on Long Term Debt- Dr.	-0-	-0-
Total Long Term Debt	$39,738,863	$ 75,632,664
Current & Accrued Liabilities		
Notes Payable	$ -0-	$ -0-
Accounts Payable	20,601,559	3,577,201
Payables to Associated Companies	-0-	-0-
Customer Deposits	182,620	183,875
Taxes Accrued	114,685	-0-
Interest Accrued	-0-	-0-
Dividends Declared	-0-	-0-
Matured Long Term Debt	-0-	-0-
Matured Interest	-0-	-0-
Tax Collections Payable	-0-	-0-
Miscellaneous Current & Accrued Liabilities	-0-	136,939
Total Current & Accrued Liabilities	$20,898,864	$ 3,898,015
Deferred Credits		
Customer Advances for Construction	$ -0-	$ -0-
Accumulated Deferred Investment Tax Credits	-0-	-0-
Deferred Gains from Disposition of Utility Plant	-0-	-0-
Other Deferred Credits	20,270	50,350
Unamortized Gain on Reacquired Debt	-0-	-0-
Accumulated Deferred Income Taxes	-0-	-0-
Total Deferred Credits	$ 20,270	$ 50,350
Operating Reserves		
Property Insurance Reserve	$ -0-	$ -0-
Injuries & Damages Reserve	-0-	-0-
Pensions & Benefits Reserve	-0-	-0-
Miscellaneous Operating Reserves	-0-	-0-
Total Operating Reserves	$ -0-	$ -0-
Total Liabilities & Other Credits	$61,446,955	$ 80,028,851

STATEMENT OF INCOME FOR THE YEAR

	Amount for Year	Increase or (Decrease) From Preceding
Operating Revenues	$ 1,573,665	$ 304,322
Operating Expenses		
Operation & Maintenance Expense (List Detail Below)	$ 1,297,525	$ 233,261
Depr. & Amort. Expense	143,093	37,833
Taxes Other Than Income Taxes	3,935	167
Income Taxes - Federal	-0-	-0-
~~Income Taxes - Other~~ INCOME DEDUCTIONS	1,255	1,205
(Gain) or Loss on Disposition of Utility Plant	-0-	-0-
Total Utility Operating Expense	$ 1,445,808	$ 272,466
Net Utility Operating Income	$ 127,857	$ 31,856
Other Income		
Non-utility Income (Scheduled)	$ 2,481	$ 1,306
Other Income Deductions		
Misc. Non-utility Deductions (Scheduled)	$ 2,790	$ 2,790
Interest Charges		
Interest on Long Term Debt	$ 64,887	$ 17,231
Other Interest Expense	(5,267)	191
Total Interest Charges	$ 59,620	$ 17,422
Extraordinary Items		
Extraordinary Income or (Deductions)	$	$
NET INCOME	$ 67,928	$ 12,950

ELECTRIC OPERATING & MAINTENANCE EXPENSES

Production Expense		
Supervision & Labor	$ 246,473	$ 56,982
Fuel	764,288	158,554
Supplies & Expenses	51,743	12,824
Repairs of Other Power Production Plant		
Purchased Power		
Other Expenses	21,128	(1,371)
Total Production Expenses	$ 1,083,632	$ 226,989
Transmission & Distribution Expenses		
Supervision & Labor	$ 35,866	($ 3,084)
Supplies & Expenses	8,141	(985)
Transportation Expenses (Included as Payroll Overhead)		
Total Transmission & Distribution Expenses	$ 44,007	($ 4,069)
General Expenses		
Administrative & General Salaries	$ 113,855	$ 24,579
Office Supplies & Expenses	7,240	18
Outside Services Employed	12,165	(1,142)
Insurance Expense	3,234	(902)
Employee Pension & Benefits		
Regulatory Commission Expenses	1,095	(7,510)
Miscellaneous General Expenses	31,328	1,813
Uncollectable Accounts	969	(6,515)
Total General Expenses	$ 169,886	$ 10,341
TOTAL OPERATION & MAINTENANCE EXPENSES	$ 1,257,925	$ 233,261

Title 10 AK.

Chapter 25. Electric and Telephone Cooperative Act.

Article 1. Substantive Provisions.

Sec. 10.25.010. Powers of electric or telephone cooperative. An electric or telephone cooperative may

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter it;

(4) construct, buy, lease, or otherwise acquire, and equip, maintain, and operate and sell, assign, convey, lease, mortgage, pledge, or otherwise dispose of or encumber lands, buildings, structures, electric or telephone lines or stations, dams, plants and equipment, and any other real or personal property, tangible or intangible, which is necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(5) buy, lease, or otherwise acquire, and use, and exercise and sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses and easements;

(6) borrow money and otherwise contract indebtedness, and issue evidences of indebtedness, and secure the payment of the indebtedness by mortgage, pledge, or deed of trust of or any other encumbrances upon its real or personal property, assets, franchises, or revenues;

(7) construct, maintain, and operate electric transmission and distribution lines, or telephone lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways;

(8) exercise the power of eminent domain;

COMPARATIVE BALANCE SHEET
LIABILITIES & OTHER CREDITS

	Beginning of Year Balance	End of Year Balance
Proprietary Capital		
Common Stock Issued	$	$
Preferred Stock Issued		
Capital Stock Subscribed		
Stock Liability for Conversion		
Premium on Capital Stock		
Other Paid-in Capital	4,336	4,336
Installments Received on Capital Stock		
Discount on Capital Stock		
Capital Stock Expense		
Retained Earnings	[1,681,714]	[1,599,141]
Unappropriated Undistributed Subsidiary Earnings		
Reacquired Capital Stock		
Total Proprietary Capital	$ [1,677,378]	$ [1,594,805]
Long Term Debt		
Bonds	$	$
Advances from Associated Companies		
Other Long Term Debt	6,096,324	6,010,439
Unamortized Premium on Long Term Debt		
Unamortized Discount on Long Term Debt- Dr.		
Total Long Term Debt	$ 6,096,324	$ 6,010,439
Current & Accrued Liabilities		
Notes Payable	$ 5,060	$ 5,061
Accounts Payable	72,561	240,975
Payables to Associated Companies	-0-	-0-
Customer Deposits	6,560	9,430
Taxes Accrued	24,620	-0-
Interest Accrued	-0-	-0-
Dividends Declared		
Matured Long Term Debt		
Matured Interest		
Tax Collections Payable		
Miscellaneous Current & Accrued Liabilities	114,393	59,010
Total Current & Accrued Liabilities	$ 223,194	$ 314,476
Deferred Credits		
Customer Advances for Construction	$	$
Accumulated Deferred Investment Tax Credits		
Deferred Gains from Disposition of Utility Plant		
Other Deferred Credits	32,382	27,059
Unamortized Gain on Reacquired Debt		
Accumulated Deferred Income Taxes		
Total Deferred Credits	$ 32,382	$ 27,059
Operating Reserves		
Property Insurance Reserve	$	$
Injuries & Damages Reserve		
Pensions & Benefits Reserve		
Miscellaneous Operating Reserves		
Total Operating Reserves	$ -0-	$ -0-
Total Liabilities & Other Credits	$ 4,674,522	$ 4,757,169

(9) become a member of other cooperatives or corporations or own stock in them;

(10) conduct its business and exercise its powers inside or outside the state;

(11) adopt, amend and repeal bylaws;

(12) make all contracts necessary, convenient or appropriate for the full exercise of its powers;

(13) do and perform any other act and thing, and have and exercise any other power which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized. (§ 4(1) ch 93 SLA 1959)

Sec. 10.25.020. Powers of electric cooperative. An electric cooperative may

(1) generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and distribute, sell, supply and dispose of electric energy to its members, to governmental agencies and political subdivisions, and to other persons not exceeding 10 per cent of the number of its members; however, a cooperative which acquires existing electric facilities may continue service to persons, not in excess of 40 per cent of the number of its members, who are already receiving service from these facilities without requiring them to become members, and these persons may become members upon the terms as may be prescribed in the bylaws;

(2) assist persons to whom electric energy is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrical and plumbing appliances, equipment, fixtures and apparatus by financing them, and in connection with these services wire or have wired the premises, and buy, acquire, lease, sell, distribute, install and repair electric and plumbing appliances, equipment, fixtures and apparatus;

(3) assist persons to whom electric energy is or will be supplied by the cooperative in constructing, equipping, maintaining and operating electric cold storage or processing plants by financing them or otherwise. (§ 4(2) ch 93 SLA 1959)

Sec. 10.25.030. Powers of telephone cooperative. A telephone cooperative may

(1) furnish, improve and expand telephone service to its members, and to other users not in excess of 10 per cent of the number of its members; however, telephone service may be made available by a cooperative through interconnection of facilities to any number of subscribers of other telephone systems, and through pay stations to any number of users, and a cooperative which acquires existing telephone facilities may continue service to persons, not exceeding 40 per cent of the number of its members, who are already receiving service from the facilities without requiring

them to become members, and these persons may become members upon terms as may be prescribed in the bylaws;

(2) connect and interconnect its telephone lines, facilities or systems with other telephone lines, facilities or systems;

(3) make its facilities available to persons furnishing telephone service inside or outside the state. (§ 4(3) ch 93 SLA 1959)

Sec. 10.25.040. Name. The name of a cooperative shall include the words "electric" or "telephone," as appropriate to its purpose, and "cooperative," and the abbreviation "inc." The name of a cooperative shall be distinct from the name of other cooperatives or corporations organized under the laws of or authorized to do business in this state. This section does not apply to a corporation which becomes subject to this chapter by compliance with §§ 290 and 300 or 600 of this chapter and which elects to retain a corporate name which does not comply with this section. (§ 5 ch 93 SLA 1959)

Sec. 10.25.050. Incorporators. Five or more persons, including cooperatives, may organize a cooperative. (§ 6 ch 93 SLA 1959)

Sec. 10.25.060. Articles of incorporation. (a) The articles of incorporation of a cooperative shall recite that they are executed under this chapter and shall state

(1) the name of the cooperative;

(2) the address of its principal office;

(3) the names and the addresses of the incorporators;

(4) the names and addresses of its directors.

(b) The articles may contain any provisions not inconsistent with this chapter which are considered necessary or advisable for the conduct of its business. The articles shall be signed by each incorporator and acknowledged by at least two of the incorporators, or on their behalf, if they are cooperatives. It is not necessary to recite in the articles the purpose for which the cooperative is organized or any of its corporate powers. (§ 7 ch 93 SLA 1959)

Sec. 10.25.070. Bylaws. The board of directors shall adopt the first bylaws of a cooperative to be adopted following an incorporation, conversion, merger or consolidation. Thereafter the members shall adopt, amend or repeal the bylaws by the affirmative vote of a majority of those members voting on the adoption, amendment or repeal at a meeting of the members. The bylaws shall set forth the rights and duties of members and directors and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with its articles of incorporation. (§ 8 ch 93 SLA 1959)

Sec. 10.25.080. Members. Each incorporator of a cooperative shall be a member of the cooperative. No other person may become

a member unless he agrees to use electric energy, or telephone service, or other services furnished by the cooperative when they are made available through its facilities. Membership in a cooperative is not transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations on membership. (§ 9 ch 93 SLA 1959)

Sec. 10.25.090. Meetings of members. (a) An annual meeting of the members of a cooperative shall be held at the time and place provided in the bylaws.

(b) Special meetings of the members may be called by a majority of the board of directors or by not less than 10 per cent of all members. (§ 10(1) (2) ch 93 SLA 1959)

Sec. 10.25.100. Notice of meetings. Except as otherwise provided in this chapter, written notice stating the time and place of each meeting of the members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than 20 days nor more than 40 days before the date of the meeting. If mailed, notice is considered given when it is deposited in the United States mail with postage prepaid addressed to the member at his address as it appears on the records of the cooperative. (§ 10(3) ch 93 SLA 1959)

Sec. 10.25.110. Quorum requirements. Unless the bylaws prescribe the presence of a greater percentage or number of the members for a quorum, a quorum for the transaction of business at all meetings of the members of a cooperative having not more than 1,000 members is 5 per cent of all members, present in person, and a quorum for the transaction of business of the members of a cooperative having more than 1,000 members is 50 members, present in person. If less than a quorum is present at a meeting, a majority of those present in person may adjourn the meeting from time to time without further notice. (§ 10(4) ch 93 SLA 1959)

Sec. 10.25.120. Voting. Each member is entitled to one vote on each matter submitted to a vote at a meeting of the members. Voting shall be in person, but, if the bylaws so provide, may also be by mail. (§ 10(5) ch 93 SLA 1959)

Sec. 10.25.130. Waiver of notice. A person entitled to notice of a meeting may waive notice in writing either before or after the meeting. Attendance at a meeting is a waiver of notice of the meeting, unless the person attends solely to object to the transaction of business because the meeting has not been legally called or convened. (§ 11 ch 93 SLA 1959)

Sec. 10.25.140. Board of directors. The business of a cooperative shall be managed by a board of not less than five directors, each of whom shall be a member of the cooperative or of another cooperative which is a member of it. The bylaws shall prescribe the number of directors, their qualifications other than those prescribed in this chapter, and the manner of holding meetings of the board of directors and of electing successors to directors who resign, die, or are otherwise incapable of acting. The bylaws may provide for the removal of directors from office and for the election of their successors. Directors shall not receive salaries for the services as directors and, except in emergencies, shall not receive salaries for their services in any other capacity without the approval of the members. The bylaws may, however, prescribe a fixed fee for attendance at each meeting of the board of directors and may provide for reimbursement of actual expenses of attendance. (§ 12(1) ch 93 SLA 1959)

Sec. 10.25.150. Term of office of directors. The directors of a cooperative named in articles of incorporation, consolidation, merger or conversion hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting, or in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual meeting of the members, except as otherwise provided in this chapter. Each director holds office for the term for which he is elected and until his successor is elected and qualifies. (§ 12(2) ch 93 SLA 1959)

Sec. 10.25.160. Staggered terms of office for directors. Instead of electing all directors annually, the bylaws may provide that directors shall be elected for terms not to exceed three years, or until their successors are elected and qualify, and that the terms of directors shall be staggered so that one-third of the directors, or a number as close to one-third as possible, shall be elected at each annual meeting. (§ 12(3) ch 93 SLA 1959)

Sec. 10.25.170. Quorum of board. A majority of the board of directors constitutes a quorum. (§ 12(4) ch 93 SLA 1959)

Sec. 10.25.180. General powers of board. The board of directors may exercise all of the powers of a cooperative not conferred upon the members by this chapter, its articles of incorporation or its bylaws. (§ 12(5) ch 93 SLA 1959)

Sec. 10.25.190. Districts. The bylaws may provide for the division of the territory served or to be served by a cooperative into two or more districts for any purpose, including, without limitation, the nomination and election of directors and the election and

functioning of district delegates. These delegates, who shall be members, may nominate and elect directors. The bylaws shall prescribe the boundaries of the districts, or the manner of establishing the boundaries, and the manner of changing the boundaries, and the manner in which the districts function. No member at any district meeting and no district delegate at any meeting may vote by proxy or by mail. (§ 13 ch 93 SLA 1959)

Sec. 10.25.200. Officers. The officers of a cooperative are a president, a vice president, a secretary and a treasurer. The officers shall be elected annually by the board of directors from among its members. When a person holding an office ceases to be a director, he ceases to hold office. The offices of secretary and of treasurer may be held by the same person. The board of directors may elect or appoint such other officers, agents, or employees as it considers necessary or advisable and shall prescribe their powers and duties. An officer may be removed from office and his successor elected in the manner prescribed in the bylaws. (§ 14 ch 93 SLA 1959)

Sec. 10.25.210. Amendment of articles of incorporation. A cooperative may amend its articles of incorporation as follows, except that it may change the location of its principal office in the manner set forth in § 230 of this chapter.

(1) The proposed amendment shall be presented to a meeting of the members, and the notice of the meeting shall set forth or have attached to it the proposed amendment.

(2) If the proposed amendment, with any changes, is approved by the affirmative vote of not less than two-thirds of those members voting on it, the president or vice president shall execute and acknowledge articles of amendment on behalf of the cooperative and the secretary shall affix and attest to the seal of the cooperative. (§ 15 ch 93 SLA 1959)

Sec. 10.25.220. Contents of articles of amendment. (a) The articles of amendment shall recite that they are executed under this chapter and shall state

(1) the name of the cooperative;

(2) the address of its principal office;

(3) the amendment to its articles of incorporation.

(b) The president or vice president executing the articles of amendment shall make and annex to them an affidavit stating that the provisions of this section regarding the amendment were complied with. (§ 15 ch 93 SLA 1959)

Sec. 10.25.230. Change of location of principal office. A cooperative may, upon authorization of its board of directors or its members, change the location of its principal office by filing a certificate reciting the change of principal office, executed and ac-

knowledged by its president or vice president under its seal, attested by its secretary, in the office of the commissioner. (§ 16 ch 93 SLA 1959)

Article 2. Merger and Consolidation.

Sec. 10.25.240. Merger. One or more cooperatives, each hereinafter designated "merging cooperative," may merge into another cooperative, hereinafter designated "surviving cooperative," by complying with the following requirements.

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger shall be submitted to a meeting of the members of each merging cooperative and of the surviving cooperative. The notice of the meeting shall have attached to it a copy of the proposed articles of merger.

(2) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each cooperative voting on them at the meeting, articles of merger in the form approved shall be executed and acknowledged on behalf of each cooperative by its president or vice president and its seal shall be affixed by its secretary. (§ 18(1) (2) ch 93 SLA 1959)

Sec. 10.25.250. Contents of articles of merger. (a) The articles of merger shall recite that they are executed under this chapter and shall state

(1) the name of each merging cooperative and the address of its principal office;

(2) the name of the surviving cooperative and the address of its principal office;

(3) a statement that each merging cooperative and the surviving cooperative agree to the merger;

(4) the names and addresses of the directors of the surviving cooperative;

(5) the terms and conditions of the merger and the manner of carrying it into effect, including the manner in which members of the merging cooperatives may or shall become members of the surviving cooperative.

(b) The articles of merger may contain provisions not inconsistent with this chapter which are considered necessary or advisable for the conduct of the business of the surviving cooperative.

(c) The president or vice president of each cooperative shall make and annex to the articles an affidavit stating that the provisions of this section regarding the articles were complied with by the cooperative. (§ 18(2) ch 93 SLA 1959)

Sec. 10.25.260. Consolidation. Two or more cooperatives, hereinafter designated "consolidating cooperative" may consolidate into a new cooperative, hereinafter designated the "new cooperative," by complying with the following requirements.

(1) The proposition for the consolidation into the new cooperative and proposed articles of consolidation shall be submitted to a meeting of the members of each consolidating cooperative. The notice of the meeting shall have attached to it a copy of the proposed articles of consolidation.

(2) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting on them, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice president and its seal shall be affixed and attested by its secretary. (§ 17(1) (2) ch 93 SLA 1959)

Sec. 10.25.270. Contents of articles of consolidation. (a) The articles of consolidation shall recite that they are executed pursuant to this chapter and shall state

(1) the name of each consolidating cooperative and the address of its principal office;

(2) the name of the new cooperative and the address of its principal office;

(3) a statement that each consolidating cooperative agrees to the consolidation;

(4) the names and addresses of the directors of the new cooperative;

(5) the terms and conditions of the consolidation and the manner of carrying it into effect, including the manner in which members of the consolidating cooperatives may or shall become members of the new cooperative.

(b) The articles of consolidation may contain provisions not inconsistent with this chapter which are considered necessary or advisable for the conduct of the business of the new cooperative.

(c) The president or vice president of each consolidating cooperative executing the articles of consolidation shall make and annex to the articles an affidavit stating that the provisions of this section regarding the articles were complied with by the cooperative. (§ 17(2) ch 93 SLA 1959)

Sec. 10.25.280. Effect of consolidation or merger. (a) In the case of a consolidation the existence of the consolidating cooperatives ceases and the articles of consolidation are the articles of incorporation of the new cooperative. In the case of a merger the separate existence of the merging cooperatives ceases and the articles of incorporation of the surviving cooperative are amended to the extent that changes are provided for in the articles of merger.

(b) The rights, privileges, immunities and franchises, and all real and personal property including, without limitation, applications for membership, all debts due on whatever account and all other choses in action, of the consolidating or merging cooperatives are transferred to and vested in the new consolidated or surviving cooperative without further act or deed.

(c) The new consolidated or surviving cooperative is responsible and liable for the liabilities and obligations of each of the consolidating or merging cooperatives and a claim existing or action or proceeding pending by or against the consolidating or merging cooperatives may be prosecuted as if the consolidation or merger had not taken place, but the new consolidated or surviving cooperative may be substituted in its place.

(d) Neither the rights of creditors nor liens upon the property of the cooperatives is impaired by the consolidation or merger. (§ 19 ch 93 SLA 1959)

Sec. 10.25.290. Conversion of existing corporation. A corporation organized under the laws of the state and supplying or having the corporate power to supply electric energy, or to furnish telephone service, may be converted into a cooperative by complying with the following requirements and thereupon becomes subject to this chapter as if originally organized under this chapter.

(1) The proposition for the conversion of the corporation into a cooperative and proposed articles of conversion shall be submitted to a meeting of the members or stockholders of the corporation, or in case of a corporation having no members or stockholders, to a meeting of the incorporators of the corporation. The notice of the meeting shall have attached to it a copy of the proposed articles of conversion.

(2) If the proposition for the conversion of the corporation into a cooperative and the proposed articles of conversion, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of the corporation voting on them or, if the corporation is a stock corporation, by the affirmative vote of the holders of not less than two-thirds of those shares of the capital stock of the corporation represented at the meeting and voting on them, or, in the case of a corporation having no

members and no shares of its capital stock outstanding, by the affirmative vote of not less than two-thirds of its incorporators, articles of conversion in the form approved shall be executed and acknowledged on behalf of the corporation by its president or vice president and its seal shall be affixed and attested by its secretary. (§ 20(1) (2) ch 93 SLA 1959)

Sec. 10.25.300. Contents of articles of conversion. (a) The articles of conversion shall recite that they are executed under this chapter and shall state

(1) the name of the corporation and the address of its principal office prior to its conversion into a cooperative;

(2) the statute or statutes under which it was organized;

(3) a statement that the corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(4) its name as a cooperative;

(5) the address of the principal office of the cooperative;

(6) the names and addresses of the directors of the cooperative;

(7) the manner in which members, stockholders or incorporators of the corporation are to become members of the cooperative.

(b) The articles of conversion may contain provisions not inconsistent with this chapter considered necessary or advisable for the conduct of the business of the cooperative.

(c) The president or vice president executing the articles of conversion shall make and annex to it an affidavit stating that the provisions of this section were complied with regarding the articles. The articles of conversion are the articles of incorporation of the cooperative. (§ 20(2) ch 93 SLA 1959)

Article 3. Dissolution.

Sec. 10.25.310. Dissolution of cooperative which has not commenced business. A cooperative which has not commenced business may be dissolved by delivering articles of dissolution to the commissioner. A majority of the incorporaters shall execute and acknowledge articles of dissolution on behalf of the cooperative. The articles shall state

(1) the name of the cooperative;

(2) the address of its principal office;

(3) that the cooperative has not commenced business;

its debts, obligations and liabilities, other than those to patrons arising by reason of their patronage, the directors shall distribute remaining sums, first, to patrons for the pro rata return of all amounts standing to their credit by reason of their patronage, and second, to members for the pro rata repayment of membership fees. Sums then remaining shall be distributed among its members and former members in proportion to their patronage, except to the extent participation in the distribution has been legally waived. The board of directors sh thereupon authorize the execution of articles of dissolution. The president or vice president shall execute and acknowledge articles of dissolution on behalf of the cooperative and the secretary shall affix and attest to the seal. (§ 21(2) ch 93 SLA 1959)

Sec. 10.25.360. Contents of articles of dissolution. (a) The articles of dissolution shall recite that they are executed under this chapter and shall state

(1) the name of the cooperative;

(2) the address of its principal office;

(3) the date on which the certificate of election to dissolve was filed by the commissioner;

(4) that there are no actions or suits against the cooperative;

(5) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provisions has been made for them;

(6) that the provisions of §§ 320—360 of this chapter have been complied with.

(b) The president or vice president executing the articles of dissolution shall make and annex to the articles an affidavit stating that the statements contained in the articles are true. (§ 21(2) ch 93 SLA 1959)

Article 4. Miscellaneous Provisions.

Sec. 10.25.370. Filing of articles. Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution, when executed and acknowledged and accompanied by the affidavits required by this chapter, shall be presented to the commissioner for filing. If the commissioner finds that the articles presented conform to the requirements of this chapter, he shall, upon the payment of the fees provided in this chapter, file the articles in the records of his office. Upon filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for is in effect. This section also applies to certificates of election to dissolve and affidavits executed under §§ 320—360 of this chapter. (§ 22 ch 93 SLA 1959)

Sec. 10.25.380. Nonprofit operation. A cooperative shall be operated on a nonprofit basis for the mutual benefit of its members and patrons. The bylaws of a cooperative or its contracts with members and patrons shall contain such provisions relating to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its nonprofit and cooperative character. (§ 23 ch 93 SLA 1959)

Sec. 10.25.390. Disposition of property to secure indebtedness. The board of directors of a cooperative may, without authorization by the members of the cooperative, authorize the execution and delivery of mortgages or deeds of trust of, or the pledging or encumbering of, the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues therefrom, upon the terms and conditions the board of directors determines, to secure an indebtedness of the cooperative to the United States of America or an agency or instrumentality of it. (§ 24(1) ch 93 SLA 1959)

Sec. 10.25.400. Limitations on disposition of all the property. A cooperative may not otherwise sell, mortgage, lease or dispose of or encumber all or a substantial portion of its property unless the transaction is authorized by the affirmative vote of not less than a majority of all the members of the cooperative. However, notwithstanding a provision of this chapter or any other provision of law, the board of directors may, upon the authorization of a majority of those members of the cooperative present at a meeting of the members, sell, lease or otherwise dispose of all or a substantial portion of its property to another cooperative or to the holder

of an evidence of indebtedness issued to the United States of America or an agency or instrumentality of it. (§ 24(2) ch 93 SLA 1959)

Sec. 10.25.410. Nonliability of members for debts of cooperative. No member is liable or responsible for any debts of the cooperative and the property of the members is not subject to execution therefor. (§ 25 ch 93 SLA 1959)

Sec. 10.25.420. Effect of recordation of mortgages. A mortgage, deed of trust, or other instrument executed by a cooperative, which affects real and personal property and which is recorded in the real property records in the city, borough or other recording districts in which the property is located or is to be located has the same effect as if recorded, filed or indexed as provided by law in the proper office in the city, borough or other recording district as a mortgage of personal property. All after-acquired property of the cooperative described or referred to as being mortgaged or pledged in a mortgage, deed of trust or other instrument is subject to the lien thereof immediately upon the acquisition of such property by the cooperative, whether or not the property was in existence at the time of the execution of the mortgage, deed of trust or other instrument. Recordation of such mortgage, deed of trust or other instrument constitutes notice and has the same effect with respect to after-acquired property as it has under the laws relating to recordation of property owned by the cooperative at the time of the execution of the mortgage, deed of trust or other instrument and described in it or referred to as being mortgaged or pledged thereby. The lien of such mortgage, deed of trust or other instrument upon personal property after its recordation continues for the period of time specified in the instrument without refiling or the filing of a renewal certificate, affidavit or other supplemental information required by the laws relating to the renewal, maintenance or extension of liens upon personal property. (§ 26 ch 93 SLA 1959)

Sec. 10.25.430. Validity of mortgage under Rural Electrification Act of 1936. A mortgage made by a cooperative organized under this chapter to the United States of America, or an agency or instrumentality of it, to secure indebtedness incurred under the Rural Electrification Act of 1936, as amended, is not void as against creditors of the mortgagor and subsequent purchasers and encumbrancers of the property in good faith for value because the mortgage is not accompanied by an affidavit of the parties to it, or an affidavit of the agent or attorney in fact of a party to it, that the mortgage is made in good faith to secure the amount named, and without a design to hinder, delay or defraud creditors. A mortgage made by a cooperative organized under this chapter to the

United States of America, or an agency or instrumentality of it to secure indebtedness incurred under the Rural Electrification Act of 1936, as amended, need not set forth the date upon which the indebtedness secured by it becomes due. (§ 26 ch 93 SLA 1959)

Sec. 10.25.440. Construction standards. Construction of electric lines and facilities, or telephone lines and facilities, by a cooperative shall, as a minimum requirement, comply with the standards of the National Electrical Safety Code in effect at the time of construction. (§ 27 ch 93 SLA 1959)

Sec. 10.25.450. Directors, officers or members as notaries. No person authorized to take acknowledgments under the laws of this state is disqualified from taking acknowledgments of instruments to which a cooperative is a party because he is an officer, director or member of the cooperative. (§ 28 ch 93 SLA 1959)

Sec. 10.25.460. Registered office and registered agent. Each cooperative shall have and continuously maintain in the state

(1) a registered office which may be, but need not be, the same as the location of the principal office;

(2) a registered agent who is an individual resident in the state and whose business office is identical with the registered office. (§ 29 ch 93 SLA 1959)

Sec. 10.25.470. Change of registered office or registered agent. A cooperative may change its registered office or change its registered agent, or both, upon filing in the office of the commissioner a statement setting forth

(1) the name of the cooperative;

(2) the address of its registered office;

(3) if the address of its registered office is changed, the address of the new registered office;

(4) the name of the registered agent;

(5) if its registered agent is changed, the name of its new registered agent;

(6) that the address of its registered office and the address of the business office and its registered agent, as changed, will be identical;

(7) that such change was authorized by resolution adopted by its board of directors. (§ 30 ch 93 SLA 1959)

Sec. 10.25.480. Execution and filing of statement. The statement of change of office or agent shall be executed by the cooperative by its president or vice president, verified by him, and directed to the commissioner. If the commissioner finds that the statement conforms to this chapter, he shall file it in his office. Upon the filing, the change of address of the registered office and the appoint-

ment of the registered agent, or both, as the case may be, is effective. (§ 30 ch 93 SLA 1959)

Sec. 10.25.490. Resignation of registered agent. A registered agent of a cooperative may resign by filing a written notice of resignation, executed in duplicate, with the commissioner. The commissioner shall immediately mail a copy of it to the cooperative at its registered office. The appointment of the agent terminates 30 days after receipt of the notice by the commissioner. (§ 30 ch 93 SLA 1959)

Sec. 10.25.500. Service of process on cooperative. (a) The registered agent of a cooperative is an agent of the cooperative upon whom process, notice or demand required or permitted by law to be served upon the cooperative may be served.

(b) When a cooperative fails to appoint or maintain a registered agent in the state, or when its registered agent cannot with reasonable diligence be found at the registered office, then the commissioner is an agent of the cooperative upon whom process, notice or demand may be served. (§ 31 ch 93 SLA 1959)

Sec. 10.25.510. Manner of service on commissioner. (a) Service on the commissioner is made by delivering to and leaving with him, or with a clerk having charge of the corporation department of his office, duplicate copies of the process, notice or demand. The commissioner shall immediately have one copy forwarded by registered mail, addressed to the cooperative at its registered office. Service on the commissioner is returnable in not less than 30 days.

(b) The commissioner shall keep a record of each process, notice and demand served upon him under this section, and shall record the time of service and his action with reference to it. (§ 31 ch 93 SLA 1959)

Sec. 10.25.520. Other means of service not affected. Nothing in §§ 500 and 510 of this chapter limits or affects the right to serve process, notice or demand required or permitted by law to be served on a cooperative in any other manner permitted by law. (§ 31 ch 93 SLA 1959)

Sec. 10.25.530. Fees. The commissioner shall charge and collect for

(1) filing articles of incorporation, $10;
(2) filing articles of amendment, $5;
(3) filing articles of consolidation or merger, $5;
(4) filing articles of conversion, $10;
(5) filing certificate of election to dissolve, $1;
(6) filing articles of dissolution, $5;
(7) filing certificate of change of principal office and designa-

tion or change of registered office and registered agent, $1. (§ 32 ch 93 SLA 1959)

Sec. 10.25.540. Taxation of cooperatives. Cooperatives under this chapter shall apply for a business license and pay the initial license fee as provided by the Alaska Business License Act (AS 43.70), as amended. Before March 1, 1961, and before March 1 of each year thereafter, each cooperative shall pay to the state, instead of state and local ad valorem, income and excise taxes which may be assessed or levied on or after January 1, 1960, a percentage of its gross revenue earned during the preceding calendar year. (§ 33 ch 93 SLA 1959; am § 1 ch 66 SLA 1960)

Sec. 10.25.550. Amount of gross revenue tax. The gross revenue tax shall be computed as follows:

(1) one per cent of gross revenue for cooperatives which have furnished electric energy and power, or telephone service, to consumers for less than five years as of December 31 of the preceding calendar year;

(2) two per cent of gross revenue for cooperatives which have furnished electric energy and power, or telephone service, to consumers for five years or longer as of December 31 of the preceding calendar year. (§ 33 ch 93 SLA 1959; am § 1 ch 66 SLA 1960)

Sec. 10.25.560. Manner of computing gross revenue. For the purpose of computing gross revenue, an electric cooperative shall include only that revenue which has been derived from electric energy which it distributes to its consumers. It shall not include revenue derived from the sale or transmission of electric energy and power to, or on behalf of, another distributor. Gross revenue of a telephone cooperative includes all revenues earned from local and toll services. (§ 33 ch 93 SLA 1959)

Sec. 10.25.570. Refund of gross revenue tax to local taxing authorities. The proceeds of the gross revenue tax, less the amount expended by the state in its collection, shall be refunded to the local taxing authorities by action of the legislature, in the proportion that the revenue was earned within the geographical areas of the taxing authorities. However, taxes collected on gross revenue earned outside a local taxing authority shall be retained by the state and deposited into its general fund. (§ 33 ch 93 SLA 1959)

Sec. 10.25.580. Inventory and fixtures subject to taxation. The inventory and fixtures of a business operated by a cooperative incidental to the furnishing of central station electric service, including, without limitation, appliance stores or departments, is not exempt from ad valorem taxes. The inventory and accounts of these businesses shall be separately maintained and taxes shall be paid upon them as provided by law. (§ 33 ch 93 SLA 1959)

Sec. 10.25.590. Connection and interconnection of facilities. A telephone cooperative organized or doing business under this chapter, hereafter designated as applicant, may require a person furnishing telephone service to the public in the state, hereafter designated as company, to interconnect its lines, facilities or systems with, or otherwise make available the lines, facilities or systems to, the applicant's telephone lines, facilities or systems, in order to provide a continuous line of communication for the applicant's subscribers. If the company and the applicant are unable to agree upon the terms and conditions of interconnection, including compensation, the superior court shall, upon petition of the parties, or either of them, establish the terms and conditions. The terms and conditions shall be reasonable and nondiscriminatory. (§ 34 ch 93 SLA 1959)

Sec. 10.25.690. Correction of defectively organized cooperatives. If a cooperative has filed defective articles of incorporation, or has failed to do all things necessary to perfect its corporate organization, it may file corrected articles of incorporation, or amend the original articles, and do and perform all acts and things necessary for the correction of the defects. The action so taken is valid and binding upon all persons concerned. The capacity of the cooperative to file corrected articles of incorporation or amendments to the original articles, or to do and perform all acts and things necessary, may not be questioned. (§ 37 ch 93 SLA 1959)

Article 5. General Provisions.

Sec. 10.25.610. Purpose. Cooperative, nonprofit, membership corporations may be organized under this chapter for the purpose of supplying electric energy or telephone service and promoting and extending the use of these services. (§ 2 ch 93 SLA 1959)

Sec. 10.25.620. Chapter extended to existing cooperatives. This chapter applies to all nonprofit cooperatives organized under any other law of the state for the purpose of supplying electric energy and power, or telephone service, to its members, or for the purpose of promoting and extending the use of electric energy and power, or telephone service. These cooperatives are subject to this chapter as if originally organized under it. (§ 36 ch 93 SLA 1959)

Sec. 10.25.630. Construction of chapter. This chapter is complete in itself and is controlling. The provisions of any other law of the state relating to the organization of a corporation, except as pro-

vided in this chapter, do not apply to a cooperative organized under this chapter. The enumeration of an object, purpose, power, manner, method or thing does not exclude like or similar objects, purposes, powers, manners, methods or things. (§ 35 ch 93 SLA 1959)

Sec. 10.25.640. Definitions. As used in this chapter

(1) "commissioner" means the commissioner of commerce;

(2) "cooperative" means a corporation organized under this chapter or which becomes subject to this chapter in the manner provided in this chapter;

(3) "person" means a natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision, or an agency of the state or political subdivision, or a body politic;

(4) "telephone service" means communication service where voice communication through the use of electricity is the primary intended use, and includes all telephone lines, facilities or systems used in the rendition of this service. (§ 3 ch 93 SLA 1959; am § 10 ch 64 SLA 1959; am § 2 ch 1 SLA 1961)

Sec. 10.25.650. Short title. This chapter may be cited as the Electric and Telephone Cooperative Act. (§ 1 ch 93 SLA 1959)

Chapter 30. Cemetery Associations.

Sec. 10.30.010. Formation of cemetery association. Five or more persons who are residents of the same recording district may form themselves into a cemetery association, and elect at least three of their members to serve as trustees, and one member as clerk. The trustees and the clerk hold office at the pleasure of the association. (§ 36-5-1 ACLA 1949)

Am. Jur. and C.J.S. references.—
10 Am. Jur., Cemeteries, §§ 5, 10, 19.
14 C.J.S. Cemeteries §§ 5 to 14.

Sec. 10.30.020. Records. The clerk shall keep a record of the proceedings of the meetings of the association, certify to and file one copy of the record together with the name of the association

Tom Staudenmaier
Director of the Board
Matanuska Electric Association
P. O. Box 8890
Anchorage, Alaska 99508

IMMEDIATE NEWS RELEASE

November 18, 1982

The Honorable Senator William Proxmire
United States Senate
Washington, D. C. 20510

Dear Senator Proxmire:

I speak for a group of Matanuska Electric Association, Chugach Electric Association and Homer Electric Association members, requesting your immediate assistance in plugging a rat hole, at least temporarily, which tens of millions of Federal dollars have already slid down.

The Chugach Electric Association, a Rural Electric Association electric utility located in Anchorage, Alaska requested, as of November 12, 1982 yet another Federal loan for $37.7 million dollars to cover massive cost overruns. One year ago, Chugach Electric received $41 million dollars from the Rural Electric Association. That loan too was for the purpose of paying for cost overruns on the same project that was started in 1976 and was to be completed in 1979. Chugach Electric Association, Matanuska Electric Association and Homer Electric Association are in deep financial trouble. The reason is the high salaries, mismanagement and duplicity in their work. The former General Manager of Chugach Electric, Bud Schultz, was paid $145,000 (plus a retirement fee of $400,000 in cash) for wages, plus 32% fringe benefits which totals $191,400 per year. The Manager of Matanuska Electric Association, Jim Palin, draws $73,000 plus 40% fringe benefits, which totals $102,000 per year. Homer Electric Association is just as bad. Chugach Electric for the most part generates the bulk of the electric power in southcentral Alaska. Matanuska Electric Association buys 90% of its power needs from Chugach Electric. Ten percent is bought from the Eklutna Power Authority. Homer Electric Co-op buys 100% of their power needs from Chugach Electric Association.

There are less than 100,000 monthly billing members buying electric power from Chugach Electric, Matanuska Electric, Homer Electric and the Municipal Light & Power Co. Between the four utilities in southcentral Alaska, there are approximately 525 bureaucrats, plus four complete management organizations where one could do the job.

Chugach Electric Association has been involved in a major management scandal, touching on salaries, benefits and contracts written under questionable authority. Chugach reports a 100% cost overrun on a power development project at the Beluga Field near Anchorage. As customers we are forced to pay these outrageous costs.

Senator Proxmire, I'm asking for your help in the following areas:

1. Stop the REA from any further action on Chugach Electric Associations $37.7 million dollar loan for cost overruns until there is a complete audit.

2. Request a complete audit of REA by the GAO, to determine the following:

a. Propriety of the entire Beluga Project including salaries, contracts let on competitive bid, cable laying operations and vessels hired to do the work.

b. Was the 1977 Foreign Corrupt Business Practices Act violated in the purchase of generators and the cable laying operations from a foreign country?

c. Were contracts let under Federal guide lines for competitive bid? Were contractors who were involved in the construction projects for Chugach Electric owned by any Chugach employees?

d. What justifies the 100% cost overruns?

e. What savings would there be if three REA Co-ops, along with the Municipal Light and Power were merged into one management organization with three divisions.

a) division of generation, b) division of transmission and distribution, and, c) division of administration.

f. How many times have major line items been shifted in Chugach Electric, Homer Electric and Matanuska Electric? And, do these shifts indicate budget fraud? Example: Matanuska Electric Association. I, as an elected Board Member refused to sign a waiver for borrowing $1,646,000 this past August 1982. James F. Palin, Manager of Matanuska Electric Association stated at the time this money was being borrowed for a new headquarters building in Palmer, Alaska. The Board now has the intention of using this money for other projects besides building this unnecessary building. Is this obtaining Federal money under false pretenses?

g. Attorney Roger Kemppel represents the three above mentioned utilities at the same time. Is this a conflict of interest?

My concern is to stop the flow of millions of dollars of Federal funds which flows through the Chugach Electric Association, which we the customer members must eventually pay. There are many people who would be more than happy to talk to GAO investigators in Alaska in order to get to the bottom of this case.

In closing I would like to say that if there are any violations of Federal laws then that information should be turned over to the Federal Grand Jury for prosecution of the individuals who are involved in this scandal.

An early reply would be deeply appreciated.

Sincerely,

Tom Staudenmaier, Director
of the Board, Matanuska
Electric Association

TS/ijb

ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2322

December 13, 1982

The Honorable Senator Ted Stevens
United States Senate
Washington, D. C. 20510

Dear Senator Stevens:

I speak for a group of Matanuska Electric Association, Chugach Electric Association and Homer Electric Association members, requesting your immediate assistance in plugging a rat hole, at least temporarily, which tens of millions of Federal dollars have already slid down.

The Chugach Electric Association, a Rural Electric Association electric utility located in Anchorage, Alaska requested, as of November 12, 1982 yet another Federal loan for $37.7 million dollars to cover massive cost overruns. One year ago, Chugach Electric received $41 million dollars from the Rural Electric Association. That loan too was for the purpose of paying for cost overruns on the same project that was started in 1976 and was to be completed in 1979. Chugach Electric Association, Matanuska Electric Association and Homer Electric Association are in deep financial trouble. The reason is the high salaries, mismanagement and duplicity in their work. The former General Manager of Chugach Electric, Bud Schultz, was paid $145,000 (plus a retirement fee of $400,000 in cash) for wages, plus 32% fringe benefits which totals $191,400 per year. The Manager of Matanuska Electric Association, Jim Palin, draws $73,000 plus 40% fringe benefits, which totals $102,000 per year. Homer Electric Association is just as bad. Chugach Electric for the most part generates the bulk of the electric power in southcentral Alaska. Matanuska Electric Association buys 90% of its power needs from Chugach Electric. Ten percent is bought from the Eklutna Power Authority. Homer Electric Co-op buys 100% of their power needs from Chugach Electric Association.

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Senator Stevens, I'm asking for your help in the following areas:

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2. Request a complete audit of REA by the GAO, to determine the following:

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Seven to ten million dollars in contracts were given out without competitive bid by the manager of Chugach Electric, Bud Schultz.

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An early reply would be deeply appreciated.

Sincerely,

Tom Staudenmaier

Tom Staudenmaier, Director
of the Board, Matanuska
Electric Association

TS/ijb

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

January 17, 1983

Mr. Tom Staudenmaier
Director of the Board
Matanuska Electric Association
P.O. Box 1603
Eagle River, Alaska 99577

Dear Mr. Staudenmaier:

This is in further reference to our conversation with Senator Stevens' Administrative Assistant, Dennis Fradley, about your visit to Washington and your interest in discussing with a member of the staff your concerns about the use of Federal funds by the Chugach Electric Association, the Homer Electric Association and the Matanuska Electric Association. This is also to acknowledge receipt of your letter about this situation.

As Dennis advised you, Senator Stevens has been out of town during the Congressional recess, so I was requested by Dennis to meet with you when you came to Washington. I understand from Rick Agnew of Congressman Young's office that you did discuss with him your belief in the need for a GAO investigation of the financial practices of these electric associations. I was prepared to meet with you last Monday, January 10th, and I do regret that we did not get together. However, I will make sure that your letter about this matter is brought to Senator Stevens' attention when he returns to Washington.

Sincerely,

Susan L. Arnold

Susan L. Arnold
Staff Assistant to
TED STEVENS

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, D.C. 20510

February 2, 1983

Mr. Tom Staudenmaier
Post Office Box 1603
Eagle River, Alaska 99577

Dear Mr. Staudenmaier:

This is to follow up on the brief conversation you had with Joseph Darnell on my Washington, D.C. staff about a possible GAO study.

A GAO study of Chugach and the Rural Electrification Administration does not appear to be appropriate. It is my understanding that Chugach Electric Association has recently undergone two separate audits, one by REA and another for the Alaska Public Utilities Commission. If you have concerns about Chugach's management, then they should be directed to the organizations charged with overseeing Chugach.

With best wishes,

Cordially,

TED STEVENS

ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2322

December 30, 1982

The Honorable Senator Frank Murkowski
United States Senate
Washington, D. C. 20510

Dear Senator Murkowski:

I speak for a group of Matanuska Electric Association, Chugach Electric Association and Homer Electric Association members, requesting your immediate assistance in plugging a rat hole, at least temporarily, which tens of millions of Federal dollars have already slid down.

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An early reply would be deeply appreciated.

Sincerely,

Tom Staudenmaier, Director
of the Board, Matanuska
Electric Association

TS/ijb

FRANK H. MURKOWSKI
ALASKA

COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
COMMITTEE ON VETERANS' AFFAIRS

United States Senate

WASHINGTON, D.C. 20510

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FAIRBANKS OFFICE:
101 12TH AVENUE, BOX 7
(907) 452-6227

February 1, 1983

Mr. Tom Staudenmaier
P. O. Box 408
Eagle River, Alaska 99577

Dear Mr. Staudenmaier:

Thank you for contacting my office requesting that I initiate a General Accounting Office (GAO) investigation into the activities of Chugach Electric.

In light of the fact that the REA has recently completed a complete audit of Chugach, along with the fact that a private management audit completed at the request of the Alaska Public Utilities Commission has also recently been completed, I do not believe the disruption and expense associated with a GAO investigation is warranted at this time.

I appreciate your contacting my office about this matter.

Sincerely,

Frank H. Murkowski
United States Senator

DON YOUNG
CONGRESSMAN FOR ALL ALASKA

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
MERCHANT MARINE AND FISHERIES

Congress of the United States
House of Representatives
Washington, D.C. 20515

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2331 RAYBURN BUILDING
TELEPHONE 202/225-5765

DISTRICT OFFICES
FEDERAL BUILDING AND
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BOX 10, 101 12TH AVENUE
FAIRBANKS, ALASKA 99701
TELEPHONE 907/456-6949

February 7, 1983

Mr. Tom Staudenmaier
P.O. Box 1603
Eagle River, AK 99577

Dear Mr. Staudenmaier:

I appreciated being informed of your efforts regarding the proposed merger of Alaskan electrical co-ops and the suggested audits of R.E.A. and Chugach Electric Association.

After reviewing the materials you sent and the investigative work prepared by staff, I have concluded that there is not a justifiable basis at this time to request an audit of R.E.A. by the General Accounting Office. Many of the questions you have raised regarding management practices have been answered by internal audits and audits conducted by R.E.A. and the Alaska Public Utilities Commission. In the case of Chugach Electric Association, changes were recommended and adopted by the Association. Allegations of serious wrong-doing were not substantiated.

I hope that this information is useful to you. Again, I appreciated hearing from you regarding these matters and will keep your concerns in mind. In the meantime, if you have any further comments or questions regarding this matter, please contact me.

Sincerely,

DON YOUNG
Congressman for All Alaska

DY:ra

ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2322

March 30, 1983

Charles A. Bowsher
Comptroller General
U. S. General Accounting Office
Washington, D. C. 20510

Dear Mr. Bowsher:

I speak for a group of Matanuska Electric Association, Chugach Electric Association and Homer Electric Association members, requesting your immediate assistance in plugging a rat hole, at least temporarily, which tens of millions of Federal dollars have already slid down.

The Chugach Electric Association, a Rural Electric Association electric utility located in Anchorage, Alaska requested, as of November 12, 1982 yet another Federal loan for $37.7 million dollars to cover massive cost overruns. One year ago, Chugach Electric received $41 million dollars from the Rural Electric Association. That loan too was for the purpose of paying for cost overruns on the same project that was started in 1976 and was to be completed in 1979. Chugach Electric Association, Matanuska Electric Association and Homer Electric Association are in deep financial trouble. The reason is the high salaries, mismanagement and duplicity in their work. The former General Manager of Chugach Electric, Bud Schultz, was paid $145,000 (plus a retirement fee of $400,000 in cash) for wages, plus 32% fringe benefits which totals $191,400 per year. The Manager of Matanuska Electric Association, Jim Palin, draws $73,000 plus 40% fringe benefits, which totals $102,000 per year. Homer Electric Association is just as bad. Chugach Electric for the most part generates the bulk of the electric power in southcentral Alaska. Matanuska Electric Association buys 90% of its power needs from Chugach Electric. Ten percent is bought from the Eklutna Power Authority. Homer Electric Co-op buys 100% of their power needs from Chugach Electric Association.

There are less than 100,000 monthly billing members buying electric power from Chugach Electric, Matanuska Electric, Homer Electric and the Municipal Light & Power Co. Between the four utilities in southcentral Alaska, there are approximately 525 bureaucrats, plus four complete management organizations where one could do the job.

Chugach Electric Association has been involved in a major management scandal, touching on salaries, benefits and contracts written under questionable authority. Chugach reports a 100% cost overrun on a power development project at the Beluga Field near Anchorage. As customers we are forced to pay these outrageous costs.

Mr. Bowsher, I'm asking for your help in the following areas:

1. Stop the REA from any further action on Chugach Electric Associations $37.7 million dollar loan for cost overruns until there is a complete audit.

2. Request a complete audit of REA by the GAO, to determine the following:

a. Propriety of the entire Beluga Project including salaries, contracts let on competitive bid, cable laying operations and vessels hired to do the work.

b. Was the 1977 Foreign Corrupt Business Practices Act violated in the purchase of generators and the cable laying operations from a foreign country?

c. Were contracts let under Federal guide lines for competitive bid? Were contractors who were involved in the construction projects for Chugach Electric owned by any Chugach employees?

Seven to ten million dollars in contracts were given out without competitive bid by the manager of Chugach Electric, Bud Schultz.

d. What justifies the 100% cost overruns?

e. What savings would there be if three REA Co-ops, along with the Municipal Light and Power were merged into one management organization with three divisions.

a) division of generation, b) division of transmission and distribution, and, c) division of administration.

f. How many times have major line items been shifted in Chugach Electric, Homer Electric and Matanuska Electric? And, do these shifts indicate budget fraud? Example: Matanuska Electric Association. I, as an elected Board Member refused to sign a waiver for borrowing $1,646,000 this past August 1982. James F. Palin, Manager of Matanuska Electric Association stated at the time this money

was being borrowed for a new headquarters building in Palmer, Alaska. The Board now has the intention of using this money for other projects besides building this unnecessary building. Is this obtaining Federal money under false pretenses?

g. Attorney Roger Kemppel represents the three above mentioned utilities at the same time. Is this a conflict of interest?

My concern is to stop the flow of millions of dollars of Federal funds which flows through the Chugach Electric Association, which we the customer members must eventually pay. There are many people who would be more than happy to talk to GAO investigators in Alaska in order to get to the bottom of this case.

In closing I would like to say that if there are any violations of Federal laws then that information should be turned over to the Federal Grand Jury for prosecution of the individuals who are involved in this scandal.

I originally contacted Sen. William Proxmire regarding a full GAO audit outside the REA. He in turn referred me to our State Delegates - Stevens, Murkowski & Young.

I sent a request to our Delegates and met with them or their Staff personally concerning this in January 1983 in Washington, D. C. and their response was that they were not going to initiate a GAO investigation. It appears that they are proud of the way Chugach handles their business affairs and approve of the past practices of massive cost overruns. Some of their close friends are the recipients of the $9 million dollar contracts that went out without competitive bid.

In light of the poor performance of our Alaska Congressional Delegation, Sen. Proxmire referred me directly to the Anchorage GAO office, Ronald D. Kelso, Site Coordinator.

An early reply would be deeply appreciated.

Sincerely,

Tom Staudenmaier

Tom Staudenmaier
Director of the Board
Matanuska Electric Association

TS/ijb

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

ACCOUNTING AND FINANCIAL
MANAGEMENT DIVISION

Control Number
29514

25 APR 1983

Mr. Tom Staudenmaier
Director of the Board
Matanuska Electric Association
Electric Merger Committee
P.O. Box 1803
Eagle River, AK. 99577

Dear Mr. Staudenmaier:

Thank you for your letter regarding wrongdoing and/or mismanagement in Federal programs.

We are evaluating the information you provided to determine its ultimate disposition and have assigned it the above control number.

If you have additional information regarding this matter, you can send it to the Fraud Referral and Investigations Group at the following address:

U. S. General Accounting Office
Fraud Referral and Investigations Grou
Room 6134
441 G Street, NW.
Washington, D. C. 20548

Additional information can also be furnished by using our toll-free hotline. The number is 800-424-5454. Please call between 8:00 a.m. and 4:30 p.m. (Eastern time), Monday through Friday, and one of my staff will assist you.

When providing additional information, either by mail or phone, it is important that you refer to the control number shown in the upper right hand corner of this letter.

Your interest and concern are appreciated.

Sincerely yours,

George L. Egan, Jr.
Associate Director
Fraud Prevention/Audit
Oversight Group

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

May 5, 1983

Mr. Tom Staudenmaier
Director of the Board
Matanuska Electric Association
P.O. Box 1603
Eagle River, AK 99577

Dear Mr. Staudenmaier:

Your letter of March 30, 1983, which was referred to our Division on April 22, 1983, requested a complete audit of the Rural Electrification Administration (REA) activities relative to the Matanuska, Chugach, and Homer Electric Associations.

The General Accounting Office is an agency in the legislative branch of the Government whose principal purposes are to assure compliance by agencies of the executive branch with Federal statutes governing the expenditure of public monies appropriated by the Congress and to assist in improving the effectiveness and efficiency with which Government programs are administered. However, in the execution of these functions, our reporting responsibility runs to the Congress as a whole, to chairmen of committees and subcommittees, and to individual Members of Congress who request that we undertake work.

The Department of Agriculture has primary responsibility for assuring that REA activities are effectively administered. One way the Department accomplishes this is through periodic audits of REA by the Office of Inspector General. Accordingly, we have referred your request for an audit to the Department's Office of Inspector General for its consideration.

Sincerely yours,

Robert E. Allen, Jr.
Senior Group Director

United States
Department of
Agriculture

Office of
Inspector
General

Washington,
D.C.
20250

Mr. Tom Staudenmaier
Director of the Board
Matanuska Electric Association
P.O. Box 1603
Eagle River, Alaska 99577

MAY 24 1983

Dear Mr. Staudenmaier:

Your letter of March 30, 1983, to Charles A. Bowsher, GAO, has been forwarded to our office.

We are checking into the alleged irregularities to see if any violations have occurred. You will be notified of our findings when we complete our review.

Sincerely,

Linda C. Magone

LINDA C. MAGONE, Acting Chief
Complaint Analysis Branch

United States Department of Agriculture

Office of Inspector General

Washington,. D.C. 20250

NOV 23 1983

Mr. Tom Staudenmaier
Executive Director
Staudenmaier Electric Merger Committee
P.O. Box 1603
Eagle River, Alaska 99577

Dear Mr. taudenmaier:

Your November 17 telegram to Secretary Block was referred to this office for reply.

Our investigation of your complaint concerning Chugach Electric Association, Homer Electric Association, and Matanuska Electric Association is complete and a report (Hq-999-3) was issued on November 10, 1983.

The investigative report is currently being reviewed by officials of the Department to determine whether enforcement action may be appropriate. Since release of the report at this time would interfere with enforcement proceedings, it is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(7)(A). Therefore, your request for the report is denied.

You may appeal this decision to the Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

Sincerely,

L. L. FREE
Assistant Inspector General
Administration

STAUFFENBERG'S
WATCHDOG/TAXPAYER COMMITTEE
P.O. BOX 1303 • EAGLE RIVER, AK 99577 • 694-4332, 694-2222

November 22, 1983

The Honorable John R. Block
Secretary of Agriculture
14th St. & Independence Ave., S. W.
Washington, D. C. 20250

Dear Mr. Block:

On November 18, 1982, I made a request to Senator Proxmire for a complete in-depth, Federal, criminal audit of Chugach Electric Assoc., Homer Electric Assoc., and Matanuska Electric Assoc., concerning massive cost overruns on the Beluga project and what major line items had been shifted.

Senator Proxmire replied that since Dept. of Defense funds were not directly involved, this request should be directed to our Alaska Delegates, Stevens, Young & Murkowski.

I sent a written request to our Delegates December 13th, 1982, and met with them or their Staff personally in Washington, D. C. in January 1983, and their response was to go to hell.

Letters were sent to Senator Proxmire by the management of MEA, HEA and the Rural Electrification Administration in an effort to kill this investigation. In light of the poor performance of our Alaska Congressional Delegation, Senator Proxmire referred me directly to the Comptroller General, Charles A. Bousher, United States General Accounting Office in Washington, D. C.

On April 25, 1983 Control No. 29514 was assigned to this case.

June 6th, 1983 special agents for the Office of Inspector General, Security and Special Operations, U. S. Dept. of Agriculture arrived in Anchorage from Washington, D. C. and from Kansas City, Missouri.

I was informed that on November 10th, 1983 the criminal investigation was completed by special agent Joe Rotunno.

I hereby request an immediate response to the disposition of this investigation concerning this scandal involving REA funds.

Will there be criminal prosecution of the individuals involved? If not, why not?

Will there be civil prosecution? If not, why not?

If the Department of Agriculture does not seek criminal or civil prosecution, then I hereby request a copy of the findings of that investigation.

Sincerely,

Tom Staudenmaier
Executive Director

TS/ijb

cc: CBS 60 Minutes
ABC 20/20

STAUDENMAIER'S
ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4932, 694-2322

December 22, 1983

President Ronald Reagan
The White House
Washington, D. C. 20250

Dear President Reagan:

On November 18, 1982, I made a request to Senator Proxmire for a complete in-depth, Federal, criminal audit of Chugach Electric Assoc., Homer Electric Assoc., and Matanuska Electric Assoc., concerning massive cost overruns on the Beluga project and what major line items had been shifted.

Senator Proxmire replied that since Dept. of Defense funds were not directly involved, this request should be directed to our Alaska Delegates, Stevens, Young & Murkowski.

I sent a written request to our Delegats December 13th, 1982, and met with them or their Staff personally in Washington, D. C. in January 1983, and their response was to go to hell.

Letters were sent to Senator Proxmire by the management of MEA, HEA and the Rural Electrification Administration in an effort to kill this investigation. In light of the poor performance of our Alaska Congressional Delegation, Senator Proxmire referred me directly to the Comptroller General. Charles A. Bousher, United States General Accounting Office in Washington,D.C

On April 25, 1983 Control No. 29514 was assigned to this case.

June 6th, 1983 special agents for the Office of Inspector General, Security and Special Operations, U. S. Dept. of Agriculture arrived in Anchorage from Washington, D. C. and from Kansas City, Missouri.

I was informed that on November 10th, 1983, the criminal investigation was completed by special agent Joe Rotunno.

A reply was received on November 23rd, 1983 from the Department of Agriculture indicating that report #Hq. 999-3 was issued on November 10th, 1983. This criminal investigative report is currently being reviewed by officials of the Department to determine whether enforcement action may be appropriate.

STAUDENMAIER'S
ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2322

Mr. President, through hours of research, we have uncovered the fact that Stevens, Young & Murkowski have received substantial financial contributions from the Action Committee for Rural Electrification, 1800 Massachusetts Ave. N. W., Washington, D. C. 20036.

According to the Federal Election Commission Reports, one of the congressional delegates from Alaska received a substantial contribution from Wayne H. Henson, 1701 E. 1st Avenue, Anchorage, Ak. 99501. His employer is York Steel, who is one of the prime suspects in this $100 million dollar cost overrun.

We have followed your presidency the last three years in the areas of your efforts in uncovering waste, mismanagement and corruption in the Federal system. In light of Stevens, Young & Murkowski's refusal to help clean up their own backyard, they may try to quash and cover up this investigation to protect some of their friends who are involved.

Mr. President, I ask you to look into the matter of this incident.

Will there be criminal prosecution of the individuals involved?

Will there be civil prosecution? If not, why not?

If the Department of Agriculture does not seek criminal or civil prosecution, then I hereby request a copy of the findings of that investigation.

We hereby request an immediate response to the disposition of this investigation concerning this scandal involving REA funds. It affects hundreds of thousands of Alaskans.

Respectfully yours,

Tom Staudenmaier
Executive Director

TS/ijb

P. S. We Alaskans wish you and Nancy a Merry Christmas and Joyous New Year!

United States Department of Agriculture

Office of Inspector General

Washington, D.C. 20250

FEB - 9 1984

Mr. Tom Staudenmaier
Executive Director
Staudenmaier Electric Merger Committee
P.O. Box 1603
Eagle River, Alaska 99577

Dear Mr. Staudenmaier:

This replies to your February 7 telephone call during which you reiterated your request for investigative report Hq-999-3.

Mr. Free withheld the report because it was being reviewed by officials of the Department to determine whether enforcement action was appropriate and because release at that time would have interfered with enforcement proceedings. We have now determined that release of the report will no longer interfere with enforcement proceedings. A copy is enclosed.

Please send $6.40 to cover copying costs (10 cents per page). Your check or money order should be made payable to "Treasury of the United States" and mailed to:

Mr. L. L. Free
Office of Inspector General
U.S. Department of Agriculture
Room 8-E, Administration Building
Washington, D.C. 20250

Sincerely,

JAMES J. SCOTT
Director
Policy and Liaison Staff

Enclosure

THE WHITE HOUSE

WASHINGTON

February 22, 1984

Dear Mr. Staudenmaier:

This is in response to your recent letter to the President, which was forwarded to my office for reply.

Please be advised that we have forwarded your correspondence to the General Counsels at the Department of Agriculture and the Federal Elections Commission so that it may receive appropriate consideration by those Government officials responsible for review of such matters. It is established White House policy not to become involved in particular investigatory matters pending before a Federal department such as the Department of Agriculture, or which come under the jurisdiction of an independent agency such as the Federal Elections Commission.

I am confident you will understand the need for this policy as a means for maintaining public confidence in the effective and impartial administration of our laws.

With best regards,

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Tom Staudenmaier
Executive Director of Staudenmaier's
Electric Merger Committee
Post Office Box 1603
Eagle River, Alaska 99577

STAUDENMAIER'S
ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2822

November 16, 1983

CBS-60 Minutes
555 W. 57th Street
New York, N. Y. 10019.

Re: Telephone Conversation
of November 15th, 1983

Dear Sirs:

Please find enclosed the newspaper clippings that you asked for. A copy of a letter to U. S. Senator Proxmire, the Government Accounting Office, and all other pertinent data.

On November 10th, 1983 a criminal audit was completed by Federal agents from the Office of Security and Special Operations, U. S. Dept. of Agriculture.

There is concern on our part that an effort is underway to cover up these findings.

I would encourage you to contact Secretary of Agriculture, John R. Block.

Sincerely yours,

Tom Staudenmaier
Executive Director

TS/ijb

Attachments

STAUDENMAIER'S
ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4932, 694-2322

November 16, 1983

Mary Jo Malone
ABC - 20/20
77 W. 66th Street
New York, N. Y. 10023

Re: Telephone Conversation
of November 15th, 1983

Dear Ms. Malone:

Please find enclosed the newspaper clippings that you asked for. A copy of a letter to U. S. Senator Proxmire, the Government Accounting Office, and all other pertinent data.

On November 10th, 1983 a criminal audit was completed by Federal agents from the Office of Security and Special Operations, U. S. Dept. of Agriculture.

There is concern on our part that an effort is underway to cover up these findings.

I would encourage you to contact Secretary of Agriculture, John R. Block.

Sincerely yours,

Tom Staudenmaier
Executive Director

TS/ijb

Attachments

December 01, 1983

Patricia A. Klein
Chief of Public Records
Federal Election Commission
1325 "K" Street, N W
Washington, D. C. 20463

Attention: Lucinda Munger

Dear Ms. Munger:

On my visit of November 22nd, 1983, Ippaid cash in the amount of $118.00 to get copies made.

As per our telephone conversation of today, please find enclosed a check for the balance of $105.00 for the cost of copying campaign contribution records concerning Stevens, Young and Murkowski.

Thank you for your assistance in this matter. Please send the copies as soon as possible.

Sincerely yours,

Tom Staudenmaier
Executive Director

TS/ijb

Attachment: check

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ 610 C STREET, SUITE 211
ANCHORAGE, ALASKA 99501-3598
(907) 276-4176

☐ JUNEAU BRANCH OFFICE
POUCH CO
JUNEAU, ALASKA 99811-0222
(907) 465-4864

ALASKA PUBLIC OFFICES COMMISSION

March 31, 1983

Tom Staudenmaier
Staudenmaier's Electric Merger Committee
Post Office Box 8-890
Anchorage, Alaska 99508

Dear Tom:

You have asked me to confirm that the Electric Merger Committee, funded separately and independently of the Alaska Conservative Political Action Committee, is not subject to the reporting requirements of Alaska's Campaign Disclosure Law, AS 15.13, with regard to elections held by private entities such as the Matanuska Electric Association and the Chugach Electric Association. The reason for this is that the disclosure requirements of AS 15.13 apply only to state and municipal elections. Hence, efforts to influence the outcome of the election held by a private entity are not reportable; advertising related to such a private election is not within the APOC's jurisdiction and is not required to carry the identification specified by AS 15.13.090.

In the event that the subject of a merger appears on the ballot at a Municipality of Anchorage election, however, efforts to influence the outcome of that municipal election would be reportable under AS 15.13 and required to be identified.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Theda S. Pittman

Theda S. Pittman
Executive Director

TSP/dh

MATANUSKA ELECTRIC ASSOCIATION, INC.

P.O. BOX 1148

PALMER, ALASKA 99645

TELEPHONE
(907) 745-3231

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

December 21, 1983

Mr. Thomas G. Staudenmaier
Staudenmaier's Electric Merger Committee
P. O. Box 1603
Eagle River, Alaska 99577

Dear Mr. Staudenmaier:

In reference to your letter of December 7, to MEA President Robert Husted, in which you basically requested a $25,000 contribution from MEA to the Staudenmaier Electric Merger Committee, please be advised that the MEA Board of Directors voted against making a contribution to your Committee. Since you were present at that meeting, I feel confident that you understand the reasons for the Boards' decision. In addition, and as you will no doubt recall, on November 9, 1982, the Board included the following comment in Resolution No. 1018, "WHEREAS, the Board of Directors of Matanuska Electric Association, Inc. because it has not yet been furnished with sufficient information and verified facts in support of the merger plan, has taken no position on this plan." To the best of my knowledge, the Board's position has not changed.

Should you have need for additional information, please send us a letter detailing the request, and MEA will certainly consider an appropriate response.

Happy Holidays to you and yours.

Sincerely,

James F. Palin
General Manager

mm

cc: Board of Directors
Roger R. Kemppel

Homer Electric Association, Inc.

CENTRAL OFFICE: P.O. BOX 429 • HOMER, ALASKA 99603-0429 • (907) 235-8167

December 14, 1983

Mr. Tom Staudenmaier, Exec. Director
Staudenmaier's Electric Merger Committee
P. O. Box 1603
Eagle River, Alaska 99577

Dear Mr. Staudenmaier:

Reference is made to your communication dated December 7, 1983, relative to your proposed merger.

Please be advised that HEA is presently in the process of forming a Generation & Transmission Cooperative; and, therefore, would not be interested in forming a second organization.

Best wishes for a happy holiday season.

Very truly yours,

HOMER ELECTRIC ASSOCIATION, INC.

Leo Rhode
President

LR:em

STAUDENMAIER'S
ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2322

NEWS RELEASE Nov. 17, 1983

PROPOSED NEW BI-LAWS OF THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP, TO BE VOTED ON BY THE MEMBERS OF CHUGACH ELECTRIC ASSOC., MATANUSKA ELECTRIC ASSOC. AND HOMER ELECTRIC ASSOC., UNDER TITLE 10, STATUATORY LAW, CHAPTER 25, ELECTRICAL AND TELEPHONE CO-OPERATIVE ACT, ARTICLE II, MERGER AND CONSOLIDATION, SECTION 10.25.240.

1. THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP'S BOARD OF DIRECTORS SHALL CONSIST OF 11 MEMBERS. THE CO-OP'S HEADQUARTERS SHALL BE IN ANCHORAGE, ALASKA.

RATIONALE: EVERY AREA IN SOUTHCENTRAL ALASKA IS EQUALLY REPRESENTED BY POPULATION USING THE SAME REAPPORTIONMENT METHOD AS THE ALASKA STATE SENATE.

2. THE BOARD OF DIRECTORS SHALL NOT SERVE MORE THAN ONE CONSECUTIVE FOUR YEAR TERM.

RATIONALE: NEW PEOPLE WILL BRING NEW IDEAS TO THE BOARD OF DIRECTORS, WITHOUT LETTING ANY CERTAIN GROUP DEVELOP A POWER STRUCTURE.

3. MONTHLY BOARD MEETINGS SHALL BE CONVENED ON THE SECOND SATURDAY OF EACH MONTH, CONVENING AT 10:00 AM. THE MEETINGS SHALL BE HELD ON A ROTATING BASIS STARTING IN ANCHORAGE. THE NEXT MONTHLY MEETING SHALL BE IN THE MAT/SU VALLEY. FOLLOWED BY THE KENAI PENINSULA. EACH OF THESE AREAS SHALL HAVE FOUR MEETINGS PER YEAR, FOLLOWING THE ABOVE ROTATION SCHEDULE. THIS ROTATION SHALL NOT BE CHANGED UNLESS VOTED ON BY THE MEMBERSHIP AT LARGE.

RATIONALE: THIS WILL GIVE THE CONSUMER/OWNERS OF THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP MAXIMUM EXPOSURE TO THE BOARD OF DIRECTORS FOR THEIR MAXIMUM PARTICIPATION.

STAUDENMAIER'S
ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2322

4. ALL OFFICIAL MEETINGS, INCLUDING WORK SESSIONS, SHALL BE TAPED, TRANSCRIBED AND THE ORIGINAL COPY HELD AT THE CO-OPS HEADQUARTERS FOR SEVEN YEARS. THE TAPING SYSTEM SHALL BE OF THE SAME QUALITY AS THAT OF THE ANCHORAGE MUNICIPAL ASSEMBLY. ALL ISSUES SHALL BE RECORDED BY ROLL CALL VOTE.

RATIONALE: TO MAINTAIN A COMPLETE RECORD OF THE BUSINESS THAT TRANSPIRES WITHIN THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP.

5. A COMPLETE, CERTIFIED COPY OF THESE TRANSCRIPTS SHALL BE POSTED AT EACH LOCATION OF THE AK. SOUTHCENTRAL ELECTRIC CO-OP'S PLACE OF OFFICIAL BUSINESS, AND MADE AVAILABLE TO THE MEMBERSHIP WITHIN 48 HOURS OF A BOARD MEETING. THESE ARE TO BE UPDATED ON A MONTHLY BASIS.

RATIONALE: TO GIVE THE CONSUMER/OWNER IMMEDIATE ACCESS TO TRANSACTIONS THAT OCCURED AT THE BOARD MEETINGS OR WORK SESSIONS.

6. THE GENERAL MANAGER SHALL SERVE FOR A ONE 5 YEAR TERM. THE BOARD OF DIRECTORS CAN REPLACE HIM OR HER AT THEIR DISCRESSION AT ANY TIME DURING HIS/HER TERM IF HIS/HER SERVICES ARE BELOW EXPECTATIONS.

RATIONALE: "NEW LEADERSHIP BRINGS NEW AND FRESH IDEAS".

7. ALL SALARIES AND BENEFITS OF THE EMPLOYEES OF THE AK. SOUTHCENTRAL ELECTRIC CO-OP SHALL BE MADE PUBLIC TO THE MEMBERSHIP, WITH AN UPDATE EVERY SIX MONTHS. BENEFITS SHALL NOT EXCEED 20% OF THE BASE SALARY. THE SALARIES, BENEFITS AND JOB TITLES SHALL BE POSTED IN ALL OF THE OFFICIAL OFFICES OF THE CO-OP FOR MEMBERSHIP REVIEW.

RATIONALE: THE MEMBERSHIP OWNS THE CO-OP. THE MEMBERS ARE THE EMPLOYER AND THEREFORE SHOULD BE AWARE OF THE SALARIES AND BENEFITS THAT THEIR EMPLOYEES ARE BEING PAID.

STAUDENMAIER'S
ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2322

8. THE SALARY OF THE GENERAL MANAGER SHALL NOT EXCEED THE BASE SALARY OF THE GOVERNOR OF THE STATE OF ALASKA.

RATIONALE: THERE ARE THOUSANDS OF AMERICAN MEN AND WOMEN WHO ARE QUALIFIED, WHO ARE LOOKING FOR JOBS.

9. IT SHALL TAKE A 2/3 VOTE BY THE BOARD OF DIRECTORS TO IMPLEMENT A PAY RAISE FOR THE EMPLOYEES.

RATIONALE: TO CONTROL OVERHEAD EXPENSES AND HELP KEEP THE COST OF THE ELECTRIC UTILITIES REASONABLE.

10. THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP SHALL BE A NON-PROFIT ORGANIZATION AND THEREFORE SHALL NOT ENGAGE IN ANY NEW CONSTRUCTION. NEW CONSTRUCTION IS DEFINED AS: ANY ITEMS THAT ARE NOT ALREADY PHYSICALLY IN PLACE, INCLUDING TEMPORARY POWER. THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP SHALL BE DESIGNATED AND SHALL FUNCTION AS A SERVICE AND MAINTENANCE ORGANIZATION. NEW CONSTRUCTION SHALL BE PUT OUT TO COMPETITIVE BID TO PRIVATE ENTERPRISE.

RATIONALE: THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP IS A NON-PROFIT ORGANIZATION AND SHALL NOT COMPETE WITH A PROFIT MAKING ORGANIZATION. LABOR PRODUCTIVITY IS MUCH GREATER IN PRIVATE INDUSTRY.

11. MAINTENANCE AND SERVICE PERSONNEL UNDER A COLLECTIVE BARGAINING AGREEMENT WITH THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP SHALL RECEIVE 85% OF CONSTRUCTION SCALE, PLUS BENEFITS.

RATIONALE: THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP IS ESTABLISHED AS A MAINTENANCE AND SERVICE ORGANIZATION, NOT AS A CONSTRUCTION COMPANY. THEREFORE THE MEN AND WOMEN WHO WORK SERVICE AND MAINTENANCE ARE NOT ENTITLED TO

STAUDENMAIER'S
ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2322

FULL CONSTRUCTION SCALE. THOSE WHO WANT TO RECEIVE FULL CONSTRUCTION SCALE SHOULD TAKE THEIR TALENTS AND WORK IN THE CONSTRUCTION INDUSTRY. THIS IS A FAIR AND EQUITABLE WAGE AND THE SAME TYPE OF WAGE PLAN USED BY ALYESKA PIPELINE SERVICE CO.

12. THE BELUGA POWER STATION SHALL BE DESIGNATED AS LOCAL HIRE AND SERVICE AND MAINTENANCE SHALL BE RUN ON THREE 8 HOUR SHIFTS, TWENTY-FOUR HOURS PER DAY, SEVEN DAYS A WEEK.

RATIONALE: CUT DOWN COST OF OVERHEAD TO MAINTAIN THE MEN AND WOMEN WHO WORK AT BELUGA. CREATE MORE JOBS BY CUTTING OVERTIME.

13. BID PROCEDURES SHALL FOLLOW THE BID PROCEDURES OF THE STATE OF ALASKA ON ALL NEW CONSTRUCTION PROJECTS. ANY VIOLATIONS OF BID PROCEDURES SHOULD BE CLASSIFIED AS A FELONY COUNT UNDER STATUATORY LAW.

RATIONALE: EVERY BUSINESS ESTABLISHMENT THAT WANTS TO PARTICIPATE IN THE BIDDING PROCESS SHALL HAVE AN EQUAL OPPORTUNITY TO PARTAKE OF THE AMERICAN FREE ENTERPRISE SYSTEM.

14. LINE EXTENSION POLICIES: THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP'S LINE EXTENSION POLICIES SHALL BE: 1. ALL NEW SUBDIVISIONS MUST SECURE THEIR OWN FINANCING FOR THEIR ELECTRIC POWER INSTALLATION AND SHALL BUILD THEIR SYSTEM TO THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP'S SPECIFICATIONS, SO IT IS COMPATIBLE WITH THE MAIN POWER GRID SYSTEM. 2 EACH SUBDIVISION SHALL CHOOSE HIS OWN METHOD OF INSTALLATION PROVIDED IT MEETS THE SPECIFICATIONS OF THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP. 3. WHEN THESE SPECIFICATIONS ARE MET, THEN THE AK. SOUTHCENTRAL ELECTRIC CO-OP SHALL ENERGIZE THE SYSTEM.

STAUDENMAIER'S
ELECTRIC MERGER COMMITTEE
P.O. BOX 1603 • EAGLE RIVER, AK 99577 • 694-4982, 694-2322

15. THE TRANSITION TEAM OF THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP.

1. THE TRANSITION TEAM SHALL BE MADE UP OF THREE MEMBERS FROM MEA, HEA & CEA, EACH SELECTED BY THEIR OWN BOARD OF DIRECTORS.

2. THE TRANSITION TEAM POWERS SHALL BE:

A. TO OVERSEE THE OFFICIAL ELECTION OF THE PERMANENT ELEVEN MEMBER BOARD WITHIN 60 DAYS OF THE MERGER VOTE.

B. TO EXECUTE CONTRACTS FOR THE LENGTH OF 60 DAYS ONLY, ON BEHALF OF THE ELECTION PROCESS.

16. THE PRESENT THREE UTILITIES, MEA, HEA & CEA SHALL FUNCTION IN THEIR INDIVIDUAL CAPACITY UNTIL THE NEW ELEVEN MEMBER BOARD IS SELECTED. THE NEW BOARD OF DIRECTORS SHALL HAVE NINETY DAYS TO COMPLETE THE MERGER.

17. ALL JOBS SHALL BE FILLED THRU APPLICATIONS RECEIVED AT THE PERSONNEL DEPT. OF THE ALASKA SOUTHCENTRAL ELECTRIC CO-OP. NO PRESENT EMPLOYE IS GUARANTEED THEIR POSITION IN THE NEW ORGANIZATION.

RATIONALE: ALL QUALIFIED ALASKANS SHALL HAVE THE SAME OPPORTUNITY TO APPLY AND COMPETE FOR THE JOBS THAT ARE AVAILABLE IN THIS NEW CO-OP.

Tom Staudenmaier

TOM STAUDENMAIER
EXECUTIVE DIRECTOR

LOBBYIST REGISTRATION

RETURN TO:

ALASKA PUBLIC OFFICES COMMISSION
Pouch CO
Juneau, Alaska 99811-0222
(907) 465-4864 or 465-4865

ARRIVED

APR 11 1984

APOC - ANCH
PM HC

(PLEASE PRINT OR TYPE)

Part 1. GENERAL INFORMATION (The address you indicate below will be used by the APOC when forwarding information regarding the Regulation of Lobbying.)

Lobbyist's Name	Home Telephone
THOMAS G. STAUDENMAIER	694-2322
Mailing Business Address (Street, City, State, Zip Code)	**Business Telephone**
P.O. Box 1603 Eagle River AK 99577	Same

Home Address (Street, City, State, Zip Code)
Same as above

Part 2. THIS FORM IS:

☒ Initial Registration	Initial Date of Lobbying this Year	☐ Additional Employer	Initial Date of Lobbying this Year	☐ Amendment (Change of Address, Status, etc.)
	11 April 84			

Part 3. EMPLOYER INFORMATION: NAME AND ADDRESS

Name of Business	Telephone
STAUDENMAIER'S ELECTRIC MERGER COMMITTEE	694-2322

Mailing Business Address (Street, P.O. Box, City, State, Zip Code)
Same as above

Part 4. Name and Address of person who has custody of records required to be maintained by AS 24.45. if other than the lobbyist named in Part 1.

Name	Title	Telephone

Mailing Address (Street, City, State, Zip Code)

Part 5. EMPLOYMENT INFORMATION **LOBBYIST IS:**

☐ Employed solely as a lobbyist
☐ Retained to lobby in addition to other duties, i.e. consulting
☒ A regular employee performing services for employer which include, but are not limited to, influencing legislative or administrative action.
☐ A representational lobbyist, i.e., an individual who receives no salary, fee or other compensation from the entity on whose behalf he is lobbying but whose expenses are reimbursed.

Part 6. TYPE OF LOBBYING:

☒ Legislative ☐ Administrative

Part 7. NATURE OF COMPENSATION:

☐ Salary ☐ Fee ☒ Reimbursement of Expenses ☐ Other (Specify)

Part 8. DESCRIPTION OF LOBBYING ACTIVITIES:

Give a general description of the subjects or matters on which the registrant expects to lobby or to engage in the influencing of legislative or administrative action.

House Bill 475 1984

Part 9. CERTIFICATION

I hereby certify that this registration is true, complete and correct, in accordance with AS 24.45.041.

Loobyist's Signature NOTE: Your report is not considered complete unless signed by the lobbyist:	Date
Thomas G. Staudenmaier	11 April 84

Complete the following if the form was prepared by someone other than the lobbyist:

Signature	Date	Telephone

Type or Print Name	Position

Business Address

REMINDER: For each reporting period in which you remain registered as a lobbyist you must file a LOBBYIST REPORT (Form 24-3). If you have had no activity during the period, i.e., received no compensation or made no expenditures, you are still required to submit Form 24-3 indicating no activity.

A SEPERATE REGISTRATION STATEMENT MUST BE FILED FOR EACH EMPLOYER.

EMPLOYER OF LOBBYIST VERIFICATION

RECEIVED

RETURN TO:
ALASKA PUBLIC OFFICES COMMISSION
Pouch CO
Juneau, Alaska 99811-0222
(907) 465-4864 or 465-4865

APR 11 1984

APOC - ANCH
PM (HC)

INSTRUCTIONS: AS 24.45.061. REPORTS BY EMPLOYERS OF LOBBYISTS. (a) Within 15 days after employing, retaining or contracting for the employment or retention of a lobbyist, the person who employs, retains or who contracts for the services of a lobbyist shall file a statement with the commission authorizing or verifying that employment, retention or contract for lobbying services.

SUBMIT A SEPARATE APOC FORM 24-2, EMPLOYER OF LOBBYIST STATEMENT, FOR EACH LOBBYIST.

1. NAME OF BUSINESS, ORGANIZATION OR INDIVIDUAL EMPLOYING OR RETAINING A LOBBYIST: (PLEASE PRINT OR TYPE)

Name: STAUDENMAIER'S ELECTRIC MERGER COMMITTEE | Area Code Phone: 694-2322

Mailing Address (Street or P.O. Box, City, State and Zip Code)
P.O Box 1603 Eagle River AK. 99577

2. NAME OF LOBBYIST AND DATE OF EMPLOYMENT/DATE OF RETENTION AS A LOBBYIST

Name of lobbyist employed or retained to represent you or your business or organization
THOMAS G. STAUDENMAIER

Current year date of employment, retention, or assignment to lobby
12 April 84

3. ADDRESS TO BE USED BY APOC WHEN FORWARDING INFORMATION REGARDING LOBBYING IF OTHER THAN THE ADDRESS IN NO. 1.

4. DETERMINATION OF BONA FIDE STATUS

A. Is your association registered in the State of Alaska as: ☐ Partnership ☐ Corporation N/A

B. If your association is financed by membership dues, does any one member pay in excess of 25% (one-fourth) of the total paid by all members? ☐ Yes ☐ No ☒ Non-applicable

C. If your association is financed by membership dues and uses a sliding dues assessment scale, does any member exceed an allotted assessment by 25% solely for the purposes of supporting lobbying activity?

☐ Yes ☐ No ☒ Non-applicable

D. Do the association's annual expenditures for administrative and legislative lobbying (based on the previous year's experience or current year's estimate) equal or exceed 50% of the total expenditures for the year?

☐ Yes ☒ No

5. CERTIFICATION: I hereby certify that the above-named person is authorized to engage in the activities of lobbyist on behalf of the business, organization or individual named above and that, to the best of my knowledge, all facts contained herein are true, complete and correct.

EXECUTED ON BEHALF OF THE EMPLOYER:

Signature: Thomas G. Staudenmaier | Date: 11 April 84

Type or Print Name: THOMAS G. STAUDENMAIER | Title or Position: Executive Dir

EMPLOYER OR CLIENT OF LOBBYIST REPORT
GENERAL INFORMATION SHEET

Due Date: July 31, 1984

RETURN TO:

ALASKA PUBLIC OFFICES COMMISSION
Pouch CO
Juneau, Alaska 99811-0222
(907) 465-4864 or 465-4865

1. NAME AND ADDRESS OF EMPLOYER OR CLIENT:

Name: Staudenmaier Electric Energy Consultants — Telephone: 694-2322

Mailing Address: P.O. Box 1603 Eagle River AK. 99577

Street Address:

☐ Check if new mailing address

2. CERTIFICATION:

I hereby certify that this report and its attachments are, to the best of my knowledge, true, correct and complete:

Executed on Behalf of the Employer:

Signature: Thomas H Staudenmaier — Date: 11 April 84

Type or Print Name: THOMAS G. STAUDENMAIER — Title of Position: Pres. Dir.

Complete the following if the form was prepared by a person other than the person signing on behalf of the employer

Signature	Type or Print Name	Telephone

Business Address:

PLEASE REMEMBER: YOU MUST ACCOUNT FOR ALL LOBBYISTS WHO WERE REGISTERED DURING THE QUARTER FOR WHICH YOU ARE REPORTING: SUBMIT EITHER A SCHEDULE A (IF APPLICABLE PAYMENTS WERE MADE) OR NOTE THE NAME OF THE LOBBYIST(S) UNDER QUESTION 8 BELOW (IF NO APPLICABLE PAYMENTS WERE MADE). FAILURE TO ACCOUNT FOR ALL LOBBYISTS MAY RESULT IN THE ASSESSMENT OF A CIVIL PENALTY.

3. REPORTING PERIOD (CHECK ONE ONLY)

☐ 1st Quarter (Jan-March) ☑ 2nd Quarter (April-June) ☐ 3rd Quarter (July-Sept) ☐ 4th Quarter (Oct.-Dec)

4. NOTICE OF TERMINATION: LIST THE NAME AND EFFECTIVE DATE OF ANY LOBBYIST WHO TERMINATED HIS LOBBYING ACTIVITIES ON YOUR BEHALF DURING THE REPORTING PERIOD:

Name	Date
Name	Date

☐ This constitutes a final reporting of all payments related to our attempts to influence legislative and administrative action this year.

5. DESCRIPTION OF LOBBYING ACTIVITIES:

Give a general description of the legislative or administrative action you attempted to influence through the use of a lobbyist:

6. NATURE AND INTEREST OF EMPLOYER:

a. NATURE (Check One)

☐ Business Entity ☐ Industry, Trade, or Professional Association ☐ Individual ☑ ~~Other~~

b. INTEREST (Give a brief description of the entity or individual's interest)

Cut your Light Bill 67% To 80% Percent Per Month

APOC 24-4 (Rev. 12/81)

COMPLETE REVERSE SIDE

SCHEDULE A
EMPLOYER OR CLIENT OF LOBBYIST REPORT
PLEASE DO NOT SUBMIT THIS SCHEDULE WITHOUT A GENERAL INFORMATION SHEET (FORM 24-4)

INSTRUCTIONS: A separate Schedule A must be filed for each lobbyist to whom payments either are due or have been made directly or indirectly to, or on behalf of, during the reporting period. See manual of instructions for specific details as to what constitutes reportable Schedule A transactions. *(If no payments were made or due to or on behalf of a lobbyist during the reporting period, the lobbyist's name should be noted in Number 8 on the General Information Sheet (Form 24-4).*

Part A-1: General Information

This Report is Being Filed for: ☐ 1st Qtr. ☒ 2nd Qtr. ☐ 3rd Qtr. ☐ 4th Qtr. 198_____ ☐ Amended

Name of Employer or Client: Stanbeamin Electric Mergen Committee

Name of Lobbyist: Thomas H Stanbeamin

Part A-2: Payments Accrued or Made Either Directly or Indirectly to, or on Behalf of, the Lobbyist this Period:

Month Accrued	Recipient of Payment	Total Amount Paid or Accrued	Salary, Fee Retainer	Food and Beverage	Living Accommodations	Travel	Other Expenses (Explain on Other Side)	Other Things of Value (Explain on Other Side)
April 84	Crown Travel Inc.	$ 352.00						
Totals from Above.....								
Totals from Other Side.....								
Totals This Period.....								
Cumulative Last Report.....								
CUMULATIVE TO DATE.....								

APOC Form 24-4A (Rev. 12/81)

(USE REVERSE SIDE IF NECESSARY)

CHUGACH ELECTRIC ASSOCIATION, INC.
Anchorage, Alaska

November 30, 1983

TO: Joyce M. Murphy, President, Board of Directors

FROM: Thomas S. Kolasinski, Interim General Manager

SUBJECT: CFC - Study of the Formation of An Alaskan G & T

Comments:

1. Study Variance - Natural Gas Contracts

   Quote: "We are of the opinion that the figures provided which justify a formation of the G & T far outweigh any perceived loss of benefits from an assignment of the gas contracts to the new G & T."

   Answer: CFC states a savings of $271.9 million over a period of 18 years and $639.0 million over the entire period. Apparently CFC didn't do their homework because if the present CEA Beluga gas contracts were abragated and the G & T would have to pay the market price $2.32 MCF vs 20¢ MCF for the gas that is in inventory the net cost would be more than $700 million during the next 15 years.

Nowhere in the study does the report address the cost to Chugach (Distribution Coop.) for the additional 20% supplemental loan requirements from CFC if a G & T were formed; i.e., CEA would have a plant revenue ratio of approximately 9.0. (Total utility plant ÷ operating revenue - less cost of power.)

The study characterizes higher margins as a cost to members.

Chugach believes there are several benefits from using a 1.5 TIER:

1. A Equity Management Program can flow monies back to the members.

2. Chugach can invest in facilities instead of borrowing money.

VAN NESS, FELDMAN, SUTCLIFFE, CURTIS & LEVENBERG
A PROFESSIONAL CORPORATION
1050 THOMAS JEFFERSON STREET, N.W.
SEVENTH FLOOR
WASHINGTON, D.C. 20007
(202) 33[illegible]-2400

B. LYNN SUTCLIFFE
HOWARD J. FELDMAN
WILLIAM J. VAN NESS, JR.
BEN TAMAGATA
ROBERT G. SZABO
GRENVILLE GARSIDE
DERRY LEVENBERG, P.C.
HUGH D. AIN
ALAN L. HINTZ
ROBERT B. NORDHAUS
CHARLES B. CURTIS
GARY L. FONTANA

GARY D. BACHMAN
R. KEITH GUTHRIE
PETER D. DICKASON
JEFFREY S. CHRISTIE
ADAM WENNER
RICHARD D. RATHVON
EILEEN M. YOUNG
RUMAN TOMASAT
DEBORAH M. GOTTHOLD
DAVID W. DICKASON
WILLIAM B. CONWAY, JR.

December 2, 1983

Dr. Joyce Murphy
Chairwoman, Board of Directors
Chugach Electric Association, Inc.
P.O. Box 3518
Anchorage, Alaska 99501

Dear Doctor Murphy:

You have requested our opinion as to whether certain natural gas supply contracts ("gas contracts") under which natural gas is sold to Chugach Electric Association, Inc. ("Chugach") may be assigned by Chugach to a proposed generation and transmission cooperative ("G&T") without the consent of the producer/sellers under such contracts.

Summary of opinion

Our opinion is that such an attempt to assign the gas contracts without the consent of the producer/sellers may violate the terms of the contracts. Although a sound legal argument can be made that these contract terms are inapplicable or unenforceable, an assignment without the consent of the producer/sellers presents an unacceptable risk to Chugach of the loss of the economic benefit of the gas contracts.

Background

Chugach has considered the possibility of establishing a G&T to which Chugach's generation and transmission facilities would be transferred and to which its long-term natural gas supply contracts would be assigned. Under these contracts, Chugach purchases natural gas for fuel for its generating facilities from ARCO, Shell and Chevron ("producer/sellers") at a price of approximately 26 cents per MCF.

Article XVII of the gas contracts (which is identical in all of the contracts) provides as follows:

> All provisions, covenants and obligations contained herein by which either of the parties hereto is bound, shall in like manner be binding upon the successors and assigns of the parties so bound and those which are for the benefit of either of the parties shall in like manner inure to the benefit of the successors and assigns of the parties so benefited; provided, however, that neither party hereto shall assign this Agreement in whole or in part (except to a subsidiary or successor to their respective businesses) without first obtaining the consent in writing of the other party except that the Buyer may assign this Agreement to the United States Government or any Agency thereof to secure any indebtedness thereto without Seller's consent.

Analysis

The assignment clauses of the gas contracts by their terms prohibit either party from assigning the contract in whole or in part without obtaining the prior written consent of the other party, except where the assignment is to a "subsidiary or successor" of the assignor's "business," or to a Federal agency as security for indebtedness. Thus, assignment to the G&T would be a breach of the contract unless --

(i) the G&T is a "subsidiary or successor" of Chugach's "business";
(ii) the assignment clause is inapplicable or unenforceable; o
(iii) consent is obtained.

a. "Subsidiary or successor"

Under Article XVII, consent is not required for assignment to a "subsidiary" or "successor" to Chugach's business. Both terms are undefined. However, it is unlikely that the G&T would be regarded as a subsidiary unless it was owned or controlled by Chugach. Whether the G&T is a successor is a closer question. While it would not be a successor to Chugach as a corporate entity (as a G&T which resulted from a merger or reorganization would be), the G&T could be regarded as a successor to Chugach's generation and transmission business. By specifying the "business" of the parties instead of referring to the parties, the assignment clause of the contract is concerned with the economic activity of the assignee, not its corporate form.

The producers, on the other hand, could argue that the reference to "business" was intended to refer to Chugach's business as a whole (including the distribution functions), and that a G&T not owned or controlled by Chugach is not a subsidiary or successor of Chugach's generation, transmission and distribution business.

b. Scope of prohibition on assignment.

Contract clauses prohibiting assignment are specifically addressed in the Uniform Commercial Code ("UCC"). Section 2.210(c) of the UCC (AS 45.02.210(c)) applies to sales of natural gas (see, AS 45.02.107) and provides:

> Unless the circumstances indicate the contrary, a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

Thus, if the contract language prohibited assignment, Chugach could assign its right to gas delivery, but not its duty to pay, unless the circumstances indicated the contrary. The gas contracts do not completely prohibit assignment; they only prohibit it unless consent is obtained or the assignee is a successor, subsidiary, or Federal agency. In our opinion, this UCC provision applies even if the prohibition on assignment is not unqualified. However, the UCC provision is only a rule of construction ("is to be construed") which applies unless "the circumstances indicate the contrary".

Examination of the assignment clause in the gas contracts indicates that they are not simple prohibitions on assignment, but rather are carefully drafted provisions which prescribe the rights and duties of successors and assigns, and limit the conditions under which assignment is permissible. Under the assignment clause, contract obligations are binding on successors and assigns; contract rights inure to the benefit of successors and assigns; but consent to an assignment is required unless the assignment is to a subsidiary, successor, or Federal agency.

If the draftsman had intended the construction provided by UCC § 2.210(c), (consent is required only in order to delegate performance), then it is unlikely that the assignment clause would have specifically provided that contract benefits inure to the benefit of an assignee where consent has been given, since under § 2.210(c) the assignee could receive these benefits even if consent were not given.

c. Good faith

If Chugach were to request consent to its assignment of the contracts to the proposed G&T, and the consent were refused, Chugach could argue that the refusal was not in good faith. The parties to a contract have a duty of good faith and fair dealing. AS 45.01.203; Mitford v. De Lasala, 660 P.2d 1000 (Alaska 1983). A contractual right, however unconditional it might appear to be, must be exercised in good faith. See, Alyeska Pipeline Service Company v. Aurora Air Service, Inc., 604 P.2d 1090 (Alaska 1979) (unilateral right to terminate contract required to be exercised in good faith). The producers are obligated to act in good faith in deciding whether to consent to an assignment. If performance by the G&T would not impose any greater burden or risk on the producers than performance by Chugach, it would be difficult for the producers to argue that they have acted in good faith in withholding consent to the assignment. However, if the producers could find a basis for arguing that performance by the G&T instead of Chugach would disadvantage them, then they presumably would have a good faith basis for refusing consent.

Conclusion

If Chugach wished to assign the gas contracts to the proposed G&T without the producers' consent, there are a number of legal theories on which Chugach could rely were the producers to claim that such an assignment was a breach of contract. However, there is a plausible reply that the producers could make to each of these theories. If Chugach argues that consent is not required because the G&T is a "successor" to Chugach's business, the producers can respond that the G&T must be a successor to the entire business, not just the generation and transmission business. If Chugach argues that the UCC makes consent unnecessary because Chugach is assigning a benefit rather than delegating performance, the producer can respond that the "circumstances indicate the contrary" -- the parties intended a different result. If Chugach argues that withholding of consent would be in violation of the producers' duty of good faith, the producers may be able to devise a good faith objection to selling gas to the G&T (or take the position that defense of their economic interest in raising the price of the gas is not bad faith).

It is our opinion that, although sound legal arguments can be made that consent to an assignment of the gas contracts to the G&T is unnecessary or cannot be withheld, there is a substantial possibility that such an assignment would be held to be a breach of the contract, and the basis for the producers' terminating delivery of the gas. Because of the extraordinary value of these contracts to Chugach and its

customers, we believe that an assignment without consent of the producers would present an unacceptable business risk to Chugach, unless prior to the assignment Chugach obtained a declaratory judgment or a decision under the arbitration provisions of the contract that such assignment was permissible.

We hope that this opinion has responded to your question.

Sincerely,

Van Ness, Feldman, Sutcliffe,
Curtis & Levenberg, P.C.
1050 Thomas Jefferson Street, N.W.
Washington, D.C. 20007
(202) 331-9400

By: Robert R. Nordhaus

Railbelt Energy Needs May Double by 2001

Alaska's Rapid Population Growth Increases Electric Power Demands

By DEB DAVID

Although per capita energy consumption by Alaskans has not increased dramatically in this decade, the demand for electricity has risen due to unprecedented population growth. The precise demand for electricity in the long-term future continues to evade planners, but they are certain that Railbelt electrical requirements will continue to grow at a healthy rate.

A 20-year energy and peak load forecast summary compiled by the Alaska Systems Coordinating Council (ASCC) for the Railbelt (see Table 1) estimates peak energy usage will jump from 627.8 MW in 1983 to 1,474 MW in 2001. Considerable disagreement surrounds the peak load forecasts, which are invaluable in planning electrical generation needs.

One argument is the peak load forecasts indicate that the proposed $5.5-billion (estimated 1983 dollars), 1,600-MW Susitna hydroelectric project is too large. Another camp argues the power projections are unrealistically low.

In either case, at least some growth in demand is certain, and utilities will continue to be active users of construction services through the next decade.

Anchorage Area

Southcentral Alaska, particularly the Anchorage area, has exhibited phenomenal population growth in the first three years of the 1980s. The growth has spurred revised peak load forecasts and provided the impetus for large electrical construction projects.

According to the ASCC forecast, Anchorage Municipal Light and Power (ML&P) generated 663 gigawatts (1 GW = 1,000 MW) in 1982. Energy consumption by the publicly owned utility is expected to reach 717 GW this year and 786 GW in 1984. Table 1 shows similar energy usage increases through the year 2001.

Peak loads this winter at ML&P are expected to reach between 130 MW and 140 MW, compared to the peak last winter of 126 MW. (Peak loads are very weather-sensitive, surging during periods of extremely cold temperatures.) By the year 1991, peak loads will nearly equal the utility's current total generating capacity of 253 MW, which includes 16 MW of power purchased from the Alaska Power Authority's Eklutna hydro facility.

ML&P currently has more than 100-MW reserve capacity, a hefty 80-percent reserve capacity. From a national perspective, the reserve is extremely high, but in Anchorage, where the largest unit produces 100 MW, the reserve is not excessive. The loss or failure of ML&P's largest unit at peaking periods would annihilate its reserve generating capacity.

> 'ML&P's 80-percent reserve capacity is not excessive for Anchorage.'

A $122.5-million, 170-mile electrical intertie between Anchorage and Fairbanks utilities will help to preserve Anchorage's generating reserve during peaking, while enabling Fairbanks area utilities to draw from Anchorage's cheaper gas-fueled power. The project, sponsored by the Alaska Power Authority, is under construction and scheduled for completion in December 1984. (See November 1983 issue of AC&O for a complete report on the Anchorage-Fairbanks intertie project.)

The municipality currently operates seven main generating units — four simple-cycle combustion turbines, two of which are diesel-fired, and two combined cycle units which work in concert with one steam turbine running off of waste heat. ML&P is considering the installation of an additional 80-MW plant next spring at a nominal cost of $16 million, if a contract for sale of excess power can be arranged with Chugach Electric Cooperative Inc.

Chugach, which serves nearly 50,000 Anchorage area customers compared to ML&P's 19,000 center city customers, has a greater immediate need for energy. Under the arrangement being negotiated, Chugach would buy excess production from the new ML&P plant until the latter utility required the generation to meet its customers' needs. While Chugach and ML&P could mutually benefit from such an arrangement — Chugach would have additional power without up-front capital costs, while the municipality could reduce its capital costs by selling power — both utilities are prepared to proceed alone if an agreement is not reached.

ML&P would install the plant in 1985 instead of 1984 without a purchase agreement from Chugach. And the cooperative is pursuing plans to purchase ML&P new generation and to build its own new unit on a parallel track. Chugach, which pegs the total project cost at $26 million, would probably install a new unit at its Beluga station, near its cheapest source of gas from the Beluga field.

Chugach Electric also is planning to increase its generation by another 40 MW with a new unit at Bernice Lake. The $17-million project would include a new gas-driven turbine and 21 miles of 115-kV transmission line from the Nikiski plant to a Soldotna substation. The transmission line portion of the contract is estimated to cost between $7 million and $8 million. The Bernice Lake unit is scheduled for installation in 1984.

In 1986-87, Chugach is planning to boost its generation further by adding

two more units — an 80-MW unit at its Beluga station and a 40-MW unit at Bernice Lake. Specifications and site plans for the projects are being developed.

The increased generating capacity will help Chugach meet ASCC's forecasted energy demand of 2,304 GW in 1987. Table 1 indicates the cooperative's energy generation climbing from 1,765 GW in 1982, to 1,854 GW in 1983, to 1,966 GW in 1984, to 2,079 GW in 1985, and to 2,192 GW in 1986.

The two Anchorage-based utilities also are undertaking major transmission line upgrades this year. All Chugach-ML&P 35-kV transmission lines will be boosted to 115 kV by the end of 1983. The improvements also entail modifying the lines into a loop system to give all substations two-way feed. The utilities have been interconnected in the past, but the recent transmission upgrades will build extra reliability into both systems.

ML&P will spend about $14 million in capital improvements this year, and has budgeted $36 million, including $16 million for the proposed new electrical generating unit at its main plant, for 1984. According to Tom Stahr, general manager of ML&P, the utility also has a four-million-gallon fuel-oil storage facility on the drawing board for possible construction in the next few years.

Additional Chugach improvements include a complete upgrade of its Beluga station transmission lines to 230 kV over the next three or four years. The project, which will boost the current 115-kV line from Anchorage to the Kenai Peninsula, likely will involve a submarine cable crossing of Turnagain Arm.

In addition, the cooperative is planning two new bulk power substations in Anchorage — one in the western end of the city near Anchorage International Airport and one in east Anchorage at University Substation. Within the next five years, Chugach is planning an upgrade of its radial transmission lines to 138 kV in South Anchorage's Huffman Road residential area.

For the immediate future, the two utilities are confident they will keep pace with Southcentral Alaska's mounting energy needs. But with the proposed Susitna hydroelectric project still hanging and the inability to precisely predict long-term energy demands, the distant future is more uncertain.

Several proposals aimed at improving future capacity have been aired, including the merger of Chugach and ML&P. Stahr believes the proposal merits further study. A merger could result in up to $60 million in savings to consumers by avoiding duplications and improving planning capabilities, he said. Chugach's board of directors has chosen to accentuate cooperative, joint planning among the two utilities, avoiding any reorganization until such a move is deemed economically sound for Chugach customers, said Larry Markley, director of government and environmental affairs for Chugach.

Southcentral

The City of Seward, which purchases the bulk of its power from Chugach Electric, is planning an estimated $10-million transmission line upgrade

Teble 1†
Alaska Systems Coordinating Council
20-Year Energy and Peak-Load Forecast Summary
Railbelt Utilities

	AML&P [1]		CEA [1][2]		FMU [1]		GVEA [1]		Railbelt Total [3]	
Year	Energy (GWH)	Winter Peak (MW)	Energy (GWH)	Winter Peak (MW)	Energy (GWH)	Winter Peak (MW)	Energy (GWH)	Winter Peak (MW)	Energy (GWH)	Winter Peak (MW)
1982	663	130.0	1765	372.3	141	28.2	360	67.9	2929	598.4
1983	717	140.0	1854	384.1	147	29.3	387	74.4	3105	627.8
1984	786	153.0	1966	408.4	153	30.5	416	81.4	3321	672.3
1985	844	162.0	2079	432.7	161	32.2	447	89.2	3531	716.1
1986	915	174.0	2192	457.0	165	32.9	480	97.7	3752	761.6
1987	986	186.0	2304	481.3	168	33.6	516	107.0	3974	807.9
1988	1053	197.0	2417	505.6	172	34.3	558	113.7	4200	850.6
1989	1126	209.0	2530	529.8	175	35.0	603	120.9	4434	894.7
1990	1200	221.0	2642	554.1	183	36.5	653	128.5	4678	940.1
1991	1270	232.0	2754	578.3	190	38.0	706	136.6	4920	984.9
1992	1322	241.0	2867	602.5	198	39.5	764	145.3	5151	1028.3
1993	1375	251.0	2979	626.8	206	41.1	826	154.4	5386	1073.3
1994	1431	261.0	3091	651.0	214	42.8	894	164.1	5630	1118.9
1995	1489	272.0	3203	675.2	225	45.0	967	174.5	5884	1166.7
1996	1549	283.0	3315	699.3	237	47.3	1046	185.5	6147	1215.1
1997	1621	294.0	3428	723.5	249	49.7	1131	197.2	6429	1264.4
1998	1697	306.0	3540	747.7	262	52.3	1223	209.6	6722	1315.6
1999	1775	318.0	3652	771.8	275	54.9	1323	222.8	7025	1367.5
2000	1858	331.0	3764	795.9	281	56.1	1432	236.9	7335	1419.9
2001	1944	344.0	3875	820.0	295	58.9	1548	251.8	7662	1474.7

Notes:
[1] Forecast from utility — 2-83
[2] CEA forecast includes Matanuska Electric Association, Homer Electric Association and Seward Electric requirements
[3] Eklutna is included in AML&P and CEA

Copper Valley Electric Association (CVEA) totals not included. CVEA has indicated (3/83) its growth will average two to five percent per year through 2001

AML&P = Anchorage Municipal Light & Power
CEA = Chugach Electric Association
FMU = Fairbanks Municipal Utilities System
GVEA = Golden Valley Electric Association, Fairbanks Area

† *Courtesy of Alaska Power Administration*

which will boost its power lines from 24 kV to 115 kV. In the design phase, the project is scheduled to begin in spring 1984, hinging on an appropriation from the Alaska Legislature.

Existing single-pole transmission lines are undersized for current loads, resulting in excess voltage loss, and hence, in energy loss. The current transmission system also leaves little room for any industrial load expansion at a time when Seward foresees increased electrical demands from industry.

A coal port to handle Usibelli coal being shipped to Korea's coal-fired electrical plants is scheduled to be built next fall in Seward. A ship lift currently is under construction and should be in use by the summer of 1984. The city also is expecting ancillary industries to spin off of these larger developments and an accompanying increase in residential energy demand.

Seward's current peak loading is estimated at 5 MW, a figure which is predicted to increase to 20 MW over the next 30 years. Ebasco Services Inc. currently is conducting a 30-year economic and load forecast to be used in designing the line and preparing construction contract drawings and documents.

To meet short-term energy needs, the city will have to rely on two of its three stand-by diesel generators to supplement the power it purchases from Chugach. The only power currently generated by the city utility consists of about 100 kW from a small hydro plant for use by the local hospital.

In the Glenallen-Valdez area, Cooper Valley Electric Association (CVEA) has no plans for immediate capital improvements. The system is powered by two diesel units — one producing 10 MW in Valdez and one producing 7 MW in Glenallen — in the winter months and the 12-MW Solomon Gulch hydro plant in the summer. Glenallen currently is not tied into the hydro facility and operates its diesel units year-round.

Dan Tegeler, CVEA office manager, hopes to see a transmission line built to tie Glenallen into the hydro system. But no immediate plans or funding exists.

Also in the future is the possibility of installing a pressure-reducing turbine which would tap the kinetic energy from the trans-Alaska pipeline, terminating in Valdez, and convert it to electricity. Such a system would replace Valdez's aging and expensive-to-operate diesel turbines.

The kinetic conversion talks have been held up by a lawsuit brought by the City of Valdez in an effort to take over CVEA. Tegeler said the case soon will be dismissed, opening the door for continuation of negotiations with the Alyeska Pipeline Service Co. over using the pipeline as a kinetic energy source.

Also in limbo is an Alaska Power Authority preliminary feasibility study to determine the lowest long-range cost of power for the area. The study, conducted by Stone-Webster, tentatively recommended a Silver Lake hydro plant transmitting electricity to Cordova and Valdez as the best of several options. The Power Authority is requesting funding in 1984 to complete the feasibility study.

Unlike most areas of the state, Cordova's peak electrical loads occur during the summer fishing season. The summer peak for 1983 reached 4.5 MW and is expected to climb to 5 MW in 1984.

About 1,200 Cordova area customers are served by the Cordova Electrical Cooperative Inc. A demand growth rate of between seven and eight percent a year has necessitated construction of a new power plant, which was about one-third complete in late October. The facility will increase CEC's current 7.5-MW generating capacity to 10 MW in time for next summer's fish processing surge.

The $3-million project, funded with money borrowed from the Rural Electric Association and the National Rural Utilities Cooperative Finance Corp., entails installing a new 2.5-MW diesel unit and relocating an existing 2.5-MW unit to the new power plant. The contract is being performed by Hales Construction & Associates of Seattle.

Two units — 1.9-MW and 2.6-MW Enterprise generators — will continue to operate at the existing Eyak Lake plant, but plans are to eventually phase out these older units and replace them with new unattended-operation models. CEC Manager Doug Bechtel said the move would reduce staffing levels and lower electricity rates.

Fairbanks Area

Fairbanks area utilities also will benefit from the Anchorage-Fairbanks intertie project currently under way. While demand is growing — new connects by Golden Valley Electric Association increased from 1,075 in 1981, to 1,319 in 1982 and an estimated 2,000 in

Table 2†
Juneau Area Net Generation and Peak Demand

Fiscal Year	System Net Generation MWH*	MWH % Annual Increase	Peak Demand MW	MW % Annual Increase
1970	58,266		12.4	
		9.5		11.3
1971	63,786		13.8	
		10.1		8.0
1972	70,255		14.9	
		7.8		4.0
1973	75,753		15.5	
		9.6		4.5
1974	83,059		16.2	
		13.9		9.9
1975	94,609		17.8	
		12.4		11.2
1976	106,296		19.8	
		5.6		3.0
1977	112,197		20.4	
		8.9		14.7
1978	122,218		23.4	
		9.2		-1.3
1979	133,457		23.1	
		7.2		13.4
1980	143,128		26.2	
		16.5		22.9
1981	166,700		32.2	
		21.7		29.2
1982	202,900		41.6	
		10.3**		
1983 (Oct-June)	174,754		40.1	
		12.4		-3.6
1983	228,600***		40.1	

* Includes Alaska Electric Light & Power and Glacier Highway Electric Association sales and losses
** Increase over same period in 1982
*** Estimate based on nine months' data
† *Courtesy of Alaska Power Administration*

1983 — utilities generally feel their generating capacities are adequate to cover power needs into the early 1990s.

GVEA currently has a generating capacity of 203 MW and expects peak loading this year to reach 72.7 MW, compared to a peak load of 67.9 MW in 1982. Peak load estimates for 1984 are 77 MW.

Power for the cooperative's 20,000 customers is generated with GVEA's main base plant at Healy, which produces 25 MW from coal-fired turbines. In addition, two diesel-driven generators each produce 65 MW at the North Pole peaking plant and several 7.5-MW generators operate at the Fairbanks Vhender complex.

While GVEA has no plans for large capital improvements in the short-term, the rising number of new connects will require continual power line expansions.

At Fairbanks Municipal Utility System (MUS), which is interconnected with GVEA and Fort Wainwright, the maximum generating capacity is 63 MW achieved with four coal-fired, steam turbines and two diesel turbines for back-up and for peaking. The system usually operates in the 30-MW to 50-MW range, and peaked at 28.2 MW in the winter of 1982-83. The utility expects a peak load this winter of 30 MW.

System growth due to new housing construction and commercial construction will require MUS to purchase an additional 25-MW coal-diesel unit, which will replace three 30-year-old steam turbines with a combined capacity of 17.5 MW. While the change will not greatly enhance generation ability, it will build more reliability into the system.

Southeastern

The Juneau area has experienced a significant increase in peak demand and energy consumption since 1980. In the spring of 1983 local utilities were required to furnish more than five million kwh of diesel-generated electricity to supplement power available from hydroelectric plants. According to the Alaska Power Administration, a division of the U.S. Department of Energy, the need for this diesel generation is expected to increase each spring as area reservoirs are drawn down until additional hydro power is available from Crater Lake.

An Alaska Power Administration study, "Juneau Area Power Market Analysis, Update of Load Forecasts," concludes that the Crater Lake addition to the Snettisham hydroelectric facility is needed, since from 40 to 70 percent of the project's output could be used the first year on-line in 1987. Firm energy from Crater Lake would be used by 1990 under a high-growth case, and by 1993 under a lower-growth scenario.

Construction of the Crater Lake project, estimated to cost $70 million, is expected to be contracted by the Army Corps of Engineers in the spring of 1984, with site construction beginning in early July. Under this construction schedule, the project would be on-line in February 1987.

Expected generating capacity from the addition is 27 MW, which represents a 60-percent increase in present generating capabilities in the Juneau area.

Crater Lake generating units will be housed in the Snettisham power plant, from which Juneau utilities draw the bulk of their power. Snettisham's current generating capacity is about 46 MW. In addition, Alaska Electric Light & Power (AEL&P) owns small hydro sites supplying about 6 MW. The privately owned utility added one diesel unit this year to give it nine stand-by diesel generators with a capacity of 17 MW.

Plans are to add two to three additional diesel generators a year to satisfy the hydroelectric deficit which currently exists. AEL&P also has requested a 17.5-MW oil-fired gas turbine which it would use strictly for stand-by in the event of a loss of load at Snettisham.

Potential hydroelectric sites beyond Crater Lake would include Long Lake Dam, Lake Dorothy, Sweetheart Creek and Speel River, according to the Alaska Power Administration. AEL&P has proposed a cooperative study to look into future development of generation facilities to ensure the best use of the area's hydro resources.

Table 2 shows the Juneau area net generation and peak demand and the trend toward increased demand and declining MW generation capacity.

In other Southeastern communities, the State of Alaska has invested millions of dollars in hydroelectric projects at Swan Lake, Tyee Lake and Terror Lake in an attempt to meet electrical demands in the long-term. (See articles on Southeastern hydro projects in this issue of AC&O.)

Electric power retains a commanding role in the development of Alaska, and will continue to spark construction activity for the foreseeable future. □

Bill proposes merger of Railbelt utilities

11 JAN 84

By DON HUNTER
Daily News reporter

An Anchorage legislator has sponsored a bill that would appropriate up to $800 million to pay off the combined debts of electric utilities from Fairbanks to Seward, if the utilities agreed to merge into one giant power cooperative.

Rep. Terry Martin, a Republican, says his proposal would eliminate duplication and waste by forging several administration-heavy utilities into one. Paying off the debt would cause electric bills to plummet, perhaps by as much as 50 percent, he said.

The heads of two of the utilities involved disagree, however.

Martin concedes the odds are slim lawmakers would agree to an $800 million grant to benefit only Railbelt electric utilities and ratepayers, especially in an era of declining oil revenues and increasing competition from other spending proposals.

But he says House Bill 475, introduced on Monday, may be a useful bargaining chip when budget time rolls around.

Martin said the legislature has routed millions of dollars into energy projects in rural Alaska and to hydroelectric projects in Southeast. He said the Sheffield administration will ask for an additional appropriation and legislative action necessary to issue revenue bonds for the Alaska Power Authority's so-called four-dam pool.

"I think it's just a real opportune time to make the statewide legislators and public aware that we in Southcentral have just as many problems as they do elsewhere," he said.

Martin also said his funding proposal — using $800 million in state money to pay off the accumulated debts of electric cooperatives and city utilities in Fairbanks, Anchorage, the Matanuska Valley and the Kenai Peninsula — is open to compromise.

"This isn't the gospel line, it's just a concept very general in its statements," he said.

The grant, as proposed in Martin's bill, would be awarded on the date the utilities merged into an "Alaska south-central electric cooperative." Martin said the new utility would merge Chugach Electric Association, Anchorage's Municipal Light and Power, Homer Electric Association, Matanuska Electric Association, Seward and Fairbanks city utilities and the Golden Valley Electric Association in Fairbanks.

The merger is essentially the same proposal advocated for more than a year by utilities critic Tom Staudenmaier. It would require affirmative votes of the members of the cooperatives and probably voters in Fairbanks, Anchorage and Seward.

Executives of two of the utilities, however, said there are serious drawbacks to the plan.

ML&P General Manager Tom Stahr said it is a mistake to believe that merging smaller companies into one larger company will reduce administrative overhead. Even though one company only has one manager, larger companies require more levels of administrative oversight, he said.

"You only have to look at larger government or larger private business operations to see that is so," Stahr said. "One man can run a small business, but for a big organization you have to have layer upon layer of administration. It's just wrong to say (merger) will reduce adminstrative costs."

Matanuska Electric General Manager Jim Palin said a low-interest state loan program for construction of new generators would be more valuable than the retroactive elimination of existing debt.

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MANAGEMENT QUARTERLY ADVISORY COMMITTEE

The Management Quarterly Advisory Committee was selected from a wide cross section of cooperative board members, managers, and key employees from across the country. The Committee's purpose is to provide a link with our readers which enables us to know your thoughts, concerns and suggestions for MQ. Readers who have ideas to share are invited to contact the Advisory Committee member nearest them.

From the Editor

As MQ goes to press for this issue, the economy and the spring flowers in Washington seem to match—a bit bedraggled as yet but looking better than what we had a couple of months ago. Several of the indicators the experts use to gauge the general health of the economy indicate that our nation's financial malaise is improving a bit. So.....we hope you can breathe a tentative sigh of relief, put your feet up on your desk and take some time to enjoy an issue of MQ of which I am inordinately proud! Every writer has done a praiseworthy job and each article has immediately usable, readily acceptable ideas.

To switch gears a bit, those members of the Management Services staff who are in the field a lot have been comparing notes of late and several of us have become aware of a tendency (hopefully one that is not contagious) which might best be described as "the-doom-and-gloom-theory-of-management". To determine whether you or others around you may have adopted this world view, ask yourself these questions: Have I (or a member of the staff or of the board of directors) made the following—or a similar statement—recently?" "There's no point in trying to communicate with the members because they don't care about the cooperative and will just complain no matter what." "There's no point in trying to motivate employees because all they want is their paychecks and the union has our hands tied anyway." "There's no point in trying to give new ideas to the board because they never listen and they're all living in the past."

While any of these statements may be true in isolated instances, it is certain that they are not as universally applicable as the doom and gloom adherents would have us believe.

I've always found it fascinating that children can so easily build happy worlds for themselves--castles and spaceships and far-off places can be conjured in the twinkling of an eye.

Although one of the tasks of becoming an adult is to learn to live in the real world, the process seems to have left many of us with the ability to fantasize only harmful outcomes and to act as if they had already happened. ("Vague premonitions of disaster" is the name stress management experts give to this tendency.) Perhaps it's time that we took a cue from the little people around us (and from some very credible health practitioners as well) and began creating good mental scenarios for ourselves and the world around us. Whether we choose to call this exercise positive thinking, good mental health habits, meditation or some other form of "mental centering", people who use an upbeat, accepting way of processing reality seem to be highly successful at creating the reality they wish to participate in. It would be shortsighted at this point in our history to assume that wishing will make our problems disappear, but it surely will not help to abdicate our rights and responsibilities by creating a world for ourselves in which we are totally powerless to affect the outcomes.

June Bostic Lane

The Board Room

Is Bigger Better?

The economic realities of the 1980's mandate that we take a fresh look at the major objective of our rural electric systems and determine whether there are some other ways of meeting it. This article is a very important one. It is the result of some lengthy analytical efforts by CFC which clearly show the economic advantages of merging some of our smaller systems. Would a merger benefit your system? Only the thoughtful consideration of those most closely involved can determine the answer and it may well be time to examine the option.

By George King, Jr.

For many years there has been a great deal of discussion among rural electric program leaders regarding the advantages of merger or consolidation of the smaller REA-financed electric distribution systems, or at least a consolidation of certain functions into organizations of sufficient size to take advantage of the economies of scale inherent with higher volume. I do not know of a single merger study which has not shown cost savings to the ultimate consumer if two or more relatively small systems were consolidated. Such consolidations can eliminate duplication in staffing, equipment, headquarters facilities, top management and consulting services. Frequently, it can also result in long-term savings in distribution plant, all of which can reduce costs to the ultimate consumers. Yet, relatively few mergers or consolidations have taken place.

In this article we will explore some of the pros and cons regarding the merger of rural electric distribution systems in the 1980's, as compared to prior decades.

Obviously, the leaders in the rural electric program have long recognized the economies possible from working together to accomplish, as a group, what would have been impossible or impractical to accomplish as individuals. In the 1930's, when few farms and rural homes had electric service, those people without electricity generally recognized that it was not practical for each farm or home to buy, operate, and maintain its own small generating plant. The costs associated with the purchase and installation of a plant, with capacity adequate for more than intermittent service for a few lights and a radio, were too expensive. After taking into consideration the additional expenses for fuel, oil, maintenance, depreciation and replacement, very few decided it was economically feasible to install these "light plants".

Yet, by working together, rural residents organized REA-financed distribution systems, which are today providing electric service to 10 million persons. The key to the feasibility of these distribution systems was then and is today the spreading of certain fixed expenses over a wide base of consumers and KWh sales. Certainly, REA's low cost loans were important, as were non-profit operation, standardization of line materials and design and REA technical assistance. However, the keystone in the feasibility was the ability to take advantage of economies of scale made possible by consumers joining together to spread costs over a wider base.

The initial emphasis in the 30's and on into the 40's was not so much in creating systems of an "*optimum*" size, as it was on creating systems with *adequate* size to make the costs of service "feasible" or "affordable" at that time, and into the immediate future.

Local control was considered to be a special advantage. In the creation of almost every rural electric system, many local people spent countless hours without pay, calling on their neighbors to "sell" the concept of creating an electric cooperative, to "sign up" each farmer as an "applicant", to collect a $5.00 membership fee, and to obtain an easement to cross the farmer's land with poles and wires. Neighbors were more trustful of their friends, neighbors and acquaintances, and this created a tendency for smaller systems to be developed.

In the 1930's the creation of more jobs was also a major federal objective. The goal of the REA program was not only to help provide electric service in previously unserved areas, but also to provide jobs in manufacturing the transformers, wire and meters, and the myriad of other items necessary to build a system. At the local level, jobs were created in building the lines and wiring the farmsteads and in managing and operating the local distribution system. All of these developments were important in improving the nation's economic outlook in the years following the "great depression". Again, optimum size of the new systems was not a consideration. The objective was to get the job done, not to determine the "right" size.

REA did recognize the need for more than 300 or 3000 or even 30,000 consumers to spread the costs associated with owning and operating generating plants and transmission grids. Very few loans were granted for distribution systems to construct their own generating plants. In order to spread the costs across a wider base, generation and transmission cooperatives were organized by groups of distribution systems to build and operate these facilities.

Rural leaders across the nation also recognized the need for spreading the costs of such programs as job and safety training and other educational and legislative efforts over a wider base. As a result, statewide organizations were established. The National Rural Electric Cooperative Association (NRECA) and the National Rural Utilities Cooperative Finance Corporation (CFC), along with many regional supply organizations and data processing centers were created, each to fulfill a specific need, and each based upon the concept of spreading of the costs over a wide base in order to realize economies of scale.

For forty years or more following the creation of the rural electric program and most of the rural electric distribution systems, the individual systems continued to grow in number of consumers served, miles of line, and KWh sold. The efficiency of their operations improved with this growth. Although inflation has been a factor for most of the REA program's

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history, the economies of scale achieved by virtue of growth approximately offset the effect of inflation, at least through 1973, and the systems were able to provide service with little change in their electric rates. However, when the rate of inflation reached the double-digit levels of the early 1970's, costs began to increase much faster than any normal economies of scale could offset.

Exhibits I and II show the Trends in Total Operating Expenses for the composite of all REA-financed distribution systems from 1962 thru 1981. **Exhibit I** excludes the cost of wholesale power and thus shows the increases in efficiency for the distribution systems alone. **Exhibit II** includes wholesale power costs and is thus more representative of the consumer's view of his cost of electric service.

Under the declining cost conditions which prevailed until about 1970 to 1973, the consumers of most systems were content with the operation of their distribution systems, and there was little incentive for the consideration of mergers. There was very little dissatisfaction with the quality of the electric service and the rates charged. The systems' staffs enjoyed steadily increasing wage levels resulting from the systems' increased ability to pay, inflation and increased responsibilities. Under these conditions, most managers and directors had little incentive to consider changing long-standing organizational patterns. Everyone was happy: Why take any chances on the uncertainties which could be coincident with a merger?

However, later in the 1970's and continuing into the 80's, and as far into the future as we can now see, the fulfillment of management within electric systems has been eroded by inflation at rates greater than could be offset by increases in the systems' efficiency or economies of scale resulting from normal rates of growth. First, there was the substantial inflation in the interest rates on the loans to finance distribution plant extensions and replacements. The increase in the interest rates for new generating plants has been even more severe.

The cost of fuel for the generating plants has also been increasing, and the rate of increase went out the ceiling following the OPEC oil embargo and the deregulation of natural gas prices in the United States.

The cost of constructing new generating plants has also been increasing steadily due to ordinary inflation in the cost of labor and materials used, but especially due to the new federal and state requirements to reduce the pollution of the air and water, not simply to a reasonable level, but to the maximum degree afforded by the "state of the art", with no consideration for the effect these measures will have on the ultimate cost to the consumers.

Management of electric systems has been made more difficult by the need for repeated retail electric rate increases necessary to pay higher costs for trucks, gasoline, labor, materials and especially for wholesale power. The consumer's reaction to these "excessive" rate increases was to conserve in their use of electricity which, in turn, requires additional rate increases in order to realize sufficient revenues to cover the fixed costs of owning the required facilities, while selling a lower volume of KWh's.

It would be foolhardy to suggest that the merger or consolidation of systems into larger units would offset all these increased costs. However, at a time when member dissatisfaction with rapidly increasing rates is rampant, it would seem appropriate to explore all possible ways

EXHIBIT I

TRENDS IN TOTAL OPERATING EXPENSES

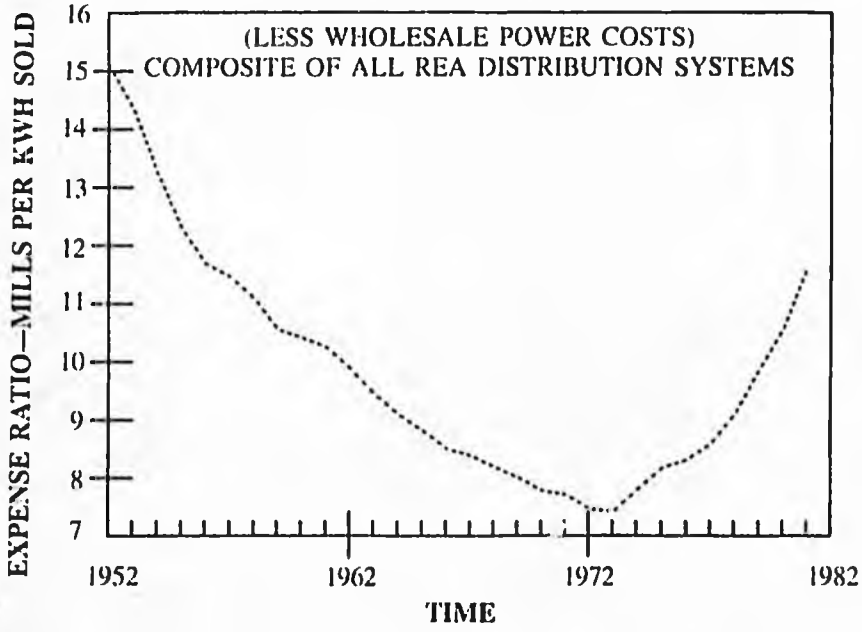
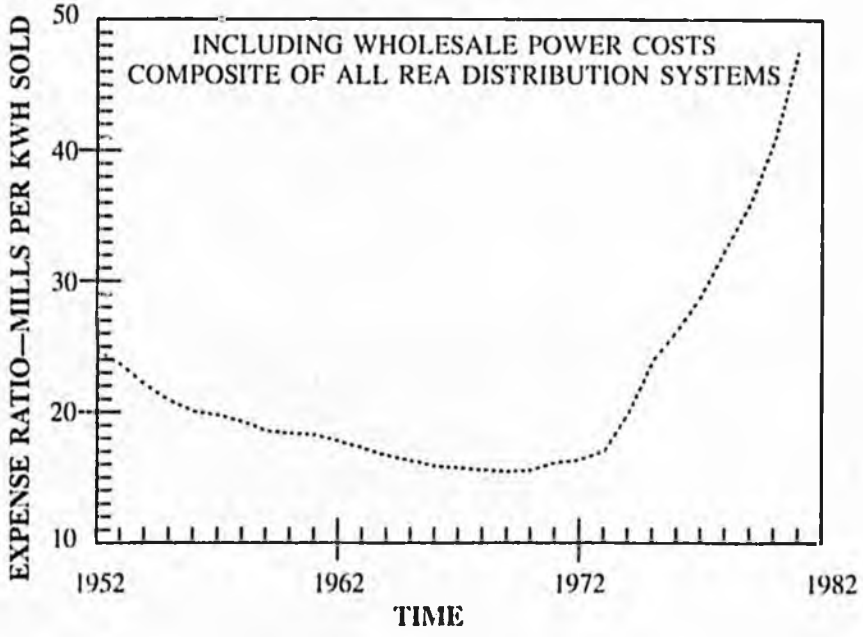


EXHIBIT II

TRENDS IN TOTAL OPERATING EXPENSES



to limit the need for rate increases as much as possible and thus minimize consumer dissatisfaction and conservation, which only serves to compound the problem, from the point of view of the distribution system.

Merger Statistics

For a decade or more I have explored various approaches to quantify the potential savings possible from the merger of two or more electric distribution systems. A wealth of actual cost *data* is available in the REA Annual Statistical Reports and this data has served as the base for my studies. The problem is in converting the *data* to useful *information*.

Each year since 1974 I have run the CFC Key Ratio Trend Analysis to extract, among other things, the trends of various expense ratios as posted by the more than 900 REA-financed electric distribution systems. For the purposes of the merger studies I have concentrated on the following two ratios of the 39 included in the KRTA:

1. Administrative And General Expenses (Expressed as a percent of Total Utility Plant)
2. Total Operating Expenses Less Power Costs (Expressed in Mills per KWH sold)

The logic is that most savings which can be realized in the short-term (one to three years) would tend to be charged to Administrative and General Expenses. Over the long-term, (five to ten years) savings should be realized in many additional areas, so we look to Total Operating Expenses.

Wholesale power costs are normally subtracted out of Total Operating Expenses, since it is unlikely that the cost of wholesale power could be reduced appreciably as the result of a merger.

In one facet of the KRTA, all distribution systems were divided into one of 11 groups, depending upon the number of consumers they served, and the expense ratios of the systems in each group were then sorted into descending order to determine the median ratio value for each size group, which was taken as representative of the costs for systems in that size group.

The actual median values for each size group were then smoothed by substituting values as computed from a formula derived by least squares techniques from the actual values. **Table 1** shows the median data-points for Administrative and General Expenses for each of the years from 1975 thru 1981, together with "adjusted" values as computed from the formula derived as the best "fit" of the actual values. **Table 2** shows the same data for Total Operating Expenses Less Wholesale Power Costs.

The data shown on Table 1 can be better visualized by reference to **Graph I**, in which one can see how sharply the median expense values for 1981 fall from 4.62% (of Total Utility Plant) for systems in the 0 to 1,000 consumer size group to 2.88% for systems in the 9,000 to 12,000 size group, and then decline more slowly to 2.42% for systems in the 30,000 and over consumer-size group.

Graph II shows the same data for 1981, but points and the best-fit curve have been added to show data for the year 1975. **Graph III** shows the 1975 and 1981 actual data points and the best-fit curves for Total Operating Expenses, less wholesale power costs.

If you examine Graphs II and III carefully, you will note a considerably greater increase from 1975 to 1981 in the adjusted expense ratios for the smallest size-group as compared to the largest. For example, on Graph 3 the Total Operating Expenses for the smallest size-group went from 14.08 mills per KWh in 1975 to 29.42 mills in 1981, while the comparable value for the largest size-group increased from 8.26 mills to 10.87 mills over the same time span.

In order to show this more clearly, we rearranged the adjusted values from Tables 1 and 2 into time series for each

TABLE 1

ACTUAL AND SIZE ADJUSTED MEDIAN RATIO VALUES
for
ADMINISTRATIVE AND GENERAL EXPENSES—KRTA RATIO 13
(EXPRESSED AS A PERCENT OF TOTAL UTILITY PLANT)

Year		MEDIAN EXPENSE RATIO BY SIZE RANGE											r^2
		Under 1,000	1,000 to 2,499	2,500 to 3,999	4,000 to 5,999	6,000 to 8,999	9,000 to 11,999	12,000 to 14,999	15,000 to 19,999	20,000 to 24,999	25,000 to 29,999	30,000 and Over	Value
	Midpoint	500	1,750	3,250	5,000	7,500	10,500	13,500	17,500	22,500	27,500	45,000	
1975	Actual	3.78	3.03	2.82	2.71	2.70	2.45	2.44	2.31	2.26	2.19	2.16	
	Adjusted	3.65	3.12	2.89	2.74	2.61	2.50	2.43	2.35	2.28	2.22	2.09	.977
1976	Actual	3.71	3.21	2.99	2.81	2.81	2.59	2.62	2.44	2.44	2.33	2.31	
	Adjusted	3.68	3.21	3.00	2.86	2.74	2.64	2.57	2.50	2.43	2.38	2.25	.984
1977	Actual	4.00	3.16	3.09	2.95	2.96	2.67	2.64	2.44	2.51	2.38	2.28	
	Adjusted	3.96	3.42	3.18	3.02	2.88	2.77	2.68	2.60	2.53	2.47	2.33	.820
1978	Actual	4.06	3.23	3.20	3.03	2.92	2.71	2.72	2.57	2.61	2.39	2.45	
	Adjusted	3.92	3.40	3.17	3.02	2.88	2.78	2.70	2.62	2.55	2.49	2.35	.962
1979	Actual	4.80	3.45	3.31	3.08	2.93	2.70	2.70	2.63	2.65	2.50	2.45	
	Adjusted	4.40	3.67	3.56	3.16	2.98	2.84	2.74	2.64	2.55	2.47	2.31	.940
1980	Actual	4.56	3.54	3.56	3.10	3.06	2.80	2.73	2.67	2.59	2.52	2.38	
	Adjusted	4.29	3.63	3.34	3.15	2.99	2.86	2.76	2.67	2.58	2.51	2.35	.991
1981	Actual	4.62	3.68	3.38	3.15	3.15	2.88	2.89	2.75	2.63	2.47	2.42	
	Adjusted	4.49	3.76	3.45	3.24	3.06	2.92	2.82	2.72	2.62	2.55	2.38	.984

NOTE: The formula was found for the curve (with the form of $Y = A\ X^B$) which best fit the actual data points for each year's data. The adjusted values were computed from the derived formula. The r^2 (coefficient of determination) indicates the quality of the fit, with $r^2 = 1.00$ indicating a perfect fit.

to limit the need for rate increases as much as possible and thus minimize consumer dissatisfaction and conservation, which only serves to compound the problem, from the point of view of the distribution system.

Merger Statistics

For a decade or more I have explored various approaches to quantify the potential savings possible from the merger of two or more electric distribution systems. A wealth of actual cost *data* is available in the REA Annual Statistical Reports and this data has served as the base for my studies. The problem is in converting the *data* to useful *information*.

Each year since 1974 I have run the CFC Key Ratio Trend Analysis to extract, among other things, the trends of various expense ratios as posted by the more than 900 REA-financed electric distribution systems. For the purposes of the merger studies I have concentrated on the following two ratios of the 39 included in the KRTA:

1. Administrative And General Expenses (Expressed as a percent of Total Utility Plant)
2. Total Operating Expenses Less Power Costs (Expressed in Mills per KWH sold)

The logic is that most savings which can be realized in the short-term (one to three years) would tend to be charged to Administrative and General Expenses. Over the long-term, (five to ten years) savings should be realized in many additional areas, so we look to Total Operating Expenses.

Wholesale power costs are normally subtracted out of Total Operating Expenses, since it is unlikely that the cost of wholesale power could be reduced appreciably as the result of a merger.

In one facet of the KRTA, all distribution systems were divided into one of 11 groups, depending upon the number of consumers they served, and the expense ratios of the systems in each group were then sorted into descending order to determine the median ratio value for each size group, which was taken as representative of the costs for systems in that size group.

The actual median values for each size group were then smoothed by substituting values as computed from a formula derived by least squares techniques from the actual values. **Table 1** shows the median data-points for Administrative and General Expenses for each of the years from 1975 thru 1981, together with "adjusted" values as computed from the formula derived as the best "fit" of the actual values. **Table 2** shows the same data for Total Operating Expenses Less Wholesale Power Costs.

The data shown on Table 1 can be better visualized by reference to **Graph I**, in which one can see how sharply the median expense values for 1981 fall from 4.62% (of Total Utility Plant) for systems in the 0 to 1,000 consumer size group to 2.88% for systems in the 9,000 to 12,000 size group, and then decline more slowly to 2.42% for systems in the 30,000 and over consumer-size group.

Graph II shows the same data for 1981, but points and the best-fit curve have been added to show data for the year 1975. **Graph III** shows the 1975 and 1981 actual data points and the best-fit curves for Total Operating Expenses, less wholesale power costs.

If you examine Graphs II and III carefully, you will note a considerably greater increase from 1975 to 1981 in the adjusted expense ratios for the smallest size-group as compared to the largest. For example, on Graph 3 the Total Operating Expenses for the smallest size-group went from 14.08 mills per KWh in 1975 to 29.42 mills in 1981, while the comparable value for the largest size-group increased from 8.26 mills to 10.87 mills over the same time span.

In order to show this more clearly, we rearranged the adjusted values from Tables 1 and 2 into time series for each

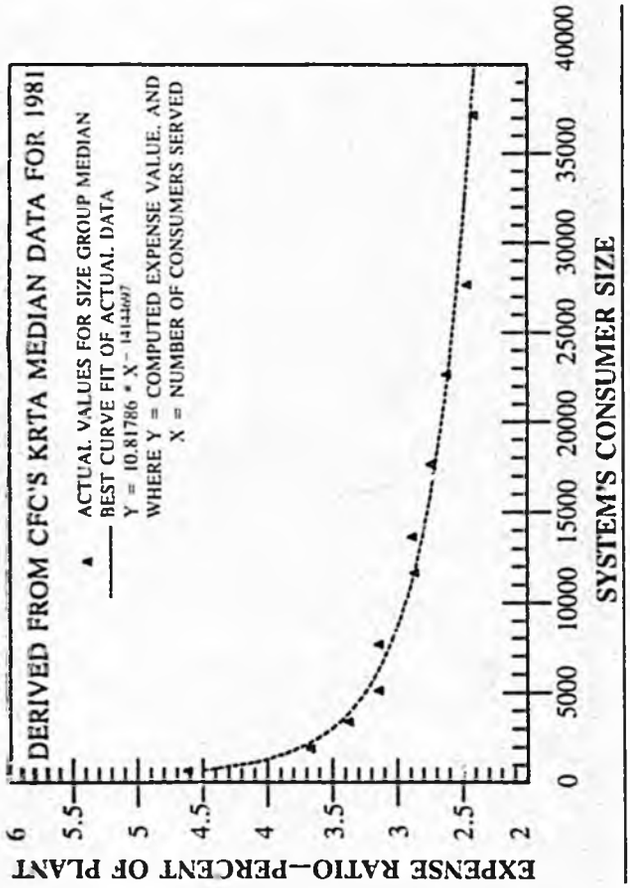
TABLE 1

ACTUAL AND SIZE ADJUSTED MEDIAN RATIO VALUES
for
ADMINISTRATIVE AND GENERAL EXPENSES—KRTA RATIO 13
(EXPRESSED AS A PERCENT OF TOTAL UTILITY PLANT)
MEDIAN EXPENSE RATIO BY SIZE RANGE

Year		Under 1,000 to 1,000	1,000 to 2,499	2,500 to 3,999	4,000 to 5,999	6,000 to 8,999	9,000 to 11,999	12,000 to 14,999	15,000 to 19,999	20,000 to 24,999	25,000 to 29,999	30,000 and Over	r^2 Value
	Midpoint	500	1,750	3,250	5,000	7,500	10,500	13,500	17,500	22,500	27,500	45,000	
1975	Actual	3.78	3.03	2.82	2.71	2.70	2.45	2.44	2.31	2.26	2.19	2.16	
	Adjusted	3.65	3.12	2.89	2.74	2.61	2.50	2.43	2.35	2.28	2.22	2.09	.977
1976	Actual	3.71	3.21	2.99	2.81	2.81	2.59	2.62	2.44	2.44	2.33	2.31	
	Adjusted	3.68	3.21	3.00	2.86	2.74	2.64	2.57	2.50	2.43	2.38	2.25	.984
1977	Actual	4.00	3.16	3.09	2.95	2.96	2.67	2.64	2.44	2.51	2.38	2.28	
	Adjusted	3.96	3.42	3.18	3.02	2.88	2.77	2.68	2.60	2.53	2.47	2.33	.829
1978	Actual	4.06	3.23	3.20	3.03	2.92	2.71	2.72	2.57	2.61	2.39	2.45	
	Adjusted	3.92	3.40	3.17	3.02	2.88	2.78	2.70	2.62	2.55	2.49	2.35	.962
1979	Actual	4.80	3.45	3.31	3.08	2.93	2.70	2.79	2.63	2.65	2.50	2.45	
	Adjusted	4.40	3.67	3.36	3.16	2.98	2.84	2.74	2.64	2.55	2.47	2.31	.940
1980	Actual	4.38	3.54	3.38	3.10	3.06	2.80	2.73	2.67	2.59	2.52	2.38	
	Adjusted	4.29	3.63	3.34	3.15	2.99	2.86	2.76	2.67	2.58	2.51	2.35	.991
1981	Actual	4.62	3.68	3.38	3.15	3.15	2.88	2.89	2.75	2.63	2.47	2.42	
	Adjusted	4.49	3.76	3.45	3.24	3.06	2.92	2.82	2.72	2.62	2.55	2.38	.984

NOTE: The formula was found for the curve (with the form of $Y = A \cdot X^B$) which best fit the actual data points for each year's data. The adjusted values were computed from the derived formula. The r^2 (coefficient of determination) indicates the quality of the fit, with $r^2 = 1.00$ indicating a perfect fit.

GRAPH I



GRAPH II

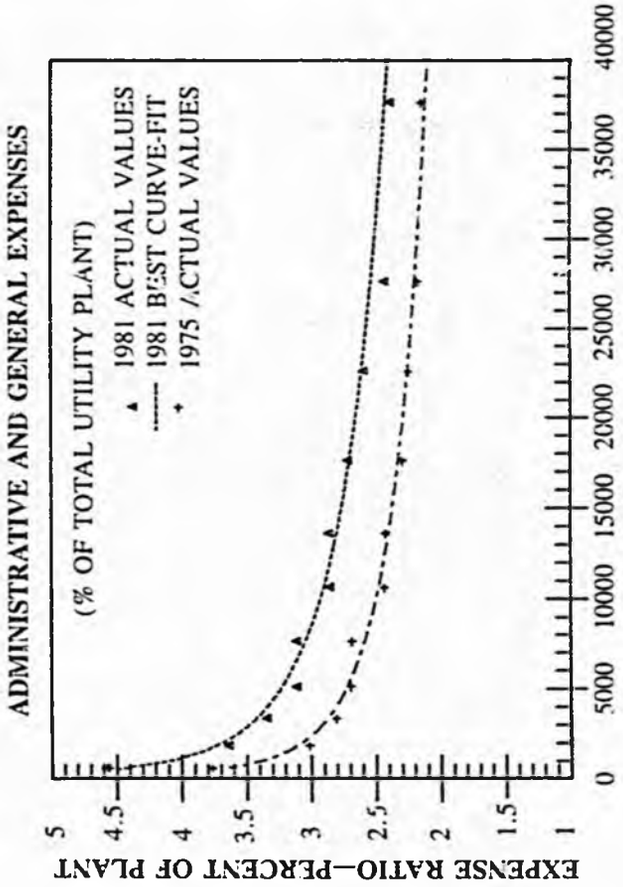


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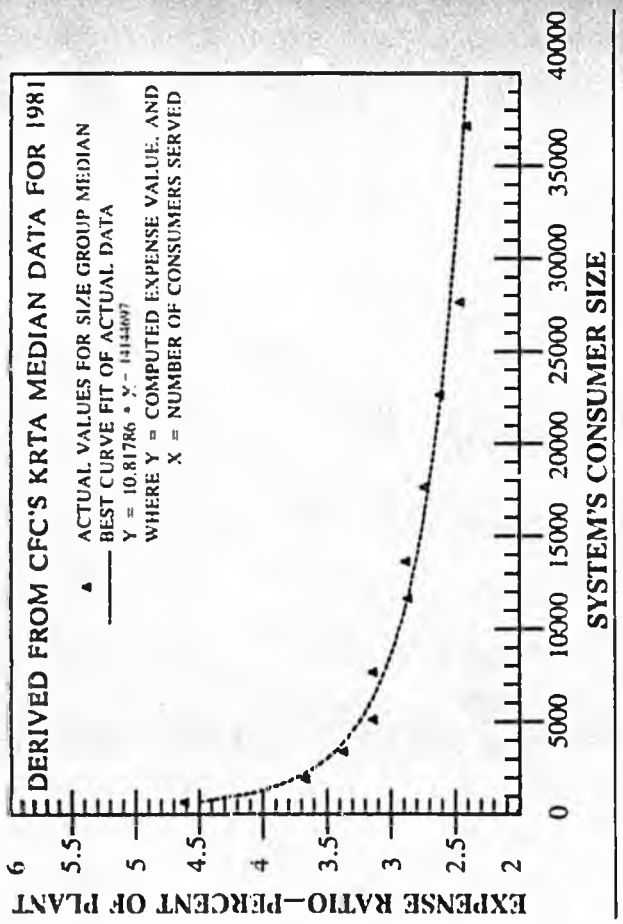
TABLE 2

ACTUAL AND SIZE ADJUSTED MEDIAN RATIO VALUES
for
TOTAL OPERATING EXPENSES (LESS WHOLESALE POWER COSTS)—KRTA RATIO 20
(EXPRESSED IN MILLS PER KWH SOLD)

Year		MEDIAN EXPENSE RATIO BY SIZE RANGE										
		Under 1,000	1,000 to 2,499	2,500 to 3,999	4,000 to 5,999	6,000 to 8,999	9,000 to 11,999	12,000 to 14,999	15,000 to 19,999	20,000 to 24,999	25,000 to 29,999	30,000 and Over	R² Value
	Midpoint	500	1,750	3,250	5,000	7,500	10,500	13,500	17,500	22,500	27,500	45,000	
1975	Actual	15.57	11.34	10.12	10.13	10.41	10.14	10.16	9.31	9.24	8.60	8.25	
	Adjusted	14.08	12.14	11.28	10.72	10.22	9.82	9.53	9.24	8.97	8.76	8.26	.870
1976	Actual	14.93	11.42	9.88	10.13	10.41	9.96	10.24	9.49	9.09	9.21	8.65	
	Adjusted	13.51	11.89	11.16	10.69	10.25	9.91	9.66	9.41	9.17	8.98	8.54	.840
1977	Actual	15.49	11.94	10.74	10.79	10.47	10.38	10.53	9.51	8.71	9.02	8.71	
	Adjusted	14.49	12.48	11.60	11.02	10.50	10.09	9.79	9.49	9.21	8.99	8.48	.920
1978	Actual	16.43	12.12	11.03	11.05	11.08	10.98	10.97	9.77	9.92	9.17	9.01	
	Adjusted	15.39	13.22	12.26	11.64	11.08	10.64	10.32	10.00	9 70	9.46	8.91	.920
1979	Actual	18.48	12.95	11.47	11.92	11.95	11.87	11.67	10.89	11.23	10.03	10.15	
	Adjusted	16.14	14.05	13.12	12.51	11.96	11.52	11.21	10.89	10.59	10.36	9.81	.800
1980	Actual	21.28	13.66	12.96	13.03	13.01	12.64	12.14	11.44	11.17	10.42	10.05	
	Adjusted	18.60	15.61	14.31	13.47	12.73	12.14	11.72	11.30	10.91	10.61	9.90	.870
1981	Actual	24.39	13.68	14.64	15.14	13.97	13.15	13.62	12.38	12.60	11.30	11.24	
	Adjusted	20.42	17.13	15.71	14.79	13.97	13.33	12.87	12.41	11.98	11.65	10.87	.780

NOTE: The formula was found for the curve (with the form of $Y = A X^B$) which best fit the actual data points for each year's data. The adjusted values were computed from the derived formula. The r^2 (coefficient of determination) indicates the quality of the fit, with $r^2 = 1.00$ indicating a perfect fit.



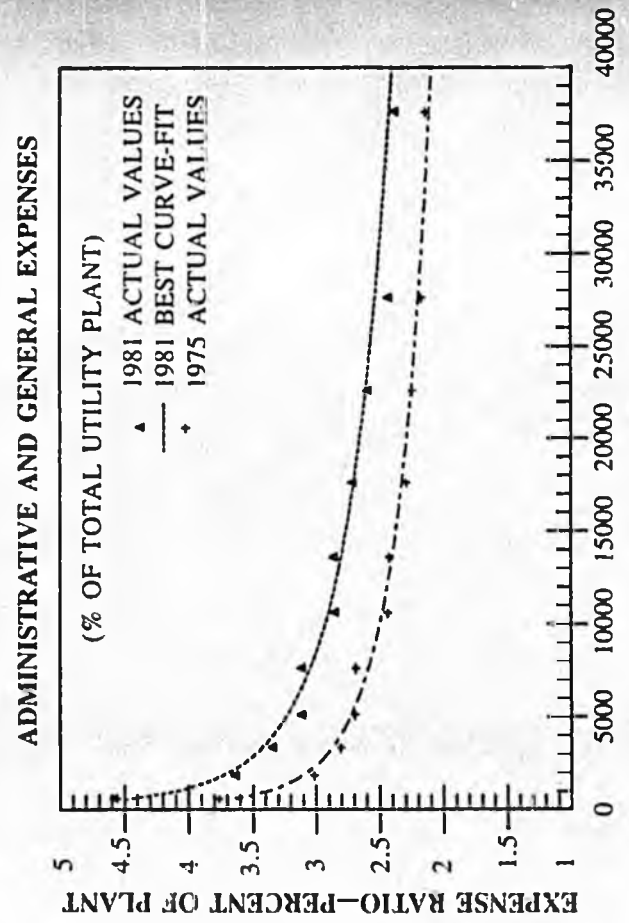


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TABLE 2

ACTUAL AND SIZE ADJUSTED MEDIAN RATIO VALUES
for
TOTAL OPERATING EXPENSES (LESS WHOLESALE POWER COSTS)—KRTA RATIO 20
(EXPRESSED IN MILLS PER KWH SOLD)

Year		MEDIAN EXPENSE RATIO BY SIZE RANGE										
		Under to 1,000	1,000 to 2,499	2,500 to 3,999	4,000 to 5,999	6,000 to 8,999	9,000 to 11,999	12,000 to 14,999	15,000 to 19,999	20,000 to 24,999	25,000 to 29,999	30,000 and Over	r^2 Value
	Midpoint	500	1,750	3,250	5,000	7,500	10,500	13,500	17,500	22,500	27,500	45,000	
1975	Actual	15.57	11.34	10.12	10.1[illegible]	10.41	10.14	10.16	9.31	9.24	8.60	8.25	
	Adjusted	14.08	12.14	11.28	10.72	10.22	9.82	9.53	9.24	8.97	8.76	8.26	.870
1976	Actual	14.93	11.42	9.88	10.13	10.41	9.96	10.24	9.49	9.09	9.21	8.65	
	Adjusted	13.51	11.89	11.16	10.69	10.25	9.91	9.66	9.41	9.17	8.98	8.54	.840
1977	Actual	15.49	11.94	10.74	10.79	10.47	10.38	10.53	9.51	8.71	9.02	8.71	
	Adjusted	14.49	12.48	11.60	11.02	10.50	10.09	9.79	9.49	9.21	8.99	8.48	.920
1978	Actual	16.43	12.12	11.03	11.05	11.08	10.98	10.97	9.77	9.92	9.17	9.01	
	Adjusted	15.39	13.22	12.26	11.64	11.08	10.64	10.32	10.00	9.70	9.46	8.91	.920
1979	Actual	18.48	12.95	11.47	11.92	11.95	11.87	11.67	10.89	11.23	10.03	10.15	
	Adjusted	16.14	14.05	13.12	12.51	11.96	11.52	11.21	10.89	10.59	10.36	9.81	.800
1980	Actual	21.28	13.66	12.96	13.03	13.01	12.64	12.14	11.44	11.17	10.42	10.05	
	Adjusted	18.60	15.61	14.31	13.47	12.73	12.14	11.72	11.30	10.91	10.61	9.90	.870
1981	Actual	24.39	13.68	14.64	15.14	13.97	13.15	13.62	12.36	12.60	11.30	11.24	
	Adjusted	20.42	17.13	15.71	14.79	13.97	13.33	12.87	12.41	11.98	11.65	10.87	.780

NOTE: The formula was found for the curve (with the form of $Y = A X^B$) which best fit the actual data points for each year's data. The adjusted values were computed from the derived formula. The r^2 (coefficient of determination) indicates the quality of the fit, with $r^2 = 1.00$ indicating a perfect fit.

consumer size-group. These values, adjusted by the formula for the best curve-fit, are plotted on **Graph IV** and **Graph V**.

Conclusions

On **Graphs IV and V** we can clearly see that not only are the unit costs of operating a small system higher than for larger systems, but the rate of increase with time is considerably greater for small systems.

Administrative and General Expenses for the smallest size-group were 65.6% greater than for the largest size-group in 1975 and 86.7% higher in 1981. If they continue to increase at the same rates, the smallest group's costs will be 116% greater than the largest systems costs by 1991.

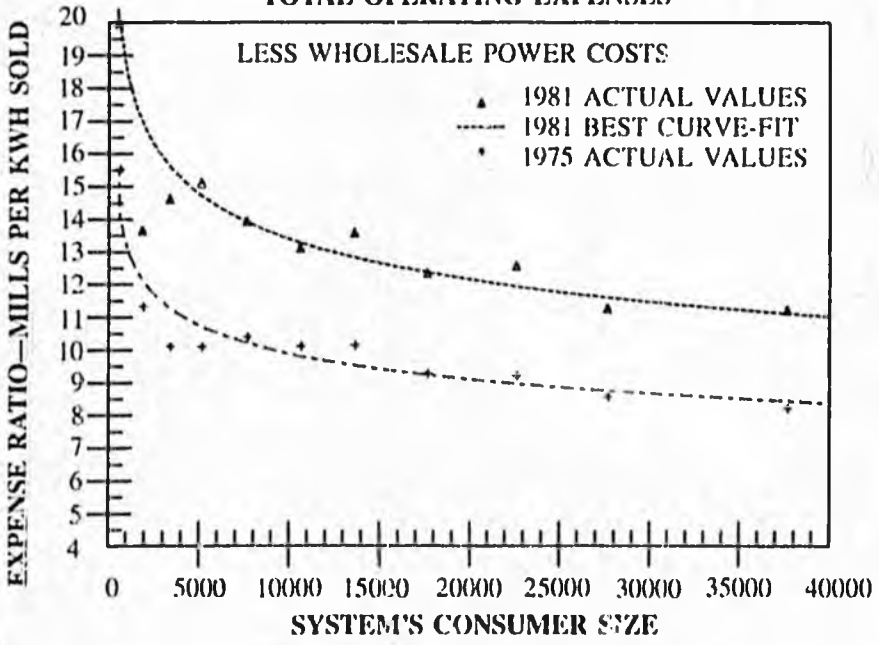
Total Operating Expenses (less power costs) for the smallest size-group were 60.1% higher than similar unit costs for the largest size-group in 1975, 84.2% higher in 1981 and projected to be 106% higher by 1991.

At best, the cost of electric service is skyrocketing, due to many causes. The consumers react in many ways, including conservation in their use of electricity and a retreat to alternative sources of energy such as wood-burning stoves and solar water heaters. This reduces the volume of KWh sales over which the system spreads the fixed costs on the facilities built to make electric service available. This reduced volume only creates the need for additional rate increases.

Potential short-run savings computed to result from the merger or consolidation of one or more "typical" systems in the 100 to 2500 consumer size-group to create a system in the 30,000 or larger size-group could statistically be $44.00 per consumer per year from Administrative and General Expenses alone.

GRAPH III

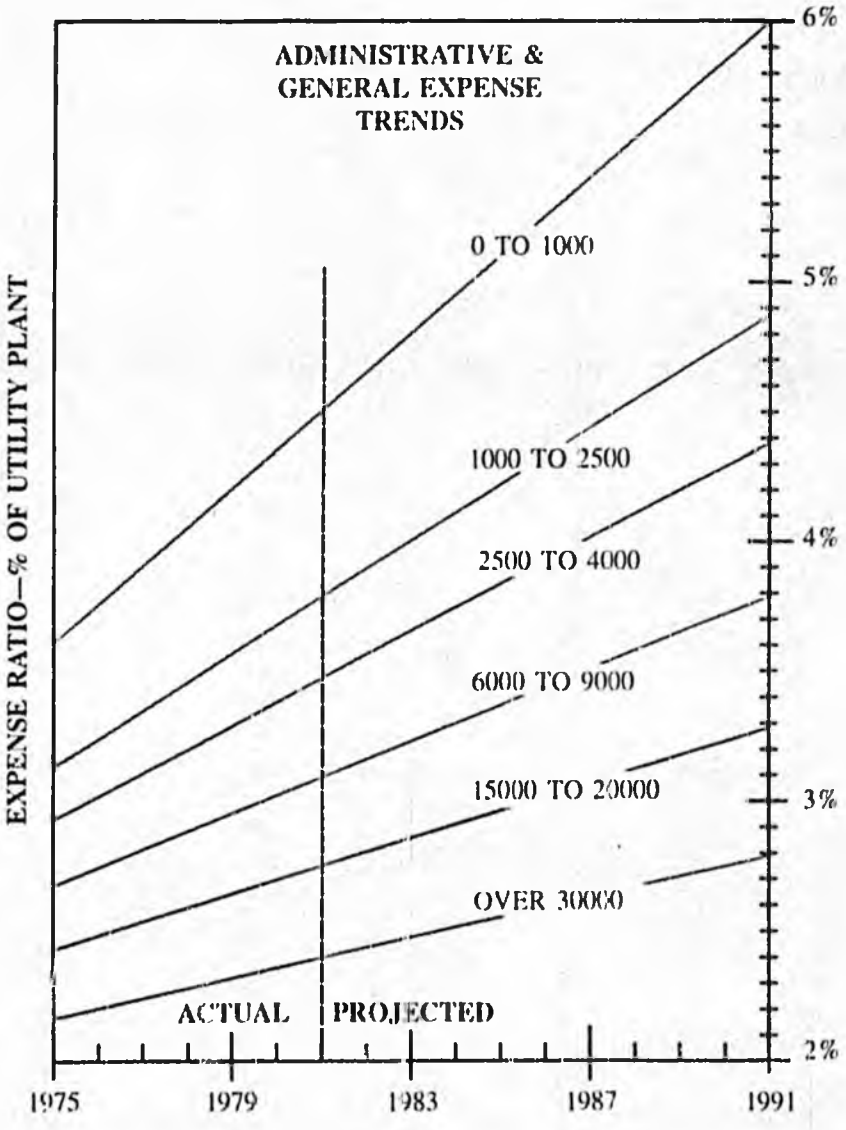
TOTAL OPERATING EXPENSES



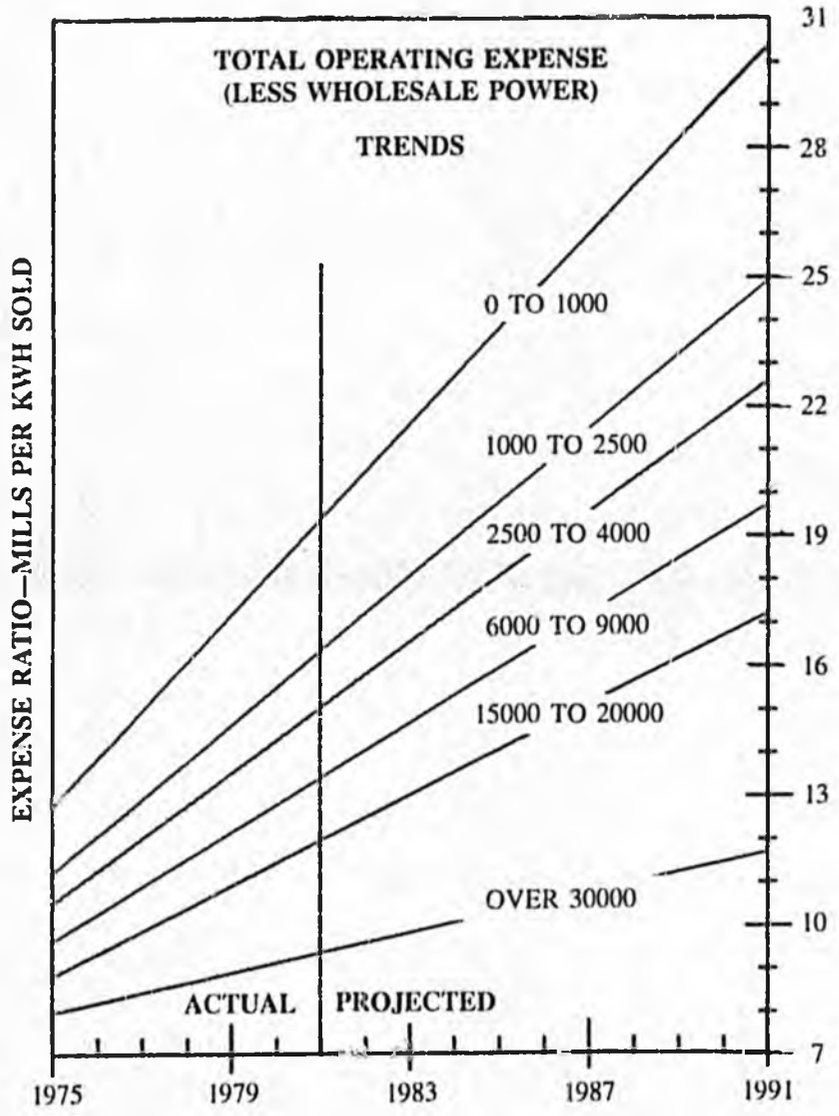
Potential savings in Total Operating Expenses are computed at $93.31 per consumer per year in the short-run and per $201.77 consumer per year by 1991. These calculations assume 5% per year growth in KWh sold and 2.75% per year growth in the number of consumers served.

From the "average consumer's" viewpoint (from a purely financial stance), it would be difficult to defend a board's reluctance to consider merger, considering the potential savings from merger and the growing concern over continuing increases in the cost of electric service.

GRAPH IV



GRAPH V



If no other values were to be considered, the financial health and viability of the RE program would likely be better if we entered the 1990's with a smaller but more efficient group of larger distribution systems serving the area and consumers now served by over 900 systems. Distasteful as this might be to managers, members of the boards, auditors, attorneys and key members of the staff who might face considerable uncertainties during the merger and readjustment period, a merger should be preferred to an attempted sellout.

THE OTHER SIDE of the proposition has many good points for consideration! First, there has always been considerable "labor of love" among the directors, managers, board members and key staff of the smaller electric systems. There seems to be a greater sense of pride in being an integral part of a small organization which is vital to the "home town". As the organization grows and the individuals become a smaller part of the whole, the sense of importance and pride diminishes somewhat and individuals tend to demand other forms of compensation to replace the values lost.

Rural people were not generally pleased with the forced consolidation of the rural schools into county school systems. The economies which were promised either did not come about, or were lost in the increases in costs caused by inflation and additional layers of bureaucracy.

Many small rural communitities are already suffering from being by-passed by the interstate highway system and the migration of jobs and people and services to metropolitan areas. A reduction in payroll resulting from a reduction in or a relocation of, the local RE system's operation would have an important effect on a small community which may now consider the RE system one of its largest payrolls.

The economies of scale obvious from the study of existing systems in different size groups cannot be achieved immediately following a merger. In all probability, costs would even be higher in the first year as a result of the costs of accomplishing the merger, and a degree of confusion would exist as all the people involved become accustomed to different roles and different procedures.

Individuals would undoubtedly be apprehensive for their future, and may resent their new title, assignments, and supervisors. If this doubt and uncertainty and apprehension is allowed to build within the staff, they can either consciously or subconsciously sabotage efforts to effect economies and truly "merge" the organizations into one.

Although much of the savings from merger must result from the elimination of duplication in jobs, it is essential that the people involved have assurance that their careers will not suddenly end and that the vested interest of loyal, capable, dedicated employees will not be ignored simply in order to pursue economies of scale. To a large degree, elimination of duplication must result from attrition. In other words, it must be a process of evolution, not revolution.

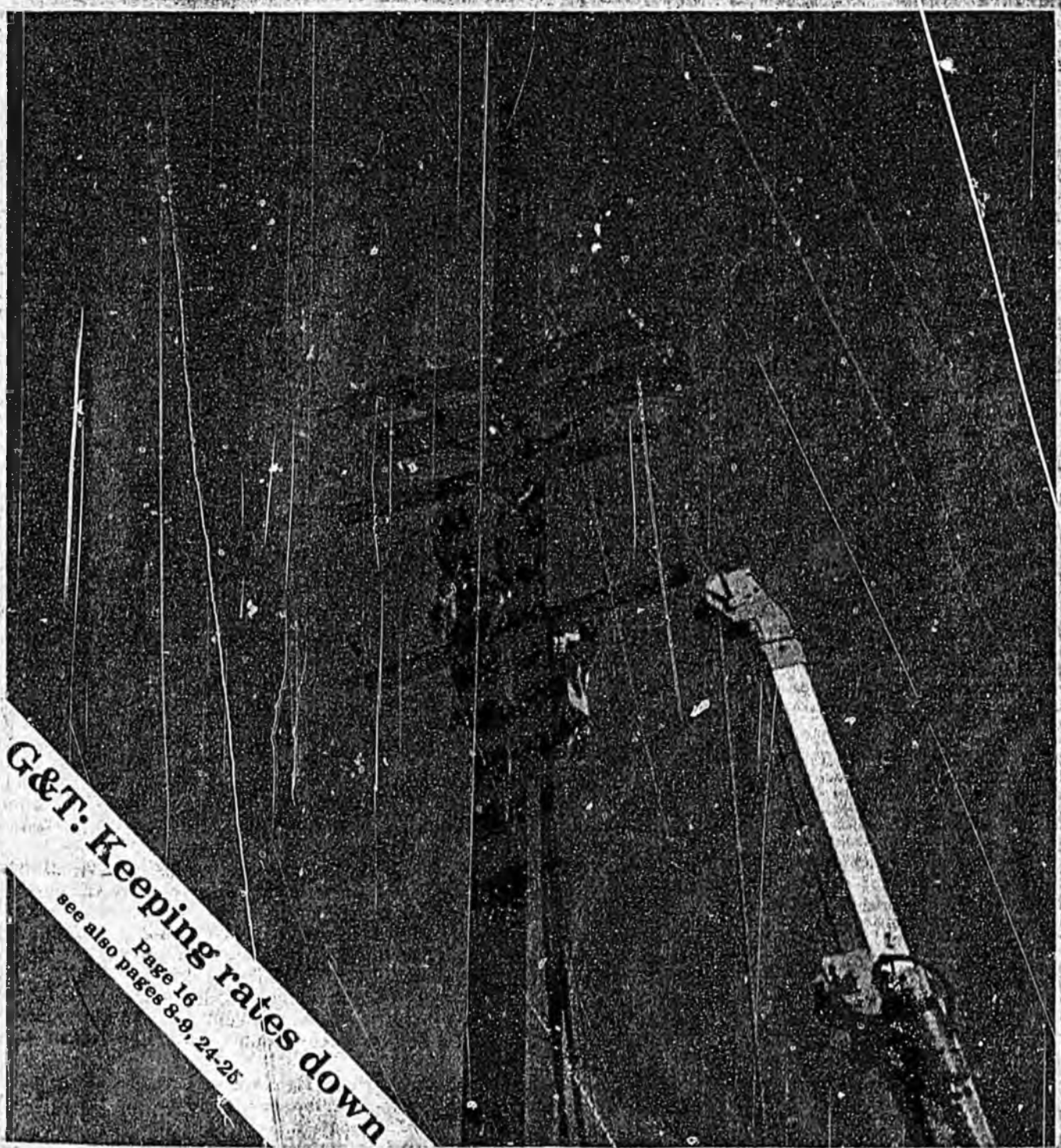
In addition to all its other problems, it appears that the management of many RE systems must look forward to solving the dilemma of "to merge or not to merge" or "how to successfully merge" in the 1980's.

Alaska Ruralite®

POSTMASTER: Change of address & PO Form 3579 to be sent to Matanuska Electric Assn., Inc., PO Box 1148, Palmer, AK 99645.

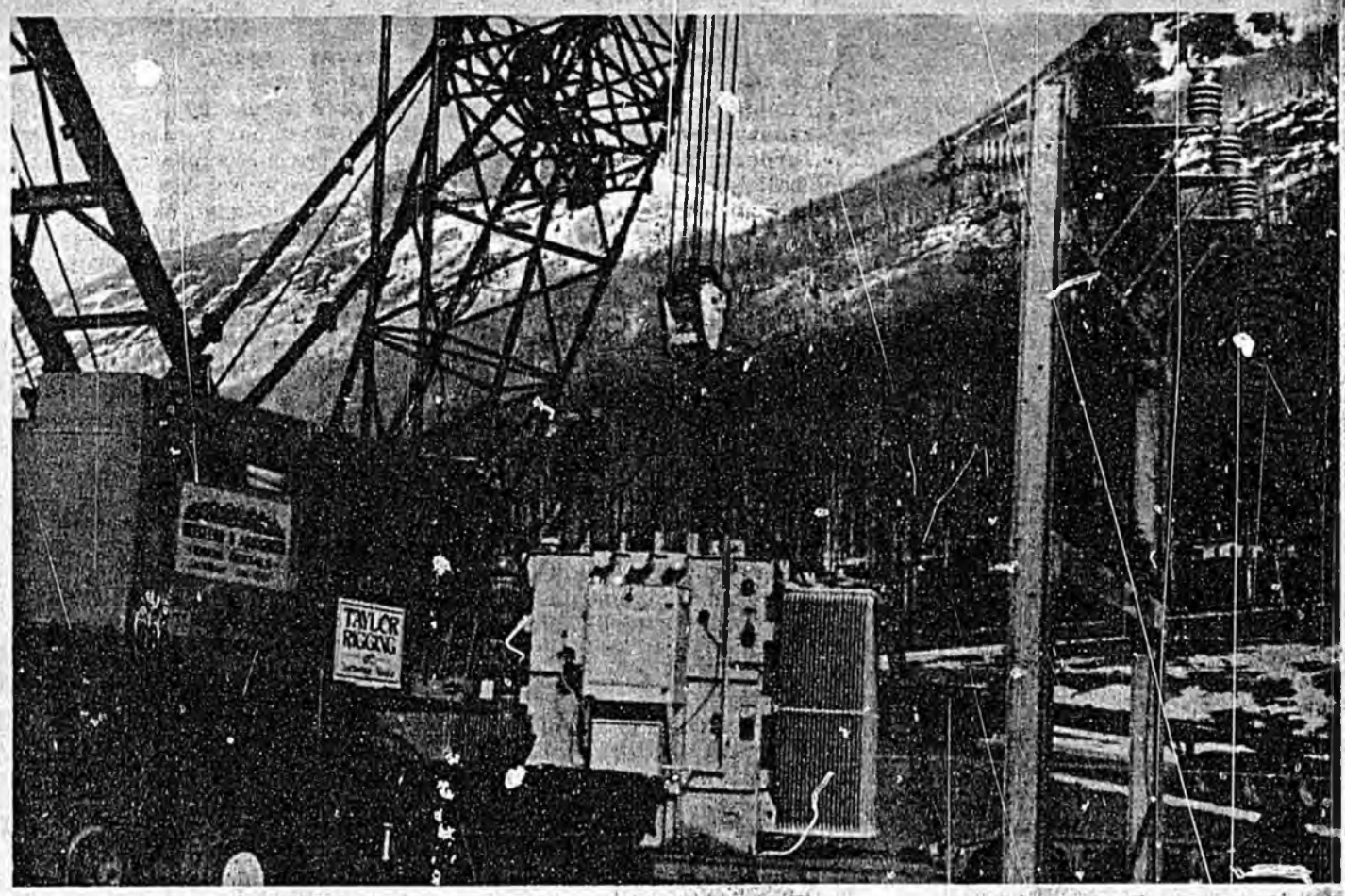
March 1984

Matanuska



G&T: Keeping rates down

Page 16
see also pages 8-9, 24-25



G&T: To keep rate increases reasonable and give a voice to MEA members

What is a "G&T"? What does it mean to me, the average consumer? Where is MEA going to get electricity for our members? What say does MEA have over our power supply? What will it cost—or will it lower my electric bill?

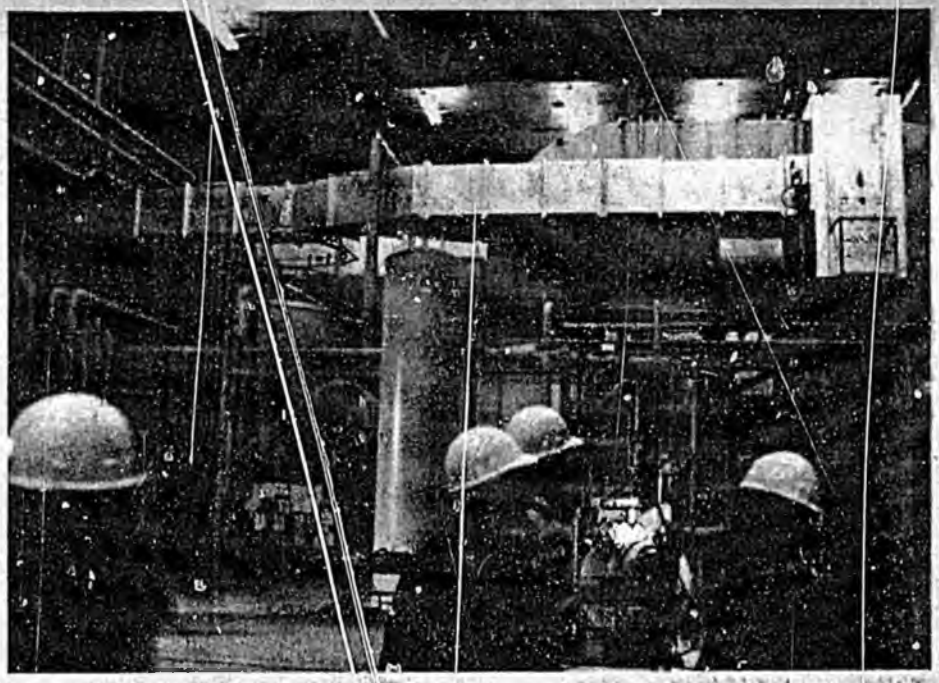
These questions need to be asked by all the consumers in south central Alaska—and the factual answers to these questions need to be given to the public by the management and boards of directors of all the utilities in the region.

Matanuska Electric Association—and its Board of Directors, its Member Advisory Committee and its management staff—the whole organziation has very carefully examined this *major* issue from every angle. We have some answers, and we want our members to know what they are.

A "G&T" is a Generation and Transmission Cooperative. It is a special kind of utility organization, which has as its only purpose to provide power generation and the high voltage transmission of that power into each local utility's power lines—into each utility's electrical distribution system.

The "G" in "G&T" is for Generation and the "T" is for Transmission. This special kind of utility organization is also called a Cooperative, because its members are each local utilities *cooperating* together, planning together, deciding together, building together and maintaining together the power generating plants and the high power transmission lines coming from those plants into each local utility system, which are necessary to meet the electricity needs of consumers.

Why shouldn't each individual utility "do its own thing," build its own power plants and transmission lines? Utility rates could skyrocket! Decades ago in this country, both lending institutions and government agencies came to the solid conclusion that electric consumers would not be able to pay the price of duplicated and unnecessary electrical plants being built side by side by competing private electric utilities. A new 60-megawatt gas turbine generating set costs about $20,000,000 today. Today, it is still true



ight, the Beluga generating tation.

pposite: A new transformer is stalled at a substation.

hat it is cheaper for our consumers, for all consumers, if utilities jointly purchase just the amount of power generating supply that is needed to meet consumers' needs, with an appropriate reserve supply, rather than each utility building its own power plants. Years ago in south central Alaska, the federal government, through the Rural Electrification Administration (REA) decided only Chugach Electric Association would be given loan funds to build G&T plant, and that they would sell power wholesale to MEA and Homer Electric Association (HEA) down on the Kenai Peninsula, as well as providing power to their own consumers. That arrangement stands today.

Unfortunately, that "arrangement" leaves MEA and HEA OUT of the big decisions about new generation and transmission facilities. Those BIG decisions can cost our consumers more on their monthly electric bill, or less, depending on whether or not the gas turbine generating unit purchased is a reliable unit. We want to be at the decision-making table, on behalf of our consumers' best interests, when those decisions are made. A Generation and Transmission Cooperative would have a Board of Directors making those millions-of-dollars-worth of decisions, which would include representatives from each local participating utility. Now we pay and have no say at the table where those decisions are made . . . by Chugach Electric Association.

In total fairness, Chugach has made some good decisions for us. We have enjoyed the benefit of some very inexpensive gas which runs Chugach turbines across Knik Arm, because Chugach negotiated those cheap gas contracts in past years. Our wholesale power rate has been less because of that decision. On the other hand, other decisions were made on the last couple of generating and transmission projects which we believe may have made our wholesale power rate a little higher than it need have been. MEA had no say in either set of those decisions on behalf of our members. A G&T, with Chugach, Matanuska and Homer Electric Associations as members, would put all the cooperatives in that decision-making process.

The three REA cooperatives all believe that some sort of regional generating and transmission orgnization should be formed. MEA and our sister co-op, HEA, believe it should be a G&T. REA, itself, believes that a G&T should be formed, as they have been formed and functioning for years, among and between REA distribution cooperative utilities in the South 48. And REA believes that an Alaskan G&T should include Chugach, as well as the generation and transmission plant they have built to meet the needs of Chugach, MEA and HEA, with loans from REA and which we have all helped pay for.

The *bottom line*, in dollars and cents to the average residential consumer based on Chugach's most recent rate increase filing, would be an immediate average annual savings on their electric bills of approximately $55 for the Chugach member, $60 for the HEA member and $75 for the MEA member. These average annual savings are based upon the fact that a potential reduction in revenue requirements from electric rates of $7,600,000 could be saved, if Chugach put its generating and transmission facilities into a G&T. These savings are based on lower interest coverage required for a G&T than for a Distribution Cooperative, as which Chugach is classified now by REA. The interest coverage level required to be collected from consumers has always historically been significantly lower for a Generation and Transmission Cooperative, than for a Distribution Cooperative. While some observers expect both those interest coverage levels to be increased by the federal government, nearly everyone acknowledges that there will likely be savings for consumers if a G&T is formed, especially in the immediate future.

"This may be the most important decision MEA has faced in the last ten years," announced MEA's Manager of Administration, John Parker, at the January meeting of our Member Advisory Committee. We agree. In our next issue of *Ruralite* we will have more about the G&T Cooperative issue.

APRIL 12, 1984

TO: JOHN

FROM: KEN

RE: HB 475 APPROPRIATING 800 MILLION DOLLARS TO THE THE ALASKA SOUTHCENTRAL ELECTRIC COOPERATIVE.

HOUSE BILL 475 MAKES AN APPROPRIATION TO THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FOR PAYMENT AS A GRANT TO THE ALASKA SOUTHCENTRAL ELECTRIC COOPERATIVE. THE MONEY WOULD BE USED BY THE COOPERATIVE TO DISCHARGE ALL THE DEBTS OF THE COMPANIES, ASSOCIATIONS AND COOPERATIVES THAT MERGED TO FORM ONE UTILITY.

QUESTIONS:

1. HOW WAS THE FIGURE 800 MILLION DOLLARS ARRIVED AT ?

2. WHAT ARE THE ADVANTAGES TO MERGING ALL UTILITIES IN THE RAILBELT AREA ?

3. WHAT TYPE OF STUDIES DO YOU HAVE TO SUPPORT THESE ADVANTAGES ?

4. HAVE YOU HAD A MANAGEMENT PLAN LAYED OUT THAT WOULD SHOW EFFICIENCY YET SAVE THE CONSUMER MONEY ?

5. WHY WOULD THIS MERGER PROPOSAL BE BETTER FOR CONSUMERS THAN ANY OF THE OTHERS PROPOSED FOR UTILITIES IN THE RAILBELT AREA ?

6. WITH 800 MILLION DOLLARS THE STATE COULD ENSURE THE CONSTRUCTION OF THE WATANA PHASE OF THE SUSITNA PROJECT. DO YOU FEEL THE MERGER IS MORE IMPORTANT THAN SUSITNA ?

7. IN THE PAST, THE MERGING OF SMALL UTILITIES HAS RESULTED IN SAVINGS FOR THE CONSUMER. BUT IN THE MERGER OF LARGE UTILITIES THIS IS NOT ALWAYS THE CASE. WHY DO YOU THINK SUCH A LARGE MERGER WOULD WORK IN THE RAILBELT AREA ?

Railbelt Energy Needs May Double by 2001

Rep. Terry Martin
Pouch V-State Capitol Bldg.
Anchorage, AK 9911

Alaska's Rapid Population Growth Increases Electric Power Demands

By DEB DAVID

Although per capita energy consumption by Alaskans has not increased dramatically in this decade, the demand for electricity has risen due to unprecedented population growth. The precise demand for electricity in the long-term future continues to evade planners, but they are certain that Railbelt electrical requirements will continue to grow at a healthy rate.

A 20-year energy and peak load forecast summary compiled by the Alaska Systems Coordinating Council (ASCC) for the Railbelt (see Table 1) estimates peak energy usage will jump from 627.8 MW in 1983 to 1,474 MW in 2001. Considerable disagreement surrounds the peak load forecasts, which are invaluable in planning electrical generation needs.

One argument is the peak load forecasts indicate that the proposed $5.5-billion (estimated 1983 dollars), 1,600-MW Susitna hydroelectric project is too large. Another camp argues the power projections are unrealistically low.

In either case, at least some growth in demand is certain, and utilities will continue to be active users of construction services through the next decade.

Anchorage Area

Southcentral Alaska, particularly the Anchorage area, has exhibited phenomenal population growth in the first three years of the 1980s. The growth has spurred revised peak load forecasts and provided the impetus for large electrical construction projects.

According to the ASCC forecast, Anchorage Municipal Light and Power (ML&P) generated 663 gigawatts (1 GW = 1,000 MW) in 1982. Energy consumption by the publicly owned utility is expected to reach 717 GW this year and 786 GW in 1984. Table 1 shows similar energy usage increases through the year 2001.

Peak loads this winter at ML&P are expected to reach between 130 MW and 140 MW, compared to the peak last winter of 126 MW. (Peak loads are very weather-sensitive, surging during periods of extremely cold temperatures.) By the year 1991, peak loads will nearly equal the utility's current total generating capacity of 253 MW, which includes 16 MW of power purchased from the Alaska Power Authority's Eklutna hydro facility.

ML&P currently has more than 100-MW reserve capacity, a hefty 80-percent reserve capacity. From a national perspective, the reserve is extremely high, but in Anchorage, where the largest unit produces 100 MW, the reserve is not excessive. The loss or failure of ML&P's largest unit at peaking periods would annihilate its reserve generating capacity.

> 'ML&P's 80-percent reserve capacity is not excessive for Anchorage.'

A $122.5-million, 170-mile electrical intertie between Anchorage and Fairbanks utilities will help to preserve Anchorage's generating reserve during peaking, while enabling Fairbanks area utilities to draw from Anchorage's cheaper gas-fueled power. The project, sponsored by the Alaska Power Authority, is under construction and scheduled for completion in December 1984. (See November 1983 issue of AC&O for a complete report on the Anchorage-Fairbanks intertie project.)

The municipality currently operates seven main generating units — four simple-cycle combustion turbines, two of which are diesel-fired, and two combined cycle units which work in concert with one steam turbine running off of waste heat. ML&P is considering the installation of an additional 80-MW plant next spring at a nominal cost of $16 million, if a contract for sale of excess power can be arranged with Chugach Electric Cooperative Inc.

Chugach, which serves nearly 50,000 Anchorage area customers compared to ML&P's 19,000 center city customers, has a greater immediate need for energy. Under the arrangement being negotiated, Chugach would buy excess production from the new ML&P plant until the latter utility required the generation to meet its customers' needs. While Chugach and ML&P could mutually benefit from such an arrangement — Chugach would have additional power without up-front capital costs, while the municipality could reduce its capital costs by selling power — both utilities are prepared to proceed alone if an agreement is not reached.

ML&P would install the plant in 1985 instead of 1984 without a purchase agreement from Chugach. And the cooperative is pursuing plans to purchase ML&P new generation and to build its own new unit on a parallel track. Chugach, which pegs the total project cost at $26 million, would probably install a new unit at its Beluga station, near its cheapest source of gas from the Beluga field.

Chugach Electric also is planning to increase its generation by another 40 MW with a new unit at Bernice Lake. The $17-million project would include a new gas-driven turbine and 21 miles of 115-kV transmission line from the Nikiski plant to a Soldotna substation. The transmission line portion of the contract is estimated to cost between $7 million and $8 million. The Bernice Lake unit is scheduled for installation in 1984.

In 1986-87, Chugach is planning to boost its generation further by adding

two more units — an 80-MW unit at its Beluga station and a 40-MW unit at Bernice Lake. Specifications and site plans for the projects are being developed.

The increased generating capacity will help Chugach meet ASCC's forecasted energy demand of 2,304 GW in 1987. Table 1 indicates the cooperative's energy generation climbing from 1,765 GW in 1982, to 1,854 GW in 1983, to 1,966 GW in 1984, to 2,079 GW in 1985, and to 2,192 GW in 1986.

The two Anchorage-based utilities also are undertaking major transmission line upgrades this year. All Chugach-ML&P 35-kV transmission lines will be boosted to 115 kV by the end of 1983. The improvements also entail modifying the lines into a loop system to give all substations two-way feed. The utilities have been interconnected in the past, but the recent transmission upgrades will build extra reliability into both systems.

ML&P will spend about $14 million in capital improvements this year, and has budgeted $36 million, including $16 million for the proposed new electrical generating unit at its main plant, for 1984. According to Tom Stahr, general manager of ML&P, the utility also has a four-million-gallon fuel-oil storage facility on the drawing board for possible construction in the next few years.

Additional Chugach improvements include a complete upgrade of its Beluga station transmission lines to 230 kV over the next three or four years. The project, which will boost the current 115-kV line from Anchorage to the Kenai Peninsula, likely will involve a submarine cable crossing of Turnagain Arm.

In addition, the cooperative is planning two new bulk power substations in Anchorage — one in the western end of the city near Anchorage International Airport and one in east Anchorage at University Substation. Within the next five years, Chugach is planning an upgrade of its radial transmission lines to 138 kV in South Anchorage's Huffman Road residential area.

For the immediate future, the two utilities are confident they will keep pace with Southcentral Alaska's mounting energy needs. But with the proposed Susitna hydroelectric project still hanging and the inability to precisely predict long-term energy demands, the distant future is more uncertain.

Several proposals aimed at improving future capacity have been aired, including the merger of Chugach and ML&P. Stahr believes the proposal merits further study. A merger could result in up to $60 million in savings to consumers by avoiding duplications and improving planning capabilities, he said. Chugach's board of directors has chosen to accentuate cooperative joint planning among the two utilities, avoiding any reorganization until such a move is deemed economically sound for Chugach customers, said Larry Markley, director of government and environmental affairs for Chugach.

Southcentral

The City of Seward, which purchases the bulk of its power from Chugach Electric, is planning an estimated $10-million transmission line upgrade

Table 1†
Alaska Systems Coordinating Council
20-Year Energy and Peak-Load Forecast Summary
Railbelt Utilities

	AML&P [1]		CEA [1] [2]		FMU [1]		GVEA [1]		Railbelt Total [3]	
Year	Energy (GWH)	Winter Peak (MW)	Energy (GWH)	Winter Peak (MW)	Energy (GWH)	Winter Peak (MW)	Energy (GWH)	Winter Peak (MW)	Energy (GWH)	Winter Peak (MW)
1982	663	130.0	1765	372.3	141	28.2	360	67.9	2929	598.4
1983	717	140.0	1854	384.1	147	29.3	387	74.4	3105	627.8
1984	786	152.0	1966	408.4	153	30.5	416	81.4	3321	672.3
1985	844	162.0	2079	432.7	161	32.2	447	89.2	3531	716.1
1986	915	174.0	2192	457.0	165	32.9	480	97.7	3752	761.6
1987	986	186.0	2304	481.3	168	33.6	516	107.0	3974	807.9
1988	1053	197.0	2417	505.6	172	34.3	558	113.7	4200	850.6
1989	1126	209.0	2530	529.8	175	35.0	603	120.9	4434	894.7
1990	1200	221.0	2642	554.1	183	36.5	653	128.5	4678	940.1
1991	1270	232.0	2754	578.3	190	38.0	706	136.6	4820	984.9
1992	1322	241.0	2867	602.5	198	39.5	764	145.3	5151	1028.3
1993	1375	251.0	2979	626.8	206	41.1	826	154.4	5386	1073.3
1994	1431	261.0	3091	651.0	214	42.8	894	164.1	5630	1118.9
1995	1489	272.0	3203	675.2	225	45.0	967	174.5	5884	1166.7
1996	1549	283.0	3315	699.3	237	47.3	1046	185.5	6147	1215.1
1997	1621	294.0	3428	723.5	249	49.7	1131	197.2	6429	1264.4
1998	1697	306.0	3540	747.7	262	52.3	1223	209.6	6722	1315.6
1999	1775	318.0	3652	771.8	275	54.9	1323	222.8	7025	1367.5
2000	1858	331.0	3764	795.9	281	56.1	1432	236.9	7335	1419.9
2001	1944	344.0	3875	820.0	295	58.9	1548	251.8	7662	1474.7

Notes:
[1] Forecast from utility — 2/83
[2] CEA forecast includes Matanuska Electric Association, Homer Electric Association and Seward Electric requirements
[3] Eklutna is included in AML&P and CEA

Copper Valley Electric Association (CVEA) totals not included. CVEA has indicated (3/83) its growth will average two to five percent per year through 2001

AML&P = Anchorage Municipal Light & Power
CEA = Chugach Electric Association
FMU = Fairbanks Municipal Utilities System
GVEA = Golden Valley Electric Association, Fairbanks Area

† *Courtesy of Alaska Power Administration*

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Anchorage, AK 9911

which will boost its power lines from 24 kV to 115 kV. In the design phase, the project is scheduled to begin in spring 1984, hinging on an appropriation from the Alaska Legislature.

Existing single-pole transmission lines are undersized for current loads, resulting in excess voltage loss, and hence, in energy loss. The current transmission system also leaves little room for any industrial load expansion at a time when Seward foresees increased electrical demands from industry.

A coal port to handle Usibelli coal being shipped to Korea's coal-fired electrical plants is scheduled to be built next fall in Seward. A ship lift currently is under construction and should be in use by the summer of 1984. The city also is expecting ancillary industries to spin off of these larger developments and an accompanying increase in residential energy demand.

Seward's current peak loading is estimated at 5 MW, a figure which is predicted to increase to 20 MW over the next 30 years. Ebasco Services Inc. currently is conducting a 30-year economic and load forecast to be used in designing the line and preparing construction contract drawings and documents.

To meet short-term energy needs, the city will have to rely on two of its three stand-by diesel generators to supplement the power it purchases from Chugach. The only power currently generated by the city utility consists of about 100 kW from a small hydro plant for use by the local hospital.

In the Glenallen-Valdez area, Cooper Valley Electric Association (CVEA) has no plans for immediate capital improvements. The system is powered by two diesel units — one producing 10 MW in Valdez and one producing 7 MW in Glenallen — in the winter months and the 12-MW Solomon Gulch hydro plant in the summer. Glenallen currently is not tied into the hydro facility and operates its diesel units year-round.

Dan Tegeler, CVEA office manager, hopes to see a transmission line built to tie Glenallen into the hydro system. But no immediate plans or funding exists.

Also in the future is the possibility of installing a pressure-reducing turbine which would tap the kinetic energy from the trans-Alaska pipeline, terminating in Valdez, and convert it to electricity. Such a system would replace Valdez's aging and expensive-to-operate diesel turbines.

The kinetic conversion talks have been held up by a lawsuit brought by the City of Valdez in an effort to take over CVEA. Tegeler said the case soon will be dismissed, opening the door for continuation of negotiations with the Alyeska Pipeline Service Co. over using the pipeline as a kinetic energy source.

Also in limbo is an Alaska Power Authority preliminary feasibility study to determine the lowest long-range cost of power for the area. The study, conducted by Stone-Webster, tentatively recommended a Silver Lake hydro plant transmitting electricity to Cordova and Valdez as the best of several options. The Power Authority is requesting funding in 1984 to complete the feasibility study.

Unlike most areas of the state, Cordova's peak electrical loads occur during the summer fishing season. The summer peak for 1983 reached 4.5 MW and is expected to climb to 5 MW in 1984.

About 1,200 Cordova area customers are served by the Cordova Electrical Cooperative Inc. A demand growth rate of between seven and eight percent a year has necessitated construction of a new power plant, which was about one-third complete in late October. The facility will increase CEC's current 7.5-MW generating capacity to 10 MW in time for next summer's fish processing surge.

The $3-million project, funded with money borrowed from the Rural Electric Association and the National Rural Utilities Cooperative Finance Corp., entails installing a new 2.5-MW diesel unit and relocating an existing 2.5-MW unit to the new power plant. The contract is being performed by Hales Construction & Associates of Seattle.

Two units — 1.9-MW and 2.6-MW Enterprise generators — will continue to operate at the existing Eyak Lake plant, but plans are to eventually phase out these older units and replace them with new unattended-operation models. CEC Manager Doug Bechtel said the move would reduce staffing levels and lower electricity rates.

Fairbanks Area

Fairbanks area utilities also will benefit from the Anchorage-Fairbanks intertie project currently under way. While demand is growing — new connects by Golden Valley Electric Association increased from 1,075 in 1981, to 1,319 in 1982 and an estimated 2,000 in

Table 2†
Juneau Area Net Generation and Peak Demand

Fiscal Year	System Net Generation MWH*	MWH % Annual Increase	Peak Demand MW	MW % Annual Increase
1970	58,266		12.4	
		9.5		11.3
1971	63,786		13.8	
		10.1		8.0
1972	70,255		14.9	
		7.8		4.0
1973	75,753		15.5	
		9.6		4.5
1974	83,059		16.2	
		13.9		9.9
1975	94,609		17.8	
		12.4		11.2
1976	106,296		19.8	
		5.6		3.0
1977	112,197		20.4	
		8.9		14.7
1978	122,218		23.4	
		9.2		-1.3
1979	133,457		23.1	
		7.2		13.4
1980	143,128		26.2	
		16.5		2.9
1981	160,700		32.2	
		21.7		29.2
1982	202,000		41.6	
		10.3**		
1983 (Oct-June)	174,754		40.1	
		12.4		-3.6
1983	228,000***		40.1	

* Includes Alaska Electric Light & Power and Glacier Highway Electric Association sales and losses
** Increase over same period in 1982
*** Estimate based on nine months' data
† *Courtesy of Alaska Power Administration*

Rep. Terry Martin
State Capitol, Pouch V
Juneau, AK 99811

1983 — utilities generally feel their generating capacities are adequate to cover power needs into the early 1990s.

GVEA currently has a generating capacity of 203 MW and expects peak loading this year to reach 72.7 MW, compared to a peak load of 67.9 MW in 1982. Peak load estimates for 1984 are 77 MW.

Power for the cooperative's 20,000 customers is generated with GVEA's main base plant at Healy, which produces 25 MW from coal-fired turbines. In addition, two diesel-driven generators each produce 65 MW at the North Pole peaking plant and several 7.5-MW generators operate at the Fairbanks Vhender complex.

While GVEA has no plans for large capital improvements in the short-term, the rising number of new connects will require continual power line expansions.

At Fairbanks Municipal Utility System (MUS), which is interconnected with GVEA and Fort Wainwright, the maximum generating capacity is 63 MW achieved with four coal-fired, steam turbines and two diesel turbines for back-up and for peaking. The system usually operates in the 30-MW to 50-MW range, and peaked at 28.2 MW in the winter of 1982-83. The utility expects a peak load this winter of 30 MW.

System growth due to new housing construction and commercial construction will require MUS to purchase an additional 25-MW coal-diesel unit, which will replace three 30-year-old steam turbines with a combined capacity of 17.5 MW. While the change will not greatly enhance generation ability, it will build more reliability into the system.

Southeastern

The Juneau area has experienced a significant increase in peak demand and energy consumption since 1980. In the spring of 1983 local utilities were required to furnish more than five million kwh of diesel-generated electricity to supplement power available from hydroelectric plants. According to the Alaska Power Administration, a division of the U.S. Department of Energy, the need for this diesel generation is expected to increase each spring as area reservoirs are drawn down until additional hydro power is available from Crater Lake.

An Alaska Power Administration study, "Juneau Area Power Market Analysis, Update of Load Forecasts," concludes that the Crater Lake addition to the Snettisham hydroelectric facility is needed, since from 40 to 70 percent of the project's output could be used the first year on-line in 1987. Firm energy from Crater Lake would be used by 1990 under a high-growth case, and by 1993 under a lower-growth scenario.

Construction of the Crater Lake project, estimated to cost $70 million, is expected to be contracted by the Army Corps of Engineers in the spring of 1984, with site construction beginning in early July. Under this construction schedule, the project would be on-line in February 1987.

Expected generating capacity from the addition is 27 MW, which represents a 60-percent increase in present generating capabilities in the Juneau area.

Crater Lake generating units will be housed in the Snettisham power plant, from which Juneau utilities draw the bulk of their power. Snettisham's current generating capacity is about 46 MW. In addition, Alaska Electric Light & Power (AEL&P) owns small hydro sites supplying about 6 MW. The privately owned utility added one diesel unit this year to give it nine stand-by diesel generators with a capacity of 17 MW.

Plans are to add two to three additional diesel generators a year to satisfy the hydroelectric deficit which currently exists. AEL&P also has requested a 17.5-MW oil-fired gas turbine which it would use strictly for stand-by in the event of a loss of load at Snettisham.

Potential hydroelectric sites beyond Crater Lake would include Long Lake Dam, Lake Dorothy, Sweetheart Creek and Speel River, according to the Alaska Power Administration. AEL&P has proposed a cooperative study to look into future development of generation facilities to ensure the best use of the area's hydro resources.

Table 2 shows the Juneau area net generation and peak demand and the trend toward increased demand and declining MW generation capacity.

In other Southeastern communities, the State of Alaska has invested millions of dollars in hydroelectric projects at Swan Lake, Tyee Lake and Terror Lake in an attempt to meet electrical demands in the long-term. (See articles on Southeastern hydro projects in this issue of AC&O.)

Electric power retains a commanding role in the development of Alaska, and will continue to spark construction activity for the foreseeable future. □

Rep. Terry Martin
State Capitol, Pouch V
Juneau, AK 99811

HB

486

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 3/16/84

REQUEST (L&C)
Bill/Resolution No.: CS For HB 486
Title: State Park Facility Fees

Sponsor: Bettisworth
Requestor:
Date of Request: 2/2/84

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: NRM&EC

BRU, Program or Subprogram(s) Affected:
Parks, Park Management/Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		13.5	14.0	14.6	15.2	15.8
200 TRAVEL						
300 CONTRACTUAL		3.0	4.5	4.5	4.5	4.5
400 SUPPLIES		1.5	1.5	1.5	1.5	1.5
500 EQUIPMENT		3.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		21.0	20.0	20.6	21.2	21.8
CAPITAL		35.7	17.9	17.9	-0-	-0-
REVENUE		200.0	210.0	231.0	254.1	280.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		56.7	37.9	38.5	21.2	21.8
FEDERAL FUNDS						
OTHER						
TOTAL		56.7	37.9	38.5	21.2	21.8

POSITIONS:

FULL-TIME						
PART-TIME		1	1	1	1	1
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Al Meiners/Mike Lee/Marcy Halloran Phone: 265-4506, 465-2407
Division: Parks/Management Date: 2/2/84

Approved by Commissioner: Norman D. Saward Dognin Date: 2/3/84
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/22/84

REQUEST
Bill/Resolution No.: CSHB 486(Res)
Title: State Park Facility Fees

Sponsor: Bettisworth
Requestor:
Date of Request: 2/22/84

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:
Parks, Park Management/Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 39
OPERATING						
100 PERSONAL SERVICES		13.5	14.0	14.6	15.2	15.8
200 TRAVEL						
300 CONTRACTUAL		3.0	4.5	4.5	4.5	4.5
400 SUPPLIES		1.5	1.5	1.5	1.5	1.5
500 EQUIPMENT		3.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		21.0	20.0	20.6	21.2	21.8
CAPITAL		35.7	17.9	17.9	-0-	-0-
REVENUE		200.0	210.0	231.0	254.1	280.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		56.7	37.9	38.5	21.2	21.8
FEDERAL FUNDS						
OTHER						
TOTAL		56.7	37.9	38.5	21.2	21.8

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Al Meiners/Mike Lee/Mary Halloran Phone: 265-4506, 465-2407
Division: Parks/Management Date: 2/2/84

Approved by Commissioner: James K. Hemmells Date: 2/22/84
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/22/84

REQUEST
Bill/Resolution No.: CSHB 486(Res)
Title: State Park Facility Fees

Sponsor: Bettisworth
Requestor:
Date of Request: 2/22/84

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:
Parks, Park Management/Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		13.5	14.0	14.6	15.2	15.8
200 TRAVEL						
300 CONTRACTUAL		3.0	4.5	4.5	4.5	4.5
400 SUPPLIES		1.5	1.5	1.5	1.5	1.5
500 EQUIPMENT		3.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		21.0	20.0	20.6	21.2	21.8
CAPITAL		35.7	17.9	17.9	-0-	-0-
REVENUE		200.0	210.0	231.0	254.1	280.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		56.7	37.9	38.5	21.2	21.8
FEDERAL FUNDS						
OTHER						
TOTAL		56.7	37.9	38.5	21.2	21.8

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Al Meiners/Mike Lee/Mary Halloran
Phone: 265-4506, 465-2407
Division: Parks/Management
Date: 2/2/84

Approved by Commissioner: James K. Caulfield
Date: 2/22/84
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HB

497

Alaska State Legislature

House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MEMORANDUM

January 19, 1984

TO: Representative Cowdery, Chairman
House Labor & Commerce Committee

FROM: Representative Joe Flood

SUBJECT: HB 497 - Overcrowding in Schools

On Tuesday, January 26th, the Committee on Labor & Commerce will be hearing HB 497, which is a bill that I sponsored. I feel this is important legislation and therefore appreciate your committee's willingness to give this legislation a fair and complete hearing.

The bill is important because it deals with the quality of education here in Alaska. A quality that is eroding away. In fact, as you may already be aware, our students graduation rates and test scores are falling. I find this to be unacceptable. I think we can do better.

That is why I introduced HB 497. This bill will provide the opportunity for school board members and teachers to meet together so they can negotiate on class size. This is important because if we can reduce class size we can increase student achievements and, once again bring our education standards up to the quality we all expect and need.

The issue of class size is not new. It was brought to the attention of the state Supreme Court several years ago. At that time the Court suggested, "It would be helpful if the legislature, through future enactments provided specific guidance on a number of items which unions seek to negotiate.". Thus, the Supreme Court is inviting a bill such as HB 497.

In that same opinion, the Court also asserted that under the Alaska Constitution, Article VII, Section 1, the legislature has exclusive domain over education in the state. I believe that we members must respond to this obligation and pass legislation that can, in a cost effective manner deal with some of our schools problems.

I believe this bill will do just that. It will provide the opportunity to reduce class size and therefore increase student achievement. I hope you will support this legislation with me and believe, as I do, that something must be done and done now. Students are flocking into the Anchorage, Matsu and Kenai districts. Class size is putting a terrible burden on our teachers abilities to provide an effective and efficient learning environment. This bill will at least provide the opportunity to deal with class size and do so at the local level so we can maintain the local control over schools that we all want.

You will note that I have also enclosed some additional backup information for your review. If you have additional questions to be answered before the hearing on Thursday, please call.

Thank you for your time and consideration in regards to this matter.

cc: Representative Furnace
Representative Ringstad
Representative Uehling
Representative Wendte
Representative Koponen
Representative Pestinger

Scores low despite pay in schools

From staff and wire reports

In the past decade, Alaska has retained the distinction of having the best-paid teachers in the country and has reduced the student-teacher ratio in the classroom, but the dropout rate has been increasing and test scores have been falling.

The numbers are not so discouraging in Anchorage as in other parts of the state, says Anchorage School District Superintendent Gene Davis.

The statewide composite is drawn from figures released Thursday by the U.S. Department of Education. Secretary T.H. Bell said the statistics show that the school systems that spend the most money don't necessarily get the best results.

The data compares figures in 1982 to 1972 and puts them into national perspective.

Alaska teachers' salaries in 1982 averaged $29,000. The District of Columbia is second at $22,883. The national average is $17,360.

In 1972, Alaska led the way at $14,124, followed by New York at $11,400. The national average was $9,615.

During that 10-year period, the number of students per class in Alaska schools declined from 21 to 16, moving Alaska from 18th in the country to a tie for eighth. The national average declined from 22.3 to 18.9.

But Alaska's graduation rate declined from 79.3 percent to 71 percent, dropping it from 25th to 38th in the country. The national rate went from 77.2 percent to 72.8 percent.

Alaskans' scores on the American College Test (ACT) fell from 19.6 to 18.7 (on a scale of 1 to 36). Nationally, the ACT scores went from 15.5 to 13.5 so Alaska's standing actually improved from a tie for 15th to a tie for 13th.

The dropout rate in Anchorage appears to be declining, Davis said. As for test scores, he acknowledged a decline last year in Anchorage, but said average test scores here are nevertheless higher than the state or national average.

The biggest problem in Anchorage is the high turnover rate of students each year, Davis said. Family mobility resulted in a 35 percent turnover rate last year, he said.

Reprinted from the March 1979 KAPPAN

The Class Size/Achievement Issue:
New Evidence and a Research Plan

by Leonard S. Cahen and Nikola N. Filby

Using "meta-analysis," Gene Glass and Mary Lee Smith have discovered important student achievement gains when class size is reduced to 15 or below. Cahen and Filby are now involved in intensive field study of the whys and hows of these gains.

On the average, student achievement increases as class size is reduced, and the advantage rises sharply for a class of 15 and below. Reductions in size of from, say, 28 to 25, are projected to make only a small difference in average achievement.

These are perhaps the most significant conclusions reached in a new "meta-analysis" of half a century of research, performed as part of a project in class size and instruction being conducted by the Far West Laboratory for Educational Research and Development with National Institute of Education funds.

Gene Glass and Mary Lee Smith of the University of Colorado were responsible for the meta-analysis. At the same time, a complementary and converging approach to the question of class size/achievement relationships was undertaken and is continuing. A small number of field studies were designed in which class size is experimentally controlled and intensive observation of classroom procedures is being conducted. A chief object is to find out what aspects of instruction in smaller classes account for the achievement advantages.

The remainder of this article will detail the procedures, findings, conclusions, and policy implications of the Far West project.

For the research synthesis, we felt that the new approach called meta-analysis would prove to be a powerful way of resolving some of the inconclusive findings reported in the literature. Glass, a primary developer of meta-analysis methodology, reported that the class size/student achievement literature might lend itself to the technique.[1]

Meta-analysis provides a method for the statistical integration of data across many studies.[2] Studies of psychotherapy and tutoring, among other fields, have already been integrated via meta-analysis. Meta-analysis proceeds by calculating the size of one or more measures of effect in each study, then pools these measures as data points for further analysis. In the case of class size studies, each data point is a measure of the difference in achievement between two classes of different size.

Glass and Smith first obtained and read some 300 reports, publications, theses, etc., that reported findings on class size and achievement. The search was made through ERIC, dissertation abstracts, research reports and reviews,[3] and from nominations and suggestions from other researchers. Glass and Smith found current reviews by Doris Ryan and T. Barr Greenfield[4] and C. D. Latleur, R. J. Sumner, and E. Witton[5] very helpful. Only 77 of the 300 documents could be used. They yielded 725 comparisons of achievement in different class sizes. Many studies yielded multiple sets of data. For example, one might report achievement data for reading, mathematics, and science for three grade levels, thus yielding nine comparisons. The studies provided a data set based on nearly 900,000 pupils and spanned over half a century. Sixty-five percent of the comparisons were obtained from journals, approximately 16% from books, and 11% from unpublished sources. Approximately 8% came from theses, a source not generally tapped in prior examinations of the literature. Approximately 56% of the comparisons were obtained on children whose ages ranged from 5 to approximately 11½ years.

As expected, most of the studies compared class size in the range of 20 or larger. Comparisons of classes of about 26 pupils with classes of more than 30 were common, 10 with 20 far less so. For many years researchers expected to see dramatic differences between class sizes of 25 and 28.

Glass and Smith define class size as the pupil-to-instructor ratio (P/I). One teacher with 30 pupils gives a P/I of 30, two with 30 a P/I of 15. One teacher doing supplementary math instruction with four pupils gives a P/I of four. The search for an appropriate descriptive ratio has a long history in the research on class size.[6] Any ratio is, at best, a crude indicator of how much teacher attention any pupil receives. One hopes that as the total number of pupils in a class decreases, the teacher will be able to provide more appropriate, personal instruction for every pupil. How to help teachers take advantage of reduction in total class size becomes a crucial issue, to be discussed later.

Glass and Smith define "delta" as a key concept. A statistical index of the achievement advantage of one size class over another size class, delta is defined as the mean achievement score for the smaller class in a study minus the mean of the larger class in the study, the difference then being divided by the within-group

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LEONARD S. CAHEN is director and NIKOLA N. FILBY associate director of the Class Size and Instruction Project, Far West Regional Laboratory, San Francisco. *The study reported here was produced under NIE grant No. OB-NIE-G-78-0103.*

Cahen and Filby wish to acknowledge the help and support of Joseph Caverly and Virginia Koehler of the National Institute of Education. Some support for the project came from the Carnegie Scholars Program, Center for the Study of Evaluation, UCLA, NIE grant No. OB-NIE-G-78-0213.

standard deviation. To illustrate, Class A has 10 pupils. Class B in the same study has 20. The students in each class are given an achievement test of 50 items. The mean for Class A is 35. The mean for Class B is 30. The within-group standard deviation is 10. The delta for this hypothetical case would be .5, i.e., (35-30) – 10. Delta is a standard score. Its value can be positive, negative, or zero. Assuming a normal distribution, a delta of plus one is one standard deviation above the mean and has a percentile rank of 84. A delta of plus .5 represents the 69th percentile.

The calculation of delta is straightforward when means and standard deviations are given and when the standard deviations are equal, but these conditions are not always met. Glass worked out formulas for estimating delta from other common statistics, such as a correlation coefficient. Problems can arise in defining the within-group standard deviation when the groups differ widely in variability. In this case the estimate of delta may be biased. Continued work on the methodology of meta-analysis, as developed by Glass, will need to study the effects of heterogeneous variability on the magnitude of deltas and the relationship of the deltas to other variables in the studies being examined.

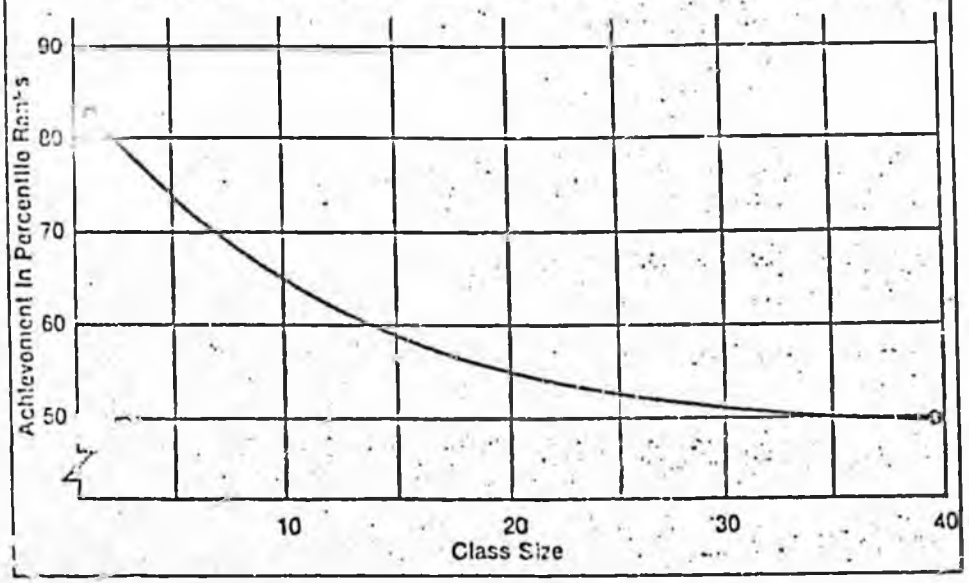
Of the 725 deltas calculated, 60% were positive, indicating that achievement was higher in the smaller class. The average delta was .09. Further analysis revealed two important interactions: The size of the difference depended on the sizes of the classes being compared; it also depended on the quality of the research design. Effects were stronger in studies having good design characteristics — e.g., where pupils were randomly assigned to classes or were "matched," or where the same teachers or pupils participated in both the smaller and the larger class. The average delta in well-designed studies was .40.

To take into account the influence of different class sizes, a regression model was developed to predict delta. After preliminary models were tried, the final system predicted delta (advantage of smaller over larger) from three variables: 1) number of students in the smaller class; 2) square of the number of students in the smaller class; 3) difference between the number of students in the smaller class and the number of students in the larger class. The regression model was used to generate a graph of predicted achievement. Predicted achievement scores were transformed to a percentile rank on a hypothetical nationally normed standard achievement test. The Glass-Smith curve for well-designed studies is shown in Figure 1.

In this figure the curve starts to rise most dramatically when class size is reduced below 15 pupils. The average pupil in class sizes of 40, 20, 15, 10, and five would be expected to score at the 50th, 55th, 58th, 65th, and 75th percentiles respectively. The predicted outcome difference can be described in grade-equivalent units over one school year: 1.00 years of growth for class size 40, 1.15 years for size 20, 1.24 years for size 15, 1.45 years for size 10, and 1.72 for size five. These data show an impressively large advantage for smaller classes.

Figure 1. The Glass-Smith Curve of Achievement and Class Size

(Data integrated across approximately 100 comparisons from studies exercising good experimental control)



The overall difference in results between the well-controlled and poorly controlled studies was dramatic. The curve for the poorly designed studies was almost flat, indicating, at best, a very small advantage to smaller classes. Almost half of the deltas came from the poorly designed studies. Little wonder class size research has been so inconclusive.

Glass and Smith analyzed data separately for elementary and secondary pupils. Small-class advantages were slightly stronger at the secondary level. It is our opinion that the advantages are too small to lead to a conclusion that elementary pupils would profit less than secondary pupils if class size were reduced. There also appeared to be no difference in results for different subject matters, such as reading or mathematics.

The meta-analysis reports that there is no correlation between class size and achievement advantage in the studies performed before 1940. Over half the 725 deltas were from pre-1940 studies. It is not surprising that surveys of the literature prior to World War II typically concluded that reducing class size had no effect on achievement.

Over the next few months we plan to fit the Glass-Smith equation to data not analyzed when the model was developed. This will allow us to estimate the error in the model for different class size comparisons. We anticipate that new studies will be identified, but these, like those available to Glass and Smith, will contain few data for class size smaller than 20, the range we believe to be crucial.

How does one judge the importance of the differences shown in Figure 1? Is the percentile advantage in achievement between class sizes of 15 and 30 big enough to make it worthwhile to reduce size by this much? Policy makers will have to decide. As researchers, we encourage the concept of utility. We regard the delta difference between class size 30 and 25 as relatively trivial. But the difference between class size 30 and 15 has utility. Enough pupils should profit to warrant pursuing ways of creating the smaller class. We acknowledge the economic difficulty of putting this judgment into practice. But we encourage investigations of reduced instructional group size for parts of the school day. More on this later.

A cautionary comment about the small changes in achievement above a class size of 20: Achievement tests measure only one aspect of instruction. They do not capture the quality or humanness of the classroom environment. Certainly larger classes permit less relaxed interaction with individual pupils. Teachers often feel overwhelmed and frustrated.

It is also important to point out that the Glass-Smith meta-analysis shows the relationship of class size and achievement without any attempt to see how this relationship is conditioned by a set of variables we shall call quality of instruction. It would be useful to find out whether, and how, good and poor teaching or environmental conditions alter the curve.

The Field Studies

The Glass-Smith meta-analysis indicates that, on the average, achievement

The field studies may show how to achieve even greater gains in small classes.

increases as class size decreases. If this is true, it must be because of some change in classroom instruction. With fewer pupils to attend to, a teacher should be able to improve the quantity and/or quality of instruction.

P. J. Porwoll and others have concluded that many qualities of classroom instruction, such as increased individualization, are improved when class size is reduced.[5] Glass and Smith are now doing a meta-analysis of studies relating class size to classroom processes, student attitude, and teacher satisfaction. Teacher satisfaction is an important outcome to consider in its own right.[6] It appears from the literature search that relatively few studies have systematically examined the question of *how* class size influences student achievement. The field studies undertaken by the Class Size and Instruction Project address this question.

The basic plan of the current field studies is to reduce class size experimentally and see what changes take place in the classroom. In each of two schools, we work with two second-grade classes, each taught by a single teacher. Midway through the year a third teacher is hired and some students from each class are moved to the new third class. Many methodologies are used to learn about the nature of schooling in the larger class situation (before the split), and this can be compared with what we learn when the classes are made smaller after the split.

An important aspect of the field studies is the role of the classroom teachers. We hope to make them collaborators in the investigation of an important educational question. As a research team, we shall form hypotheses about what might be different in a smaller class, and we shall collect evidence about what actually changes. The teachers are encouraged to "tinker," i.e., try new techniques. This means that the field studies are not a "clean" experimental test of class size but are instead a combination of class size experiment and in-service training for teachers. It is exactly this combination that we consider it important to study. Many people have suggested that reducing class size will have no effect if teachers do exactly the same thing in a small class as in a large one and that it is important to help teachers take advantage of the opportunity of a small class."

[illegible] we [illegible] the increases in achievement should be even greater than those shown in the Glass-Smith curve.

A major source of our perspective in describing classroom instruction is our previous work on the Beginning Teacher Evaluation Study (BTES).[10] In our current work we hope to elaborate and extend the BTES model of instruction, thus building a cumulative research program.[11] BTES researchers, working with second- and fifth-grade classes, looked at a series of questions about pupil learning in mathematics and reading and how this learning was related to teaching behaviors and characteristics of classroom learning environments. The BTES study convinced us that the teacher controls learning conditions that are positively associated with pupil learning. For example, larger pupil achievement gains were associated with teacher monitoring of pupil behavior, the teacher's ability to diagnose pupil status and prescribe appropriate educational tasks (quantity and quality), and teacher feedback. Classes with larger gains were typically associated with teachers who held academic goals for their pupils and provided relatively large amounts of direct instruction. It was also observed that the teaching/learning environments in these classes were supportive. Teachers did not have to be punitive in order to have children learn. As we began to design our plan for the Class Size and Instruction Project, we wondered how the learning environments in classes could be changed if we reduced the number of pupils for whom the teacher had responsibility. If class size could be reduced by one-third or one-fourth, would the teacher be able to provide a more individualized form of instruction? Would the teacher be able to diagnose pupil needs better, assign more appropriate work, and monitor the work more frequently? Would pupils' "wait time" (waiting for teacher direction or help) be reduced? Would pupil/pupil and pupil/teacher interaction change?

How would teachers feel about teaching and their pupils when class size was reduced? Would there be more time for informal discussions with pupils? Would there be changes in the curriculum or learning activities such as more and different types of art or science lessons? Would pupils now be allowed to talk to each other as they worked?

The following categories of questions provide a framework for our investigations: [illegible] environment, rule setting, interruptions and disruptions, diagnosis, assessment and pupil evaluation, teacher feedback, reward systems, teacher expectations prior to splitting, and teacher evaluation of conditions before and after splitting.[12]

Two schools are participating in the study. One is a rural school near Charlottesville, Virginia, directed by Gail McCutcheon of the University of Virginia. Pupils are primarily low socioeconomic level blacks (60%). Before they were split in January, 1979, each class had about 19 pupils. Splitting reduced the classes to approximately 13 students each. Parent volunteers assist teachers.

The second school is located in Oakland, California. Both second-grade classes prior to splitting were composed of 34 students, so size dropped to approximately 23 students per class after splitting in February, 1979. Classroom aides are used. There is a staggered reading schedule, meaning that half the students in a class come for an hour in the morning and the other half remain at the end of the day for their smaller group instruction in reading. Nikola Filby, one of the authors, teaches the class created by the split.

Methods of Data Collection

The central activity in the field study will be to document and describe differences in instruction before and after splitting. Research on teaching today is multidisciplinary and uses many approaches to knowing. Some researchers advocate the experimental method as the most powerful way of detecting teaching/learning relationships. Others feel that understanding can best be attained by spending many hours in classrooms watching the process, talking to teachers, etc. Many researchers like ourselves think it is wise to combine many methods: We observe and record what we see, we measure some dimensions, we ask our teachers to help us understand what we see. Our methodology includes both qualitative and quantitative approaches. The Oakland and Virginia researchers have developed descriptions of different approaches to inquiry being used in the study under the following headings: 1) "case study" observation, 2) interviews with teachers, 3) systematic, quantitative observation, 4) teacher journals, 5) achievement testing, 6) samples of student work, 7) photographs, and 8) later follow-up.[13]

Reporting the Findings

The detailed case studies of each class will be a major form for reporting our study findings. The case studies will document any changes between instruction in the large-class phase and the small-class phase. We hope to discover whether changes in instruction are a function of reduced class size. The case studies will also address more general questions about important characteristics of classroom in-

struction that should be understood regardless of class size.

It is our goal to blend the information obtained from the case studies, teacher logs, and interviews with the information obtained through quantitative records. The "numbers" gathered by systematic observation may help tell us *if* changes took place after splitting. The other sources of information can then, we hope, tell us *how* the changes took place.

Issues and Policies

To date, major reviews of the literature on class size have reported conflicting findings in the research.[14] Some studies supported smaller class sizes; others did not. Reviewers generally found the literature complex and inconclusive. Some reviewers became pessimistic about the value of smaller classes.[15] The Glass-Smith meta-analysis is unique because it presents a statistical synthesis that reveals general trends. Previous reviews and the conclusions drawn from them were primarily reached from an "armchair" synthesis of the literature. Studies were classified as supportive of smaller class size, larger class size, or inconclusive. The classifications were guided by the statistical significance reported. No evaluation was given in the counting or classification procedure to studies nearing conventional levels of significance. For example, studies showing probability levels greater than .05 would typically be classified as nonsignificant and thus be placed in the inconclusive category. In contrast, Glass and Smith used all the available data to develop a continuous distribution of effects and therefore move their analysis beyond the nominal classification of supportive (favoring smaller classes), nonsupportive (favoring larger classes), and inconclusive (failure to reject the null hypothesis). We feel that the new findings by Glass and Smith present a convincing case that average achievement increases as class size decreases, especially when class size is below 20 pupils per class. Earlier arguments that smaller classes cannot be justified on the basis of test scores must be reexamined in light of the Glass-Smith findings.

We must point out, however, that there are many exceptions to the general trend. Smaller is not always better. Previous reviews of the literature have done a commendable job of describing the limitations of past studies of class size and explaining how research in the area must accept the problem as interactive — a

No surplus, only underutilized teachers.

Glass-Smith analyses did not find any general interactions in the data; that is, class size effects were *not* noticeably different for children of different ages or abilities or studying different subjects. But there were many instances in the data where small classes did not produce superior achievement. Two possible explanations are the nature of the teaching that takes place and imprecision in the construct "class size."

As discussed earlier, a number of people have pointed out that the effect of class size depends on the intervening classroom instruction. Poor teaching will not be effective, even in a small class. Teachers may need help in learning to use the potential available in the small-class situation. We are exploring this issue in the field studies. Certainly anyone who plans to reduce class size should plan also to support and educate personnel to realize the potential.

From discussions of class size in the literature, it is clear that better designs are needed if we are to understand the complexities of instruction and how the complexities are influenced by the sometimes poorly defined global term "class size." Donald Pidgeon has described other characteristics of students and classrooms that influence the size of the job facing a teacher.[17] He mentions homogeneity of pupils, classroom space available, and ancillary assistance available in the classroom. The concept of teacher load is discussed in the literature. While the term is usually used to describe the teaching responsibilities of secondary teachers, it applies to the elementary school as well. A teacher who has responsibility for grading essays probably has a different out-of-school workload than a shop teacher. The teacher who has many students learning English as their second language has additional teaching burdens. The problems created by disruptive students must be reckoned with in assessing teaching load responsibilities. The Class Size Committee of the Los (California) Education Association has attempted to weight factors in the classroom (i.e., number of slow learners, hyperactive pupils, bilingual pupils, etc.) in adjusting class size so that it better reflects the range of teaching responsibilities.[18] All of these issues create complications in simplified [illegible] class size.

[illegible] have [illegible] and political climate [illegible] 9.

in collaboration with Gene Glass and Mary Lee Smith, we shall commission reaction papers to the meta-analysis on class size and achievement and the second meta-analysis dealing with the relationship of class size and classroom processes, teacher satisfaction, and pupil affect. Within our funding restriction we shall seek reaction papers from teachers, administrators, economists, and researchers. These papers will serve to clarify and highlight the different viewpoints on class size and the trade-offs that must be made. In the end, individual states, communities, or parents must make their own value judgments.

We would hope that in discussions of class size many different alternatives will be considered. The data suggest that there is relatively little pay-off for small overall reductions (e.g., 28 to 25). Attention should be given to ways to make larger reductions in more limited situations. Flexible arrangements within a school might allow the creation of smaller instructional groups for part of the school day or for those students most in need of closer supervision or individual attention. Some school districts use a staggered schedule so that students spend part of the day in a smaller class. Paraprofessionals can help. The use of nonprofessional instructional staff (aides, parent volunteers, and pupil tutors) deserves careful attention. R. G. Stennett, A. L. Hyer and Robert M. McClure, and Beatrice A. Ward and William J. Tikunoff have discussed issues relating to the use of noncertificated personnel in classroom instruction.[19] We would also hope that schools examine ways to rehire some of the many talented teachers who have lost their positions or cannot find teaching positions. We share the positions of John Corbally[20] and Herbert Walberg and Sue Pinzur Rasher[21] that the large number of unemployed teachers should be viewed as an underutilization of talent, not as a surplus. It is interesting to ponder what instruction in schools could be with two professionals teaching 30 pupils, at least for reading and mathematics in the primary grades.

We are concerned that the Smith-Glass curve may be interpreted by "budget at any cost" school administrators and citizens to mean that class size can be increased beyond 30 pupils without achievement deficit or other consequences.

[illegible] that the present [illegible] only student achievement [illegible]. Glass and Smith are presently completing a second meta-analysis for our project. This analysis will

(Continued on page 538)

Class Size/Achievement
(Continued from page 495)

examine the relationship of class size, instructional processes, teacher morale, and pupil affect. The studies will include pieces of research that previously have not been integrated into most of the literature reviews. Their report is scheduled for publication later this spring. We can anticipate that this further analysis and the field studies will give a richer picture of the benefits of smaller classes. Certainly many teachers are convinced of the need for smaller classes. NEA President John Ryor has said that wages and class size were primary strike issues in 1978-79.[22] In November, 1978, half of the Fresno, California, public school teachers struck in a dispute over class size. The school board had rejected the Fresno Teachers Association proposal to add an aide in elementary school classes with more than 33 students.

We need to consider a broad range of outcomes — the relationship between class size and the quality and humanness of the nation's schools. These concerns may make even small changes in class size worthwhile and may increase the impetus to find ways to create some small classes. We encourage educators and the public to think seriously about what we want our schools to be and how smaller classes might help make that image a reality.

[illegible] Glass, "Meta-Analysis and Meta-Analysis of Research," *Educational Researcher*, Nov. 1976, pp. 3-8.

[illegible] Glass and Smith, "Meta-Analysis of Research on Class Size and Its Relationship to Attitudes and Instruction," *American Educational Research Journal*, vol. 16, 1979, pp. 253-64.

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3. Howard E. Blake, "Class Size: A Summary of Selected Studies in Elementary and Secondary Schools" (Doctoral dissertation, Teachers College, Columbia University, 1954). See also Henry J. Otto and Fred von Borgerstrode, "Class Size," *Encyclopedia of Educational Research*, 2nd ed., 1950, pp. 212-16; Henry J. Otto et al., *Class Size Factors in Elementary Schools*, Bureau of Laboratory Schools Publication #4 (Austin, Tex.: University of Texas Press, 1954); P. J. Porwoll, *Class Size: A Summary of Research* (Arlington, Va.: Educational Research Service, 1978); James B. Pugh, Jr., *Performance of Pupils and Teachers in Small Classes* (New York: Metropolitan School Study Council, Teachers College, Columbia University), 1955), Stanley M. Shapson, *Optimum Class Size? A Review of the Literature* (Toronto, Ontario: Toronto Board of Education, Research Department, November, 1972); George E. Sitkei, *The Effects of Class Size: A Review of the Research*, Research Studies Series, 1967-68 (Los Angeles: Los Angeles County Superintendent of Schools, 1968); and William S. Vincent, "Class Size," *Encyclopedia of Educational Research*, 4th ed., 1969, pp. 141-46.

4. Doris W. Ryan and T. Barr Greenfield, *The Class Size Question* (Toronto, Ontario: Ontario Institute for Studies in Education, 1975).

5. C. D. Lafleur, P. J. Sumner, and E. Witton, *Class Size Survey* (Canberra: Australian Government Publishing Service, 1974).

6. Porwoll, op. cit.

7. Ibid. See also B. McKenna, "Measures of Class Size and Numerical Staff Adequacy Related to a Measure of School Quality" (Doctoral dissertation, Teachers College, Columbia University, 1955); Pugh, op. cit.; and Donald H. Ross and Bernard McKenna, *Class Size: The Multi-Million Dollar Question* (New York: Teachers College, Columbia University, 1955).

8. G. Fenstermacher, "Satisfaction: An Alternative Criterion for School Success," in J. Goodlad et al., *Toward Humaneness and the Affective in Education* (Berkeley: McCutchan, 1975).

9. Morris Haberman and Richard G. Larson, "What's Wrong Using Class Size Changes Instruction?" *National Elementary Principal*, vol. [illegible], 1965, pp. 18, 19. See also Otto et al., op. cit.; Otto and von Borgerstrode, op. cit.; Pugh, op. cit.; Ryan and Greenfield, op. cit.; McKenna, "Evaluating [illegible]," in Ross and Kratochwill, *Experimental*

[illegible] Bernard S.

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14. Lafleur, Sumner, and Witton, op. cit. See also New England School Development Council, *Class Size and Teacher Load* (Newton, Mass.: NESDC, April, 1975); Porwoll, op. cit.; and Ryan and Greenfield, op. cit.

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16. Lafleur, Sumner, and Witton, op. cit. See also Otto and von Borgerstrode, op. cit.; Porwoll, op. cit.; Ross and McKenna, op. cit.; Ryan and Greenfield, op. cit.; and Vincent, op. cit.

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18. Virginia Green, *Report of the Lodi Education Association Class Size Committee* (California Teachers Association Instruction Center, October 1, 1974).

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STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 497
Title: Labor Negotiations by School Boards
Sponsor: Flood
Requestor: Labor and Commerce
Date of Request: 1-19-84

FISCAL DETAIL
Agency Affected: Education
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS: N/A

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

While the bill has no fisical impact on this department, it will have an indeterminate impact on school districts.

ANALYSIS: Attach a separate page for analysis

Prepared By: Steve Hole Phone: 1-20-84
Division: Office of the Commissioner Date:

Approved by Commissioner: Harold Raynolds, Jr. Date: 1-20-84
Agency: Education

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HB

505

MARCH 28, 1984

TO: JOHN

FROM: KEN

RE: HB 505 "RELATING TO INSURANCE"

THE PURPOSE OF HB 505 IS TO UPDATE THE PENALTY PROVISIONS IN THE INSURANCE CODE IN TITLE 21 OF THE ALASKA STATUTES. UNDER CURRENT LAW, MANY OF THE VIOLATIONS OF THE INSURANCE CODE HAVE CRIMINAL PENALTIES, SUBJECT TO PROSECUTION AS A MISDEMEANOR. THIS LEGISLATION WOULD CREATE CIVIL PENALTIES FOR CERTAIN VIOLATIONS OF THE INSURANCE CODE. ACCORDING TO THE DIVISION OF INSURANCE THIS WOULD PREVENT MANY OF THE ADMINISTRATION VIOLATIONS OF THE INSURANCE CODE WHICH MANY INSURANCE COMPANIES NOW TAKE LIGHTLY.

QUESTIONS:

1. HOW MANY VIOLATIONS DO YOU ESTIMATE OCCUR EACH YEAR THAT ARE NEVER PROSECUTED ?

2. COULD YOU ESTIMATE THE ADDED EXPENSE TO THE DIVISION BECAUSE OF THESE VIOLATIONS ?

3. WHY IS THERE SUCH A STRONG EFFORT NOW TO CURB THESE VIOLATIONS OF THE CODE ?

4. ON PAGE 2, LINE 11, HOW WAS THE FIGURE 2,500 DECIDED ?

5. ON PAGE 2, LINE 25, 25 THOUSAND DOLLARS IS A CONSIDERABLE AMOUNT OF MONEY TO BE FINED BY THE DIRECTOR OF THE DIVISION OF INSURANCE FOR A CIVIL PENALTY. SHOULDN'T CRIMES SUCH AS EMBEZZLEMENT BE PUNISHED UNDER THE CRIMINAL STATUTES ?

SECTION BY SECTION ANALYSIS OF CSHB 505 (L&C) 3/26/84

This proposal, while lengthy, is a relatively straightforward cleanup and update of the penalty provisions in the insurance code. The first function of this bill is to consolidate the criminal penalties of the insurance code in a single section, Sec.21.36.360. There are no NEW criminal penalties created, but there are some upgrades. Currently, any violation of Title 21 (the insurance code), is a misdemeanor unless otherwise specifically labeled.

The second function of this bill is to establish an administrative penalty for any violation of the insurance code. In many cases there is no administrative or civil penalty for a violation of the code. This means that the violator gets away with the act, since a district attorney is going to be less than enamored with prosecuting as a misdemeanor some of the technical violations we see in the administration of the code. This bill sets up a dual course, where an administrative remedy and a criminal remedy will be available for any violation of the code. This is accomplished by changing all the present criminal language to civil penalty language. In doing this, the penalty levels, which have not been changed since 1966, have been reviewed and upgraded.

The third element of this bill deals with a growing concern amongst insurance regulators concerning information sought during investigations of criminal activities. In recent months a number of fraud investigations have commenced in the west, some in which our division is participating. The challenge we currently face is that there is no immunity available for persons sharing or providing information. This fact has impeded a number of investigations across the country. In some cases other insurance regulators are willing to act as our agent in securing information but have no protection if they do so. Presently two states have adopted legislation that deals with this issue. We have used a model that tracks a National Association of Insurance Commissioners model.

Section 1. Page 1, lines 9-16.
This is a new civil penalty section that fines an insurer who fails to submit its annual financial statement when due. It also gives the director the authority to suspend the activities of an insurer who fails to submit the statement when due. The concern here is that the statement is the director's principal tool in determining the financial health of an insurer and its absence leaves that health in question.

Section 2. Page 1, lines 17-25.
This section establishes a new civil penalty. The section deals with violations of AS 21.09.220-250, which is the section on the countersignature law which is in the process of repeal, and with writing through unlicensed agents. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(i)].

Section 3. Page 1, lines 26-29 & page 2, lines 1-7.
This section establishes a new civil penalty. AS 21.22 is the insurance

holding company act which is concerned with the acquisition of, control of, or, merger with a domestic insurance company. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(h)].

Section 4. Page 2, lines 8-12.
This section establishes a new civil penalty. AS 21.27 is the insurance agents, brokers, solicitors, and adjusters licensing act. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(j)].

Section 5. Page 2, lines 13-19.
This section establishes a new civil penalty. It deals with reporting of premiums to an insurer by a licensee. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(n)].

Section 6. Page 2, lines 20-27.
This section establishes a new civil penalty. is concerned with the monies a licensee receives as premium from an insured or as return premium from an insurer. These are trust funds and their misuse or misappropriation is a matter of particular concern to the division. The current criminal provision is transferred to Section 10 [see Sec. 21.36.360(b)(5)].

Section 7. Page 2, lines 28-29 & page 3, lines 1-11.
This section deals with the penalties for violation of the licensing law. The principal change here is an upgrading of the amount of penalty.

Section 8. Page 3, lines 12-21.
This section upgrades the fine applied in lieu of suspension, revocation, of refusal to renew a license from $500 to $2500.

Section 9. Page 3, lines 22-29 & page 4, lines 1-2.
This section establishes a new civil penalty. It deals with persons refusing examination by the director of their activities in the surplus lines market. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(l)].

Section 10. Page 4, lines 3-29, all of pages 5-9 & page 10, lines 1-14.
This section centralizes the criminal provisions of the insurance code. The chapter into which this has been inserted is the trade practices and frauds chapter, a logical place to look for these provisions. The new section also deals with investigation information confidentiality and immunity.

Sec 21.36.360(a). Page 4, lines 3-9.
This subsection prohibits fraudulent and criminal acts and provides that the criminal penalties are in addition to civil penalties. We have made a distinction beteween fraudulent and criminal because of the connotation

associated with the term "fraudulent". The word as used in this section generally means to intentionally injure, defraud, or deceive.

Sec 21.36.360(b)(1). Page 4, lines 10-15.
This section is drawn from the current AS 21.36.180(a), which is repealed in Section 22. No substantive change.

Sec 21.36.360(b)(2)-(3). Page 4, lines 16-24.
These sections are drawn from the current AS 21.36.200, which is repealed in Section 22. No substantive charge.

Sec 21.36.360(b)(4). Page 4, lines 25-29 & page 5, lines 1-2.
This section is drawn from the current AS 21.36.180(b), which is repealed in Section 22. No substantive change.

Sec 21.36.360(b)(5). Page 5, lines 3-5.
This section is drawn from the current AS 21.27.360(c) which is amended in Section 6. No substantive change.

Sec 21.36.360(b)(6). Page 5, lines 6-7.
This section effectively upgrades the criminal offense of failing to pay a tax liability under this title, depending on the amount the person has failed to pay. It is currently a misdemeanor under the general penalty section of the insurance code, AS 21.90.020.

Sec 21.36.360(c). Page 5, lines 8-16.
This section is drawn from the current AS 21.69.060 which is amended in Section 14. It deals with solicitation to form an insurer without a solicitation permit. No substantive change.

Sec 21.36.360(d)-(e). Page 5, lines 17-27.
These sections are drawn from the current AS 21.06.170(e) which is repealed in Section 22, and deals with perjury in an examination, investigation or hearing of the division. No substantive change.

Sec 21.36.360(f). Page 5, lines 28-29 & page 6, lines 1-3
This section is drawn from the current AS 21.69.210 and deals with false accounts, documents, or advertisements in forming an insurer. See Section 15. No substantive change.

Sec 21.36.360(g). Page 6, lines 4-7.
This section is drawn from the current AS 21.69.390 and deals with the removal or concealment of records of a domestic insurer. See Section 16. No substantive change.

Sec 21.36.360(h). Page 6, lines 8-9.
This section is drawn from the current AS 21.22.170 and deals with insurance holding companies. See Section 3. No substantive change.

Sec 21.36.360(i). Page 6, lines 10-21.
This section is drawn from the current AS 21.09.250-260 and deals with the writing of business by insurance companies through persons not licensed by this state. See Section 2. No substantive change.

Sec 21.36.360(j). Page 6, lines 22-29 & page 7, lines 1-5.
This section is drawn from the current AS 21.27.010(d), AS 21.66.160, and AS 21.84.420(a) and deals with agents, brokers, solicitors, and adjusters licensing. See Sections 4, 12, and 18. No substantive change.

Sec 21.36.360(k). Page 7, lines 6-14.
This section is drawn from the current AS 21.27.370 in the licensing chapter which requires all parties to the insurance transaction have the appropriate license. The penalty is drawn from the general penalty section, AS 21.90.020. No substantive change.

Sec 21.36.360(l). Page 7, lines 15-19.
This section is drawn from the current AS 21.33.320 dealing with examination of surplus lines transactions. See Section 9. No substantive change.

Sec 21.36.360(m). Page 7, lines 20-23.
This section is drawn from the current AS 21.69.510(a) dealing with unauthorized dividends of a domestic insurer. See Section 17. No substantive change.

Sec 21.36.360(n). Page 7, lines 24-28.
This section is drawn from the current AS 21.27.360 dealing with agents and brokers trust accounts. See Section 5. No substantive change.

Sec 21.36.360(o). Page 7, line 29 & page 8, lines 1-3.
This section is drawn from the current AS 21.36.200 which is repealed in Section 21. It deals with false applications for insurance. No substantive change.

Sec 21.36.360(p). Page 8, lines 4-5.
This section is drawn from the current AS 21.90.020, the general penalty section of the insurance code. See Section 20. No substantive change.

Sec 21.36.360(q). Page 8, lines 6-20.
This subsection establishes the level of criminal violation in each of

the activities described in the section. i.e., whether it is a class B felony, class C felony, class A misdemeanor, or a class B misdemeanor.

Sec 21.36.370. Page 8, lines 21-29 & page 9, line 1.
This section is drawn from the current AS 21.36.180(b) which is repealed in Section 22. No substantive change.

Sec 21.36.380. Page 9, lines 2-8.
This is a new provision which requires that claims forms contain a warning that falsification is a felony.

Sec 21.36.390. Page 9, lines 9-19.
This is a new requirement requiring insurers to advise the director when they have knowledge of a fraudulent claim. It also provides immunity from civil liability for persons providing such information without malice.

Sec 21.36.400. Page 9, lines 20-29 & page 10, lines 1-5.
This is a new section. It provides confidentiality for data received under Sec.21.36.390. Presently investigations are considered examination of the insurer and are confidential while necessary, but this is not true when an insurer is not involved thus impeding investigation.

Sec 21.36.410. Page 10, lines 6-13.
This is an important new provision that enables the director to effectively share investigative functions with other states. It allows the director to designate another state to act on his behalf and vice-versa. The information would be in the participating state as well as the principle state. This would be a valuable tool in investigating violations of the insurance code by non residents. Further, the sharing of the data will better enable us to head off problems before they are sufficiently entrenched and cause loss to the insureds in this state and the insurer.

Section 11. Page 10, lines 14-25.
This section upgrades the rate law penalty provisions to make them more meaningful. Presently the gain from a violation of that law may well exceed the loss from a penalty application. With this new provision, that would no longer be the case.

Section 12. Page 10, lines 26-29 & page 11, lines 1-7.
This section establishes a new civil penalty. It deals with doing a title insurance business without an effective certificate of authority. The current criminal provision is transferred to Section 10 [see Sec. 21.36.360(j)].

Section 13. Page 11, lines 8-21.
This section substantially upgrades the title insurance rate law

penalties. The gain from writing a title insurance policy at an inappropriate rate is far more profound than in a property/casualty situation. It is also more likely to occur.

Section 14. Page 11, lines 22-26.
This section establishes a new civil penalty. AS 21.69 deals with the organization and corporate procedures of domestic insurers. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(c)].

Section 15. Page 11, lines 27-29 & page 12, lines 1-6.
This section establishes a new civil penalty. This section deals with deliberate falsification of company records. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(f)].

Section 16. Page 12, lines 7-17.
This section establishes a new civil penalty. This section deals with the removal or concealment of the records of a domestic insurer. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(g)].

Section 17. Page 12, lines 18-26.
This section establishes a new civil penalty. It deals with the unauthorized payment of dividends. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(m)].

Section 18. Page 12, lines 27-29 & page 13 lines 1-5.
This section establishes a new civil penalty. It deals with the unlicensed agent of a fraternal benefit society. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(j)].

Section 19. Page 13, lines 6-18.
This section establishes a new civil penalty. It deals with misrepresentations under the fraternal benefit society chapter. The current criminal penalty is transferred to Section 10[see Sec. 21.36.360(p)].

Section 20. Page 13, lines 19-29 & page 14, lines 1-7.
This section is needed in view of the transfer of the criminal penalty in Section 19. AS 21.84 is an exclusive chapter that incorporates the other provisions of AS 21 only by specific reference within that chapter. No substantive change.

Section 21. Page 14, lines 8-17.
This section establishes a new general civil penalty for violations of the insurance code not specifically carrying a stated civil penalty. The current criminal general penalty is transferred to Section 10 [see Sec. 21.36.360(p)]. The effect of this change is to have a civil penalty and a criminal penalty for any violation of the insurance code. This fact will

alaska all lines charter

division of insurance newsletter

VOL. 15, NO. 2 FALL/WINTER 1983

LET THE SURPLUS LINES BROKER BEWARE

"A surplus lines broker shall ascertain the financial condition of an insurer before placing insurance with him. A violation of this section is punishable by a fine of not less than $50 or more than $250 for each offense. The department shall also revoke his license and may not license him as a surplus lines broker for a period of two years thereafter."

Surplus lines brokers who fail to ascertain the financial condition of insurers as required by AS 21.33-.180, run the risk of losing their license, as well as being liable for losses if an insurer proves to be insolvent. During the past year, we have followed up on numerous consumer complaints where policy security runs from poor to insolvent. Some of these policies fail to name the actual insurers as required by law. Instead, we see coverage backed by "Lloyds and foreign companies." The foreign companies are domiciled in Bermuda, Cayman Islands, Africa and Hong Kong. In many cases, it is more correct to say they were domiciled in these countries but have since gone broke, leaving policyholders little option but to recover from the surplus line broker. The Division of Insurance urges every licensee to know his/her markets. Agents and brokers must ascertain the quality of markets utilized by a surplus lines broker when they farm out coverage to a surplus lines wholesaler.

The responsibility to determine the financial condition of an insurer cannot be delegated. The surplus lines broker carries a heavy responsibility when dealing with the unauthorized market and will be held responsible for his conduct.

RURAL HEALTH CARE

Bethel Family Health Services, Inc. (BFHS), a rural, private health care provider, recently entered into an agreement with the Indian Health Service (IHS). This agreement is unique and the first of its kind in the entire United States.

This agreement makes available acute in-patient care, emergency room services, laboratory services, and radiology services to the population of the Bethel area, who are not IHS beneficiaries. Bethel is a rural village not connected by any road or rail system to a major population center. In fact, Bethel is approximately 475 air-miles from Anchorage, the nearest population center.

In effect, BFHS can be viewed as a "retailer" of health care services that purchases some services from the "wholesaler," IHS - a "hospital within a hospital."

Any licensed physician or mid-level practitioner employed by BFHS that meets the credential requirements of IHS may be granted hospital privileges. In fact, this is what is anticipated in the agreement. BFHS medical staff will be treating their own patients but in the IHS facility.

IHS has established a fee schedule for those services contracted by BFHS. IHS intends to modify this fee schedule annually each October 1 to reflect changes in the actual costs incurred based upon the Medicare methodology. BFHS is financially responsible for all charges incurred on behalf of its own patients. BFHS will be billed directly by IHS and, in turn, will bill their patients. However, BFHS must pay IHS directly and must collect from their patients.

1983 INSURANCE COMPANY ANNUAL STATEMENTS AND PREMIUM TAX

The Alaska premium tax statements were mailed to all insurance companies doing business in Alaska during the week of November 14. The annual reports are due in Juneau on or before March 2, 1984. Premium tax payments must be received in the Division of Insurance before April 1. A postage mailing date stamp will not be accepted in lieu of actual receipt.

The 1983 INSURANCE REPORT is now available from the Division of Insurance for $10.00 per copy. Please send checks in advance with order. Make them payable to the Director of Insurance and/ or the Division of Insurance.

SHOW CAUSE ORDERS

83-10: World Underwriters/Richard Buestad

The division negotiated with Corroon Black/Dawson (50% owner of World Underwriters Northwest) a stipulated agreement signed by Richard Buestad (50% owner of World Underwriters Northwest) whereby World Underwriters Northwest agreed to pay a $50,000 fine, $25,000 suspended, and $2,500 to help defray investigative costs. In addition, World Underwriters Northwest agreed to withdraw their request for renewal of their nonresident surplus line broker license and not reapply for any license for two years. The basis for the penalties was the allegation that World Underwriters Northwest transacted business with admitted companies while not properly licensed, altered policies, issued fraudulent endorsements, charged premiums in excess of those reported to the companies and failed to maintain a proper trust account.

83-11: Corroon and Black/Dawson and Company, Inc., Withdrawn without prejudice.

83-12: Rollins Burdick Hunter of Washington entered into a stipulated agreement with the division whereby they agreed to several points, including that they would pay $2,500 to help defray investigative costs and forfeit to the division $7,500, a sum equivalent to the commissions received by Rollins Burdick Hunter of Washington on premium charges based on rates not filed with the division. The agreement was based on the division's contention that Rollins Burdick Hunter knew or should have known that certain policy dailies and endorsements received from an intermediary and given to the insured were not identical with those authorized by the company.

83-13: Alexander and Alexander. Hearing postponed indefinitely.

83-14: Baccala and Shoop entered into a stipulated agreement whereby they agreed to pay a $50,000 fine with $25,000 suspended, provided no violations occur between November 1, 1983 and December 31, 1984. All of Baccala and Shoop's licenses were suspended until December 31, 1984. Such suspension is stayed provided no violations occur between November 1, 1983 and December 31, 1984. The basis for the penalties was the allegation that Baccala and Shoop had acted as a general agent in Alaska without a license, transacted admitted business with improperly or unlicensed individuals and allowed an intermediary to alter policies and to charge premiums in excess of the premium reported to the company.

83-16: Alaska National Insurance Company. Fine levied for dealing with improperly licensed persons.

83-17. John Anderson. Hearing pending.

83-18: Rosemurgy and Company fined $5,000 for an unlicensed trainee adjuster adjusting claims. They are further prohibited from using trainee adjusters for a period of five years.

83-19: F. B. Beattie and Company, Inc. has entered into a stipulated agreement and agreed to pay a $4,000 penalty to the division for acting as a broker without a proper license and provide a list of all business conducted with admitted companies in the past two years. The division has agreed to issue F. B. Beattie and Company, Inc., a broker's license.

83-20: Frontier Underwriters, Inc., has entered into a stipulated agreement and agreed to pay a $4,500 penalty to the division for acting as a broker without a proper license. The division has agreed to issue Frontier Underwriters a broker's license.

CEASE AND DESIST ORDERS

83-12: Automobile Warranty Corporation was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-13: Everett Sports Cars was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-14: Gold Rush Auto Sales was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-15: Universal Dealer Services, Inc., was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-16: Stephen J. May International was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-17: Frontier Underwriters, Inc., was ordered to cease and desist from dealing with admitted insurance companies in the State of Alaska.

83-18: Swett and Crawford (Seattle) was ordered to cease and desist from dealing with admitted insurance companies in the State of Alaska.

83-19: F. B. Beattie and Company, Inc. was ordered to cease and desist from dealing with admitted insurance companies in the State of Alaska.

83-20: Don Sherwood was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-21: Loveless and Company, Inc., was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-22: Seligman and Seligman was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-23: Corroon and Black/Carter and Higgins was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-24: Cordell Excess and Surplus Lines was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-25: Professional Reinsurance Office, Inc., was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-26: Swett and Crawford (Dallas) was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-27: Stewart Smith Mid-America, Inc., was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-28: PENCO was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-29: The Nelson Company was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-30: GBS Insurance Agency was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-31: Alaska Commercial and Marine Insurance Brokerage, Inc./Martin Horn was ordered to cease and desist from acting as surplus lines brokers without a license. Martin Horn was ordered to cease and desist from acting as a broker on Alaska commercial license until qualifies to do so.

83-32: Miro and Associates was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-33: Bruce C. Davis was ordered to cease and desist from acting as a broker and dealing with admitted companies in the State of Alaska.

83-34: International Rental Insurance Services, Inc., was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

alaska all lines charter

division of insurance newsletter

VOL. 15, NO. 1 SPRING/SUMMER 1983

DIRECTOR'S COMMENTS

by Kenneth C. Moore

"Change" is a word you hear with increasing frequency. With each change new problems arise. As a regulator of the business of insurance my major concern is Solvency of Insurance Companies.

Insolvencies are occurring with increasing frequency. These events are happening to both life and property and casualty companies. The citizens of Alaska deserve nothing less than the very best. As a producer agent-broker you owe this high degree of responsibility to each member of the buying public. If you have any questions there are some simple steps that can be taken. A few of them are:

1. Check the "Best's" rating. If you do not have a current guide, call the division's office in Anchorage or Juneau.

2. Twice a year we publish a "White List" of companies which meet our unofficial guide for surplus lines companies. Please understand that our publishing of the list is no guarantee of solvency. It simply means that we have made some checks as to capital and surplus. We also follow various guides as to policy service, promptness of payments and a host of other informative information, including trust deposits. We do not deny that there is some subjectivity in the formation of this list. Without the freedom of that choice I would immediately eliminate its publication.

3. Sharing information between us is important. Many of you rub shoulders on the same street with persons who have information. Likewise, I will share with you if you will only ask.

Let's keep our market clean.

PROTECT OUR FISHING FLEET

by John George

Fishing is a major component of the economy of Alaska. Likewise, fishermen are extremely reliant upon insurance for protection of their property and defense of potential liability. Recent events have caused the fishing industry to have some misgivings concerning the integrity of the insurance industry.

The Division of Insurance has revoked licenses of those who may have been a part of this confusion. We found instances of subscription policies which failed to name the security. The division also found policies listing a company actually being written in a different company.

Investigation revealed at hearings that companies were being used whose financial background was suspect. Consequently, we have vessel owners who have hull losses, P and I claims and return premiums unpaid.

It is the duty of the broker and surplus lines broker to determine the substance of the security. No licensee is privileged to pass the blame on to some other wholesale source.

Due to situations described above, many lenders have adopted the director's "White List" as the standard for acceptance of surplus lines companies on mortgaged vessels. Cut rate prices set by the use of unreliable security have become the standard by which all legitimate quotes are compared. Unpaid claims reflect on all insurance companies.

Fishermen contacted by the division have indicated that they do not understand marine insurance and are very dissatisfied with the handling of all marine claims. In order to gain the confidence of fishermen the insurance industry will need to fully explain the options, differences between admitted and surplus companies and the procedures for collecting a loss from insurers.

NONADMITTED CARRIERS
by Dorothy Devinney

A broker selling insurance coverage in nonadmitted carriers should be aware of the consequences to his client and himself should the company not pay a claim due to poor claims practices or insolvency.

Every nonadmitted policy in Alaska is required to have the following wording on it:

> "This contract is registered as a surplus line coverage under the insurance law of Alaska."

In addition to the wording required under AS 21.33-.120, Bulletin 81-4 (Amendment) requires the following wording affixed to the face of the policy:

> "THIS POLICY OF INSURANCE IS NOT COVERED BY THE ALASKA INSURANCE GUARANTY ASSOCIATION ACT."

This lettering must be in red and at least 3/16" high.

The meaning of the above wording should be explained to every insured.

Explanations

It means that the benefits of the State insolvency law do not apply. It means that the insurance director does not have a control over the company, nor can be of any service in claims or have any control over the company's assets.

It also could mean that the broker providing the policy could be held liable for an insolvency, even if the risk is reinsured in a solvent admitted or nonadmitted company.

The benefits of the reinsurance do not flow to the insured, but rather to the receiver of the insolvent ceding company for the benefit of "all" insureds, unless there is a cut-through endorsement.

Every broker should take extra precautions when dealing with a nonadmitted insurer and when covering property outside the State or in dealing with a foreign insurer.

MARKET SURVEILLANCE
by Norm Cheney

Recently, the division has become aware of many illegal activities taking place in the marketplace. These activities range from companies paying commission to unlicensed brokers all the way up to fraud. Many of the activities appear to be the result of intense competition for business in the commercial arena. While the division welcomes and encourages healthy competition in all areas of the insurance market, we would urge all members of the industry to confine their competitive efforts within the legal and moral framework upon which an industry based on trust must rely.

All admitted companies are urged to review their procedures to verify that all agents, brokers and general agents they do business with are properly licensed and that the rates being charged are filed with and approved by this division. Those utilizing schedule rating plans should review Bulletin 82-9 to make sure they are in compliance. When conducting field audits have the auditor look beyond the numbers; quite often irregularities can be picked up through the correspondence in the file. This tactic was instrumental recently in aiding the division in the identification of apparently illegal overcharges totalling almost $78,000.

While the vast majority of agents and brokers licensed in Alaska conduct their business in an ethical manner, there are few that do not choose to follow the rules. These are not the type of representatives the insurance industry needs in Alaska. The division encourages your cooperating in helping to ferret out those undesirable elements for the betterment of the industry as a whole.

Thirteen Alaskan insureds have received refunds and credits totalling $77,995 as a result of an investigation conducted by the Division of Insurance. The cash refunds were $61,443 plus $3,210 interest, in addition one insured received a $13,342 credit on an existing policy. The refunds ranged from a low of $103 to a high of $22,953. The division's three-

month investigation uncovered evidence that the 13 insureds had been overcharged for insurance through the use of allegedly altered policy dailies and forged endorsements. In most cases, it appeared that the producing brokers were unaware of any illegal premium manipulation. The insurance companies whose policies were altered are Twin City Fire, American [illegible]tennial and Old Republic. They, while innocent of any direct involvement in the scheme, agreed to pay to the insureds through their general agent Baccala and Shoop Insurance Services the overcharges plus interest from the date of the overcharge and will be reimbursing the division for investigative expenses. Their cooperation in this matter has been appreciated.

The investigation is continuing and the division expects to issue at least four show cause orders on this matter in July.

BULLETIN 83-5

TO: ALL AGENCIES AND COMPANIES

RE: QUALIFYING TESTS AND EXAMINATION PROCEDURES FOR PRODUCERS

Due to previous problems encountered in the past, new guidelines have been established to permit more efficient and equitable testing procedures, ultimately benefiting all applicants for licensure. These procedures are primarily applicable to the Anchorage and Fairbanks testing facilities.

1. All test fees are payable in advance and must be received in the Juneau office by the Thursday prior to the test.

   A. Test dates in Anchorage are the first and third Thursdays of each month at 7:00 p.m.

   B. There is only one test date per month in Fairbanks, that is the first Thursday of the month at 1:00 p.m.

In Anchorage, all fees are collectible in advance (AS 21.06.250(a)). NO checks will be accepted in the Anchorage office.

2. All applicants are requested to be at the test site no later than 6:45 p.m. to facilitate processing of the admittance cards so the examination may promptly begin at 7:00 p.m. (The test time is 7:00 p.m. to 10:00 p.m.)

3. If your admittance card is lost, not received by the day prior to the test date, or if there are errors on your admittance card, notify Juneau no later than noon, Juneau time, of the test day (10:00 a.m. Anchorage time). Juneau can authorize a new admittance card to be issued by the Anchorage office. You will be required to turn in the old admittance card when you pick up the corrected one. No corrected admittance cards will be accepted at the test site. Identification will be required, along with your admittance card before any applicant will be allowed to sit for an examination.

If an applicant cannot appear on the scheduled test date, they must notify the Juneau office (465-2578) 72 hours prior to the test date for rescheduling. For nonappearance without notification, the fee will be forfeited and another fee will need to be submitted before another examination date is scheduled.

4. When an applicant fails to pass an examination, there must be at least a 20-day study period before retesting. After the third time the applicant has failed to pass the examination, the applicant must wait at least 90 days from the date of the most recent failure before being eligible to retake that examination.

SHOW CAUSE ORDERS

82-8: All insurance licenses of Fred [illegible] Tucker and Fred A. Tucker and Company [illegible] evoked for numerous violations of the Insur[illegible]de pertaining to surplus lines placements o[illegible]ng and vessel insurance.

83-1: Any and all licenses held by John C. Karnos were permanently revoked and fines totalling $35,000 were levied for misappropriating funds for his personal use.

83-2: John C. Murphy entered into a consent agreement in lieu of SC 83-2 for misappropriating funds for his personal use and for acting as an agent without a license. A fine of $1,000 was levied and his adjuster's license was permanently revoked.

83-3: Integrity Insurance Company entered into a stipulated agreement with the director and reimbursed $1,000 in investigation expenses for paying commissions to an unlicensed person or firm.

83-4: Forrest Gene Short's agent's license was voluntarily surrendered until July 1, 1983 for irregularities pertaining to insurance applications.

83-5: Mead Reinsurance Corporation entered into a stipulated agreement with the director and reimbursed $1,000 in investigation expenses for paying commissions to an unlicensed person or firm.

83-6: Planet Insurance Company entered into a stipulated agreement with the director and reimbursed $1,000 in investigation expenses for paying commissions to an unlicensed person or firm.

83-7: Marsh and McLennon (Seattle) was fined $2,000 with $1,432 suspended for failing to file Surplus Line Affidavits from September 1982 - January 1983.

83-8: LaBow Haynes Company, Inc., entered into a stipulated agreement and paid fines of $9,425 for writing insurance without a proper license and dealing with matters outside the scope of their license.

83-9: Fred S. James' hearing for charging a fee in excess of filed insurance rates was postponed until August.

CEASE AND DESIST ORDERS

82-5: Leroy E. Kuehne was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-1: S. J. Petrakis Insurance Services, Inc., was ordered to cease and desist from transacting insurance in the State without a license and paid a $2,000 penalty pursuant to a stipulated agreement.

83-2: Alexander Howden Insurance Services, Inc., of Atlanta, was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-3: Baccala and Shoop Insurance Services of San Francisco, Los Angeles and Seattle were ordered to cease and desist from transacting insurance in the State of Alaska without a license. A fine of $2,000 was levied by stipulated agreement.

83-4: Patricia Fleischman, Inc., was fined $2,000 for dealing with an unlicensed producer in Alaska by the terms of a stipulated agreement.

83-5: Independent Contractors-Operators Association was ordered to cease and desist from conducting the business of insurance in Alaska without a license.

83-6: Patrick Hines was issued a Cease and Desist Order to stop the practice of insurance in Alaska with out a license. Mr. Hines was subsequently issued an agent's license.

83-7: Aviation Insurance Unlimited Agency, Inc., was ordered to cease and desist from conducting the business of insurance in Alaska without a license.

83-8: John Robbins and Lightwing Insurance Agency was ordered to cease and desist from conducting the business of insu ance in Alaska without a license.

83-9: Samuel W Hartman was ordered to cease and desist from conducting the business of insurance in the State of Alaska without a license.

83-10: Not issued.

83-11: World Underwriters Northwest, Inc., was ordered to cease and desist from acting as a broker as they are only licensed as a nonresident surplus line broker.

BULLETINS

82-9: Schedule or Individual Risk Modification Plans. This bulletin eliminates aggregate limitations on schedule or individual risk modification plans for property and casualty. Rate modifications are limited, however, to the extent that they must be justified and shall not be discriminatory.

83-1: Notifies all resident and nonresident surplus line brokers that International Indemnity Company of Texas has not been approved for our "White List."

alaska all lines charter

division of insurance newsletter

VOL. 14, NO. 1 FALL/WINTER 1982

DIRECTOR'S COMMENTS
by Kenneth C. Moore

TIME FOR REVIEW

In March 1979, I listed my specific philosophies and goals for the Division of Insurance.

My Philosophy remains the same.

Here are the goals restated. True evaluation must come from you, to see how we have measured up to the goals. I would appreciate your comments on how I view the results:

1. To bring the personnel of the Division of Insurance into closer contact with the public.

   Result - Through public hearings, seminars, and literature, we have exposed ourselves. Inquiries are increasing, which would indicate some success.

2. To personally visit as many cities and villages as the travel budget will permit.

   Result - We have tried. Alaska is a huge area. We will continue in this effort.

3. To publish an educational handbook on automobile insurance covering rate making factors and tips on securing automobile insurance.

   Result - This book as well as one on homeowners has been published, the demand has been heavy.

4. To hold hearings in as close proximity as possible to the principals of such hearings.

   Result - Completely accomplished for Alaskan residents.

5. To utilize the Division of Insurance financial and market surveillance personnel on any questions of solvency or market conduct where such action is justified and do so without delay.

   Result - In the admitted market our efforts need improvement. In the Surplus Lines Market our actions have brought better results.

6. To personally make contacts in the insurance world that hopefully result in the insurance companies competing for business.

   Result - There is now intense competition. The marketplace in many instances has corrected itself. Our sales effort in Workmen's Compensation and Nonstandard Automobile Insurance has been a notable success.

7. To encourage the insurance companies writing business in Alaska to invest portions of their assets in Alaska enterprises.

   Result - Success here has been beyond our fondest expectations. Investments have expanded at the rate of approximately one hundred million dollars per year. In this we had the wholehearted assistance of our staff and from our agents and brokers.

2. Employees of admitted insurers need not be licensed to solicit, bind or otherwise carry on the business of insurance for their employer.

Licensees must also limit their insurance dealings to those types of insurance for which they are licensed. The most frequently noted violations are agents acting as brokers and agents or brokers acting as surplus line brokers.

TO COMPANIES APPOINTING AGENTS:

Agent appointment Forms 08-230 not submitted in four copies, typewritten, and signed by an authorized person will no longer be accepted by the division. Deviation from this in the past has caused delays in issuing appointments and overall confusion. We will be better able to serve you under the new procedure.

ATTENTION RESIDENT BROKERS:

Broker licenses will be up for renewal December 31, 1982. The division will attempt to send a renewal Form 08-266 sometime before the first of December. If the form has not been received before the time indicated, notify our office in Juneau or Anchorage so a form can be sent or picked up. Submit forms and fees on time or a late filing may result in a penalty.

SHOW CAUSE ORDERS

81-14: Barry Callahan's agent license was revoked and fines totalling $850.00 were levied for submitting false applications for insurance.

81-11: Lawrence M. English's life agents license was revoked and fines totalling $4,000.00 were levied for soliciting surplus lines insurance without an appropriate license.

81-16: Neil Padgett, Harold Wurster, and John Kelczewski all had their life agents licenses permanently revoked and fines totalling $1,650.00 were levied for trade practice violations committed as agents of Combined Insurance Company of America. Combined entered into an agreement limiting the scope of their future operations in this State and agreed to reimburse the State for up to $20,000.00 in past and future investigation costs related to their agents.

82-2: Greg Parks entered into a settlement agreement for operating without a valid license for a period in excess of one year. A penalty of $2,000.00 was levied.

82-3: Bayly Martin and Fay, Clyde Clary, Lois Clary, Jack Katzenmeyer, and Mary Shields have each entered into an agreement in settlement of Show Cause 82-3.

BMF as owners agreed to closely monitor their Aiaska operations in the future and pay a $75,000.00 fine. BMF was dismissed from further actions without prejudice.

Clyde Clary's licenses were revoked and a fine of $75,000.00 was levied with $70,000.00 suspended provided that he commit no further violations of AS 21.

Lois Clary's surplus lines brokers license was revoked and fines of $50,000.00 were levied with $45,000.00 suspended provided that she commit no further violations of AS 21 during the next five years. She is also prohibited from dealing with premium finance matters for five years.

Jack Katzenmeyer agreed not to violate any part of AS 21.

Mary Shields was fined $10,000.00 with $9,000.00 suspended provided that she not violate AS 21 during the next five years. She is prohibited from exercising any signatory powers on behalf of any insurance agency in this State.

82-5: Lambert "Pete" Peterson hearing was continued pending the outcome of criminal proceedings against him. NOTE: Peterson was convicted on seven criminal counts. Sentencing has been set for January 14, 1983. Peterson has announced his intent to appeal.

82-7: Gail Brewer's insurance licenses were revoked for unfair trade practices relating to his failure to place coverage despite his assurances to the client that coverage was in effect at all times.

CEASE AND DESIST ORDERS

81-15 & 81-16: Robert and John Deck were ordered to cease and desist from soliciting insurance without a license.

82-2: Cease and Desist Order issued to Alaska Shield for acting as an insurer without a Certificate of Authority. On appeal a hearing has been set for March 1983 with the concurrence of all parties.

82-3: Property Management Service, Inc. was ordered to cease and desist from solicitation of insurance without a license.

82-4: Midwest Mutual Insurance Company was ordered to cease and desist solicitation of insurance in the State of Alaska without a Certificate of Authority.

BULLETINS

82-1: Notifies all resident and nonresident surplus lines brokers that surplus line affidavits must be filed within 30 days of the end of the month for which the report is made.

82-2: On February 2, 1982, the director issued an updated list of eligible unauthorized insurers who have met Alaska's minimum trust or capital and surplus requirements.

82-3: The director continued permission to place aircraft workers compensation in the surplus lines market. This bulletin also sets out certain conditions on the placement of this coverage.

82-4: Rescinded

82-5: Advised all insurers of possible delays caused by renovation of the Juneau office. Renovation was completed October 14.

82-6: On August 10, 1982, the director issued an updated list of eligible unauthorized insurers who have met Alaska's minimum trust of capital and surplus requirements.

82-7: Removed Oceanus Mutual Underwriting Association from the "White list" of approved unauthorized insurers on October 7, 1982.

82-8: Notified all surplus lines brokers to cease using Amherst Insurance Company. The company is in receivership.

REGULATORY ORDERS

81-6: Adopted medicare supplement regulations.

81-7: Authorizes political subdivisions as a qualifying group for life and disability coverages.

81-8: Requires insurers to adopt supplement payment coverage pertaining to attorney fees.

81-9: Pertains to filings by title insurers.

81-10: Adopted regulations pertaining to variable life insurance.

81-11: Approved merger of INA Corporation and Connecticut General Corporation.

81-12: Approved the application of Alaska National Insurance Company to invest in a wholly owned subsidiary in order to acquire ownership in their home office building.

82-1: Repeals regulations pertaining to deposits required by insurers holding a Certificate of Insurance.

In this newsletter we have omitted the changes in company names and companies newly admitted to conduct business in the State. Copies of these lists are available upon request. Please enclose a stamped self-addressed envelope with your request.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 3-29-84

REQUEST
Bill/Resolution No.: CSHB 505(L&C)
Title: Insurance

Sponsor: Labor and Commerce
Requestor: Labor and Commerce
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce and Economic Dev.
Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected:
Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENEPAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Kenneth C. Moore, Director
Phone: 465-2515
Division: Insurance
Date: 3/29/84

Approved by Commissioner: Richard A. Lyon
Date: 3/29/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 505
Title: Insurance

Sponsor: Martin
Requestor: Labor & Commerce
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Economic Dev.
Program Category Affected: Public Prot

BRU, Program or Subprogram(s) Affected:
Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Kenneth C. Moore, Director Phone: 465-2515
Division: Insurance Date:

Approved by Commissioner: Richard A. Lyon Date: 1/20/84
Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HB

508

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada

Composed of journeymen and apprentices who have jurisdiction over every branch of the plumbing and pipe fitting industry

LOCAL NO. 262

STREET ADDRESS 245 Marine Way #7

CITY, STATE, ZIP Juneau, Alaska 99801

SUBJECT MATTER

DATE

January 31, 1984

Mr. Chairman, Committee Members,

My name is Dwight Perkins and I am the Business Manager for the United Association of Plumbers & Pipefitters Local Union 262 in Juneau, Alaska. I am also speaking on behalf of the Alaska state Pipe Trades Council of the United Association with a membership of two thousand state wide.

I've come to speak in oppostition of House Bill 508, an act realating to the Plumbing code. I would like to give you some background of the code and address some concerns that we have.

In October 1981 at it's 52nd. Annual Conference, the International Association of Plumbing and Mechanical Officials adopted the Uniform Plumbing Code, 1982 edition. Up until 1982 all such codes had limited the use of polybutylene, Polethylene, Polyvinal Chloride and Asbestos Cement Pipe for water distribution systems outside of a building, under section 1004 materials.

In addition section 401-materials limited the use of ABS and PVC Piping installation for drainage and venting systems to residential construction, not more than two stories in height.

The 1982 addition of the Uniform Plumbing code has lifted restrictions regarding the use of PB water pipe under section 1004 so that now it may be used for hot and cold water distribution systems within a building.

In Section 401, ABS and PVC Piping installations can be used where all combustible construction is allowed.

Because of the less stringent attitudes the International Association of Plumbing and Mechanical Officials has adopted raises several issues of concern not only here in Alaska but nationwide.

The issues I would like to address regarding the use of plastic pipe, whether PB., PVC, asbestos cement pressure piping or ABS presents the following problems:

1. Durability

2. Thaw ability in Arctic regions as well as other parts of the state.

3. Fire Hazards (both combustibility and gases released upon combustion)

4. Use of water system as the electricial "ground"

5. Permeability and related public health issues

6. Worker safety

1. Durability In discussing the issue of Durability the most obvious difference between plastic and metal pipe is durability. Some of Alaska is earthquake prone and hence durability can be quite important. In construction of large residential buildings and commercial buildings, the increased usage makes durability important. This issue has the advantage of being self evident. Cast iron, mallable iron or copper piping and its qualities are apparent to all and a comparision with the qualities of plastic, particularly in temperature extremes such as those in the interior, needs no further amplificiation.

2. Thaw Ability The issue of thaw ability in arctic regions as well as other parts of the state is cause for concern in that sometimes pipes freeze. The common methods of thawing pipes are (a) the use of propane torches, (b) the use of steam, and (c) the use of clamp on electricial generators. Noe of these can be used on plastic pipe. In any installation where the freezing of a pipe represents a danger to either a considerable investment or a large number of people, the ability to thaw is

important.

3. Fire Hazards The 1979 edition of the Uniform Plumbing code states that ABS or PVC installation be limited to residential construction, not more than two stories in height. The 1982 UPC states that ABS and PVC piping iinstallation shall be limited to the structures where combustable construction is allowed. It also states that PB pipe may be used for hot and cold water distribution system within a building. The problems in this area are twofold. First, plastic pipe will burn. In burning, the plastice makes itself useless as a pipe and hense terminates the water which is often necessary to fight a fire. Additionally the burning of the pipe generates gases.

4. Grounding Most modern construction involves electricity. Electricity presents the problem of short circuits. Almost all communications that use electricity require additional grounding. Traditionally, this grounding is done through the water system in a building. In a plastic pipes water system, there is no readily available ground. If the water has sufficient mineral content and if the grounds are inserted through the pipe, adequate grounding may occur. Otherwise the defense against electricial accidents and fires is worthless in plastic piped building.

5. Permeability Recent tests in California have duplicated field and laboratory experiences of water utility

districts and enviromental health experts concur that ploy vinyl chloride (PVC), Polyethylene (PE) and Polybutylene (PB) water service lines can be and are permeated by gasoline, petroleum distillates and industrial solvents. The Public Health impact can be serious enough to require the removal of an entire underground network of plastic water service lines and may cause serious health consequences for its consumers. Since plastic pipe was found to have a potentially adverse effect on the environment and because of its threat to water quality, worker safety, and fire safety, state agencies in California will not allow its expended use until all scientific and public health questions have been answered.

Because the International Association of Plumbing and Mechanical Officials proceeded with the expanded use of plastic pipe in its 1982 Uniform Plumbing Code, a colition of state public and private consumer groups, environmental and labor organizations sued I.A.M.P.O. and forced a notice of disclaimer at each location in the code where plastic pipe is mentioned.

6. Worker Safety Assemblage in small construction quantities such as residential housing, do not normally bring workers beyond the dangerously toxic levels of exposure to the Benzene, Chloroform and kindred glue. On larger projects, the time spent on their assemblage puts workers beyond the safe limits of such exposure and in effect forces him to sniff glue. Because the damage from these chemicals is permanent and irreversible, the united association and its members strenously object to the

current state of the art process for assembling plastice pipe.

In closing, I would ask that you consider holding House Bill 508 in Committee and review the amdenments the muncipality of anchorage has adopted regarding the 1982 edition of Uniform Plumbing Code.

LEGISLATIVE PROPOSAL ANALYSIS

Subject of Proposed Bill:

"Adoption of 1982 Uniform Plumbing Code"

Background Information:

Every third year, the International Association of Plumbing and Mechanical Officials adopts a revised plumbing code incorporating advances and improvements in technology. During the Twelfth Legislature, the department did not propose legislation to adopt the 1982 version of the Uniform Plumbing Code because there were conflicts between the Uniform Plumbing Code and the Uniform Building Code. The Department of Public Safety (Fire Marshall's Office) will propose legislation to adopt the most recent edition of the Uniform Building Code which is consistent with the 1982 Uniform Plumbing Code.

Summary:

The most noticeable changes in the plumbing code are as follows:

Section 108 allows for a larger grease interception to serve one or more fixtures. Section 203(d) states that copper tubing used for water service shall have a weight of not less than Type L.

Table 4-3, footnote #4. Evidence indicates that a three-inch horizontal waste will effectively handle discharge from three water closets; thus the code change, so that only four water closets or six unit traps are allowed on any vertical stack, and not to exceed three water closets or six unit traps on any horizontal branch or drain.

Section 601 changes will not allow cold storage rooms, refrigerators, cooling counters, etc. designed to hold food or drink, or sinks for washing or preparation of food, to be directly connected to a waste or vent pipe. All drains shall discharge through an air gap into a open drain or approved receptor.

Section 1004 is one of the major changes, and allows Poly Butylene (PB) water pipes to be used for hot and cold water distribution tubing systems, using inserts for connectors. It also inserts language to assure that when metal pipe is used as a building ground, it will be replaced by metal pipe when repairs are made to these pipes.

Also adopted were insulation standards for cold water service and yard piping. These standards were for Poly Vinyl Chloride (PVC), asbestos cement pressure piping and Poly Butylene (PB).

Those groups most affected by this change will be plumbers, contractors, local governments and state agencies issuing building permits.

Estimated Fiscal Impact: (FY '83 - FY '87)

To the state: -0-

To others: -0-

V CEQA SUMMARY

This chapter covers various information not presented earlier but required by the California Environmental Quality Act (CEQA) for Environmental Impact Reports. As this document is a preliminary environmental review, this section has not been fully developed. When the draft and final versions of the EIR are proposed, it is likely to expand and some of the findings will undoubtedly change or at least be stated more confidently.

A. Significant Unavoidable Environmental Impacts

For this preliminary environmental review of a very subtle and complex proposal, SRI chose to describe our current overall conclusions about the proposed plumbing code changes and our reasons for them, without making definitive findings of significance except where they were clearcut.

First, we discovered nothing to suggest that the issues discussed earlier as the prime ones are insignificant or that other issues are dominant. The only new issue of potential significance that surfaced was the permeation of buried plastic pipe by contaminants in soil and the resulting possible public health impacts. Although the possibility that such effects could occur from permeation of water supply lines from the meter to the house is plausible, any potential problem would also occur--probably in much greater proportion--from the public water distribution system. This problem should be re-examined when better understood and if found significant should influence state policies with respect to plastic use in both public and residential systems. With

adequate education of building inspectors on the permeation issue, improper installation of plastic water service in contaminated soils should be rare.

As to public health impacts from chemicals leaching from water pipe into potable water, we find that significant impacts are possible but unproven, both for plastic pipes--especially the chlorinated varieties--and for metal ones, specifically copper systems. If the upper ranges of possible concentrations of leachates are regularly reached, the cumulative risks to public health may be high enough to be of concern by typical standards of acceptable risk, for example, a lifetime cancer risk of one in a million. The chemicals of concern are lead from the solder in copper pipes, possibly leading to neurologic disorders, and carbon tetrachloride, perchloroethylene, and trichloroethylene from plastic (especially PVC and CPVC) pipes, possibly resulting in cancer.

Two major considerations limit the significance of the findings. First, the status of information about long-term levels of leachates is exceedingly flimsy. Reasonable further testing could resolve at least part of the uncertainty (see Section VI). Second, the risk assessment procedure is moderately conservative. If risks still appear to be of concern after concentrations are better known, more attention would need to be devoted to assuring that the assessment procedure took into account detailed properties of the chemical. Finally, thorough initial flushing would effectively mitigate the effects of the rapidly leaching materials, especially the solvents used with plastic pipe. Overall, current information does not establish an environmental preference between copper and plastic pipe, with neither clearly likely to cause a great number of deaths or serious illnesses.

For worker safety and health, a similar situation exists. Both lead from solder fumes in installing copper pipe and solvents from installing ABS, PVC, and CPVC pipe could be hazardous if plumbers have high exposures by inhalation; dermal absorption could also be significant in the case of solvents. The diseases of concern for solder fumes are related to the lead exposure and are neurologic. The solvents may also cause nerve damage, and

they may be involved in liver damage or reproductive problems as well. However, they are not implicated in cancer unless benzene is more common than thought. Unless the NIOSH report about to be released resolves the range of exposures satisfactorily, further testing would be useful before completing the EIR. Safety issues generally favor plastic over metal, which appears to lead to more burns (hot solder and especially flux) and strains and contusions (from heavier metal pipes). PB (like PE, although its uses are not proposed for change) poses little if any worker safety and health concern. Use of gloves, other protective equipment, ventilation, and simple care will significantly reduce any potential hazards from either plastic or metal pipe, but these practices have not achieved widespread acceptance among plumbers.

Fire safety is a very real concern with plastic DWV pipe; ABS is combustible, and PVC and CPVC will at least soften and slump in lines. If these plastics are installed as direct substitutes for metal, as they already are in non-fire-rated residences, they will degrade the fire resistance of structures. The gaskets in no-hub cast iron will also fail in fires and cause the pipe to fall, leaving fire passages. But the proposed code changes apply to fire-rated, fire-resistive construction that could retain its fire rating if appropriate installation procedures are developed and enforced. In such conditions, no degradation of fire resistance would occur. This issue thus turns on enforcement, not science. The potable water pipes, kept cooler by the water inside and of much lower mass, are not a significant fire safety issue.

As with fire safety, smoke toxicity is an issue in which plastic can only be less environmentally acceptable than metal. However, whether the difference is significant is less certain. Both ABS, which seems likely to contribute the majority of pipe mass in California, and the polyolefins PB and PE produce combustion products that are not highly toxic; few if any additional fatalities or serious injuries would be likely from their combustion. PVC and CPVC both produce significant quantities of hydrogen chloride vapor in fire environments, and this corrosive material could, under certain circumstances, make a difference in the probability of human

survival in lines. The frequency of such occurrences is clouded by lack of a generally accepted test for smoke toxicity. This problem is currently being addressed both by the State of California Department of Industrial Relations and by the State of New York. We believe OHCD should pay close attention to results from those studies, but does not need to delay a decision solely on those grounds.

No other significant adverse impacts are likely to result from the expanded use of plastic plumbing pipe if relatively simple mitigation measures are taken. Plastic drain pipes may be slightly noisier than cast iron pipe. See the following section (V-B) for further elaboration.

Overall, the SRI study team sees little evidence that expanded use of plastic plumbing pipe would cause significantly greater environmental problems than the materials it would replace. Unfortunately, lack of evidence is not the same as lack of hazard. We believe it is especially important to gather more information on leaching of chemicals from both plastic and metal pipe systems into potable water and on the exposures of plumbers to material from plastic (ABS, PVC, CPVC) and metal (copper) plumbing systems.

Table V-1 summarizes our present assessment of our relative environmental concern about pipe systems. There we show our relative degrees of concern for different materials for each of the major areas of impacts. A high rating does not necessarily mean an impact that is significant in the sense of CEQA, but does mean that the material rated seems to us more likely to be environmentally harmful than other materials on that dimension. For example, the chlorinated plastics clearly are of highest concern for smoke toxicity, but may not pose any significantly higher impacts in the proposed new DWV uses (fire-resistive construction).

Table V-1

RELATIVE DEGREE OF CONCERN REGARDING
POTENTIAL ENVIRONMENTAL IMPACTS*

Impact Area	Potable Water				Drain, Waste, and Vent			
	Plastic		Metal		Plastic		Metal	
	PB/PE	PVC/CPVC	Copper	Galv. Steel	ABS	PVC/CPVC	Copper/ Gal. Steel	Ca Ir
Public Health	3	4	3	3	0	0	0	
Worker Safety	1	2	4	2	2	2	3+	
Worker Health	0	3	4	2	4	4	3+	
Fire Safety	3	2	0	0	5	4	0	
Smoke Toxicity	1	3	0	0	3	5	0	
Other Impacts	0	0	0	0	1	1	0	

*Key: 0 - No concern
1 - Considerably less concern than average
2 - Less concern than average
3 - About average concern
4 - More concern than average
5 - Considerably more concern than average

Note: High relative concern does not necessarily imply high absolute concern; significance of ratings depends on mitigation measures taken.

+More for copper, less for galvanized.

B. Insignificant Effects

The following environmental effects of expanded uses for plastic plumbing pipe may occur but are probably insignificant by any reasonable interpretation of CEQA:

- Plastic pipe systems may fail slightly more frequently than metal systems until a body of experience with installation errors has accumulated.
- Plastic pipe will consume slightly more petroleum than metal pipe, but slightly less energy overall.
- Plastic pipe will contribute a slightly different load of pollutants to public waste water treatment systems, but the direction of impact, let alone its magnitude, is uncertain.
- Plastic DWV pipe will be slightly noisier than metal systems if installed so as to contact wall surfaces; this may be more significant than otherwise in the multifamily, fire-rated construction that is affected in the DWV code changes.
- Plastic DWV pipe could be damaged by pipe cleaning equipment, but because of its resistance to corrosion, the frequency of such cleaning should be low.
- Plastic pipe will slightly decrease the life-cycle cost of plumbing and therefore of housing, but not enough to change demand patterns or growth.
- Small shifts in employment from metal pipe manufacturing to plastic pipe manufacturing will occur.
- A small reduction in the work of plumbers will occur, mostly as a result of repair and renovation work by do-it-yourselfers.

C. Effects of Alternative Actions

In addition to the proposed project, e.g., the proposed change to the 1982 Uniform Plumbing Code (UPC) allowing certain new uses of plastic plumbing pipe as described in the Project Description, this environmental review has examined the potential effects of alternatives to the proposed project on the quality of the natural and human environment. The eventual EIR will consider alternatives as well as the project itself to provide a

baseline for evaluating the significance of the impacts and to provide possible alternative courses of action should the proposed project create significant adverse impacts that cannot be successfully mitigated. With this goal in mind, the alternatives we have selected for analysis are no changes to the state code, partial approval of plastic pipe use, and complete rejection of all plastic pipe (that is, reversal of earlier provisions allowing certain uses of plastic pipe).

Under the no-action alternative, there would be no changes in the state code regarding the use of plastic plumbing pipe. All currently approved uses for plastic pipe would continue to be permitted and no new uses of plastic pipe would be allowed. None of the impacts attributable to the use of plastic pipe in expanded applications would be observed; any public health and worker safety and health effects of currently allowed plastic and metal piping systems would persist.

The partial approval alternative would amend the state code to permit certain new uses of plastic pipe, but not all of the new uses proposed under the project. Counting cold and hot water supply in a given application as one new use, the proposed project would change the code to permit 11 new uses of plastic pipe (i.e., 1 new use for ABS pipe, 3 for PB pipe, 1 for PVC pipe, and 6 for CPVC pipe). Considering all the possible combinations of these uses, over 2,000 partial approval alternatives are possible.

Our analyses of the environmental consequences of the proposed project have guided our selection of the subset of the partial approval alternatives to be considered in the EIR. That is, we define the partial approval alternative(s) to permit those new uses of plastic plumbing pipe that are least likely to have significant adverse effects on the quality of the natural and human environment. At present, the only partial alternative that seems reasonably certain to meet this requirement is to allow PB for hot and cold water supply both outside buildings and inside buildings that are not fire-rated or within the fire-resistive construction of fire-rated buildings. No other new uses of plastic pipe would be allowed. Parenthetically, there seems little reason to prohibit PB in exposed

locations of fire-rated buildings as long as the penetrations of fire-resistant construction are designed to maintain the rating of that construction. The state of information on the impacts of this alternative is generally the same as on those of the metal water pipe currently allowed for these two uses. Although PB will certainly burn and metal will not, the additional risk of fire spread appears minimal, as does that of smoke toxicity. Leachates from PB have not been shown to be risk-free, but neither have those from copper or galvanized steel. Of the two plastic alternatives, PB is somewhat less likely to be a public health hazard than CPVC, although the relative ratings of PB, CPVC, copper, and galvanized steel will not be clear without further testing (see Section VI). PB is clearly a preferred material, from the worker safety and health viewpoint, compared both with metal systems and with plastics that require cementing.

Under the option of disallowing currently allowed uses of plastic pipe, any impacts of these materials would disappear and those of metal systems reappear. The possibility of permeation of water supply piping by organic contaminants would decrease to the extent that PVC and PE supply lines would be replaced by metal with impermeable joints (but even metal pipe joints can be permeable). Leachates from PVC and PB would be replaced by those from copper, with no clear impact, positive or negative, on public health. The metal pipes would be somewhat more likely to corrode in soil than plastic (galvanized steel is not recommended for buried supply lines). Only small changes in worker safety and health would result from the changes in water supply piping.

Any major impacts of disallowing current uses of plastic pipe would be associated with the widespread use of ABS (and less widespread use of PVC) in DWV applications. Fire load and fire spread would be reduced in nonfire-rated construction. It is probable that few fatalities or little property damage would be avoided by this action, but both are possible benefits. Smoke toxins would also decrease somewhat, especially if PVC were replaced. The decrease in plumbers' exposures to solvent cements would be offset by increased work-related injuries from working with cast iron and, to some extent, with soldered joints in copper DWV. Whether the net effect

on worker safety and health would be positive or negative is difficult to predict, given the current lack of information on plumbers' exposures.

Finally, the alternative that would disallow current uses of plastic would transfer some profits and jobs from the plastics to the metal pipe industries. Since large quantities of DWV are involved, these impacts would probably be greater than those for the prime project alternative of allowing expanded uses of plastic pipe. Houses could become more expensive, depending on the prices of cast iron and copper, but probably not enough to significantly affect the demand for housing.

In summary, the alternative of approving only the expanded uses of PB appears to pose fewer environmental risks than does the full proposed project given the state of current information. Because metal systems also pose some unique risks and may be comparable to plastic systems in other risk areas, we are not prepared to say that the no-project alternative or the alternative that would disallow current uses of plastic are environmentally preferable to the partial approval alternative, or even to the full proposed project.

D. Cumulative and Long-Term Implications

Increased use of plastic plumbing pipe can contribute to cumulative environmental impacts in two ways.

First, the sum of the environmental impacts of plastic pipe could be significant even when no one individual impact is deemed significant. In the case of plastic pipe, the most plausible example is for the various leachates that could each contribute to public health impacts. For example, no one leachate might reach the level of 10^{-6} lifetime risk for cancer, but the cumulative risk of all leachates acting together might exceed that level. Given the current uncertainties about the public health impacts, especially those concerning the long-term levels of leachates in drinking water, we are unable to determine whether the cumulative impact is

significant. A similar situation is found with worker health impacts, where the risk of one solvent might be insignificant, but that of two or more could be significant. For fire safety, the cumulative impact of all the proposed new uses for plastic pipe are likely to be dominated by the new DWV uses; the contribution of PW pipe is likely to be negligible. The same is true of smoke toxicity, except that the combined affect of HCl, CO, and other toxicants could be significant even when the effects of any one alone were not.

A second issue of cumulative impact is the question of whether the expanded use of plastic water pipe would add to the impacts of other similar actions and in total create a significant effect even though the use of plastic water pipe is not itself significant. We can consider two levels of cumulative impacts:

- Cumulative impact of expanded and existing use of plastic plumbing pipe.
- Contribution of plastic plumbing pipe to total use of plastic products.

As has been made clear earlier, the expanded uses of plastic pipe are in many ways rather small in comparison to existing approved use of plastic pipe. Most new California houses are already being plumbed with ABS DWV if they are not fire-rated; the addition of 10% (by weight) more plastic pipe as PB or (less likely) CPVC water pipe will be of little consequence for fire safety, especially as water piping is less sensitive. The increase for plastic pipe in fire-rated construction, of course, is total since no plastic is being used now; however, if ways of maintaining the rating are developed as required by code, little fire safety impact would be expected. Similarly, the cementing of plastic potable water pipe is probably much less of a problem for workers than the cementing of already approved ABS DWV. Thus, the greatest issue of cumulative impact involves public health impacts, in which plastic in residences can add to plastic in public utility distribution systems. We have no way of estimating the relative contribution of each to the total hazard, as the source of contaminants

found in the water supply (control) during leaching tests is not known. We doubt that the combined effects of distribution and residential piping would be significant if neither one alone were, but we cannot rule out that possibility. Similarly, permeation of plastic distribution pipes by toxic substances is more likely than it is for residential piping systems, but the significance of either, in terms of an overall risk assessment, will not be clear for a long time.

With regard to plastics in total, the expanded uses of plastic pipe will be a relatively small contribution in most respects. Plastics are by now endemic in our society. Most of the contaminants of PVC and CPVC that could be public health hazards will be ingested in much greater quantities from other PVC products such as food containers or, in the case of some of the chlorinated methanes, simply from waste products reaching the raw water supply. Those from PB and PE are similar to those from PE food contact materials. If plasticizers do contaminate plastic pipe, they will still do so at much lower levels than they do in any number of plasticized products to which people are regularly exposed, such as flexible vinyl upholstery (where they would yield inhalation rather than ingestion exposures). But equally clearly, plastic pipe does contribute to the total load of plastic-related hazards in California--for example, to the total of all combustible plastics in residences. The hazards from the total use of plastics are undoubtedly appreciable, even though nearly impossible to estimate. Whether or not they are greater or less than the hazards of the materials they replace is perhaps even more difficult to state. About all that can be said is that plastic pipe is not an unusually prominent or special case among plastics in general.

CEQA also requires an assessment of whether long-term environmental costs will be incurred as a result of short-term economic or other benefits. Certainly, any public health impacts of plastic pipe that do occur will probably be delayed for decades, as will some of the worker health or smoke toxicity impacts. However, for the purpose of determining the environmental consequences of the expanded uses of plastic pipe, those

should be counted as current impacts, and not discounted in comparison with current benefits. We believe that, when it is viewed from this perspective, this CEQA issue is irrelevant to the decision at hand.

E. Significant Irreversible Changes

CEQA also requires an assessment of environmental changes or consumption of resources that would be permanent and irreversible. For example, the mining of a mountain is an essentially irreversible impact, whereas most air pollutants and their impacts would disappear once the source of pollution is removed.

In the case of the expanded use of plastic plumbing pipe, there would be a small permanent commitment of petroleum resources (but not other energy sources) to the manufacture of the pipe constituents. Total energy resources would be conserved to a slight degree. If any deaths occurred as a result of diseases caused by leachates or occupational exposures, or from fire or smoke toxicity, they would also be irreversible. If plastic pipe were later disapproved, the occurrence of new fatalities would gradually disappear. Some of the leachates from plastic pipe are mutagens and some mutations can be heritable. Thus, it is possible that a heritable--and more likely than not adverse--mutation could persist in the population as a result of drinking from plastic water pipes. Neither the specifics of the leachates in water from plastic pipe nor the overall state of the art of genetic risk assessment allows an evaluation of this possibility at present. If the impacts of plastic pipe eventually were judged unacceptable, it is possible that the metal pipe industry would have declined by that time to the point at which it would prove difficult to revive, but that possibility is also extremely speculative. Overall, we believe that the reversibility of the impacts is not as important an issue to resolve as the magnitude and significance of current impacts.

F. Growth-Inducing Impacts

California's population is projected to increase from the 1980 total of 23.8 million people to 25.9 million by 1985 and to 27.9 million by 1990 (California Department of Finance, 1981). The proposed code change is not likely to significantly affect this forecast population growth for the following reasons. First, the reduction in the cost of housing construction that would result from use of the newly permitted plastics in place of currently approved plumbing materials is so small that it would have virtually no effect on the sales price or rent of dwelling units in the state. Therefore, there will be no change in the demand for housing and consequently no additional in-migration of residents who would be attracted by a drop in the price of housing. Second, the plumbing material substitutions that are likely to result from the proposed code change would not significantly affect employment opportunities in the state and so would not affect the in-migration and out-migration forecasts. Nor would either housing prices or employment opportunities significantly affect shifts in population from one part of California to another.

Bill No. House Bill 508

Date January 26, 1984

Title "An Act relating to the Plumbing Code."

Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

Every three years, the International Association of Plumbing and Mechanical Officials revises its minimum standards for the installation of plumbing to incorporate technological advances. The 1982 code described in this bill is the most recent effort in this regard. The 1979 code presently in effect for the State of Alaska is therefore outdated and will not be reprinted by the International Association of Plumbing and Mechanical Officials.

Adoption of the 1982 Uniform Plumbing Code would bring Alaska's minimum standards into conformity with those commonly accepted and used by industry across the nation. The latest edition of the Uniform Plumbing Code is also commonly adopted by political subdivisions in the state as the minimum standards enforced under their building inspection programs.

Since the time the 1982 code was adopted by the International Association of Plumbing and Mechanical Officials, a number of water quality, worker safety and fire safety questions have been posed nationally concerning 1982 code provisions which permit the use of plastic pipe (section 401 of chapter 4 dealing with drainage systems and section 1004 of chapter 10 dealing with water distribution). This concern also exists in Alaska, and no doubt will be brought out in the hearings on House Bill No. 508. Although the Department supports adoption of the 1982 code at this time, should it be determined in the course of the hearings that there are compelling reasons to prohibit the use of plastic pipe, we would not have any strong objection to the specific questioned sections being excluded from the State's minimum plumbing standards.

House Bill No. 508 would not have any fiscal impact on the Department of Labor.

APPROVED:

Jan Robinson

POSITION PAPER/Department of Labor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 508
Title: "An Act relating to the plumbing code"
Sponsor: Rep. Cowdery/Rep. Liska
Requestor: House Labor/Commerce
Date of Request: January 18, 1984

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards & Safety Date:

Approved by Commissioner: Jim Robison Date: 1/26/84
Agency: Labor

LEG:A:31
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada

Consisting of journeymen and apprentices who have jurisdiction over every branch of the plumbing and pipe fitting industry

LOCAL NO. 375 STREET ADDRESS 3568 Geraghty Street

CITY, STATE, ZIP Fairbanks, Alaska 99701

SUBJECT MATTER Proposed Substitute for HB 508 DATE January 26, 1984

The Honorable Niilo Koponen
House of Representatives
State Capitol
Pouch V
Juneau, Alaska 99811 (Mail Stop 3100)

Dwight Perkins
245 Marine Way #7
Juneau, Alaska 99801

Dear Niilo and Dwight:

I am enclosing the proposed substitute for HB 508 which has been drafted in legislative form by Art Robson, our house counsel. I am sending a copy of this letter to our legislative friends so that they will know what is occurring.

After Senator Vic Fischer advised us of the pendency of this bill, Art got together with Dwight Perkins to see what had been done elsewhere. They extracted the modifications which were made by the Municipality of Anchorage and those are the modifications made in the proposed substitute bill. This may not be exactly the way we would have done it, but with Anchorage already having thoroughly debated the matter and adopted the new Uniform Plumbing Code in this form, we feel the interests of uniformity require that we all go together so that the State adopts it in the same form. Adoption in this form will take care of all our concerns and fears.

I understand there is a possibility that Rick Eliason will introduce this form in the senate so that it can proceed in both houses simultaneously.

We back this substitute one hundred percent and we hope that our legislative friends will do likewise. I hope to be in Juneau personally later on in the session to get together with everyone on

this, the natural gas pipeline proposals, and other matters that effect the work life of our members.

My thanks for all your help.

Sincerely yours,

J. L. ARSENAULT, Business Manager
Financial Secretary - Treasurer
U.A. Local 375

CLM

Enclosure

c.c. The Honorable Don Bennett
The Honorable Richard Eliason
The Honorable Bettye Fahrenkamp
The Honorable Vic Fischer
The Honorable Joe Josephson
The Honorable Jay Kerttula
The Honorable H. Pappy Moss
The Honorable Pat Rodey
The Honorable Bob Bettisworth
The Honorable Don Clocksin
The Honorable Mike Davis
The Honorable Jim Duncan
The Honorable Walt Furnace
The Honorable Ronald L. Larson
The Honorable Hugh Malone
The Honorable Mike M. Miller
The Honorable Mike W. Miller
The Honorable John Ringstad
The Honorable Richard Shultz
The Honorable Mike Szymanski

IN THE HOUSE BY COWDERY AND LISKA

SUBSTITUTE FOR

HOUSE BILL NO. 508

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the plumbing code."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 18.60.705 is amended to read:

Sec 18.60.705. PLUMBING CODE. The Department of Labor shall adopt, as the official minimum plumbing code for the state, the Uniform Plumbing Code, 1982 [1979] edition, adopted at the 52nd [49TH] Annual Conference, October 1981 [SEPTEMBER, 1978], International Association of Plumbing and Mechanical Officials, chs. 1 - 13 and appendices, useful tables, and installation standards, but excluding Part I, Administration, pages 1a - 6a, all of Subsection (e) and its exception, as well as the second and third sentences of Part (a) of Section 1004, Chapter 10, Page 75, and subject to AS 18.60.710 - 18.60.740. The following amendments to said code shall be adopted:

- In Chapter 4, Page 37, Section 401(a) and (b), shall be amended by deletion of the words "extra strength vitrified clay pipe" and "vitrified clay".

- In Chapter 4, Page 37, Section 401(a), subparagraphs number (1),(2) and (3), shall be deleted and will be replaced by the following words:

"1. No galvanized wrought iron or galvanized steel pipe or ABS or PBC shall be used under ground, but all such pipe shall be kept at least six inches above ground.

2. ABS or PBC installations shall be limited to residential construction not over 25 feet in stack height. ABS and PBC shall be no less than Schedule 40 iron pipe size standard steel pipe thickness. ABS or PBC shall not penetrate any one hour wall unless it is sleeved with a minimum of 20 gauge metal for a distance of six inches beyond the wall or changed to Schedule 40 galvanized DWV copper or cast iron pipe to a metal trap connection."

- In Chapter 5, Page 45, Section 503(a), subsection number (2), shall be deleted and replaced with the following words:

"2. ABS or PBC installations shall be limited to residential construction not over 25 feet in stack height. ABS and PBC shall be no less than Schedule 40 iron pipe size standard steel pipe thickness. ABS or PBC shall not penetrate and one hour wall unless it is sleeved with a minimum of 20 gauge metal for a distance of six inches

beyond the wall or changed to Schedule 40 galvanized DWV copper or cast iron pipe to a metal trap connection."

* Sec. 2. AS 18.60.740(1) is amended to read:

(1) "code" means the Uniform Plumbing Code, 1982 [1979] edition, adopted at the 52nd [49TH] Annual Conference, October 1981 [SEPTEMBER 1978], International Association of Plumbing and Mechanical Officials as modified by AS 18.60.705;

JANUARY 31, 1984

TO: JOHN

FROM: KEN

RE: HB 508, PLUMBING CODE

WHAT THE BILL DOES

HOUSE BILL 508 WOULD REPLACE THE STATES CURRENT UNIFORM PLUMBING CODE, the 1979 EDITION, WITH THE NEWER 1982 EDITION.

COMMENTS

AS YOU KNOW, THIS BILL IS QUITE CONTROVERSIAL WITHIN THE INDUSTRY. THE PLUMBERS UNIONS OPPOSE ITS IMPLEMENTATION WHILE NUMEROUS OTHER GROUPS INVOLVED WITH PLUMBING FAVOR THE NEW CODE. YOU CAN EXPECT SOME PRETTY HEATED DEBATE OVER THE HEALTH AND SAFETY ISSUES IN VOLVED WITH THE NEW CODE.

IN THE 1979 EDITION, PLASTIC PIPE WAS VERY RESTRICTED AS TO HOW IT COULD BE USED. IN THE 1982 CODE THE USE OF PLASTIC PIPE HAS BEEN EXPANDED TO INCLUDE VENTILATION SYSTEMS, HOT AND COLD WATER DISTRIBUTION, AND IN DRAINAGE.

I HAVE ATTACHED AN ADDITIONAL PAGE WITH QUESTIONS FOR SEVERAL DIFFERENT WITNESSES.

QUESTIONS ON 508

FOR PLUMBERS UNION.

1. IS IT TRUE PLASTIC PIPE SUCH AS POLYBUTALYENE IS MORE LABOR EFFICIENT AND ACTUALLY TAKES LESS TIME TO INSTALL ?
2. ISN'T TRUE THERE ARE CONSIDERABLE HAZARDS FROM TECHNICS USED TO INSTALL PIPES OTHER THAN THOSE MADE FROM PLASTIC ?

FOR SHELL OIL CO.

1. WHAT KIND OF TESTS HAVE YOU CONDUCTED THAT PROVE TO YOU PLASTIC PIPE IS SAFE TO USE AS PRESCRIBED BY THE 1982 UNIFORM PLUMBING CODE ?
2. DO HAVE ANY RESERVATIONS ABOUT THESE SHELL PRODUCTS ? ARE THEY AS SAFE, IN YOUR PROFESSIONAL OPINION, AS PIPE MADE FROM OTHER MATERIAL SUCH AS COPPER OR CAST IRON ?

FOR TOM HIGHAM

1. WHY DID THE INTERNATIONAL ASSOCIATION OF PLUMBERS AND MECHANICAL OFFICIALS DECIDE TO INCLUDE THE USE OF PLASTIC PIPE IN THE 1982 UNIFORM PLUMBERS CODE ?
2. IS THERE CONSIDERABLE DIFFERENCE IN SAFETY IN USING PLASTIC PIPE AND THE MORE CONVENTIONAL PIPES, IN YOUR OPINION ?
3. MR HIGHAM, IN YOUR OPINION, IS THIS AS MUCH A POLITICAL ISSUE AS IT IS WORKERS SAFETY ISSUE ? WHY IS THAT ?

ORIGINAL FILED

JAN 24 1984

COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARIE SHIBUYA-SNELL, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS, FRIENDS OF THE EARTH, CONSUMER FEDERATION OF CALIFORNIA, STATE BUILDING AND CONSTRUCTION TRADES COUNCIL OF CALIFORNIA, AND AILEEN ADAMS, Plaintiffs, vs. INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS, a California corporation, and DOES I through XX, Defendants.	CASE NO. C 395 294 JUDGMENT EXTENDING AND MODIFYING INJUNCTION

The above-captioned matter was duly and regularly called for trial on December 12, 1983, in Department 32 of the Superior Court, the Honorable Jack A. Crickard, Judge Presiding. Roger Dickinson, Esq., appeared on behalf of plaintiff Marie Shibuya-Snell, Director of the California Department of Consumer Affairs ("Director"); Michael H. Remy, Esq., and Tina A. Thomas, Esq., appeared on behalf of plaintiff California State Building and Construction Trades Council, AFL-CIO ("Union Council"); and Geoffrey Cowan, Esq.,

entered an appearance on December 12, 1983, behalf of plaintiffs Consumer Federation of California, Friends of the Earth and Aileen Adams.

John F. McKenna, Jr., Esq , appeared on behalf of defendant International Association of Plumbing and Mechanical Officials ("IAPMO").

The matter was heard on December 12, 13, 14, 15, 16, 20 and 21, 1983. Evidence, both oral and written, was submitted by all parties, and the matter was duly submitted.

IT IS NOW ORDERED, ADJUDGED AND DECREED:

1. Upon the authority of Code of Civil Procedure Section 526 Subdivision (1), the existing preliminary injunction, granted upon the application of plaintiff Director's predecessor in office, is partially modified and continued in force as the permanent order of this Court.

2. Pursuant thereto, Defendant IAPMO, its agents, officers, employees, and representatives, and all persons acting in concert or participating with IAPMO are hereby permanently enjoined from disseminating, directly or indirectly, to any individual or organization in California, the 1982 Edition of the Uniform Plumbing Code ("UPC") or the IAPMO Directory of Plumbing Research Recommendations ("Research Directory"), without including a warning notice. The warning notice required to be included shall appear in no less than 10-point bold type and shall state as follows:

> NOTICE: An Environmental Impact Report is now being prepared in California to determine whether the use of CPVC, PVC, or PB plastic pipe for transing potable water poses a danger to public health or the environment. At the time of this printing of the 1982 Edition of the Uniform Plumbing Code,

and this update of IAPMO's Directory of Plumbing Research Recommendations, the State of California does not permit any expansion of the use of such pipe, in applications permitted by the Uniform Plumbing Code, beyond those applications permitted in the 1979 Edition of the Uniform Plumbing Code.

For information on California restrictions, contact the State Housing Law Section of the California Housing and Community Development Department.

Immediately below the notice, in the same size or smaller type, the following statement may appear, at the option of IAPMO:

(This notice is inserted herein pursuant to a court Order in the case of CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS v. INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS, Los Angeles Superior Court No. C-395294.)

The notice shall not contain, include, or be accompanied by any other information or materials.

3. The notice shall be affixed

(a) To the inside cover of each copy of the UPC affected by this Order, and

(b) Upon the reverse side of the division page entitled "Water Systems and Related Items" (No. 5) of each copy the Research Directory,

(c) By suitable adhesive material along the notice's top and bottom borders, in a manner calculated to ensure that the accidental removal of the notice does not occur.

4. The foregoing orders shall take effect 30 days after entry of this Judgment, and the foregoing orders shall automatically terminate, both as to the UPC and the Research Directory, upon the date the 1982 Edition of the UPC is superceded by the publication of the 1985 Edition of the UPC.

5. All relief sought by plaintiffs, other than the relief granted to plaintiff Director by the foregoing orders, is denied.

6. Each party shall bear their own court costs.

DATED: JAN 24 1984.

JACK A. CRICKARD

JACK A. CRICKARD
JUDGE OF THE SUPERIOR COURT

Shell Chemical Company
A Division of Shell Oil Company

P.O. Box 7637
Stockton, CA 95207

February 2, 1984

The Honorable John Cowdery
House of Representatives
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Representative Cowdery:

I'd like to thank you for your prompt and efficient handling of HB 508. I also extend my appreciation to the entire committee for the courtesies extended during my appearance before the House Committee on Labor and Industries.

There is one matter that I believe deserves further comment. On February 1, 1984, during Committee discussion on the bill, Representative Koponen commented on two different occasions that "representative from Shell supports the amendments submitted by the United Association (Union)." Please be advised that Shell did not nor does not support these amendments.

First of all, I speak on behalf of polybutylene. The U.A. amendments delete all reference to polybutylene in the Code. Given the substantial performance and economic benefits of polybutylene, this amendment is clearly not in the best interest of the people of Alaska. When you combine the performance benefits -

Corrosion resistance
Resistance to scale
Freeze resistance

with the savings realized in the installation of polybutylene, you can understand why polybutylene has been widely accepted by the Code approval agencies and the contractor and developers across the United States.

The remainder of the U.A. amendements are also not supported by Shell. Simply stated these amendments would be a step back in time. The deletion of materials already approved by the U.P.C. or the restriction of their use would inflict an economic penalty on the builder and consumer. This penalty would be inflicted with no basis in fact.

Please feel free to contact me if I can clearify any of the above.

Very truly yours,

M. J. O'Brien
Regional Sales Manager
Polybutylene Department

MJO/ja

1984 JAN 31 PM 2 19

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 508
Title: "An Act relating to the plumbing code"
Sponsor: Rep. Cowdery/Rep. Liska
Requestor: House Labor/Commerce
Date of Request: January 18, 1984

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Nacolas, Sr. Phone: 465-4870
Division: Labor Standards & Safety Date:

Approved by Commissioner: Jim Robison Date: 1/26/84
Agency: Labor

LEG:A:31
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

LEGISLATIVE PROPOSAL ANALYSIS

Subject of Proposed Bill:

"Adoption of 1982 Uniform Plumbing Code"

Background Information:

Every third year, the International Association of Plumbing and Mechanical Officials adopts a revised plumbing code incorporating advances and improvements in technology. During the Twelfth Legislature, the department did not propose legislation to adopt the 1982 version of the Uniform Plumbing Code because there were conflicts between the Uniform Plumbing Code and the Uniform Building Code. The Department of Public Safety (Fire Marshall's Office) will propose legislation to adopt the most recent edition of the Uniform Building Code which is consistent with the 1982 Uniform Plumbing Code.

Summary:

The most noticeable changes in the plumbing code are as follows:

Section 108 allows for a larger grease interception to serve one or more fixtures. Section 203(d) states that copper tubing used for water service shall have a weight of not less than Type L.

Table 4-3, footnote #4. Evidence indicates that a three-inch horizontal waste will effectively handle discharge from three water closets; thus the code change, so that only four water closets or six unit traps are allowed on any vertical stack, and not to exceed three water closets or six unit traps on any horizontal branch or drain.

Section 601 changes will not allow cold storage rooms, refrigerators, cooling counters, etc. designed to hold food or drink, or sinks for washing or preparation of food, to be directly connected to a waste or vent pipe. All drains shall discharge through an air gap into a open drain or approved receptor.

Section 1004 is one of the major changes, and allows Poly Butylene (PB) water pipes to be used for hot and cold water distribution tubing systems, using inserts for connectors. It also inserts language to assure that when metal pipe is used as a building ground, it will be replaced by metal pipe when repairs are made to these pipes.

Also adopted were insulation standards for cold water service and yard piping. These standards were for Poly Vinyl Chloride (PVC), asbestos cement pressure piping and Poly Butylene (PB).

Those groups most affected by this change will be plumbers, contractors, local governments and state agencies issuing building permits.

Estimated Fiscal Impact: (FY '83 - FY '87)

To the state: -0-

To others: -0-

V CEQA SUMMARY

This chapter covers various information not presented earlier but required by the California Environmental Quality Act (CEQA) for Environmental Impact Reports. As this document is a preliminary environmental review, this section has not been fully developed. When the draft and final versions of the EIR are proposed, it is likely to expand and some of the findings will undoubtedly change or at least be stated more confidently.

A. Significant Unavoidable Environmental Impacts

For this preliminary environmental review of a very subtle and complex proposal, SRI chose to describe our current overall conclusions about the proposed plumbing code changes and our reasons for them, without making definitive findings of significance except where they were clearcut.

First, we discovered nothing to suggest that the issues discussed earlier as the prime ones are insignificant or that other issues are dominant. The only new issue of potential significance that surfaced was the permeation of buried plastic pipe by contaminants in soil and the resulting possible public health impacts. Although the possibility that such effects could occur from permeation of water supply lines from the meter to the house is plausible, any potential problem would also occur--probably in much greater proportion--from the public water distribution system. This problem should be re-examined when better understood and if found significant should influence state policies with respect to plastic use in both public and residential systems. With

adequate education of building inspectors on the permeation issue, improper installation of plastic water service in contaminated soils should be rare.

As to public health impacts from chemicals leaching from water pipe into potable water, we find that significant impacts are possible but unproven, both for plastic pipes--especially the chlorinated varieties--and for metal ones, specifically copper systems. If the upper ranges of possible concentrations of leachates are regularly reached, the cumulative risks to public health may be high enough to be of concern by typical standards of acceptable risk, for example, a lifetime cancer risk of one in a million. The chemicals of concern are lead from the solder in copper pipes, possibly leading to neurologic disorders, and carbon tetrachloride, perchloroethylene, and trichloroethylene from plastic (especially PVC and CPVC) pipes, possibly resulting in cancer.

Two major considerations limit the significance of the findings. First, the status of information about long-term levels of leachates is exceedingly flimsy. Reasonable further testing could resolve at least part of the uncertainty (see Section VI). Second, the risk assessment procedure is moderately conservative. If risks still appear to be of concern after concentrations are better known, more attention would need to be devoted to assuring that the assessment procedure took into account detailed properties of the chemical. Finally, thorough initial flushing would effectively mitigate the effects of the rapidly leaching materials, especially the solvents used with plastic pipe. Overall, current information does not establish an environmental preference between copper and plastic pipe, with neither clearly likely to cause a great number of deaths or serious illnesses.

For worker safety and health, a similar situation exists. Both lead from solder fumes in installing copper pipe and solvents from installing ABS, PVC, and CPVC pipe could be hazardous if plumbers have high exposures by inhalation; dermal absorption could also be significant in the case of solvents. The diseases of concern for solder fumes are related to the lead exposure and are neurologic. The solvents may also cause nerve damage, and

they may be involved in liver damage or reproductive problems as well. However, they are not implicated in cancer unless benzene is more common than thought. Unless the NIOSH report about to be released resolves the range of exposures satisfactorily, further testing would be useful before completing the EIR. Safety issues generally favor plastic over metal, which appears to lead to more burns (hot solder and especially flux) and strains and contusions (from heavier metal pipes). PB (like PE, although its uses are not proposed for change) poses little if any worker safety and health concern. Use of gloves, other protective equipment, ventilation, and simple care will significantly reduce any potential hazards from either plastic or metal pipe, but these practices have not achieved widespread acceptance among plumbers.

Fire safety is a very real concern with plastic DWV pipe; ABS is combustible, and PVC and CPVC will at least soften and slump in lines. If these plastics are installed as direct substitutes for metal, as they already are in non-fire-rated residences, they will degrade the fire resistance of structures. The gaskets in no-hub cast iron will also fail in fires and cause the pipe to fall, leaving fire passages. But the proposed code changes apply to fire-rated, fire-resistive construction that could retain its fire rating if appropriate installation procedures are developed and enforced. In such conditions, no degradation of fire resistance would occur. This issue thus turns on enforcement, not science. The potable water pipes, kept cooler by the water inside and of much lower mass, are not a significant fire safety issue.

As with fire safety, smoke toxicity is an issue in which plastic can only be less environmentally acceptable than metal. However, whether the difference is significant is less certain. Both ABS, which seems likely to contribute the majority of pipe mass in California, and the polyolefins PB and PE produce combustion products that are not highly toxic; few if any additional fatalities or serious injuries would be likely from their combustion. PVC and CPVC both produce significant quantities of hydrogen chloride vapor in fire environments, and this corrosive material could, under certain circumstances, make a difference in the probability of human

survival in lines. The frequency of such occurrences is clouded by lack of a generally accepted test for smoke toxicity. This problem is currently being addressed both by the State of California Department of Industrial Relations and by the State of New York. We believe DHCD should pay close attention to results from those studies, but does not need to delay a decision solely on those grounds.

No other significant adverse impacts are likely to result from the expanded use of plastic plumbing pipe if relatively simple mitigation measures are taken. Plastic drain pipes may be slightly noisier than cast iron pipe. See the following section (V-B) for further elaboration.

Overall, the SRI study team sees little evidence that expanded use of plastic plumbing pipe would cause significantly greater environmental problems than the materials it would replace. Unfortunately, lack of evidence is not the same as lack of hazard. We believe it is especially important to gather more information on leaching of chemicals from both plastic and metal pipe systems into potable water and on the exposures of plumbers to material from plastic (ABS, PVC, CPVC) and metal (copper) plumbing systems.

Table V-1 summarizes our present assessment of our relative environmental concern about pipe systems. There we show our relative degrees of concern for different materials for each of the major areas of impacts. A high rating does not necessarily mean an impact that is significant in the sense of CEQA, but does mean that the material rated seems to us more likely to be environmentally harmful than other materials on that dimension. For example, the chlorinated plastics clearly are of highest concern for smoke toxicity, but may not pose any significantly higher impacts in the proposed new DWV uses (fire-resistive construction).

Table V-1

RELATIVE DEGREE OF CONCERN REGARDING
POTENTIAL ENVIRONMENTAL IMPACTS*

Impact Area	Potable Water				Drain, Waste, and Vent			
	Plastic		Metal		Plastic		Metal	
	PB/PE	PVC/CPVC	Copper	Galv. Steel	ABS	PVC/CPVC	Copper/ Gal. Steel	Ca Ir
Public Health	3	4	3	3	0	0	0	
Worker Safety	1	2	4	2	2	2	3+	
Worker Health	0	3	4	2	4	4	3+	
Fire Safety	3	2	0	0	5	4	0	
Smoke Toxicity	1	3	0	0	3	5	0	
Other Impacts	0	0	0	0	1	1	0	

*Key: 0 - No concern
1 - Considerably less concern than average
2 - Less concern than average
3 - About average concern
4 - More concern than average
5 - Considerably more concern than average

Note: High relative concern does not necessarily imply high absolute concern; significance of ratings depends on mitigation measures taken.

+More for copper, less for galvanized.

B. Insignificant Effects

The following environmental effects of expanded uses for plastic plumbing pipe may occur but are probably insignificant by any reasonable interpretation of CEQA:

- Plastic pipe systems may fail slightly more frequently than metal systems until a body of experience with installation errors has accumulated.
- Plastic pipe will consume slightly more petroleum than metal pipe, but slightly less energy overall.
- Plastic pipe will contribute a slightly different load of pollutants to public waste water treatment systems, but the direction of impact, let alone its magnitude, is uncertain.
- Plastic DWV pipe will be slightly noisier than metal systems if installed so as to contact wall surfaces; this may be more significant than otherwise in the multifamily, fire-rated construction that is affected in the DWV code changes.
- Plastic DWV pipe could be damaged by pipe cleaning equipment, but because of its resistance to corrosion, the frequency of such cleaning should be low.
- Plastic pipe will slightly decrease the life-cycle cost of plumbing and therefore of housing, but not enough to change demand patterns or growth.
- Small shifts in employment from metal pipe manufacturing to plastic pipe manufacturing will occur.
- A small reduction in the work of plumbers will occur, mostly as a result of repair and renovation work by do-it-yourselfers.

C. Effects of Alternative Actions

In addition to the proposed project, e.g., the proposed change to the 1982 Uniform Plumbing Code (UPC) allowing certain new uses of plastic plumbing pipe as described in the Project Description, this environmental review has examined the potential effects of alternatives to the proposed project on the quality of the natural and human environment. The eventual EIR will consider alternatives as well as the project itself to provide a

baseline for evaluating the significance of the impacts and to provide possible alternative courses of action should the proposed project create significant adverse impacts that cannot be successfully mitigated. With this goal in mind, the alternatives we have selected for analysis are no changes to the state code, partial approval of plastic pipe use, and complete rejection of all plastic pipe (that is, reversal of earlier provisions allowing certain uses of plastic pipe).

Under the no-action alternative, there would be no changes in the state code regarding the use of plastic plumbing pipe. All currently approved uses for plastic pipe would continue to be permitted and no new uses of plastic pipe would be allowed. None of the impacts attributable to the use of plastic pipe in expanded applications would be observed; any public health and worker safety and health effects of currently allowed plastic and metal piping systems would persist.

The partial approval alternative would amend the state code to permit certain new uses of plastic pipe, but not all of the new uses proposed under the project. Counting cold and hot water supply in a given application as one new use, the proposed project would change the code to permit 11 new uses of plastic pipe (i.e., 1 new use for ABS pipe, 3 for PB pipe, 1 for PVC pipe, and 6 for CPVC pipe). Considering all the possible combinations of these uses, over 2,000 partial approval alternatives are possible.

Our analyses of the environmental consequences of the proposed project have guided our selection of the subset of the partial approval alternatives to be considered in the EIR. That is, we define the partial approval alternative(s) to permit those new uses of plastic plumbing pipe that are least likely to have significant adverse effects on the quality of the natural and human environment. At present, the only partial alternative that seems reasonably certain to meet this requirement is to allow PB for hot and cold water supply both outside buildings and inside buildings that are not fire-rated or within the fire-resistive construction of fire-rated buildings. No other new uses of plastic pipe would be allowed. Parenthetically, there seems little reason to prohibit PB in exposed

locations of fire-rated buildings as long as the penetrations of fire-resistant construction are designed to maintain the rating of that construction. The state of information on the impacts of this alternative is generally the same as on those of the metal water pipe currently allowed for these two uses. Although PB will certainly burn and metal will not, the additional risk of fire spread appears minimal, as does that of smoke toxicity. Leachates from PB have not been shown to be risk-free, but neither have those from copper or galvanized steel. Of the two plastic alternatives, PB is somewhat less likely to be a public health hazard than CPVC, although the relative ratings of PB, CPVC, copper, and galvanized steel will not be clear without further testing (see Section VI). PB is clearly a preferred material, from the worker safety and health viewpoint, compared both with metal systems and with plastics that require cementing.

Under the option of disallowing currently allowed uses of plastic pipe, any impacts of these materials would disappear and those of metal systems reappear. The possibility of permeation of water supply piping by organic contaminants would decrease to the extent that PVC and PE supply lines would be replaced by metal with impermeable joints (but even metal pipe joints can be permeable). Leachates from PVC and PB would be replaced by those from copper, with no clear impact, positive or negative, on public health. The metal pipes would be somewhat more likely to corrode in soil than plastic (galvanized steel is not recommended for buried supply lines). Only small changes in worker safety and health would result from the changes in water supply piping.

Any major impacts of disallowing current uses of plastic pipe would be associated with the widespread use of ABS (and less widespread use of PVC) in DWV applications. Fire load and fire spread would be reduced in nonfire-rated construction. It is probable that few fatalities or little property damage would be avoided by this action, but both are possible benefits. Smoke toxins would also decrease somewhat, especially if PVC were replaced. The decrease in plumbers' exposures to solvent cements would be offset by increased work-related injuries from working with cast iron and, to some extent, with soldered joints in copper DWV. Whether the net effect

on worker safety and health would be positive or negative is difficult to predict, given the current lack of information on plumbers' exposures.

Finally, the alternative that would disallow current uses of plastic would transfer some profits and jobs from the plastics to the metal pipe industries. Since large quantities of DWV are involved, these impacts would probably be greater than those for the prime project alternative of allowing expanded uses of plastic pipe. Houses could become more expensive, depending on the prices of cast iron and copper, but probably not enough to significantly affect the demand for housing.

In summary, the alternative of approving only the expanded uses of PB appears to pose fewer environmental risks than does the full proposed project given the state of current information. Because metal systems also pose some unique risks and may be comparable to plastic systems in other risk areas, we are not prepared to say that the no-project alternative or the alternative that would disallow current uses of plastic are environmentally preferable to the partial approval alternative, or even to the full proposed project.

D. Cumulative and Long-Term Implications

Increased use of plastic plumbing pipe can contribute to cumulative environmental impacts in two ways.

First, the sum of the environmental impacts of plastic pipe could be significant even when no one individual impact is deemed significant. In the case of plastic pipe, the most plausible example is for the various leachates that could each contribute to public health impacts. For example, no one leachate might reach the level of 10^{-6} lifetime risk for cancer, but the cumulative risk of all leachates acting together might exceed that level. Given the current uncertainties about the public health impacts, especially those concerning the long-term levels of leachates in drinking water, we are unable to determine whether the cumulative impact is

significant. A similar situation is found with worker health impacts, where the risk of one solvent might be insignificant, but that of two or more could be significant. For fire safety, the cumulative impact of all the proposed new uses for plastic pipe are likely to be dominated by the new DWV uses; the contribution of PW pipe is likely to be negligible. The same is true of smoke toxicity, except that the combined affect of HCl, CO, and other toxicants could be significant even when the effects of any one alone were not.

A second issue of cumulative impact is the question of whether the expanded use of plastic water pipe would add to the impacts of other similar actions and in total create a significant effect even though the use of plastic water pipe is not itself significant. We can consider two levels of cumulative impacts:

- Cumulative impact of expanded and existing use of plastic plumbing pipe.
- Contribution of plastic plumbing pipe to total use of plastic products.

As has been made clear earlier, the expanded uses of plastic pipe are in many ways rather small in comparison to existing approved use of plastic pipe. Most new California houses are already being plumbed with ABS DWV if they are not fire-rated; the addition of 10% (by weight) more plastic pipe as PB or (less likely) CPVC water pipe will be of little consequence for fire safety, especially as water piping is less sensitive. The increase for plastic pipe in fire-rated construction, of course, is total since no plastic is being used now; however, if ways of maintaining the rating are developed as required by code, little fire safety impact would be expected. Similarly, the cementing of plastic potable water pipe is probably much less of a problem for workers than the cementing of already approved ABS DWV. Thus, the greatest issue of cumulative impact involves public health impacts, in which plastic in residences can add to plastic in public utility distribution systems. We have no way of estimating the relative contribution of each to the total hazard, as the source of contaminants

found in the water supply (controls during leaching tests is not known. We doubt that the combined effects of distribution and residential piping would be significant if neither one alone were, but we cannot rule out that possibility. Similarly, permeation of plastic distribution pipes by toxic substances is more likely than it is for residential piping systems, but the significance of either, in terms of an overall risk assessment, will not be clear for a long time.

With regard to plastics in total, the expanded uses of plastic pipe will be a relatively small contribution in most respects. Plastics are by now endemic in our society. Most of the contaminants of PVC and CPVC that could be public health hazards will be ingested in much greater quantities from other PVC products such as food containers or, in the case of some of the chlorinated methanes, simply from waste products reaching the raw water supply. Those from PB and PE are similar to those from PE food contact materials. If plasticizers do contaminate plastic pipe, they will still do so at much lower levels than they do in any number of plasticized products to which people are regularly exposed, such as flexible vinyl upholstery (where they would yield inhalation rather than ingestion exposures). But equally clearly, plastic pipe does contribute to the total load of plastic-related hazards in California--for example, to the total of all combustible plastics in residences. The hazards from the total use of plastics are undoubtedly appreciable, even though nearly impossible to estimate. Whether or not they are greater or less than the hazards of the materials they replace is perhaps even more difficult to state. About all that can be said is that plastic pipe is not an unusually prominent or special case among plastics in general.

CEQA also requires an assessment of whether long-term environmental costs will be incurred as a result of short-term economic or other benefits. Certainly, any public health impacts of plastic pipe that do occur will probably be delayed for decades, as will some of the worker health or smoke toxicity impacts. However, for the purpose of determining the environmental consequences of the expanded uses of plastic pipe, those

should be counted as current impacts, and not discounted in comparison with current benefits. We believe that, when it is viewed from this perspective, this CEQA issue is irrelevant to the decision at hand.

E. Significant Irreversible Changes

CEQA also requires an assessment of environmental changes or consumption of resources that would be permanent and irreversible. For example, the mining of a mountain is an essentially irreversible impact, whereas most air pollutants and their impacts would disappear once the source of pollution is removed.

In the case of the expanded use of plastic plumbing pipe, there would be a small permanent commitment of petroleum resources (but not other energy sources) to the manufacture of the pipe constituents. Total energy resources would be conserved to a slight degree. If any deaths occurred as a result of diseases caused by leachates or occupational exposures, or from fire or smoke toxicity, they would also be irreversible. If plastic pipe were later disapproved, the occurrence of new fatalities would gradually disappear. Some of the leachates from plastic pipe are mutagens and some mutations can be heritable. Thus, it is possible that a heritable--and more likely than not adverse--mutation could persist in the population as a result of drinking from plastic water pipes. Neither the specifics of the leachates in water from plastic pipe nor the overall state of the art of genetic risk assessment allows an evaluation of this possibility at present. If the impacts of plastic pipe eventually were judged unacceptable, it is possible that the metal pipe industry would have declined by that time to the point at which it would prove difficult to revive, but that possibility is also extremely speculative. Overall, we believe that the reversibility of the impacts is not as important an issue to resolve as the magnitude and significance of current impacts.

F. Growth-Inducing Impacts

California's population is projected to increase from the 1980 total of 23.8 million people to 25.9 million by 1985 and to 27.9 million by 1990 (California Department of Finance, 1981). The proposed code change is not likely to significantly affect this forecast population growth for the following reasons. First, the reduction in the cost of housing construction that would result from use of the newly permitted plastics in place of currently approved plumbing materials is so small that it would have virtually no effect on the sales price or rent of dwelling units in the state. Therefore, there will be no change in the demand for housing and consequently no additional in-migration of residents who would be attracted by a drop in the price of housing. Second, the plumbing material substitutions that are likely to result from the proposed code change would not significantly affect employment opportunities in the state and so would not affect the in-migration and out-migration forecasts. Nor would either housing prices or employment opportunities significantly affect shifts in population from one part of California to another.

Bill No. House Bill 508

Date January 26, 1984

Title "An Act relating to the Plumbing Code."

Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

Every three years, the International Association of Plumbing and Mechanical Officials revises its minimum standards for the installation of plumbing to incorporate technological advances. The 1982 code described in this bill is the most recent effort in this regard. The 1979 code presently in effect for the State of Alaska is therefore outdated and will not be reprinted by the International Association of Plumbing and Mechanical Officials.

Adoption of the 1982 Uniform Plumbing Code would bring Alaska's minimum standards into conformity with those commonly accepted and used by industry across the nation. The latest edition of the Uniform Plumbing Code is also commonly adopted by political subdivisions in the state as the minimum standards enforced under their building inspection programs.

Since the time the 1982 code was adopted by the International Association of Plumbing and Mechanical Officials, a number of water quality, worker safety and fire safety questions have been posed nationally concerning 1982 code provisions which permit the use of plastic pipe (section 401 of chapter 4 dealing with drainage systems and section 1004 of chapter 10 dealing with water distribution). This concern also exists in Alaska, and no doubt will be brought out in the hearings on House Bill No. 508. Although the Department supports adoption of the 1982 code at this time, should it be determined in the course of the hearings that there are compelling reasons to prohibit the use of plastic pipe, we would not have any strong objection to the specific questioned sections being excluded from the State's minimum plumbing standards.

House Bill No. 508 would not have any fiscal impact on the Department of Labor.

APPROVED:

Jan Robinson

POSITION PAPER/Department of Labor

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada

Organized of journeymen and apprentices who have jurisdiction over every branch of the plumbing and pipe fitting industry

LOCAL NO. 375 STREET ADDRESS 3568 Geraghty Street

CITY, STATE, ZIP Fairbanks, Alaska 99701

SUBJECT MATTER Proposed Substitute for HB 508 DATE January 26, 1984

The Honorable Niilo Koponen
House of Representatives
State Capitol
Pouch V
Juneau, Alaska 99811 (Mail Stop 3100)

Dwight Perkins
245 Marine Way #7
Juneau, Alaska 99801

Dear Niilo and Dwight:

I am enclosing the proposed substitute for HB 508 which has been drafted in legislative form by Art Robson, our house counsel. I am sending a copy of this letter to our legislative friends so that they will know what is occurring.

After Senator Vic Fischer advised us of the pendency of this bill, Art got together with Dwight Perkins to see what had been done elsewhere. They extracted the modifications which were made by the municipality of Anchorage and those are the modifications made in the proposed substitute bill. This may not be exactly the way we would have done it, but with Anchorage already having thoroughly debated the matter and adopted the new Uniform Plumbing Code in this form, we feel the interests of uniformity require that we all go together so that the State adopts it in the same form. Adoption in this form will take care of all our concerns and fears.

I understand there is a possibility that Rick Eliason will introduce this form in the senate so that it can proceed in both houses simultaneously.

We back this substitute one hundred percent and we hope that our legislative friends will do likewise. I hope to be in Juneau personally later on in the session to get together with everyone on

this, the natural gas pipeline proposals, and other matters that effect the work life of our members.

My thanks for all your help.

Sincerely yours,

J. L. ARSENAULT, Business Manager
Financial Secretary - Treasurer
U.A. Local 375

CLM

Enclosure

c.c. The Honorable Don Bennett
The Honorable Richard Eliason
The Honorable Bettye Fahrenkamp
The Honorable Vic Fischer
The Honorable Joe Josephson
The Honorable Jay Kerttula
The Honorable H. Pappy Moss
The Honorable Pat Rodey
The Honorable Bob Bettisworth
The Honorable Don Clocksin
The Honorable Mike Davis
The Honorable Jim Duncan
The Honorable Wa Furnace
The Honorable Ro ld L. Larson
The Honorable Hugh Malone
The Honorable Mike M. Miller
The Honorable Mike W. Miller
The Honorable John Ringstad
The Honorable Richard Shultz
The Honorable Mike Szymanski

WHAT THIS BRIEF IS

This brief is an exploration of the issues which underly the use of plastic pipe in construction, as well as the reasoning behind the State code which limits its use to certain type building projects.

ISSUES ADDRESSED

The use of plastic pipe, whether "P.B.", "P.V.C.", or asbestos cement pressure piping, presents the following problems:

1. Durability;
2. Thaw ability in Arctic regions;
3. Fire hazards (both combustibility and gases released upon combustion);
4. Use of the water system as the electrical "ground";
5. Permeability; and
6. Worker safety.

BACKGROUND

The International Association of Plumbing and Mechanical Officials is an organization composed of representatives of building inspection departments for governmental bodies. It meets in the United States in annual convention and on every third year, it adopts a "Uniform Plumbing Code". Up until 1982, all such codes had expressly forbidden the use of asbestos cement pressure piping and limited the use of P.B. and P.V.C. piping to residential construction not in excess of two stories.

In 1982, the International Association of Plumbing and Mechanical Officials adopted a plumbing code which permitted the use of P.B. pipe in hot water supply, of P.B. and P.V.C. pipe in cold water supply, and of P.B., P.V.C., and asbestos cement pressure piping in venting and drainage. A brief synopsis of the adoption and lobbying efforts will be found in the California Legislature's summary of a case by the California Department of Consumer Affairs and others against the International Association.

This is marked Exhibit "A" and attached hereto. Forthwith upon procuring this adoption, there was introduced in Alaska and the other 49 of the United States, legislation to change the State adopted building codes to the newly adopted 1982 "Uniform Plumbing Code". In Alaska, this was Senate Bill 214, which did not pass and which was supported by Shell Oil to the tune of $75,000 during the last session in Juneau. It would have amended AS 18.60.705 and AS 18.60.740(1) to adopt the 1982 "Uniform Plumbing Code".

The salient portion of this background history is that the State Legislature has considered and not adopted the plastic pipe standards. The proponents (manufacturers of plastic pipe) have consistently made the point that plastic pipe costs less than metal pipe to purchase and is cheaper to install than metal pipe. These points have made the contractors eager to bid and construct jobs using plastic pipe, thereby being able to underbid those contractors who stick with the State building codes.

A DISCUSSION OF THE ISSUES

I.

DURABILITY

The most obvious difference between plastic and metal pipe is durability. Some of Alaska is earthquake prone and hence durability can be quite important. In construction of large residential buildings and commercial buildings, the increased usage makes durability important. This issue has the advantage of being self evident. Cast iron, malleable iron, or copper piping and its qualities are apparent to all, and a comparison with the qualities of plastic, particularly in temperature extremes such as experienced in Fairbanks, needs no further amplification.

II.

THAW ABILITY IN ARCTIC REGIONS

This issue is also one which needs little amplification. Fairbanks is exposed to cold temperatures. Cold temperatures

sometimes cause pipes to freeze. The common methods of thawing pipes are (a) the use of propane torches, (b) the use of steam, and (c) the use of clamp on electrical generators. None of these can be used on plastic pipe. In any installation where the freezing of a pipe represents a danger to either a considerable investment or a large number of people, the ability to thaw is important.

III.

THE EFFECTS OF FIRE

The "Uniform Building Code" from 1979 and all prior codes permitted plastic pipe only where "combustible construction is allowed". The 1982 code makes no such restriction. The problems in this area are twofold. First, plastic pipe will burn. In burning, the plastic pipes makes itself useless as a pipe and hence terminates the water supply which is often necessary to fight a fire. Additionally, the burning of the pipe generates gases. These are further discussed under the issue of permeability and worker safety. They range from carcinogens to known toxic substances and each such gas requires a material safety data sheet. These sheets reveal the individual problems with each such gas.

IV.

"GROUNDING"

Most modern construction involves electricity. Electricity presents the problem of short circuits. Almost all communications that use electricity require additional grounding. Traditionally, this grounding is done through the water system in a building. In a plastic pipes water system, there is no readily available ground. If the water has sufficient mineral content and if the grounds are inserted through the pipe, adequate grounding may occur. Otherwise, the defense against electrical accidents and fires is worthless in a plastic piped building.

V.

PERMEABILITY

The issue of permeability involves petroleum products, pesticides, and kitchen, bath and workshop chemicals. This is explored at great length in the summary of the California Department of Consumer Affairs lawsuit attached as Exhibit "A" and the documents for Subcommittee #1 on Health and Welfare Oversight Hearing on Plastic Pipe of the California Legislature; these being attached hereto and marked Exhibit "B". Suffice it to say, the chemical dangers here involve 1, 2 Dichloropropane; 1, 1, 1 Trichloroethane; Trichloroethylene; 1, 1 Dichloroethane; 1, 1 Dichloroethylene; Ethyloxirane; Benzene; Methylpyrole; Butane; Toluene; Xylenes; Trimethylbenzenes; Tetramethylbenzenes; Ethylbenzene; Chloroform; and Lindane. The safety and health issue here is self evident.

VI.

WORKER SAFETY

The reason for the interest of the amicus curiae in this action flows from the exposure of members of the union to the hazardous materials involved in assembling the plastic pipe.

Assemblage in small construction quantities such as residential housing, etc., do not normally bring an experienced installer beyond the dangerously toxic levels of exposure to the Benzene, Chloroform and kindred "glue". On larger projects, the time spent on this assemblage puts workers beyond the safe limit of such exposure and in effect forces him to "sniff glue". Because the damage from these chemicals is permanent and irreversible, the United Association and its members strenuously object to the current state of the art process for assembling plastic pipe.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch V, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 27, 1984

MEMORANDUM

TO: Representative John Cowdery, Chairman
House Labor and Commerce Committee

FROM: Susan Brody, Director SEB

RE: Adoption of Uniform Plumbing Code, 1982 Version
Research Request 84-18

Ken Johnson of your staff requested information about adoption of the 1982 version of the Uniform Plumbing Code. Specifically, he asked us to survey selected municipalities in the state to find out if they had adopted the 1982 version of the code, with or without amendments. He was particularly interested in sections 4,5 and 10 of the code. Ken also asked us to find out which other western states have adopted the 1982 version of the code.

Adoption of the Code in Alaska

Within the time available to complete this request, we were able to survey the following seven municipalities: Anchorage, Bethel, Fairbanks, Juneau, Kenai, Ketchikan and Sitka. Our findings are summarized below.

Anchorage has adopted the 1982 version of the Uniform Plumbing Code. However, a number of amendments were made when it was adopted, including changes to the following sections: 401(a), 503(a), 506(b), 506(f), 1003(k), 1004(a), 1004(e), and 1007(e). In addition, two new sections were added--1010 and 1011. Some of the sections noted above deal specifically with the use of ABS, PVC and PB pipe.

Bethel has not adopted the Uniform Plumbing Code. According to planning director Tony Stigall, the city has a study underway currently to consider the possible adoption of a number of codes, including the plumbing code.

Fairbanks is currently in the process of adopting the 1982 version of the code; a hearing is scheduled before the city council in February. Amendments are being considered to sections 1002(d), 1004(a), 1007(e) and 1008(e).

Juneau has adopted the 1982 version of the Uniform Plumbing Code with amendments to the following provisions in sections 4,5 and 10: 401(a), 506(a), 506(c), 506(f), 1004(a), and 1007(e). See Attachment A for a copy of Juneau's amendments.

Kenai adopted the 1982 version of the Uniform Plumbing Code in March of 1983; apparently no changes were made to sections 4,5 and 10.

Ketchikan has not yet adopted the 1982 version of the code. According to Steve Elenberger, the building inspector, the city is waiting for the State to adopt the 1982 version before they proceed with adoption.

Sitka has adopted the 1982 version of the code. The code was adopted in its entirety with no amendments.

Adoption of the Code in Other Western States

I was not able to obtain a comprehensive listing of all other states which have adopted the 1982 version of the Uniform Plumbing Code. I called a number of sources which only had incomplete or out-of-date information. However, Tom Higham with the International Association of Plumbing and Mechanical Officials, informed me that, to the best of his knowledge, the following western states have adopted the 1982 version: California, Colorado, Hawaii, Idaho, Montana, New Mexico and Utah. He also mentioned that Oregon is currently in the process of adopting the code.

Mr. Higham pointed out that not all states choose to adopt the Uniform Plumbing Code at the state level. Instead, they leave adoption to local county and city governments. For example, Arizona and Wyoming are two western states which take this approach.

* * * * *

I am sorry I was unable to provide more complete information. I hope this information is useful to the committee.

Attachment A
City of Juneau, Uniform Plumbing Code Amendments.

this section, subject only to the following enumerated additions, deletions and changes:

(1) Delete Section 103.

(2) Delete Chapters 2, 5 and 6.

(3) Delete Section 910.

19.11.010 PLUMBING CODE ADOPTED AMENDMENTS AND DELETIONS.

For the purpose of regulating the erection, construction, reconstruction, addition, enlargement, conversion, equipment, use and maintenance of all plumbing within and without all buildings and structures or portions thereof within the city and borough, there is adopted by reference as the Plumbing Code of the city and borough, that certain compilation of rules and regulations prepared and published by the International Association of Plumbing and Mechanical Officials, a nationally recognized technical trade organization, which compilation is entitled "Uniform Plumbing Code, 1982 Edition," and five copies each of which have been filed in the office of the clerk of the city and borough or at such places as designated by the clerk, for public use, inspection and examination and which compilation is made a part of this chapter as if fully set forth in this section, subject only to the following enumerated additions, deletions and changes:

(1) Delete Sections 10.1 through 10.4; 10.5(b); 20.1 through 20.3; 20.4(b) and (c); 20.6 through 20.14; and 1303.

(2) In Section 310, add a new subsection (h) reading as follows:

"(h) Galvanized or black steel pipe shall not be used for soil pipe."

(3) In Section 401(a), add new exceptions 3 and 4 reading as follows:

"3. ABS and PVC shall not be used underground where it passes underneath within one (1) foot of building walls or footings unless adequately sleeved with cast iron or ductile iron to a point two (2) feet on each side of the wall or footing.

4. ABS and PVC shall not be used underground where it passes through building walls or footings unles it passes through an opening with a minimum of a two-inch annular space around the pipe which space shall be filled with a waterproof material which will permit the pipe to move within the space without damage."

(4) In Section 506(a) change the phrase "six (6) inches (152.4 mm)" to read "one (1) foot (.3 m)".

(5) In Section 506(c) change the phrase "six (6) inches (152.4 mm)" to read "one (1) foot (.3 m)".

(6) In Section 506, delete the existing subsection (f) and substitute a new subsection (f) reading as follows:

"(f) Vents through the roof shall be a minimum of two (2) inches diameter. The increase in vent size shall be at least six (6) inches below the roofline."

(7) In Section 1004(a), in the second sentence, delete the letters "PB" and delete the entire third sentence reading "PB waterpipe and tubing may be used for hot and cold water distribution systems within a building."

(8) In Section 1007, delete subparagraph (e) and substitute the following:

"(e) Relief valves shall be located inside a building and shall be provided with full sized drain of galvanized steel or harddrawn copper piping and fittings and shall extend from the valve to a point not less than 6 inches or more than 12 inches above the floor. No part of such drain pipe shall be trapped and the terminal end of the pipe shall not be threaded."

(9) In Section 1307(c)(3), delete the first sentence and substitute therefore the following:

"(3) Combustion air requirements for gas and oil burning water heaters shall consist of two openings as described below, with each opening containing not less than one square inch of free area per 5,000 Btu per hour input."

(10) In Section 1307, delete subsection (e), including Table 13-1 and the footnotes thereto, and substitute the following:

"(e) Alternate Methods of Supplying Combustion Air. In lieu of the requirements of Section 1307(c)(3), combustion air supply may be designed in accordance with recognized engineering principals when first approved by the Administrative Authority."

(11) Add a new Section 1326 reading as follows:

"1326 Check Valves. Check valves shall not be installed on any domestic water heater installation unless approved by the Administrative Authority."

(12) Appendices A, B, C, E, G, and H are adopted.

(13) Appendix D is adopted with the following additions: Under Part B add a new section D2.2 reading:

"D2.2 Cleanouts: Cleanouts the same size as the piping shall be installed at the base of all roof leaders."

In Part C, delete the last sentence of Section D3.1 and substitute the following:

"D3.1 Roof drainage rate shall be based on a rainfall of one (1) inch per hour."

19.16.010 ELECTRICAL CODE ADOPTED AMENDMENTS AND DELETIONS.

For the purpose of regulating the construction, reconstruction, addition, enlargement, conversion, equipment, use and maintenance of all electrical wiring and devices within and without all buildings and structures within the city and borough, there is adopted, as the Electrical Code of the city and borough, that certain compilation of rules and regulations prepared and published by the National Fire Protection Association, a nationally recognized technical trade association, which compilation is entitled "National Electrical Code, 1981 Edition," and five copies each of which have been filed in the office of the clerk of the city and borough or in such places as designated by the clerk, for public use, inspection and examination and which compilation is made a part of this chapter as if fully set forth in this section, subject only to the following enumerated additions, changes and deletions:

(1) Add a new Section 90-9 reading as follows:

"PLANS AND SPECIFICATIONS. A set of electrical plans and specifications or a wiring schedule, giving the following information, shall be filed before the issuance of a permit for the installation of electrical wiring intended to supply an anticipated or future load in excess of 200 amperes, single phase, or 150 amperes, three phase. Every plan shall be drawn to scale upon substantial paper and shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and showing in detail that it will conform to the provisions of the Electrical Code and all other relevant laws, ordinances, rules and regulations. Specifications for such plans may be either shown thereon or provided separately. The building official may require plans, computations and specifications to be prepared and designed by an engineer licensed by the state to practice as such. The wiring plan or schedule required shall contain the following information:

(a) The type, rating and location of any new service equipment.

SUMMARY

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS, FRIENDS OF THE EARTH, CONSUMER FEDERATION OF CALIFORNIA, STATE BUILDING AND CONSTRUCTION TRADES COUNCIL OF CALIFORNIA, AFL-CIO, and AILEEN ADAMS, (PLAINTIFFS)

vs.

INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS (IAPMO). (DEFENDANTS)

Exhibit "A"

I. BACKGROUND ON THE PROBLEM OF PLASTIC PIPES

Recent tests in California have duplicated field and laboratory experiences of water utility districts and environmental health experts that polyvinylchloride (PVC), polyethylene (PE), and polybutylene (PB) water service lines can be and are permeated (infiltrated) by gasoline, petroleum distillates and industrial solvents.

The public health impact can be serious enough to require the removal of an entire underground network of plastic water service lines and may cause serious health consequences for its consumers. Because of the pervasive occurence of toxic chemical spills and soil contamination with residues of pesticides and herbicides, California will need to embark on a comprehensive analysis of the problem. The problem is amplified by the specter of frequently used garden and household products that may permeate these plastic pipe.

Permeation of plastic pipe by toxic chemicals is all the more serious because of the existing threat to water quality by the pipes themselves and the quality of our current water supply. The California Department of Health found that the pipes themselves leach large amounts of chloroform, carbon tetrachloride, DEHP and a host of solvents used to degrease and glue the pipes. If these toxic chemicals are added to the already high level of contamination of many water supplies, then a truly dangerous prospect

for the quality of our potable water systems emerges.

Since 1977, the State of California has reviewed industry requests for unlimited usage of plastic pipe for water distribution. Industry assertions of economic feasibility and product safety were thoroughly and comprehensively reviewed by California Departments of Health, Consumer Affairs, Housing and Community Development, Cal/OSHA, and the State Fire Marshal. The Department of Housing and Community Development(HCD) concluded, after extensive hearings and in consultation with these other state agencies, that there was substantial evidence that unlimited use of plastic pipe may have a significant effect on the environment.

These conclusions were reached because of the threat to workers who breathe the fumes of the glues, and the presence of toxic chemicals (dimethylformamide, tetrahydrofuran, DEHP, carbon tetrachloride, chloroform and many others) in drinking water passed through the pipe, and an equally dramatic conclusion of the State Fire Marshal that plastic pipe is high rise construction may pose an unreasonable fire risk.

Since plastic pipe was found to have a potentially adverse effect on the environment because of its threat to water quality, worker safety, and fire safety, state agencies in California will not allow its expanded use until all scientific and public health questions have been answered. The State Architect has also warned all the design professions and school districts throughout California

of the potential hazards of plastic pipe.

Because the International Association of Plumbing and Mechanical Officials (IAPMO) proceeded with the expanded use of plastic pipe in its 1982 Uniform Plumbing Code, a coalition of state public and private consumer groups, environmental and labor organizations sued IAPMO and forced a notice disclaimer at each location in the Code where plastic pipe is mentioned. The lawsuit is still in progress over complaints that IAPMO misrepresents its product evaluation to the general public.

Outlined below are some of the key issues being pursued in that lawsuit.

II. ISSUES IN LAWSUIT AGAINST IAPMO

Under current law, IAPMO has the authority to prepare a model code know as the Uniform Plumbing Code (UPC). The code is prepared every three years and is forwarded to Housing and Community Development (HCD) for action. HCD may make minor modifications. In the event HCD takes no action, the Model Code lapses into law in one year. The Code is then forwarded to the Building Standards Commission for final approval and publication.

IAPMO's voting membership consists of governmental jurisdictions and building officials of member jurisdictions. The UPC is approved at the IAPMO annual convention after recommendations from IAPMO's code change committee are presented to the members who come to the convention.

IAPMO's other major function is preparation of a Research Directory which lists products by the manufacturer's name. (Such "listings" are used by jurisdictions for substitutions of plumbing materials.) In order for a product to be approved, the manufacturer must submit a sizeable application fee, along with durability and strength tests and show compliance with certain standards, depending on the product.

In the case of plastic pipe products and solvents, the appropriate standard is the National Sanitation Foundation (NSF) Standard 14. One of the main problems with the standard is that it does not test for the leaching of organic chemicals (dimethyl-formamide, tetrahydrofuran, DEHP, carbon tetrachloride, chloro-form, and more) from the plastic pipe products, nor does it test the permeability of the pipe. NSF 14 also does not test for fire safety performance with respect to either the increased fire-spread risks or the toxicity of the smoke.

Finally, NSF 14 is inadequate because plastic pipe does not have a 100% content requirement standard. Thus, each manufacturer varies the formula; only generic varieties of pipe (i.e. CPVC, PVC, ABS) are tested under Standard 14.

After one review of the manufacturer's application by the IAPMO Research Committee, the plastic pipe product is given the IAPMO seal or logo which declares that the product has been tested and meets minimum health and safety requirements.

The product is then listed in the Research Directory. Both the Research Directory and the UPC are heavily relied upon by contractors, builders, inspectors and others in the building and construction trades.

In 1981, IAPMO voted for nearly unlimited use of plastic pipe products for transportation of hot and cold potable water for its 1982 Code. By this time, HCD required, in accordance with the California Environmental Quality Act (CEQA), preparation of an EIR for such expanded use of plastic pipe.

Nevertheless, IAPMO proceeded to distribute its 1982 UPC with apparent approval of plastic piping products for transportation of potable water.

The Department of Consumer Affairs and a host of environmental and consumer groups filed a complaint alleging unfair business practices and negligent misrepresentation (Business and Professional Code sections 17200 and 17500).

The theory of the case is that IAPMO's representations in both the UPC and Research Directory that plastic pipe products are safe are, in fact, gross misrepresentations. IAPMO has no testing facilities or qualified chemists, toxicologists, or epidemiologists on staff. Voting on product approval for the Research Directory and the UPC is limited to voting member of IAPMO. Furthermore, IAPMO has totally ignored the substantial evidence amassed by HCD that substantial adverse impacts are a possibility

and that an EIR would be required before use of such plastic pipe can receive HCD approval.

The Department of Consumer Affairs immediately requested an injuction from the Los Angeles Superior Court to prohibit IAPMO from distributing the 1982 UPC without a warning of potential hazards. The Superior Court denied the motion, as did the Appellate Court. However, the Supreme Court granted an alternative writ forcing IAPMO to affix a warning to the UPC. That warning reads:

> NOTICE: An Environmental Impact Report is now being prepared in California to determine whether the use of CPVC, PVC, or PB plastic pipe for transporting potable water poses a danger to public health or the environment. At the time of this printing of the 1982 Edition of the Uniform Plumbing Code, the State of California does not permit any expansion in the use of such pipe beyond those applications permitted in the 1979 Edition of the Uniform Plumbing Code.
>
> For information on California restrictions, contact the State Housing Law Section of the California Housing and Community Development Department.

The trial on the underlying merits is now set for December 12, 1983 in Los Angeles Superior Court before the Honorable Judge Jack Crickard. The objectives of the plaintiffs are

best understood in light of the relief requested. Plaintiffs seek to require either IAPMO, or the product manufacturer through a contract with an independent laboratory approved or designated by IAPMO, to test each individual product for health and safety effects. Such health and safety effects should include:

1. toxicological testing of chemicals found in products or to have leached from products;

2. water chemistry testing of appropriate uses of such products;

3. permeation of organic and inorganic substances into potable water from either airborne or groundladen substances;

4. fire safety testing;

5. worker/installer safety assessment;

6. determination of durability to assure adequate service life.

Moreover, all Research Committee meetings should be opened to the public at large. Decisions by the Research Committee should be based on substantial evidence in the record. Findings should be prepared by IAPMO which show that the Research Committee has determined that the product does not create negative health and safety effects. Members of the Research Committee must not be limited to IAPMO members only, but rather must include public members, including but not limited to, those representing environmental and consumer interests. These public members shall

have voting privileges on the Research Committee.

IAPMO plays a critical legislative role and enjoys the economic and legal benefits of such a role. The time has come for them to assume the related burden of public responsibility.

PLASTIC PIPE: A BACKGROUND REPORT

Since the early 1950's plastic pipe has steadily replaced metal piping for plumbing applications. These include: drainage-waste-vent (DWV) piping for interior drain systems; potable water piping from the street main into the building (water service); and interior hot and cold water piping to fixtures (water distribution).

Plastic pipe was introduced in the United States and Europe over 30 years ago. It is widely used in England, Canada, Australia, Japan and Germany. It now distributes potable water into 35 percent of the nation's households and businesses. Plastic pipe is used in 55 percent of the nation's drain, waste and vent (DWV) systems and a full 95 percent of the irrigation systems.

A number of U.S. cities have installed plastic instead of metal pipe for their water service systems. Most federal housing program projects use plastic pipe. Most hospitals and laboratories must use plastic pipe to deliver high purity water.

There are many reasons for preferring plastic over traditional metal piping for these plumbing applications:

1. <u>It is more cost effective</u>. Both the short-term installation costs of plastic pipe and its longer term costs associated with its longevity are lower than metal pipe in most circumstances.

Losses to the water works industry in the United States due to underground corrosion of metal pipes are in excess of $150 million annually.

In Los Angeles County, homes built between July 1973 and April 1976 began to experience leaks in the galvanized steel plumbing systems shortly after the pipe had been installed. In Santa Clara County, newly-installed copper plumbing systems began to fail immediately upon installation.

Plastic pipe does not corrode under normal use situations.

The staff of the California Department of Housing and Community Development did its own economic analysis of the costs of plastic versus metal piping installations in typical California homes and found substantial savings using plastic piping.

In 1984, if metal pipe was used exclusively, the cost of installing plumbing for all new homes in California would be $118 million higher than for plastic pipe. The figure, estimated by the Plastic Pipe and Fittings Association on housing projections from the UCLA Economic Forecast Group, jumps to between $127 and $136 million in 1985.

2. Plastic pipe is energy efficient. It is lighter than metal. In 1977, the two billion pounds of plastic pipe used in construction that year compared with 17.5 billion pounds of the equivalent amount of metal pipe which was manufactured. The energy required for plastic pipe was 84 trillion BTUs, versus 408 trillion to produce the equivalent amount of metal pipe. The savings equated to 56 million barrels of crude oil. In 1978, the savings doubled.

3. Plastic pipe protects water users from known hazards associated with the use of metal pipe. Plastic pipes made from a variety of plastics are relatively impervious to various corrosive materials including water and chemicals dissolved in it. Potential health hazards associated with heavy metals which may be leached from metal piping or their joining systems are well-known and documented.

The Federal Safe Drinking Act provided for the U.S. Environmental Protection Agency to establish standards for toxic substances in drinking water. All states must meet these minimum requirements in enforcing their own safe drinking water regulations.

The plastic pipe industry is the only piping industry which submits its products to independent third party certification processes based exactly on the Federal drinking water regulations.

News

The Vinyl Institute

Contact: Nora Jacobs
(216) 447-7887

FOR IMMEDIATE RELEASE

PIPE GASKETS POSE HEALTH THREAT, STUDY SAYS

SACRAMENTO, California, October 19, 1983 -- Pipe gaskets, not pipe materials, are the primary points through which contaminants leach into drinking water, according to test results presented today to the California Assembly by plastics industry representative Alan J. Olson. Moreover, he warned, attempts to restrict the use of certain pipe materials in the hope of solving this problem mask the real issue - the threat to public health caused by transporting drinking water through contaminated soil.

Members of the California Pipe Trades Union recently have claimed that plastic pipe poses a potential threat to public health because it allows ground contaminates to leach through it to drinking water. Olson, a scientist for B.F. Goodrich Chemical Group, appeared before the Ways and Means subcommittee on health and welfare to present the results of an industry-sponsored study which refutes those claims.

-more-

The study, conducted by the Battelle Memorial Institute, one of the world's largest private research organizations, reveals that the gaskets used to join sections of underground water distribution systems can fail when exposed to gasoline spills or to chemicals such as those found in landfills or dump sites. A threat to public health exists, Olson explained, when water distribution systems are routed through such areas.

The Battelle tests involved constructing gasketed piping systems out of three commonly used materials -- ductile iron, asbestos cement and plastic -- and exposing them to solvent-saturated soil conditions for six weeks. Pipes of the same materials, but without joints, were exposed to identical conditions. After six weeks exposure, solvents had permeated the gasketed pipes in all but one test situation while ungasketed pipe showed slower permeation or no permeation.

"While these results clearly exonerate the integrity of the piping materials involved in this study, they underscore the urgency of addressing an issue of great potential concern," Olson said. "The effect of soil contamination on drinking water is something which the State of California now must examine from a fresh perspective. As these results indicate, merely replacing one piping material with another is not the solution. Under the worst conditions, all types

of pipe systems can be contaminated through gasketed joints.

The Battelle study was commissioned by The Vinyl Institute, a trade organization of material suppliers to the pipe industry.

Environment Di. :torate

ENV/WMP/80.Sem.15

To: [illegible]
Seminar on Hazardous Waste
"Problem" Sites

English only

(4)

EXPERT SEMINAR

ON HAZARDOUS WASTE 'PROBLEM' SITES

Case of Lekkerkerk

(Contribution by Mr. Strybis)

The attached paper is submitted for consideration at the expert seminar on hazardous waste "problem" sites, OECD, Paris, November 3-7, 1980.

It has been specially prepared by Mr. Stybis, Netherlands.

Lekkerkerk

One of the most serious cases of soil pollution in the Netherlands is the case of Lekkerkerk.

Lekkerkerk is a village north east of Rotterdam on the river Lek in a reclaimed coastal swamp area. Around 1970 for the expansion of this village the ditches in the expansion area west of the village were not filled up with crushed peat, straw and saw dust, as usually is done for building purp in marshy polders, but for financial reasons with the building and demolition wastes. Among these, chemical wastes and waste oil were dumped illegally, partly in drums (of which more than a thousand have been found until now) and probably partly unpacked. Soon after the houses on this "ground" were built and inhabited complaints arose about bad smells in the houses, while at a number of places gas and water tubes in the ground were so badly affected by polluted grondwater that they broke.

After the fainting of two workmen in a pit dug for inspection of gas pipes an investigation was started in 1978. From this resulted that soil and grou water in this new part of the village were badly polluted by aromatic hydrocarbons, mainly xylene, toluene and ethylbenzene (solvents widely usec in the paintindustry) that, as later appeared, floated as a film on a layer of oily waste material on the groundwater.

Because of the low permeability of the peat soil and because of the fact that Lekkerkerk lies in an area behind the dike of the river Lek where the groundwater wells up, the pollution had not spread laterally nor vertically to the subsoil. But when in april 1980 further investigations showed that not only the atmosphere inside the houses contained rele- tively high concentrations of aromatic hydrocarbons by evaporation from the soil, but that these polluting compounds also penetrated through the network of PVC and PCE tubes in the ground for the distribution of drinkir water as a result of which the quality of this water could not be guarante any longer, in the interest of public health it was decided that at the shortest possible notice all pollutions should be removed. This cleaning operation is now in progress and reached the world press for because of th some 800 inhabitants had to be evacuated from their 270 homes for abou six to nine months.

The operation is complicated by the fact that for social and financial reasons the aim is to save the 270 houses that are built on piles, some of concrete, others of wood.

The following works have been carried out or are still to be carried out.

1. All pavements, trees and other vegetation, street lights, garages, tubes and cables in the ground have been removed and if polluted have been destroyed. Only the houses were left standing.

2. The canal around the concerning part of the village was dammed off from the surrounding surface waters to prevent possible spreading of pollutions during the operation. By steel barrages the subsoil of the quarter was divided into five compartments to reduce spreading of pollutions from uncleaned territory into cleaned territory and to reduce the quantities of groundwater that have to be pumped away during the operation.

3. The groundwater level in the compartments was lowered by pumping for the time of the operation to a level just under the pollutions so that work can be done under dry conditions, which makes grading and concentrating easier. Well from the river Lek is ooposed by a number of deep well pumping stations.

4. All polluted materials deposited on the original surface and in the ditches are removed and transported to a combustion installation for domestic and chemical wastes at Rotterdam to be burned. All polluted water thas is pumped out of the compartments is led to a temporary purification installation on the spot, where it is purified and finally led through active carbon filters before it is drained into the river Lek. Saturated active carbon sludges and chemicals separated from the water are burnt at the combustion installation in Rotterdam.

5. Underneath the houses the removal of soil and polluting substances is done by special drilling and dragging machines that can work horizontally. To prevent leaning to one side of the houses work is done two opposite sides at the same time. Houses on wooden piles are kept up straight by temporary steel constructions for additional support while work underneath them is going on.

6. After removal of all wastes and polluted soil (estimated on 75.000 tons of which 2.000 drums) the depressions are filled with clean sand, for which was chosen "flugsand" to prevent differential setting of the ground afterwards. Flugsand is a light vulcanic sand from the Eifel are.

in Germany, which has about the same volumeweight under water saturated conditions as peat. Next clean topsoil is brought up. After that the infrastructure of the quarter can be reestablished and the groundwater is raised to its original level again.

It is expected that the inhabitants can return to their homes on a new clean subsoil between november 1980 and february 1981. The costs of the whole operation are estimated to be more than 140 million guilders.

Anlab
ANALYTICAL LABORATORY
A DIVISION OF DEWANTE & STOWELL

1914 S STREET, SACRAMENTO, CALIFORNIA 95814 • 916-447-2946

5

PERMEATION OF ORGANIC COMPOUNDS IN PLASTIC PIPE

Anlab
ANALYTICAL LABORATORY
A DIVISION OF DEWANTE & STOWELL

1914 S STREET, SACRAMENTO, CALIFORNIA 95814 • 916 447-2946

September 15, 1983

Mr. Ray Leonardini
555 Capitol Mall, Suite 435
Sacramento, CA 95814

The results of the pipe study are in the report enclosed.

The findings indicate that certain organic chemicals can permeate through plastic pipe under the conditions of the study.

Sincerely,

Tom Ikesaki

TI:et
Encls.

ABSTRACT

Four potable water service pipes were tested for permeability to specific organic compounds. These organic compounds were used in concentrated form in these tests and may not be representative of normal applications. Three series of test designs were used. Successive tests were designed to reduce the possible effect of pipe joints to the inward migration of chemicals through the pipe material.

Three groups of chemicals were tested; chlorinated solvents, pesticides and gasoline in Polybutylene (PB), Polyethylene (PE), Polyvinylchloride (PVC) and Copper (CU) pipes.

Permeation by small molecular weight chlorinated solvents was pronounced for polyolefin pipes (PB & PE), less for PVC. Trace contamination of joined pipe systems (PVC and Copper) was also found. Controls with no joints in pipes showed that PVC but not Copper was permeable to specific molecular weight chemicals.

For systems showing permeation, the rank order of chemicals was related to molecular weight and polarity, with constituents of chlorinated solvents, gasoline (benzene and substituted benzenes) showing the greatest permeation effect in polyolefin and chlorinated pipes, respectively. The rank of pipes according to decreasing permeability is: Polyethylene, Polybutylene, Polyvinylchloride and Copper.

Results indicate the presence of organic chemicals from other sources such as pipe joining and sealing compounds, and a group of chemicals that appear to have been extracted as specific plastic pipes were permeated.

(6)

SOME FREQUENTLY ASKED QUESTIONS CONCERNING PIPE PERMEATION

ANSWERS PREPARED BY THE CALIFORNIA PIPE TRADES COUNCIL

Q. WHAT IS PIPE PERMEATION?

A. Pipe permeation is the phenomena whereby toxic substances seep through pipe material causing the contamination of the drinking water which is carried by those pipes. This occurs most commonly with pipe which is buried in soil.

Q. WHEN WAS PIPE PERMEATION FIRST DISCOVERED?

A. That is hard to answer. Pipe permeation was not widely reported until the Department of Consumer Affairs released test results in December, 1982, which showed that plastic pipe can be permeated by a number of carcinogens. The test was sponsored by the California Pipe Trades Council and was conducted by Anlab, an independent testing laboratory in Sacramento. The investigation leading to that test, however, revealed that the East Bay Municipal Utility District had recognized permeation as early as 1978 and had reported its findings to the Department of Health Services. Further, the president of the Society of the Plastics Industry (a major trade association of plastic resin and plastic product producers) stated, in response to DCA's permeation announcement, that the findings "are not new, since they have been identified long ago . . ."

Q. IS ONLY PLASTIC PIPE PERMEABLE?

A. As far as we know, the only testing for permeation has been conducted with plastic pipe and the only reported instances of pipe permeation have involved plastic pipe (although metal pipes have been used as test control, but were not permeated). We believe, however, that all pipe materials should be tested to make absolutely certain that public health is protected. The Budget Bill item (#4260-001-014) which would have appropriated funds for a permeation study called for the testing of all pipe materials. It was vetoed by the Governor.

Q. WHICH CHEMICALS CAN PERMEATE PLASTIC PIPE?

A. No one knows for sure how many different chemicals can permeate plastic pipe, nor under which conditions the permeation is most likely to occur. Among the toxics discovered to permeate, however, are some known carcinogens and some which are known to cause liver and kidney damage, mobility impairment, birth defects, lung congestion, nausea, and anemia. Until a comprehensive test is conducted, we simply won't know which chemicals permeate at hazardous levels. The Anlab test found the following will

permeate:

1, 2 dichloropropane
1, 1, 1 trichloroethane
trichloroethylene
1, 1 dichloroethane
1, 1 dichloroethylene
Ethyloxirane
Benzene
Methylpyrole
Butane
Toluene
Xylenes
Trimethylbenzenes
Tetramethylbenzenes
Ethylbenzene
Chloroform
Lindane

(An attachment to this series of questions & answers, excerpted from "The Merck Index" shows some of the common uses of these toxic chemicals.)

Q. WHY DID THE GOVERNOR VETO THE PIPE PERMEATION STUDY?

A. In his veto message, the Governor stated, "I am eliminating the $200,000 legislative augmentation for the study of the permeation and infiltration of toxic chemicals into pipe and pipe water mains. I believe it is more appropriate for this study to be funded by the pipe industry."

Q. WHY SHOULDN'T THE INDUSTRY BE REQUIRED TO FUND THE STUDY?

A. We're talking about a potentially serious health hazard which could affect millions of Californians. It requires a thorough and objective examination. Just as statistics can be manipulated, so can test protocols and results. Although the plastics industry acknowledges that they have known of the permeation phenomena for some time, the industry has not been at the forefront of any effort to restrict the use of plastic pipe to safe applications. Further, the president of the Society of the Plastics Industry, while referring to the permeation tests financed by the California Pipe Trades Council, stated, "There should be serious questions about the validity of a report funded by a source opposed to the product it is testing." We concur that privately funded tests may have a credibility problem and we also assert the same logic used by the S.P.I. president should discourage reliance on tests funded by advocates of products. The potential health hazard related to permeation is simply too serious to have its examination and evaluation financed, designed, or conducted by any organization other than one that is thoroughly and unquestionably objective.

Q. WAS THE TEST FUNDED BY THE PLUMBERS UNIONS (CALIFORNIA PIPE TRADES COUNCIL) A RELIABLE TEST?

A. The objective of the test was to determine whether or not certain chemicals could permeate plastic pipe. The test did not replicate "real-life" circumstances. It used highly saturated sandy soil in a controlled environment in order to accelerate the results. The test did prove that, under those conditions, plastic pipe is permeable. We know that a much more expensive and sophisticated test, such as the one which the Governor vetoed, is necessary to accurately determine which chemicals will permeate and under which soil conditions the permeation will occur. The plumbers' test was not designed to be the "last word"; its purpose was to provide sufficient evidence of the problem in order to prompt responsible parties (such as the State) to conduct a comprehensive and objective test.

Q. WHO BESIDES THE PLUMBERS UNIONS HAVE HAD EXPERIENCE WITH PERMEATION TESTING?

A. Apparently the East Bay Municipal Utility District conducted some limited testing after their initial discovery of permeation. We have recently learned, also, that testing has been conducted by the American Water Works Service Co. in New Jersey and that the company's results have shown findings similar to our own. None of this testing, however, has been nearly as comprehensive as the one which would have been conducted pursuant to the Budget Bill provisions. Strangely, although the Department of Health Services has jurisdiction over the regulation of public drinking water distribution systems and although the department has been aware of the permeation phenomena at least since 1978, DHS has never shown any interest in permeation testing until now.

Q. HASN'T A PERMEATION TEST BEEN CONDUCTED BY THE CITIZENS FOR SAFE DRINKING WATER?

A. No. The Citizens for Safe Drinking Water did widely report its discovery of lead leaching in copper pipe. The test was conducted at a few locations in Sacramento. The City of Sacramento subsequently tested the same water taps and found no evidence of leaching. The only known member of the Citizens for Safe Drinking Water, by the way, is a public relations representative for the Plastic Pipe & Fitting Association, a trade association which has worked closely with the Society of the Plastics Industry. This front organization has never announced the conduct or the results of any permeation studies.

Q. ASIDE FROM LABORATORY TESTING, WHERE HAS PERMEATION OCCURRED?

A. It may have occurred at the Coyote Hills tract near the McColl hazardous waste site in Fullerton. Further testing needs to be

conducted there to know for certain. The most dramatic permeation episode occurred at Lekkerkerk, a town in the Netherlands. There, 800 inhabitants were evacuated when 270 homes were contaminated by toxics in the soil which permeated plastic pipes and conduit. All other known instances have been in the U.S. The East Bay Municipal Utility District has reported 12 episodes of gasoline permeating PB pipe, two episodes of gasoline permeation of PB pipe have been reported by the Marin Municipal Water District in Corte Madera, one identical episode has been reported by the North Marin County Water District in Novato, Tetrachloroethylene (PCE) has permeated PE pipe in Delaware, gasoline distillates permeated PE pipe in Columbus, Ohio, and gasoline permeated plastic water service lines in Chattanooga. Undoubtedly, there have been a number of other permeation episodes that have gone unrecognized or unreported.

Q. AREN'T THE PLUMBERS SIMPLY OPPOSING PLASTIC PIPE BECAUSE THE INSTALLATION OF PLASTIC PIPE REDUCES LABOR COSTS?

A. The advocates of plastic pipe want you to think that is the reason. Actually, there are minimal economic considerations related to the plastic pipe issue. As you know, SRI International (formerly Stanford Research Institute) is currently producing an environmental impact report (E.I.R.) for the Department of Housing & Community Development which relates to the expanded uses of plastic plumbing pipe. The initial review draft produced by SRI (the final report will not be completed until next year) reports on page IV.F-1 that the proposed expanded use of plastics in home construction would amount to a labor savings of only about $50 per single family residence. The E.I.R. does not include a review of the permeation phenomena, so no accurate costs are available on the labor cost differential between the installation of underground plastic pipe and the installation of alternative materials. However, since plumbing the interior of a house is much more complicated than simply laying pipe in a trench, we can assume that the impact on labor costs -- if subsurface plastic water lines were to be restricted -- would be negligible.

Q. WHY THEN, ARE THE PLUMBERS SO CONCERNED ABOUT PERMEATION?

A. Members of the plumbing trades drink water too. Historically, our membership has been very active in the promotion of technologies to deliver pure water and to provide adequate sanitation. Our initial examination into the plastic pipe issue had been prompted by a fear that the health of plumbers had been severely endangered by the use of adhesives required for the bonding of plastic pipe, just as, 30 years ago, our fear that working with asbestos was causing cancer amongst our membership led to our investigation into the dangers of that material. Our continuing examination of plastic has uncovered the other dangers of the material, i.e., permeation, leaching, and fire toxicity.

Q. HOW COME THE E.I.R. DOES NOT INCLUDE AN EXAMINATION OF THE PERMEATION ISSUE?

A. We think it should. Unfortunately the proponents of the E.I.R. were unaware of the permeation issue when the scope of the study was being determined by the E.I.R. Task Force membership (although at least two of the participants, the Department of Health Services representative and the Society of the Plastics Industry spokesperson, were apparently well aware of the issue but chose not to reveal it) and it was therefore never included in the E.I.R.'s original work plan. When permeation eventually became a public issue, various environmental and labor organizations, some legislators, and even the Department of Health Services requested that an evaluation of pipe permeation be included in the E.I.R. Despite the strong evidence that this problem needs a careful analysis, the Department of Housing & Community Development acceded to the demands of the plastic industry and refused to permit the inclusion of a permeation study.

Q. WHAT REASONS DID THE DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT GIVE FOR REFUSING TO INCLUDE PERMEATION TESTING AS AN ELEMENT OF THE E.I.R?

A. The department contended that underground pipes are outside of their jurisdiction. That contention is not true. While water mains are the responsibility of the Department of Health Services, the subsurface pipes which carry water from the meter (usually at the property line) to the structure are within the jurisdiction of DHCD. Clearly, if a plastic water main can be permeated, so can a plastic service line carrying water under a residential yard. DHCD has frequently sided with the plastic industry representatives during E.I.R. Task Force disputes, so the department's refusal was not surprising.

Q. WHAT IS THE MAGNITUDE OF THE PROBLEM?

A. No one can know for sure, but we believe it can be a problem with enormous consequences. Until a comprehensive test is completed, we can not know with absolute certainty which chemicals will permeate plastic pipe, which soil conditions contribute to it, nor how long it takes for permeation to reach truly hazardous levels. The vetoed study could have given us those answers. Its possible, however, to speculate with some assurance about the magnitude of the problem:

The E.I.R. draft prepared by SRI estimates that over 25% of all Californians will live in homes plumbed by plastic pipe within the next 25 years if the proposed new uses of plastic are approved. It is safe to estimate that at least that many, and probably many more, will also be served by underground pipe systems which include at least some plastic. (The manager of the San Juan Suburban Water District in Sacramento County has estimated that 98% of the new homes in his district have plastic water lines from the house to the main.) Consider also that

there are thousands of recorded toxic spills each year in California (every one of them could eventually trigger some permeation activity), that there are now tens of thousands of California homes near hazardous waste sites (such as the Coyote Hills tract near McColl), and that many new communities are projected for development on land which had formerly been contaminated by pesticides. The potential for extreme danger is high; its time for clear answers.

Q. IS ANYONE BESIDES THE CALIFORNIA PIPE TRADES COUNCIL ACTIVELY SUPPORTING PERMEATION TESTING?

A. There is, of course, considerable support within the Legislature. Additionally, the California Pipe Trades Council is part of a coalition of organizations which have been actively pushing for permeation testing. Other members of the coalition include the Citizens for a Better Environment, the Consumer Federation of California, the Friends of the Earth, and the Natural Resources Defense Council. Additionally, the Sierra Club has taken strong supportive positions.

(1)

A STATEMENT OF CONCERN FOR A NEW PUBLIC HEALTH RISK POSED BY TOXIC SUBSTANCES THAT PENETRATE PLASTIC DRINKING WATER PIPES

Presented to

The Assembly Ways and Means Subcommittee Number 1
Art Agnos, Chairperson

by

The Consumer Federation of California, Friends of the Earth, Citizens for a Better Environment, The Natural Resources Defense Council, and the California Pipe Trades Council

October 19, 1983

We wish to alert the Committee to a new and previously underestimated source of environmental contamination. We are gravely concerned that California consumers may be unknowingly exposed to hazardous chemicals which may enter drinking water supplies from contaminated soils by migrating through the walls of permeable plastic water pipes.

The degree of our concern is heightened by two facts:

1) the increasing occurrences of soil contamination following accidental spills, leaks from underground storage tanks and, chemical migration from landfills [from the records of the Environmental Protection Agency we know of 58 episodes of major spills of gasoline or diesel oil in one month in California alone (January, 1983)]; and,

2) the increasing reliance of many municipalities on plastic pipes as the conduits for potable water.

In the past, such episodes of soil contamination had been thought to be rare and small in magnitude. From the EPA records we know that spills in the million-gallon range may occur monthly. In early May, 1983, the Regional Water Quality Control Board in Santa Clara reported a total of 57 major underground leaks from storage tanks containing industrial solvents and stripping solutions.

Municipalities either have been unaware of these problems or have underestimated its seriousness. San Francisco uses plastic piping in over 50 percent of its water service connections. The East Bay Municipal Utility District (EBMUD), in spite of having uncovered over a dozen such episodes since 1978, relies almost exclusively on polybutylene plastic pipe for its mains and recommends such use for service laterals.

Research done at the Anlab Laboratory in Sacramento under the supervision of Prof. Marc Lappe' of the UC Berkeley School of Public Health has shown that several major groups of hazardous chemicals can permeate different types of plastic pipe. Some of these pipes, such as polybutylene and polyethylene, are strikingly permeable to chlorinated solvents including some which are carcinogenic in animals.

At the Fairchild plant in San Jose, for instance, soils have been contaminated with chlorinated solvents like 1,1,1 trichloroethane and 1,1 dichloroethylene. Homes in the immediate

vicinity of the plume of contamination are plumbed with subsoil polyethylene (PE) and polyvinychloride pipe (PVC). PE has proven to be extremely permeable to these solvents, PVC less so.

Homes sold throughout California are commonly sprayed with lindane, a carcinogenic and teratogenic pest control agent which the EPA has just recertified for use as a structural pest control agent. The labels on several such formulations carry the instruction to spray directly on exposed pipes. Anlab studies show that prolonged contact (1-7 weeks) between PVC pipe and a concentrated lindane solution results in substantial contamination of water inside the intact pipe with this highly persistant pesticide.

Although it contains less toxic ingredients than lindane, the chemical of greatest concern remains gasoline because of its ubiquitous presence in the environment. In spite of studies done in 1978-79 by EBMUD which showed that gasoline will readily penetrate PE and PB (polybutylene) pipe, the level of concern of health officials for this now commonly recognized permeation event remains inexplicably low. A survey of water utility districts in California performed in the summer of 1983 by the Sanitary Engineering Branch of the State Department of Health Services showed that 62 percent of the representatives of districts which regularly recommend the use of plastic pipe for water lines knew nothing about State regulations which proscribed their use in the presence of petroleum distillates.

In spite of their familiarity with permeation problems with plastic pipe, the Department of Health Services failed to specify permeability when asked to indicate what public health concerns were properly within the scope of an Environmental Impact Report on expanded use of plastic pipe being conducted by the Department of Housing and Community Development. This omission is all the more questionable in the face of the fact that Robert Stephens, then the Department's head of hazardous substances, had just returned from an oversight mission in Holland where he had observed the most serious environmental episode involving plastic pipe permeation then known (Lekkerkerk).

Perhaps of greater concern, is the fact that the attorney for the Society for Plastics, Inc., failed to divulge any data about plastic pipe permeation when asked to do so by the Department of Health Services in March of 1981 following the first public reports of the Lekkerkerk event. It is clear from material submitted for the public record that such industry data were available.

Part of the lack of the Department's concern may have stemmed from the mistaken belief that problems of the magnitude of the Lekkerkerk episode (often called Europe's Love Canal) could not happen in the United States. But we know now of several episodes reported to American water districts and the EPA which have involved potential human exposure to extremely hazardous substances such as benzene as the result of permeation of plastic pipe.

Another explanation for Department passivity is the belief that the taste or odor of the water will alert consumers to the existence of a problem. Published data on odor thresholds for the chemicals of concern for permeation establish that consumers cannot be expected to detect them before they are already above the level of health concern.

A case in point is benzene, a human leukemia-causing agent. Data from the Anlab studies showed that this constituent of gasoline will readily go through PB and PE pipe walls and reach extremely high concentrations (100 ppm) after just one week of exposure. This observation could have predicted a permeation contamination episode in Columbus, Ohio, where seven people were exposed to levels of benzene well above those considered the threshold for regulatory action. For benzene in particular, the odor detection threshold is known to be substantially above this threshold, set by the EPA at 0.66 parts per billion (ppb). At 100 parts per million, the levels found by the Anlab work--albeit with pure gasoline--are over 100,000 times the action level.

The lack of response on the part of the plastics industry to the Department's request for data on permeation (March, 1981) is even less understandable, since several industry studies on the resistance of various plastics to attack by chemicals, show that they have known about the vulnerability of various plastics since the early 1960's. That they permitted water pipes to be constructed of these same materials without public disclosure of this vulnerability to appropriate public agencies is cause for concern.

Because of the gravity of the potential health hazards posed by these and other carcinogenic chemicals, and the uncertainties surrounding where and when health-threatening episodes may occur throughout the state, we believe that the following moratoria requirements and authorizations should be adopted immediately:

1) A specific moratorium on use of underground plastic

pipes for carrying potable water in and around high-risk sites in the state. These sites, to be specified by the Department of Health Services, Department of Food and Agriculture, and CalTrans, would include, but not be limited to, areas of proximity to present and abandoned hazardous waste disposal sites; land in proximity to underground chemical storage tanks; agricultural land where residual contamination with pesticides or soil sterilants may occur; and, rights-of-way at high risk for accidents or spills that contaminate soils with potentially permeating chemicals.

2) A requirement that soils at all major construction sites and rights-of-way in which contractors intend to use plastic pipe be monitored prior to use to determine the presence of significant levels of permeating chemicals.

3) A directive to the Department of Health Services to rigorously enforce relevant statutes and regulations dealing with the siting of water mains and service laterals.

4) A notification requirement that householders whose service lines have been plumbed with plastic be warned of the health risks associated with permeation of toxic chemicals from contaminated soil.

5) A requirement that CalTrans and other emergency agencies notify local water utilities known to use plastic pipe of any spill or leakage of hazardous chemicals which can permeate plastic piping (A model notification request for PCB permeation of PB pipe was recently developed by the North Marin County Water District).

6) A requirement that the Department of Food and Agriculture monitor agricultural soils for residual contaminants which can permeate underground plastic irrigation pipes and thereby recontaminate crops or workers (examples include DBCP and dichloropropanes). And

7) An authorization for the Department of Health Services to modify its existing regulations proscribing the use of plastic pipe where petroleum distillates are present to encompass all classes of chemicals known

to permeate plastic pipe.

We believe that the health and welfare of California citizens will be substantially served by taking the steps outlined above to offset the real and potentially damaging health threat posed by the permeation of plastic water pipes by toxic organic chemicals.

INCIDENTS OF PERMEATION OF PLASTIC WATER SUPPLY LINES

SITE	NUMBER OF EPISODES
East Bay Municipal Utility Districts, Oakland, California: Reports of at least twelve specific incidents of potable water being contaminated by gasoline distillates via permeation of plastic pipe. Specific types of plastic pipes permeated are unknown at this time.	12
Marin Municipal Water District, Corte Madera, California: Episodes of gasoline permeation of PB pipe at two residences.	2
North Marin County Water District, Novato, California: Permeation of PB pipe by gasoline (accident near meter) at a residence.	1
State of Delaware: Department of Health and Social Services Division of Public Health reported an episode of permeation at a shopping center of PE pipe by Tetrachloroethylene (PCE).	1
Columbus, Ohio: Shopping center, 2492 Morse Road, Columbus, reports of permeation of PE by gasoline distillates. Adverse health effects reported.	2

(2)

INCIDENTS OF PERMEATION OF PLASTIC WATER SUPPLY LINES
(Continued)

SITE	NUMBER OF EPISODES
Chattanooga, Tennessee:	
Permeation of a residential plastic service line by gasoline.	1
Lekkerkerk, Nederlands:	
See attached description. 800 Inhabitants evacuated; 270 homes contaminated.	270

CONTACT:
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FOR IMMEDIATE RELEASE
October 19, 1983

3

A new danger associated with the use of plastic pipe was revealed today in Sacramento at an Assembly committee hearing. Laboratory tests have shown that lindane, a carcinogenic chemical commonly sprayed on or near pipes for the control of termites and other structural pests, will penetrate the walls of some plastic pipe and contaminate drinking water according to Dr. Marc Lappe of the U.C. Berkely School of Public Health.

Testifying before an Assembly Ways & Means Subcommittee chaired by Assemblyman Art Agnos (D-San Francisco), Lappe urged the state to adopt an emergency regulation to prevent the application of lindane on or near plastic pipe.

Under California law, all structures must be treated for termites before sale or resale. The average home in California is resold every four years, according to Lappe, and lindane is the second most common chemical used for the required treatment. Lappe speculated that, by the year 1990, most Californians will have drunk water from lindane contaminated pipes.

Lappe warned the committee that "the state departments which are responsible for health and environmental protection need to conduct comprehensive examinations of plastic pipe permeation and do a better job of coordinating information amongst themselves." The testing for lindane permeation was recently completed under Lappe's supervision by an independent laboratory in Sacramento. Previous research had indicated that gasoline and other toxic chemicals commonly spilled, dumped, or sprayed in or on soil will permeate plastic pipe.

"Despite the reports of gasoline permeation episodes by three different California utility districts and independent confirmation of my findings by the American Water Works Service Co. in New Jersey, the state has attempted to ignore this serious health hazard," Lappe charged.

Agnos had called the hearing in response to an unreleased report by the Department of Consumer Affairs that the Department of Health Services and other agencies had failed to properly protect drinking water quality in a housing tract developed near the McColl hazardous waste site in Fullerton. The hearing also questioned the Governor's veto of a Budget Bill appropriation which would have commissioned a study of pipe permeation.

#####

LINDANE

Common Name: Lindane

Synonyms: Hexachlorocyclohexane; gamma benzene hexachloride; BHC

Uses: Fumigant in homes and gardens* (See attachments); control of body lice

*Approximately 29,000 pounds of Lindane were used for structural pest control in California in 1981. Pesticide Use Report, Dept of Food and Agriculture, State of California, 1981.

Type of Chemical: Organochlorine (chlorinated hydrocarbon)

Chemical and Physical Properties: Colorless; persists in environmeant for approximately 10 years**

** An Assessment of the Health Risks of Seven Pesticides Used for Termite Control. Committee on Toxicology, Board on Toxicology and Environmental Health Hazards, Commission on Life Sciences. National Academy Press, Washington, D.C. August, 1982.p.3.

LD_{50}: Acute oral: 88 mg/kg. in male rats*

*Thomson, W.T. Agricultural Chemicals, Thomson Publications, California. 1977.

Antidote: No antidote available

Acute Health Effects: As an organochlorine, lindane may disrupt the function of the nervous system, principally that of the brain. Acute symptoms may include headache, disorientation, apprehension, weakness, muscle twitching and convulsions. Chlorinated hydrocarbons are fat soluble and may be stored in human body fat.

Morgan, D.P., 1977. Recog. & Mgmt. of Pesticide Poisonings, U.S. EPA, Washington, D.C.

A 2-year-old boy developed aplastic anemia after playing with a dog treated with lindane solution for mange.

Vodopick, H. "Cherchez la Chienne: Erythropoietic Hypoplasia After Exposure to -Benzene Hexachloride." JAMA, 234(8), 850-851, 1975.

Lindane can be absorbed through the skin.

Chronic Health Effects: Lindane has been shown to cause cancer in rats and mice.

Reuber, M.D., 1979. "Carcinogenicity of Lindane." Environ. Res. 19(2): 460-481.
Reuber, M.D., 1979. "Carcinomas and Other Lesions of the Liver in Mice Ingesting Organochlorine Pesticides." Toxicol. Annu. 3:231-256.

Lindane has been found to be mutagenic in human cell cultures and plant root tips.

Vachkova-Petrova, R.(Inst. Hyg. & Occup. Dis., Med. Acad., Sofia, Bulgaria), 1978. Mutagenna aktivnost na pestitsidite. (Mutagenic activity of pesticides). Khig. Zdraveopaz. 21(5):496-605. (Bulgarian).
Kolmark, F.C. "The Induction of Cytogenetic Changes and Atypical Growth by Hexachlorocyclohexane." Science, 109, 467-468.

Long-term administration of lindane to rats resulted in decreased fertility and produced teratogenic, carcinogenic and central nervous system effect.

Petescu, S., V. Dobre, M. Leibovici, Z. Petroscu, S.A. Ghelberg, 1974. "The Effects of Long-Term Administration of Organochlorine Pesticides (Lindane, DDT) on the White Rat." Rev. Med. Chir. 78(4):831-842.

CAUTION

May be fatal if swallowed. Harmful if inhaled or absorbed through the skin or eyes. Do not swallow or inhale vapor or spray mist or allow contact with skin, eyes or clothing.

Avoid contact with food or feeds.

If swallowed, induce vomiting by giving the victim 1 Tablespoon of table salt in a glass of water. If on skin, remove contaminated clothing and wash with soap and water; if in eyes, flush with running water. Call a physician in all cases of suspected poisoning. Do not use in dairy barns or milkhouses.

Do not use in edible products areas of food processing plants, restaurants or other areas where food is commercially prepared or processed. Do not use in serving areas while food is exposed.

This product is toxic to fish, birds, and other wildlife. Keep out of lakes, streams, or ponds. Do not contaminate water by cleaning of equipment, or disposal of wastes.

Apply this product only as specified on this label.

NOTICE — Recommendations for the use of this product are based upon information believed to be reliable to the time of printing. The storage and use of this product being beyond the control of Los Angeles Chemical Company, no guarantees expressed or implied are made as to the effects of such, or the results to be obtained. If not used in strict accordance with the recommendations and established safe and sound practice. The Buyer assumes all responsibility including any injuries and/or damages resulting from its misuse as such, or in combination with other products. No recommendations are made under abnormal storage or use conditions, or under conditions not reasonably foreseeable to the seller.

EPA REG. NO. 962-366 AA
EPA EST. NO. 962-CA-1

Lacco

HI-LIN

CONTAINS 1 LB. LINDANE PER GAL.

FOR SPOT APPLICATION ONLY

ACTIVE INGREDIENTS:	
Lindane (Gamma Isomer of Benzene Hexachloride)	12.9%
Xylene	78.4%
INERT INGREDIENTS	8.7%

CAUTION

KEEP OUT OF REACH OF CHILDREN

KEEP CONTAINER CLOSED. DO NOT LEAVE IN SUNSHINE.

Do not reuse empty drum. Return to drum reconditioner or destroy by perforating or crushing and burying in a safe place away from water supplies.

WARNING — FLAMMABLE!

KEEP AWAY FROM HEAT OR OPEN FLAME

See other precautions on the back/side panel.

LOT NUMBER

NET CONTENTS
1 GALLON

RYTF0579

MANUFACTURED BY

LOS ANGELES CHEMICAL COMPANY

DIRECTIONS

LACCO HI-LIN is prepared for use against certain household and structural pests as listed below. Dosages are given in terms of fluid quarts of this product.

HOUSEHOLD: 1 quart in 25 gallons as a coarse, wet spray or with a paint brush as directed for the control of the following pests. Repeat as needed to maintain effective control. May cause staining in some cases.

ANTS: Apply to ant trails, door sills, window frames, openings around water pipes, heat ducts, electrical outlets, baseboards and other areas where ants may enter rooms.

ROACHES, WATERBUGS: Apply to infested cracks, hiding places and adjacent exposed surfaces where pests may crawl when not in hiding.

MOSQUITOES: Apply to doors, door sills, screens, window frames, and other areas where the pests frequently alight.

SILVERFISH: Apply to baseboards and areas behind shelving, bookcases and storage spaces.

FLEAS: Apply to infested areas around baseboards, windows and door frames, wall cracks, sleeping quarters of household pets and localized areas of floors and floor coverings; place fresh bedding in animal quarters after treatment and do not apply directly to pets.

DIRECTIONS (Continued)

FLIES: 1 quart in 8 gallons of water. Apply to doors, door sills, screens, window frames, and other areas where pests frequently alight.

STRUCTURAL: 1 quart in 25 gallons of water, pre-construction. Apply as a coarse, wet spray, or with a paint brush. Inspect treated areas annually for signs of infestation.

SUBTERRANEAN TERMITES: Slab construction, use a solution of 1 quart to 3½ gallons of water. For treatment before gravel or cinder fill has been added, apply 1 gallon of solution per 10 square feet of soil surface. Where fill has already been added, apply 1½ gallons per 10 square feet. Conventional construction, use a solution of 1 quart to 3¼ gallons of water. Apply to trench 6 inches wide and up to 30 inches deep for buildings with deep foundations along both sides of exterior and interior foundations, around piers and under utility entrances; placing about 1/3 of the solution in the bottom of the trench with the remaining 2/3 mixed into the soil as the trench is backfilled. Use 2 gallons of solution per 5 linear feet for trenches not over 15 inches deep and 4 gallons per 5 linear feet for trenches exceeding 15 to 18 inches in depth. On voids or unit masonry walls, apply to 125 linear feet, from the surface of the soil to the footing.

CAUTION

Avoid use in dairy barns or milk houses.
Keep container closed.
May be absorbed through skin.
Avoid inhalation and skin contact.
In case of contact, wash immediately with soap and water.
Avoid contamination of feed and foodstuffs.
Do not use on household pets or humans.
Harmful if swallowed.

DO NOT LEAVE IN SUNSHINE. DO NOT USE, POUR, SPILL OR STORE NEAR HEAT OR OPEN FLAME.

DESTROY OR RETURN THIS CONTAINER WHEN EMPTY.

Do not reuse empty drum. Return to drum reconditioner or destroy by perforating or crushing and burying in a safe place away from water supplies.

DIRECTIONS

LACCO LIN-O-FLY is prepared for use against certain household pests, listed below. Use as a spot treatment inside dwellings. Do not use as a general space spray or broadcast vapor. Use a coarse type spray.

ANTS: Spray around doorways, windows and cracks or openings of any kind in floor, walls or ceiling where ants might enter the room. Pay particular attention to space behind baseboards, under sinks, in cupboards and behind built-in drawers. Repeat as needed for complete control.

FLIES, MOSQUITOES: Spray to heavy dampness on and around doors, around windows, on screens and any surface on which flies or other insects congregate. Repeat often as necessary to maintain maximum killing value.

SPIDERS, CENTIPEDES: Spray infested baseboards, corners, behind pipes, storage or dark areas. Pay particular attention to basements or areas under houses, garages and storage sheds. Repeat often as needed to maintain killing efficiency of treatment.

EPA REG. NO. 962-375 AA
EPA EST. [illegible]-CA-1

Lacco

LIN-O-FLY

KILLS FLIES WITH LINDANE

ACTIVE INGREDIENTS:	
Lindane (Gamma Isomer of Benzene Hexachloride)	.50%
Deodorized Kerosene	95.10%
Toluene	4.25%
INERT INGREDIENTS:	.15%

CAUTION!

KEEP OUT OF REACH OF CHILDREN

SEE CAUTION STATEMENT TO LEFT.

LOT NUMBER 3351 NET CONTENTS 1 GALLONS

MANUFACTURED BY

LOS ANGELES CHEMICAL COMPANY

DIRECTIONS (Con'L)

CRICKETS: Spray baseboards, floors of closets and storage places. Spray thoroughly around doorways and openings of any kind through which crickets might enter. Repeat each 2 to 4 weeks during heavy cricket infestations.

ROACHES, WATERBUGS: Spray around doors, windows, and into any cracks or spaces (such as around drain pipes) through which insects might enter. Pay particular attention to areas behind built-in drawers and cupboards. Repeat as needed to maintain control.

CARPET BEETLES: Spray infested areas of carpets and surrounding floor. Spray dark corners and into cracks where insects might hide. Repeat as needed.

CLOTHES MOTHS: Clothing, blankets and other woolens to be protected should be cleaned and thoroughly sprayed so as to dampen all surfaces. Pay particular attention to seams, cuffs and pockets. Dry thoroughly and place in good tight storage. Treated items should be dry cleaned before being used as clothing or bedding.

FLEAS: Spray infested areas carefully. Direct spray into cracks, crevices and other hiding places in out-houses, yards and kennels, so that all infested areas are dampened. Repeat at monthly intervals. Do not use in human habitations. Do not spray animals. Dry treated areas carefully before allowing pets to re-enter.

SILVERFISH: Spray baseboards, behind drawers or shelving, book cases and storage areas. Repeat as needed to maintain efficient control—usually about each 2 to 3 months.

NOTICE: Recommendations for the use of this product are based upon information believed to be reliable at time of printing. The use of this product being beyond the control of LOS ANGELES CHEMICAL COMPANY, no guarantee, expressed or implied is made as to the effects of such or the results to be obtained if not used in accordance with directions or established safe and sound practice. The BUYER must assume all responsibility including injury and/or damage resulting from its misuse as such or in combination with other products.

ASSEMBLY

CALIFORNIA LEGISLATURE

ART AGNOS

ASSEMBLYMAN SIXTEENTH DISTRICT

DEMOCRATIC CAUCUS SECRETARY

CHAIRMAN
WAYS and MEANS SUBCOMMITTEE on HEALTH
and WELFARE

AGENDA

SUBCOMMITTEE #1 on HEALTH and WELFARE
OVERSIGHT HEARING on PLASTIC PIPE
WEDNESDAY OCTOBER 19, 1983
1:00 - 3:00 P.M.

Background

In July the Governor blue pencilled $200,000 for a study to assess the public impact of the permeation and infiltration of plastic pipe and pipe water mains by toxic chemicals. The study called for a comprehensive and independent literature search on permeation; the development of new test protocols to assess permeation; and risk assessment based on the likelihood and dose of human exposure to chemicals which could enter drinking water supplies.

The study designed by the Assembly was to be carried out by an independent contractor under the supervision of the Assembly Office of Research. It was to be completed by March 1, 1984, and it was funded entirely by the Hazardous Waste Control Account.

The Governor's veto message stated that the item was vetoed because it was more appropriate for the study to be funded by the pipe industry.

Major Issues

This hearing will address five critical issues relating to the plastic pipe issue.

1. How much do we know about the phenomena of permeation? Do existing studies and available information suggest that this is a serious health issue?

2. What type of studies are currently being done by industry? Are they comparable to the study proposed by the Legislature?

3. Is it prudent public policy to rely on the industries which manufacture plastic pipe and have direct financial interest in its use, to perform an important public health study?

4. Is there a legitimate need for an independent study of plastic pipe permeability? How should such a study be funded?

5. Are existing regulations being adequately enforced? Are there immediate steps that should be taken to limit or restrict the use of plastic pipe?

Witnesses

Mr. Richard Spohn, Attorney
Consumer Federation of America

Mr. Michael Paparian
Sierra Club

Mr. Marc Lappe
Coalition of Consumer Labor and Environment Groups

Resident
McColl Dump Site

Mr. Alan J. Olson
B. F. Goodrich Corp., representing the Vinyl Institute

Mr. Jim Blumencrantz
R & G Sloane, representing the Plastic Pipe & Fitting Association

Mr. Robert Harris, PhD, Co-Director
Hazardous Waste Research Program, Princeton University

Mr. Robert Fugina, Chief Deputy Director
State Department of Health Services

Mr. Harvey Collins, Chief
Environment Health Division - State Department of Health Services

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SAN FRANCISCO, CA 94102
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COMMITTEES:
AGING
ELECTIONS AND REAPPORTIONMENT
RULES
WAYS AND MEANS

Assembly
California Legislature

ART AGNOS
ASSEMBLYMAN, SIXTEENTH DISTRICT

DEMOCRATIC CAUCUS SECRETARY
CHAIRMAN
WAYS AND MEANS SUBCOMMITTEE ON HEALTH AND WELFARE

PLASTIC PIPE AND PERMEATION; DOHS OVERSIGHT HEARING
OCTOBER 19, 1983

BACKGROUND PAPER FOR
ASSEMBLY WAYS AND MEANS SUBCOMMITTEE NO. 1
ON HEALTH AND WELFARE

Summary

This briefing document provides background information on the phenomena of plastic pipe permeation and discusses what the state has done to restrict the use of plastic pipe. The document is organized as follows:

I. Overview of the Issue

Permeation refers to the phenomenon by which chemical substances travel through the walls of plastic pipe from surrounding soils and contaminate fluids transported within the pipe. Permeation is of concern whenever drinking water is transported by plastic pipe through soils that are contaminated with hazardous substances. The evidence demonstrates that permeation does occur, although the data necessary to determine the extent and severity of the problem is not conclusive. Uncertainty rests both with the potential frequency of the problem and with the often unknown health effects resulting from chronic (long-term) exposure to low levels of toxic substances.

A. Types of Pipe:

There are three major types of plastic pipe commonly in use for water service. The types of pipe are refered to by their prime constituents: polybutylene (PB), polyethylene (PE) and polyvinylchloride (PVC). Pipe used for water mains is generally from two to twelve inches in diameter. Pipe used to service individual customers is two inches or less in diameter. Evidence indicates that the higher the density of the molecules of the plastics used in the pipe, the lower the permeability of the walls and the lower the rate of permeation.

B. Reports of Permeation:

Permeation has been reported in California and in the Netherlands and EPA data indicates that other states have also experienced permeation problems. Alleged incidents of permeation have been connected to contaminated soils in the vacinity of both the McColl and Stringfellow dumpsites. Permeation could also be a problem if plastic pipe is installed to carry drinking water near any of the hundreds of other identified California sites with known soil contamination.

The experience of one major California water utility demonstrates that the installation of plastic pipe in localized areas subject to soil contamination from the spillage of gasoline can lead to permeation. Other situations of concern include: a) cases in which pipe is installed in new housing developments located on old

agricultural lands that have [illegible]
persistant pesticides; and b) application of common pesticides in a residential setting. In summary, the preconditions for permeation may be a common feature of residential and urban settings.

C. Related Public Health Issues:

Permeation is only one of several public health issues related to the use of plastic pipe. One major concern is the contamination of tap water from the leaching of plasticizing agents which are used in the manufacture of plastic pipe, and of solvents and glues used in connecting pieces of pipe. There are also concerns about toxic fumes that are generated during structural fires. Leaching and plastic fumes are major issues in an EIR being developed by SRI International for the State Department of Housing and Community Development (HCD). By contrast there is no scientific study of permeation being carried out in California.

D. Jurisdictional Issues:

Jurisdiction over the use of plastic pipe in California involves a split at the property line of the individual homeowner. The laying of water mains and the delivery of water up to, and away from the property line is regulated by the Sanitary Engineering Branch of the Department of Health Services (DOHS). The use of plastic pipe inside of the property line and within buildings is regulated by HCD. The failure to properly evaluate the threat of permeation in the five years that DOHS has known of the concern, and the failure to take appropriate preventive action, is partially due to this split in jurisdiction. In larger part, DOHS's failure on permeation is a function of:

- o very poor follow through once regulations are developed;
- o a tendency to downplay the potential severity of public health threats and;
- o understaffing.

E. Economic Interests:

The debate on permeation is often clouded by the large economic interests involved in the issue. Plumbers unions have generally been opposed to the use of plastic pipe on several grounds including:

- occupational health issues involved in using glues that contain synthetic organic compounds to join pieces of pipe and;

- public health issues of fire safety, leaching and permeation.

In addition, plastic pipe is generally less expensive than metal pipe and is more easily installed, particularly by homeowners and other nonprofessional plumbers that can use glue and avoid the soldering necessary with metal pipe. Plumbers have not been vocal in raising potential health concerns with nonplastic pipe. Yet there are also occupational and public health issues related to the use of asbestos in pipe, and the lead and cadmium used to solder metal pipe.

II. What is Known About Permeation?

The following is a summary of incidences of contamination and studies related to permeation. Events are presented chronologically where possible.

A. East Bay MUD:

In the late 1970's the East Bay Municipal Utility District (EBMUD) began to receive complaints about drinking water tasting and smelling of petroleum. After investigating several complaints EBMUD concluded that gasoline and other petroleum distillates must have been present in soils into which plastic water mains and service pipes were installed, and that these chemicals permeated through the walls of the pipe and into the tap water.

EBMUD conducted laboratory studies demonstrating that permeation occurs when PE and PB plastic pipe is allowed to soak in a solution of gasoline diluted with water. Results of an identical test of permeation through PVC pipe were negative. Several of the first incidents of petroleum distillate permeation were linked to: (1) the uncontrolled drainage of materials used to clean motorcycles and the corrosion of asphalt, and (2) the contamination of soil caused by the spillage of gasoline from the tanks of automobiles parked on a steep hill.

A third reported incident of permeation in the EBMUD service area involved the presence of butyl mercaptan in tap water. Mercaptans are added to natural gas to produce an odor for safety reasons. The mercaptans apparantly permeated from a natural gas service pipe made of PE and through a PB water pipe with which the gas pipe was in direct contact. EBMUD conducted a simple laboratory test of permeation using butyl mercaptan and PE pipe. Strong mercaptan odors were detected in several of the samples.

Several aspects of the EBMUD experience deserve note:

- Although one of the reported cases of permeation occurred on the premises of an operating chemical manufacturing plant, EBMUD did no test for substances other than gasoline and butyl mercaptan.

- The EBMUD lab tests demonstrate that permeation occurs. There was no attempt, however, to quantitatively correlate concentrations of specific substances with the rate of permeation for each type of pipe.

- EBMUD conclusions that permeation is not a common phenomenon because of the relatively low number of reported cases may be erroneous. As the utility notes, permeation will not likely be reported unless the taste or odor of the tap water is adversely affected. Thus there may be unreported incidents of permeation that involve substances at concentrations too low to be detected by end users.

- A number of the EBMUD incidents involved contaminated soils on the property of the building involved. There is serious concern that the application of pesticides near a residence, particularly fumigation with lindane and chlordane for termite or ant control, may increase the likelihood of the permeation of service pipe running through soils within the property line. One consultant notes that it is common practice when fumigating for termites to deliberately spray both the soil and any pipes entering the house.

- The EBMUD permeation experiences resulted in the 1979 promulgation of PG&E regulations prohibiting the use of plastic pipe in soils contaminated with petroleum distillates.

B. Lekkerkerk:

Lekkerkerk is a town in the Netherlands that experienced what appears to be the most serious reported incident of permeation. PE pipe was installed in Lekkerkerk in soils that were heavily contaminated with a variety of substances including known carcinogens. Many of the buildings were located on top of an old chemical waste dump. Trichloroethylene (TCE), for instance, was found in concentrations of from 140 to 160 parts per million (ppm). In 1980, 800 inhabitants were evacuated from 270 houses which were then put up on piles while the contaminated soil, totalling 150,000 tons, could be removed.

Dutch scientists subsequently did several studies of

permeation. One was a 1981 study of the permeation of gaseous methyl bromide through PE, PB and PVC pipe. An incident of suspected permeation involved this soil disinfectant which is commonly used in both the Netherlands and the U.S. PVC pipe was found to be the most resistant and of the three was the only one that did not permeate. These results are of concern in California because of the chemical similarity of methyl bromide to ethylene dibromide (EDB). Although EDB is now being banned for use by the EPA, the substance is very persistant and has been used for many years on California soils.

C. Housing and Community Development EIR:

The Department of Housing and Community Development is currently preparing an EIR on the impacts of expanding the legal uses for plastic pipe in residential buildings. Legal use is currently restricted to effluent and prohibits the use of plastic pipe to deliver potable water. Development of the EIR began in 1978 with the formation of a task force chaired by HCD and including representatives of DOHS, Consumer Affairs, Cal-OSHA, the Fire Marshall, the Pipe Trades Council (plumbers), the California Building Trades Council, a plumbers union and several manufacturers of plastic pipe. The study is being conducted by SRI International and funded by the Society of the Plastic Industry.

Although SRI identified permeation as an important public health concern, HCD does not want to include the issue in the EIR because:

- o the concern was brought up too late in the process;
- o too much basic scientific research is required before permeation can validly be evaluated in an EIR and;
- o the issue is outside of HCD's jurisdiction. Despite ongoing efforts of the Pipe Trades Council and a coalition of environmental and consumer organizations, it is not clear that the EIR is the proper forum for a study of permeation. The EIR focusses on the use of pipe in buildings and permeation occurs outside of residences.

D. McColl Dumpsite/Coyote Hills:

In 1981 residents of the Coyote Hills housing development near the McColl dumpsite began to complain of petroleum odors and tastes in their drinking water. Little was done at either the local or the state level to respond to these concerns. Two years later, during the summer of 1983, DOHS finally conducted water sampling and laboratory analyses of Coyote Hills tap water. Although DOHS concluded that permeation probably is not a problem in this Fullerton community, the report has been criticized by local residents and the Pipe Trades Council. Specific objections to the study include:

- o Water was only allowed to accumulate in the plastic service lines for two hours. Such a short period may not adequately reflect actual residential use, tending to understate any permeation.

- o No soil testing was done in the vacinity of the plastic pipe from which water entered the houses.

- o Instead of testing a random number of houses, essential for statistical validity, DOHS allegedly tested the first twelve houses they came across.

- o The Department never took the measurements of water flowrate necessary to assure that the sampled water came from the service pipe, where it was supposed to be static for two hours.

The Department found extremely low levels of one or more of three toxic organic compounds (toluene, styrene and tetrahydrofuran) in the water of three houses. The Department concluded that although the source of the substances is unknown, none of the substances is related to the oilfield wastes that contaminate the soils of the area, and that permeation is not demonstrated to be occuring. McColl residents will vociferously dispute the results of the DOHS study. The Department intends to do further water sampling at the Coyote Hills subdivision. The nature of this testing has not been announced.

E. Stringfellow Dumpsite:

Permeation has also become a concern at the Stringfellow dumpsite. In 1978 the regional water board released part of the liquid contents of one of the Stringfellow ponds during a heavy rainstorm in order to avoid a breaching of the pond walls. The effluent ran down the canyon and across a portion of the playground at the Glen Avon school. Synthetic organic compounds have recently been found in water from the school drinking fountains. It is possible that some of the Stringfellow wastes may have percolated into the school's soils and permeated plastic water service pipe.

F. Department of Consumer Affairs:

The Department of Consumer Affairs has been involved in the issue of permeation in several different contexts:

- In mid-1982 Dr. Marc Lappe, a consultant for Consumer Affairs during the Brown Administration, learned of the Lekkerkerk incident and obtained a copy of the EBMUD studies that had been part of the hearing record for the DOHS regulations. Lappe designed a protocol, working with Consumer Affairs and funding from the state Building Trades Council, to duplicate the EBMUD tests on petroleum distillates and to test a broader range of organic compounds including solvents and pesticides. As with the EBMUD studies, the aim was to qualitatively rather than quantitatively, demonstrate the threat of permeation. The work was conducted by AnLab, a independent laboratory in Sacramento, and the results were relesed by Consumer Affairs in December 1982.

The results included:

- o In testing permeation of pipe with soil saturated by gasoline, AnLab found that benzene (a potent carcinogen) accumulated in pipe at levels of up to 100 ppm in one week. The federal regulatory action level for benzene in drinking water is approximately ten thousand times lower.

- o In testing a range of pesticides, AnLab obtained negative results for chlordane, but positive results for lindane. This result raises serious questions regarding common methods of ant and

termite control that include spraying pesticides on water pipes.

- In the spring of 1983, Gus Koehler, then a research analyst with Consumer Affairs, learned of the experiences of McColl area residents. Koehler researched and wrote a paper entitled, "Plastic Water Pipe in Coyote Hills: A Case Study of Regulatory Failure", that became available in draft form in August 1983. The Koehler study is as an indictment of a state regulatory structure that is intended to protect the public health. The report demonstrates the ineffectiveness of the existing DOHS permeation regulations, due largely to lack of enforcement, and the finger pointing concerning the lack of soil testing prior to the installation of plastic pipe between the developer, the water agency and county health officials. Koehler has since been removed from his post at Consumer Affairs and shuffled to a desk with no phone in a different department.

G. Shell Study:

In July 1983 the Governor vetoed budget item 4260-001-014 which would have allocated $200,000 from DOHS' Hazardous Waste Control Account for an independent study of permeation. Department representatives testified in budget hearings that such a study would be useful.

DOHS is now working with Shell scientific staff at the firm's corporate headquaters in Houston to develop a protocol for a study to be both funded and conducted by Shell. Department spokepersons have indicated that Shell and DOHS are a long way from agreement about the initial protocol submitted by Shell. For example, Shell does not want to test soils contaminated above 1 part per million. In practice, soil is often contaminated at levels far in excess of this.

A number of questions are unanswered:

- o What was the impetus for the veto of the budgeted study and the Shell study? Did Shell offer to do the study or was the firm approached by the Administration?

- o How will the Shell study address the fundemental issue of permeation if it involves only one type of pipe, PB, of which Shell is the major manufacturer? Does the Department have any plans for more exhaustive study of permeation?

- To what degree will DOHS be able to exercise control over a study that is funded by Shell and is conducted in Texas? Will this study just be another example of suspect results from private testing by an affected industry?

The Shell study is already controversial. The Department contends that no actual work has been done by Shell and that only the protocol is now under discussion. The Pipe Trades Council asserts, however, that Shell has already conducted testing and is unhappy with the results. This controversy highlights the dangers of relying on a study such as Shell's as the basis for major public health decisions.

B. New Studies:

The results of several new studies are now becoming available including:

- Recent laboratory studies by a New Jersey utility, the American Water Works Company, strengthens the case on permeation. American Water Works conducted tests using substances present in low concentrations in the gaseous phase, rather than soil saturated with liquids. One major result is that PE, PB and PVC all were permeated by a gaseous solvent in periods ranging from one day to one week.

- AnLab, with funding from the Pipe Trades Council, has replicated its 1982 experiments using tighter controls to avoid any possible entry of substances through the joints between the pieces of pipe, rather than through the walls. The results, to be released at the hearing, include:

  - The degree and rate of permeation appears to be a function of identifiable chemical characteristics of a permeant. Constituents of gasoline, such as benzene, and chlorinated solvents permeate readily while pesticides permeate more slowly.

  - In order of the threat of permeation, PE pipe poses the greatest danger, PB pipe is of intermediate danger, and PVC appears to pose the least threat.

- o California Analytical Labs, also under contract to the Pipe Trades Council, is conducting tests on a carbon water filter from one of the McColl area houses sampled by DOHS. The results, also to be released at the hearing, indicate the presence of over thirty organic chemicals, including a number of benzene-related molecules. Some of the chemicals are known or suspected carcinogens. A number of the chemicals are related to crude petroleum and could probably be linked to the McColl wastes.

I. Miscellaneous Notes:

Ray Leonardini's group, the Pipe Trades Council and a coalition of organizations including Friends of the Earth, Citizens for a Better Environment and the Consumer Federation of California, is suing the International Association of Plumbing and Mechanical Officials (IAPMO). IAPMO is developing rules governing the installation and use of plastic pipe. Although the rules do not have the weight of law, it is common for IAPMO rules to be incorporated into state building codes. The suit is now in the discovery phase and is expected to go to trial in Los Angeles in December.

IAPMO contends that sufficient data exists to certify plastic pipes as safe. The plaintiffs assert that there is insufficient data and that the development of the rules is premature.

III. Does California Need an Independent Study of Permeation? What are the Issues?

There are significant drawbacks to relying on an industry organization to both fund and conduct a study of permeation. The Shell study will examine only PB pipe, of which the company is the major manufacturer. In addition, representatives of DOHS indicate that Shell and the Department are far from agreement on the protocol initially submitted by the firm. The State has little if any leverage over research funded and conducted by a private firm. Is the public good served by a prolonged study that addresses only part of the issue? The results of the Shell study will be inconclusive for all parties except Shell.

IV. Are Existing Regulations Being Adequately Enforced? Are there Immediate Steps that Should be Taken to Restrict the Use of Plastic Pipe?

A. Existing Regulations:

In 1979 the Sanitary Engineering Branch promulgated two new regulations relating to the permeation of plastic pipe. These regulations were the direct result of studies by East Bay MUD, and were added to Title 22, Article 5, Water Mains and Appurtances.

- Section 64624 (f) states that:

  "Plastic pipe shall not be used in areas subject to contamination by petroleum distillates."

- Section 64630 (g) states that:

  "Installation of water mains near the following sources of potential contamination shall be subject to written approval by the Department on a case-by-case basis:

  (1) Storage ponds or land disposal sites for waste water or industrial process water containing toxic materials or pathogenic organisms.

  (2) Solid waste disposal sites.

  (3) Facilities such as storage tanks and pipelines where malfunction of the facility would subject the water in the main to toxic or pathogenic contamination."

B. The Need for Emergency Regulations:

The scope of existing regulations appears to be inadequate to protect public health from toxic contaminants. Existing regulations apply only to petroleum distillates and exclude many solvents, pesticides and other toxic substances that can permeate plastic pipe.

Section 64624 should be expanded beyond petroleum

distillates to include all hazardous substances, including wastes. In addition the regulations could require:

- o certification that soil has been tested prior to installation of plastic pipe
- o that end users of water receive notice from the entity installing the pipe that plastic pipe has been used and that in the event of contamination of adjacent soils delivered water could become contaminated through permeation.

C. The Need for an Information Program:

The Department has no procedures to inform affected parties of the permeation regulations. A Department survey of water utilities found very poor knowledge of the regulations. It is unlikely that housing developers have any knowledge of the regulations. In the case of the alleged permeation in the vacinity of McColl, there were three forms of regulatory failure.

- o The contractor was unaware of Section 64624 which prohibits the use of plastic pipe in areas subject to soil contamination.
- o The water purveyor relied on the contactor to inform him of any soil contamination.
- o Despite the proximity of the McColl dumpsite the water purveyor did not request the Department's permission to install plastic pipe, in violation of Section 64630.

DOHS should develop procedures to:

- o Inform water utilities and contractors of their responsibilities under the permeation regulations.
- o Utilize data from a variety of sources within the Department, and from the regional water boards and the State Waste Management Board, to aid local governments in locating sites of known or potential contamination. This data base should include information on abandoned sites, underground storage facilities, solid and industrial waste disposal facilities and liquid waste surface impoundments.

PRESS INFORMATION

for

WAYS & MEANS SUBCOMMITTEE NUMBER 1
ART AGNOS, CHAIRPERSON

HEARING ON PLASTIC PIPE PERMEATION

1 p.m. Room 437

October 19, 1983

Presented by:

The Consumer Federation of California, Friends of the Earth, Citizens for a Better Environment, The Natural Resources Defense Council, and the California Pipe Trades Council

Coordinator:
Raymond J. Leonardini
(916) 444-0223

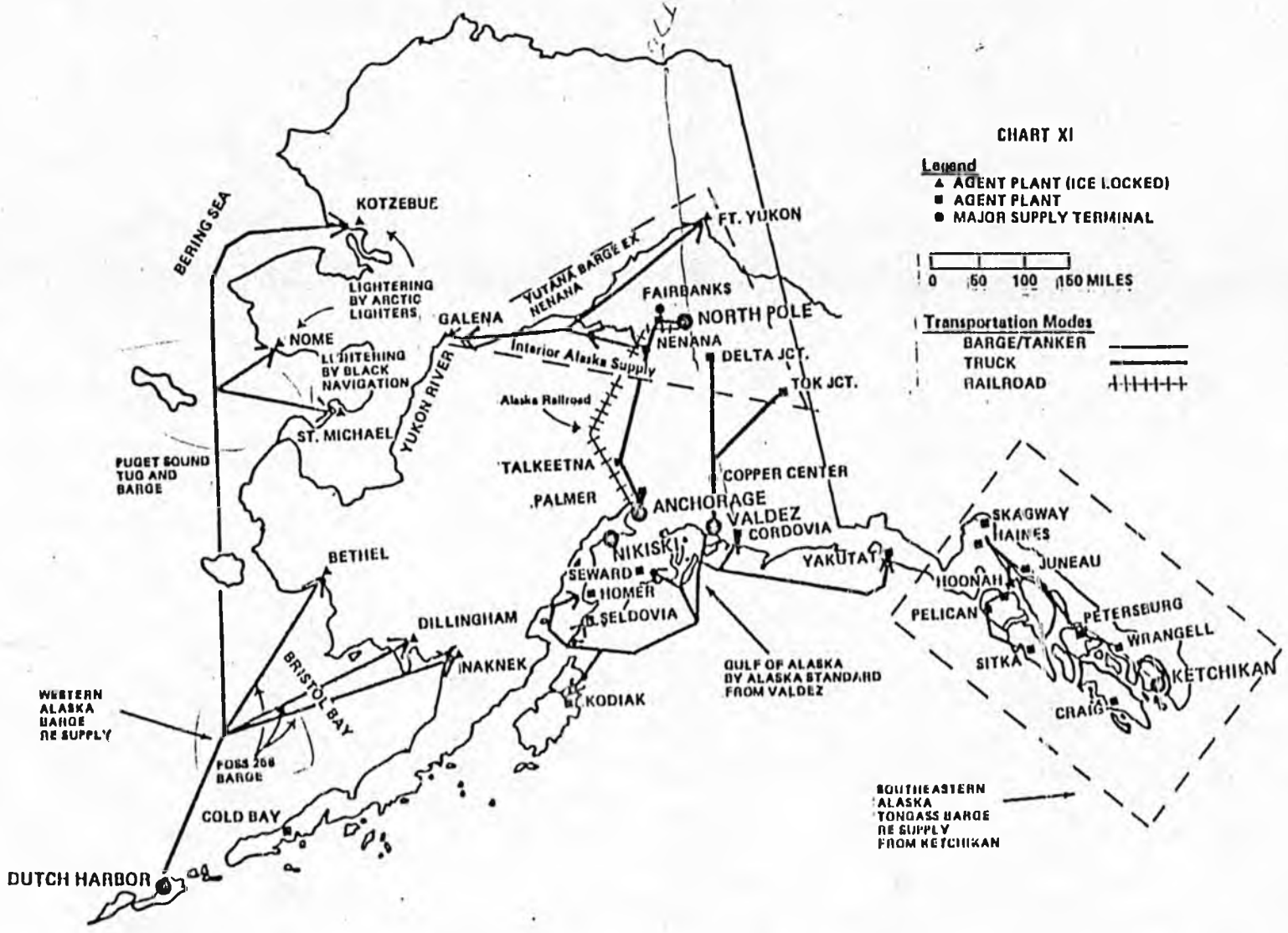
INDEX

ENCLOSURES

HB

509

Alaska Secondary Distribution



FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 509
Title: "An Act relating to aviation fuel refiners;..."
Sponsor: Repr. Hurlbert
Requestor: House Labor & Commerce
Date of Request: 3/28/84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: General Government
BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues)
Phone: 465-3672
Division: Administrative Services Division
Date: 3-28-84

Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues, for)
Date: 3-28-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 509

March 28, 1984

This bill amends Alaska's Code of Civil Procedure by exempting aviation fuel refiners from liability in a civil action for injuries resulting from the use of contaminated or impure fuel unless the fuel refiner intentionally, recklessly, or through gross negligence, causes or contributes to an injury. This exemption from liability would also not apply when an aviation fuel refiner transfers aviation fuel directly into the fuel tanks of an aircraft. This bill also amends Title 45, Trade and Commerce, to provide that an aviation fuel refiner may not refuse to sell aviation fuel solely because the purchaser provides drums of 50 gallons or more into which the aviation fuel is to be delivered.

Enactment of this bill will probably not have any direct fiscal impact on the Department of Law because it deals with private sector liability matters rather than the legal operations of state government. State funds could be significantly impacted, however, in a more indirect manner.

If, for instance, a major aircraft disaster occurred at a state operated airport, the state could be one of several parties with potential liability. When another party is shielded from liability, as is provided for in this bill, that portion of the liability that is shielded is not extinguished but, rather, it is transferred to the remaining liable parties. In this event, the total potential liability would be shouldered by the remaining parties, including the state, but excluding the aviation fuel refiner, even though contaminated or impure fuel might be a contributing cause. Because there are so many uncertainties involved in assessing potential liability, the cost of such an eventuality cannot be estimated. Consequently, no fiscal impact has been shown in this analysis.

MEMO

FEBRUARY 28, 1984

TO: JOHN

FROM: KEN

RE: HB 509

DUE TO ADDITIONAL CHANGES IN THE LANGUAGE OF HB 509 "RELATING TO AVIATION FUEL SUPPLIERS", THE COMMITTEE SUBSTITUTE IS STILL IN THE DRAFTING STAGE. HB 509 HAD BEEN PLACED ON TODAY'S CALENDAR. IT WILL BE RE-SCHEDULED SOON.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 12, 1984

TO: Representative John Cowdery
ATTN: Merrill Sikorski

FROM: Nancy Pease *Nancy Pease*
Legislative Analyst

RE: Product Liability Laws for Aviation Gasoline
Research Request 83-249

Merrill Sikorski of your office requested information regarding product liability for aviation gasoline in other states. He expressed a special interest in legislation that would limit the liability of suppliers and distributers of aviation gasoline.

I contacted Chevron USA, the Office of Air Worthiness Standards of the Federal Aviation Administration (FAA), the Aircraft Owners and Pilots Lobbying Association, and the aeronautics and consumer protection agencies in Alaska and five other states. It appears that no states have laws which limit product liability for aviation gasoline. However, several of the agencies I contacted mentioned other issues regarding the quality control of aviation fuel which may be of interest to you.

According to Thomas Horess, manager of the Propulsion Branch of the FAA's Office of Air Worthiness Standards, the FAA has seen no need to federally regulate aviation gasoline in the past. However, since August of 1982, the FAA has authorized the use of high octane automobile fuel in 12 or more models of general aviation engines and airplanes. As a result, concern has increased in several states over liability for auto fuel used in aviation. Automobile fuel normally is not subject to the strict quality controls that assure the purity of aviation gasoline. The FAA stipulates that automobile gas used in aircraft be handled according to the American Society of Testing and Materials (ASTM) standards for aviation gasoline. However, Mr. Horess said that the gasoline industry has difficulty controlling product quality at the gas station distribution level, a problem that has raised concern about product liability for the fuel suppliers.

Pat Chapman, a researcher for the Aircraft Owners and Pilots Lobbying Association, also mentioned the issue of product liability for automobile fuel used in aviation. Mr. Chapman noted that the fuel manufacturers are increasingly concerned over major settlements and awards in product liability lawsuits, but he could find no legislation addressing the issue in other states.

Jim Day of Chevron's public affairs office in Anchorage reported that he was not aware of any efforts to legislate limits to liability for aviation fuel. However, Mr. Day mentioned that Chevron had refused to supply some remote fueling sites in Alaska in instances where facilities were inadequate to assure against fuel contamination. According to Mr. Day, general aviation in Alaska involves unique fuel liability situations which are not likely to have arisen in other states.

Mr. Sikorski indicated that he thought Ohio might have a law limiting the product liability of aviation fuel, but I could find no such law in the Ohio Revised Code or through talking with numerous Ohio state agencies. I contacted aeronautics and consumer protection agencies in four other states with similar negative results.

While no states have limited the liability for fuel products, approximately 15 states have adopted ASTM quality standards for the production and handling of petroleum products, and a few states have developed fuel inspection programs.[1] Otherwise, states have little involvement in regulating fuel quality.

I am still trying to contact the Product Liability Defense Bar, an association of attorneys based in Washington D.C. If they can provide any further information on this issue, I will certainly pass it on to you. However, it appears that no states have passed legislation to limit product liability for aviation gasoline.

If we can assist you further on this or other issues, please feel free to contact us.

NP

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[1] Brad Parker, investigator for the Alaska Consumer Protection Agency, telephone conversation, December 20, 1983.

MEMORANDUM

RE: HB 509 - Aviation Fuel Liability

The importance of aviation, both commercial and general, to Alaskan communication and commerce cannot be overstated. It is common knowledge that more air miles per resident are flown in Alaska than in any other state; indeed, aviation is the only mechanism by which modern commerce and communication can be undertaken to the vast majority of Alaskan locations.

1. Marketing Aviation Fuels in Alaska.

In order to fuel the ever growing aviation traffic in Alaska, it has become necessary to develop an enormous marketing system to distribute the relatively few gallons of aviation fuel to many geographically diverse locations across the state. However, because of the increasing exposure to liability from the sale of aviation products, many companies have removed themselves from the Alaskan market. Due to the relatively low volume, and geographically diverse, aviation fuel market in Alaska, the increased exposure to liability has resulted in a declining incentive to market aviation fuel in the state.

This is particularly true with aviation gasolines, as opposed to jet fuels. For the most part, jet fuels are used in commercial aviation where the volume sales are high, and the geographical distribution is not as great. Aviation gasoline constitutes a relatively minor portion of the total market for aviation fuels. On the other hand, because of its low volume, the relative multitude of individual sales, and the geographical diversity of the ultimate customers, aviation gasolines account for the greatest exposure to liability in the aviation fuel market.

For example, in 1981, Chevron U.S.A. Inc., the largest marketer of aviation fuels in the state of Alaska, sold a total of 375 million gallons of aviation fuel in the state. Of that total, jet fuel sales accounted for 360 million gallons. Only 15 million gallons of aviation gasoline were sold. As stated before, although aviation gasolines account for only 4% of Chevron's annual aviation fuel sales, these sales provide by far the greatest exposure to liability.

2. Aviation Fuel Refiners - Unprecedented Exposure to Liability.

Aviation fuel refiners are at an unfair disadvantage with respect to the sale of their products as opposed to the sale of other products by other companies. The exposure to liability is much greater than with almost any other product because of the serious consequences of any aviation accident.

The court's development of the strict liability theory for defective products has created a legal situation wherein the refiner is virtually guilty until he proves himself innocent.

Because most refiners are large companies, the Deep Pocket Theory invites plaintiffs' attorneys to join them in actions even were liability is unlikely. Refiners may at times find it more economical to settle a case than spend thousands in defense, even when they believe there is no liability.

Even where the refiner is successful in defending such cases, the court's award of costs and attorneys' fees rarely represents even one-half of the actual expenditures. This, of course, does not even consider the in-house costs of the refiner in investigative and administrative endeavors related to the litigation. In addition, where the court makes a cost award for attorneys' fees and costs incurred in defending such an action, collection of the award is never guaranteed and often is not possible.

Examples of the effect of this increased exposure to liability are not difficult to find in Alaska. In 1980, Texaco quietly withdrew from the aviation fuel market because of the potential liability it faced. This removal prompted a letter from Governor Hammond to Chevron U.S.A. Inc., asking that Chevron do everything possible to remain in the aviation fuel market, and inquiring as to whether there might be any assistance the State of Alaska could render in that regard.

Union Oil Company withdrew from the aviation fuel market in Southeast Alaska sometime ago for the same reason. Others may do the same thing in Southcentral Alaska as a result of the Spernak Airways incident.

In that case, a plane carrying four people crashed on take-off at Merrill Field in Anchorage. It was determined that the cause of the crash was water in the gas lines of the airplane. According to the investigator for the National Transportation Safety Board (NTSB), the source of the water which contaminated the plane's fuel lines was the storage tanks kept by Spernak Airways at Merrill Field. Spernak Airways maintained a $500,000 general liability policy, and has settled the case for the policy limits. However, in spite of the NTSB's findings that the source of the water was the Spernak storage tanks, Union Oil was sued for damages in the amount of $5,000.000.

3. The Use of Barrels in the Distribution of Aviation Fuels.

In an attempt to reduce its exposure to liability, Chevron has declined to place aviation fuel in used barrels for distribution to the popular aviation market. Chevron continues to market aviation fuels in new barrels only in Alaska, and only as an accommodation to the unique reliance this state has on general aviation in remote areas where the most practical means of supply is by barrel. In all other states, Chevron will not sell aviation fuel in a barrel.

In this regard, it should be noted that there is no such thing as a "sealed barrel." All barrels, whether new or used, are susceptible to moisture contamination particularly when they are stored outside in the widely fluctuating temperatures encountered in Alaska. During such fluctuations, when moisture is present on top of the barrel near the bung hole, moisture can be pulled right through the threads on the bung with the expansion and contraction of the barrel. There in thus no guarantee that uncontaminated, clean, dry fuel purchased in a new barrel will remain so when it is stored improperly.

Typical supply routes of aviation fuel in rural Alaska include the following:

A) Direct purchase by the consumer from a Chevron-owned bulk plant - such as the bulk plants located at Kotzebue, Nome and Bethel.

B) Purchase by a Chevron aviation fuel dealer from a Chevron-owned bulk plant and sale by the Chevron aviation fuel dealer to the consumer.

C) Purchase by anyone acting as a "middleman" from a Chevron-owned bulk plant or a Chevron aviation fuel dealer and sale by the middleman to the consumer or to another middleman - such an ultimate sale by the middleman would be of unbranded product.

Chevron has learned that some of its dealers and some "middlemen" who buy aviation fuel from Chevron have (while not be under any obligation to do so) adopted Chevron's policy of declining to deliver aviation fuel in used drums supplied by the customer.

A recent example may help to illustrate the complex supply routes and the impact on rural residents.

Representative Hurlbert lives in Sleetmute which is about 200 miles up the Kuskokwim River from Bethel. The source of petroleum products including aviation gasoline, for this river system is Chevron's bulk plant in Bethel. Avgas can be purchased from Chevron FOB Bethel in new drums or 5 gallon pails or in bulk quantities delivered to a customer's barge or tank truck. There are two barge companies currently serving the river communities.

Sometime last fall Representative Hurlbert apparently had hauled a number of used drums down the river expecting to have the barge operator fill them directly from storage tanks or the barge. The barge operator was not a Chevron aviation fuel dealer but had purchased aviation gas in bulk from Chevron at Bethel. The barge operator, as an independent businessman, apparently adopted Chevron's policy regarding used drums and refused to fill them. Representative Hurlbert had to wait until bulk product was pumped ashore into another customers' tank then move his barrels to that location for filling.

4. Alternate Marketing Options

It should also be noted that Chevron has implemented a new program in the lower 48 states concerning the sale and distribution of aviation fuels. This program could prove deleterious to the flow of Alaska commerce if implemented in this state.

In the lower 48 states, Chevron will deliver aviation fuel only in 10,000-gallon deliveries and only to its own airport dealers that meet its quality specifications. All other wholesale purchasers must take delivery of such fuels in minimum 10,000-gallon allotments at a Chevron bulk plant when Chevron has certified that the carrying vehicle is appropriate for the transport of aviation fuels.

5. House Bill No. 509

House Bill 509 as originally introduced protects only aviation fuel refiners from unreasonable assertions of liability. As indicated above, numerous and probably the majority of sales of aviation fuel in Alaska are made by independent businesses that are not owned or controlled by Chevron. Perhaps consideration should be given to:

a) expending the protection of the bill to include within its protection all sellers of aviation fuel to the ultimate consumers, and

b) restricting the bill's applicability to sales of less than a given amount, such as 10,000 gallons.

GOVERNOR

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 9, 1981

Mr. James Howard
Chevron International
P.O. Box 1580
Anchorage, AK 99510

Dear Mr. Howard:

As you know, due to a revised product procurement policy and its attendant transportation changes, one supplier of aviation gasoline has significantly cut back its sales of this product in Alaska. I have been made aware that this action has caused problems for some aircraft operators in various parts of the state. As you also know, avgas plays a large, more vital role in the life and commerce of Alaska than in any of the smaller states, or perhaps the world. Therefore, supply disruption here has an impact on more people than just the directly concerned parties.

I am aware that you have already provided assistance to some aircraft operators experiencing supply problems. Your efforts to date are appreciated. I can only ask that you continue to do whatever else you can to assist those other operators who are still without an avgas supplier.

Please contact the Division of Energy and Power Development if you have questions or if the State of Alaska can assist you in this matter.

Sincerely,

Jay S. Hammond
Governor

cc: Jessie Dodson
Clarissa Quinlan

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

'ILLIAM J. TOBIN
Associate Editor
d General Manager

FRED DICKEY
Executive Editor

y fuel linked to air crash

phy

ater and rust con- he fuel system of at Merrill Field has ie fiery crash that in October 1979. ort on the accident, ansportation Safety contaminated fuel underground fuel It also said the air- was contaminated

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he crash said the o the north, then turn and lost alti- smashed into the of a hangar near ie, exploded and to he hangar. sh were pilot Wil- nchorage and pas- Standifer Sr.; his ou, and her daugh- f Tyonek.

[illegible] Spernak [illegible] of [illegible]

pending, but ttorney for Stan- [illegible] settlement [illegible] has Spernak. He de- clined to specify the terms.

Bud's Aircraft is no longer a part of the suit, and Cessna Aircraft has been added as a defendant. Came[illegible]pt said the partial settlement with Spernak "doesn't mean we've waived any rights with Cessna or Union [illegible]."

The suit alleges that an employee of Union Oil failed to [illegible] a chemic[al] necessary to detect the presence of water in [illegible] tank at Spernak Airways pr[illegible] the tank on Oct. 6, 1979.

Cessna Aircraft, the suit says, was "grossly negligent," and showed "wanton disregard for proper design, manufacture, warning and instruction for use" of the fuel system on the model 207 aircraft.

The suit also says the plane crashed as "a direct and proximate result" of Cessna's "defective design, manufacture, warning and instructions for use" of the craft's fuel and related systems.

Damages [illegible] bil- lion" are being sought, according to the suit.

Geor[ge] [S]pernak, owner of Spernak Air[way]s, said he hadn't seen the transportation board's report and declined comment on it. When a portion of report was read to him Monday, Spernak said, "We've been here since 1955 and we haven't heard those reports."

Spernak Airways has two underground fuel tanks which are supplied by Union Oil, Spernak said, adding "they are checked for water by Union Oil each time and we watch their procedures."

Spernak said the same fuel tanks

(See FUEL, page A-3)

Fuel . . .

(Continued from page A-1)

are being used now that were used at the time of the crash.

Each air taxi operator is responsible for maintaining its storage tanks. No local, state or federal regulations currently are in effect to govern fuel storage or tank maintenance.

Merrill Field Manager Joe Fouts said the municipality, which operates the field, leases land to the various air taxi services for their operations. He said about 20 leaseholders have their own underground fuel tanks.

Joe Swanson, head of the state's division of weights and measures, said a bill had been pending in the Legislature to give his agency jurisdiction over fuel tank maintenance.

"But the bill didn't go anywhere," Swanson said.

The federal board said it recognized the pilot is responsible for making sure that an airplane has uncontaminated fuel.

Pilots normally check for water or particles during preflight inspection, the report said, and contamination can be detected because water or particles settle to the bottom of the tank.

"However, when fuel contaminated by water is added to an uncontam[in]ated tank, considerable time is needed for the water to completely settle to the bottom of the tank," the report said. "This creates the opportunity for contaminated fuel to go undetected."

The report goes on to list several other instances which may prevent immediate detection of contaminated fuel and concludes, th[at] while the pilot, "although respons[i]ble, is presented with situations [in] which water detection is difficult."

The board recommended that th[e] Federal Aviation Administratio[n] adopt three specific regulatio[ns] which would:

[illegible] specifica- tions [illegible] design requirements fo[r] the installation, maintenance and in- spection of aviation fuel storage an[d] dispensing systems [illegible] cer- tificated under FAA regulations.

[illegible] minimum specifica- tions and design requirements fo[r] aviation fuel storage and dispensin[g] systems at public use airports and ce[rtificated under] FAA regulations.

[illegible] pro- cedures [illegible] compliance.

running out of gas

by Patti Epler
Times Writer

Two Merrill Field businessmen say they will either have to close their doors or raise their prices because Texaco Inc. as decided to cut back its sale of aviation gas in Alaska.

Gene Bender of Piper Sales Alaska and Ken Triplett of Alyeska Air Service say they have nowhere to turn for wholesale gas. The men said neither of the two other suppliers of aviation gas in Alaska, Chevron USA Inc. and Union Oil Co. of California, are accepting new customers.

The other companies are not taking new customers until they see what happens to two bills before the state Legislature that would limit the liability of oil companies in the sale of gas.

Bender and Triplett are the only two cut off by Texaco in Anchorage. The third and largest Texaco retailer, Air Associates at Anchorage International Airport, will still have fuel, a Texaco spokesman said.

The spokesman said Texaco has not done much business in Alaska in the past and has decided to cut back on the aviation gas business here because it's just not worth their trouble.

Piper Sales, Alyeska Air Service and Air Associates are the only Texaco retailers in Anchorage.

In three weeks, said Bender, "I'll have to close my doors. It's either that or get some awful powerful rubber bands and some big apes to wind them up."

Bender said his business consists of aircraft sales and service, rental of planes and student instruction.

Additionally, he said, more than

(See AIRCRAFT, page A-3)

(Continued from page A-1)

600 pilots per month gas at his pumps.

Now, he says, he's not selling any fuel to anybody. What he has left in his storage tanks he must keep for his own aircraft.

Triplett, who runs a charter business, said he also has cut off his 15 regular customers in order to protect his own supply.

He will be forced to buy gas from competitors at the going, public rate. That, he said, will force him to raise his charter prices between $5 and $10 per hour, a factor he believes will unfairly price him out of the market.

"It's an unfair advantage," he said. "I've got too much invested here to go out of business. I'll just have to make ends meet."

Triplett said Chevron and Union are not taking new customers because they don't want to add to their liabilities. He is hoping the two bills limiting oil companies' liability will pass this year.

The problem now, he said, is that state law makes the oil companies responsible for their fuel even after they have sold it to someone else.

The bills would stop the liability of the oil companies once they have sold their gas to a retailer and the retailer puts it in his own tanks, Triplett said.

"But," he said, "even if those are passed, there's no guarantee they'll take Alyeska Air Service as a customer."

NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

ISSUED: February 6, 1981

Forwarded to:

Mr. Charles E. Weitboner
Acting Administrator
Federal Aviation Administration
Washington, D.C. 20591

SAFETY RECOMMENDATION(S)

A-81-9 through -11

On October 8, 1979, a Cessna 207A, N6424H, crashed into a hangar at Merrill Field, Anchorage, Alaska, moments after lift-off from runway 33. All four occupants were killed, and the postcrash fire destroyed the hangar.

Investigation of the accident revealed that: the fuel system showed evidence of extensive water and rust contamination; the underground fuel tank at Merrill Field where the aircraft was last fueled contained a large quantity of water and rust; the underground fuel tank's filtration system was heavily contaminated; and an incorrect fuel system dispensing filter, intended for use with diesel fuel, had been installed.

In 1978, the National Transportation Safety Board investigated 17 general aviation accidents involving fuel contamination "exclusive" of water as a cause or factor, and 66 general aviation accidents involving water "in" the fuel as a cause or factor. In March 1980, the Safety Board's Anchorage field office mailed a questionnaire to all known commercial/air taxi operators in the State of Alaska. Of the operators who replied, 4 percent did not know what type of filtration assemblies and filters they used, 4 percent performed no inspections to determine when the dispensing filters should be changed, 30 percent inspected the dispensing filter daily, and 20 percent inspected the dispensing filter "at least yearly." The remaining operators inspected at intervals ranging from "once every 3 days" to "once every 3 years."

The Safety Board recognizes that the pilot is responsible for assuring that a general aviation aircraft has uncontaminated fuel. Pilots of general aviation aircraft procedurally drain a small amount of fuel from the tanks and the fuel strainer and check for the presence of water and particulate matter. If a partially filled tank cools, condensation results and settles to the bottom of the tank. This is detectable using normal preflight procedures.

However, when fuel contaminated by water is added to an uncontaminated tank, considerable time is needed for the water to completely settle to the bottom of the tank. This creates the opportunity for contaminated fuel to go undetected. Also, the uncontaminated fuel in the lines and fittings must first be drained to detect the water-contaminated fuel. On some aircraft, more than a quart of fuel must be drained before any water appears. Most tiedown areas where preflights checks are performed belong to flight schools or fixed-base operators, most of whom do not encourage pilots to drain a quart of fuel on the asphalt because aircraft fuel tends to dissolve this particular surface. The pilot then, although responsible, is presented with situations in which water detection is difficult.

While the Board believes that pilots must conduct an adequate preflight check, we are concerned that this is not a total solution to the problem of fuel contamination. In addition to the current pilot responsibility, the Board believes that other measures should be taken to insure against contamination. For example, fuel dispensing systems could be required to be equipped with filter/separator units which respond to the presence of free water by shutting down.

The Board is aware that 14 CFR 139 prescribes rules governing the certification of land airports serving air carriers that hold certificates of public convenience and necessity issued by the Civil Aeronautics Board. Part 139.51 states that ". . . the applicant for an airport certificate must show that it (or its tenant), as the fueling agent, has a sufficient number of trained personnel and procedures for safely storing, dispensing, and otherwise handling fuel, lubricants, and oxygen on the airport (other than articles and materials that are, or are intended to be, aircraft cargo). . . ." This is the only rule that addresses the subject of storing and dispensing aviation fuel, and in addition, applies solely to air carrier airports. In the Board's opinion, 14 CFR 139 is inadequate even for those airports it covers because it does not address fuel contamination. Our accident statistics do not indicate that fuel contamination has been a problem to air carrier aircraft. However, informal communication with the FAA indicates that control of contamination is considered during airport certification via a rather broad interpretation of 14 CFR 139.51. The Board believes that the problem of fuel contamination should be specifically addressed for both air carrier and general aviation airports. In our judgment, fuel contamination should be specifically addressed for all segments of aviation rather than only that segment in which there is an apparent current problem. It has been generally accepted that standards for air carrier operations must be as stringent as they are for general aviation. We believe that the regulations should reflect this consistency.

Therefore, the National Transportation Safety Board recommends that the Federal Aviation Administration:

> Expand 14 CFR 139 to include minimum specifications and design criteria for the installation, maintenance, and inspection of aviation fuel storage and dispensing systems at airports certificated under 14 CFR 139. (Class II, Priority Action) (A-81-9)
>
> Take necessary action to establish minimum specifications and design criteria for aviation fuel storage and dispensing systems at public-use airports not certified under 14 CFR 139. In addition to the equipment itself, such criteria should address their installation, operation, maintenance, and inspection. (Class II, Priority Action) (A-81-10)

When specifications and criteria are established for aviation fuel storage and dispensing systems at public-use airports are not certified under 14 CFR 139, establish and implement procedures to verify compliance. (Class II, Priority Action) (A-81-11)

KING, Chairman, DRIVER, Vice Chairman, McADAMS, GOLDMAN and BURSLEY, Members, concurred in these recommendations.

By: James B. King
Chairman

TESTIMONY OF GEORGE DAY
OF CHEVRON U.S.A. INC. BEFORE
THE OUSE LABOR AND COMMERCE COMMITTEE
CONCERNING HOUSE BILL 509
FEBRUARY 2, 1984

Good Morning. My name is George Day, I am the Public Affairs Manager for Chevron U.S.A. Inc. in Anchorage. Chevron markets a complete line of petroleum products throughout Alaska and is the largest marketer of aviation fuels in the state. In 1983, Chevron sold a total of 160 million gallons of aviation fuel in Alaska. Jet fuel sales accounted for 147 million gallons, and only 13 million gallons of aviation gas were sold. For this reason, Chevron is vitally interested in the passage of HB 509.

Chevron has developed an extensive distribution system for supplying aviation fuels throughout the State of Alaska. Chevron recognizes that its primary responsibility is to deliver uncontaminated fuel to the next person in the distribution chain. Quality control is an ongoing process that requires constant supervision and the expenditure of much time and money. Nevertheless, inspection of the fuels for contaminants and for water is relatively easy. In order to demonstrate this, we have brought samples of jet fuel, Avgas 80, and Avgas 100.

[Demonstrate inspection process]

A description of our distribution process to the urban areas and to the bush areas of Alaska should help the committee members of understanding the liability problems faced by an aviation fuel refiner.

[Describe Anchorage process]

[Describe Bethel process]

The development of the theory of strict liability in products liability cases has greatly expanded the liability exposure of an aviation fuel refiner to fuel liability. As you may know, the plaintiff in a strict liability lawsuit need only demonstrate that he was sold a "defective product" by the defendant which caused damage to the plaintiff. The plaintiff is not required to demonstrate that the defendant's conduct in manufacturing or maintaining the product was negligent.

The essential distinction between aviation fuel and other products for which strict liability is imposed is that most other products such as automobiles or furniture or even airplanes are static in their quality once they have been manufactured. Generally speaking, barring unforeseen events, other products remain in the same form as they were immediately after their manufacture. However, the quality of aviation fuel is always subject to incremental change depending on the quality of the handling thereof.

At each stage of the distribution process, contamination is a distinct possibility that must carefully be guarded against. Fuel that is clean and dry going into a storage tank can come out wet, dirty, and/or contaminated depending on the quality of the storage and the method of handling. Once a

refiner has placed aviation fuel in the storage tanks of another person not under the refiner's control, we believe that it is unfair to hold the refiner liable for the continued quality and integrity of that fuel.

Nevertheless, because most refiners are large companies, plaintiffs' attorneys tend to join them in actions even where liability may be unlikely. Refiners may at times find it more economical to settle the case than spend thousands in defense, even when they believe there is no liability. In response to this increased exposure to liability, companies have quietly withdrawn from the aviation fuel market in Alaska. Texaco did so in 1980, and Union Oil Company has pulled out of the aviation fuel market in Southeast Alaska.

Barrels pose a particular dilemma for the refiner. Chevron continues to market aviation fuels in new barrels only in Alaska, and only as an accommodation to the unique reliance the state has on general aviation in remote areas where the most practical means of supply is by barrel. In all other states, Chevron does not sell aviation fuel in a barrel.

It is important to realize that there is no such thing as a "sealed barrel." All barrels, whether new or used, are susceptible to moisture contamination particularly when they are stored outside in the widely fluctuating temperatures encountered in Alaska. During such fluctuations, when moisture is present on

the top of the barrel near the bunghole, moisture can be pulled right through the threads on the bung with the expansion and contraction of the barrel. There is thus no guarantee that uncontaminated, clean, dry fuel purchased in a new barrel will remain so when it is stored improperly.

Obviously, used barrels pose additional problems beyond subsequent contamination. No dealer has the facilities to complete an accurate inspection of barrels prior to refilling them. For these reasons, Chevron declines to refill used barrels with aviation fuel.

These problems combine to create strong incentive to discontinue the present marketing system in the state. For example, in the lower 48 states, Chevron will deliver aviation fuel only in 10,000-gallon deliveries and only to its own airport dealers who meet its quality specifications. All other wholesale purchasers must take delivery of such fuels in minimum 10,000-gallon allotments at a Chevron bulk plant after Chevron has certified that the carrying vehicles are appropriate for the transport of aviation fuels.

It is imperative that the State of Alaska take immediate steps to provide a fair economic climate that would allow the continued distribution of aviation fuels to all areas of the state.

The sole purpose of HB 509 is to create a fair and reasonable business climate for aviation fuel refiners by removing unreasonable exposure to liability. This will go a long way toward assuring adequate supplies to remote geographical locations and to individual customers.

The means selected to achieve this objective are carefully tailored to meet the needs that have been stated. Under HB 509, refiners are still subject to liability when they place fuel directly into aircraft. This is as it should be, since the refiners have total control of the quality of the product up to final delivery.

Except for gross negligence, recklessness or intentional conduct, the refiner is not liable where the fuel is delivered other than directly into an aircraft. The important point to note here is that once title and possession have passed from a refiner, the refiner no longer has control over the integrity of the fuel and should not be held liable therefor.

Aviation fuel refiners will not dismantle quality control programs merely because of the passage of this legislation. It should be again emphasized that refiners are still fully exposed to liability where they fuel airplanes directly. Thus, the dismantling of the quality control program which results in the delivery of contaminated fuel into an aircraft by a refiner would still fully expose the refiner to liability.

Furthermore, even where the deliveries are not made directly into an aircraft, quality control programs will remain. The dismantling of a quality control program, and the use thereafter of little or no care in the manufacture of aviation fuel, may be held to be "gross negligence" under the bill. Thus, the refiners' liability would be maintained in such situations.

HB 509 re-establishes the balance that has often been lost in the development of products liability law. Each entity in the distribution chain must take responsibility for its actions in handling aviation fuel, and must be held responsible for failure to do so properly. Aviation fuel refiners must continue to ensure quality control during the manufacture and distribution of the product. Wholesalers and retailers must also take adequate steps to ensure the continued integrity of the product during their part of the distribution chain. Finally, airlines and private pilots must continue to handle fuel in a safe manner and test for quality before and after each transfer. Only by following such procedures for each fuel transfer can the integrity of the aviation fuel be assured. It is for precisely these reasons that Chevron urges the adoption of HB 509.

LABOR & COMMERCE COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 2/2/84 SPONSOR: REPRESENTATIVES HURLBERT, FRITZ & COWDERY

PLEASE PRINT

SUBJECT(S): HB 509 AN ACT RELATING TO AVIATION FUEL

PLEASE PRINT

NAME/TITLE	REPRESENTING	ADDRESS	PHONE	OBSERVER	WITNESS	FOR	AGAINST
George Dorn	Chevron USA	[illegible]	[illegible]		✓		
Bob Batchelder	Chevron USA	[illegible]	336-6500		✓		
LARRY VAVRA	UNION OIL	[illegible]			✓		
MERRILL SIKORSKI							

*FOR THE RECORD-PLEASE FILL IN ALL ABOVE INFORMATION--USE TWO LINES IF NECESSARY

HB

535

BACKGROUND

HB 535

House Bill 535 is a single purpose piece of legislation designed to allowed retired state employees to continue their group life insurance after age 65. They would be required to pay the premiums on this coverage.

HB 535 arose from complaints from a constituent in House District 17 who is a retired state employee. At the time of her retirement, the group life insurance policy with the state was her only life coverage. By the time she was informed that she was no longer covered, her age made it impossible to purchase life insurance on the open market at a reasonable rate.

Cost of funerals in small, interior communities is very high. This is primarily due to the fact that graves cannot be dug in the winter, and bodies must therefore either be cremated or held in cold storage until after break-up.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM January 30, 1984

SUBJECT: Sectional analysis of HB 535

TO: Representative John Cowdery
Chairman, House Labor and Commerce Committee

FROM: Edward H. Hein EHH
Legislative Counsel

Under AS 39.30.090 state employees and others who participate in state-provided group life insurance are entitled to continue the insurance after terminating employment if they pay the cost of the insurance themselves. Only the coverage the person had at the time of leaving employment may be purchased. The conversion privilege is limited to persons under 65 years of age. HB 535 deletes the age requirement at page 2, line 23. All other changes reflected in the bill are technical.

EHH:ojb
J3/015

Alaska Public
Employees Association APEA
State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

MEMORANDUM

TO: Representative John Cowdery, Chairman
House Labor and Commerce Committee

FROM: Cherie Shelley
Executive Director

SUBJECT: HB 535

DATE: February 7, 1984

The Alaska Public Employees Association fully supports the provisions of HB 535 allowing all former public employees to continue to purchase group life insurance regardless of age.

This legislation will remove discriminatory language from state statute and make insurance coverage available at a time when people need it the most.

Cost to the state will be minimal since the premium will be paid by the former employees.

CS/rb

Fairbanks Field Office
825 D College Road
Fairbanks, AK 99701
Telephone: (907) 456-5412

Anchorage Field Office
833 Gambell Street, Suite A
Anchorage, AK 99501
Telephone: (907) 274-1688

Juneau Field Office
227 4th Street
Juneau, AK 99801
Telephone: (907) 586-6305

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 535
Title: An Act relating to purchase of group life insurance by retirees.
Sponsor: Shultz
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected All State Agencies
Program Category Affected: Health Insurance
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

Operating	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 Personal Svcs						
100 Ptmnt & Bnfts						
200 Travel						
300 Contractual						
400 Supplies						
500 Equipment						
600 Land & Struct						
700 Grants, Claims						
700 TRS Match						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Fund						
Federal Funds						
Other						
Total	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

Full-Time						
Part-Time						
Temporary						

SOURCE OF FUNDS TO OFFSET IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: J.K. Humphreys J.K. Humphreys Phone: 465-4460
Division: Retirement & Benefits Date: 2-3-84

Approved by Commissioner: Lisa Rudd Date: 2/8/84
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

House Bill 535
Fiscal Note Analysis
Prepared by the Division of Retirement & Benefits
Department of Administration

February 3, 1984

IV Analysis: This bill would allow retirees age 65 and older to continue to purchase optional group life insurance. Currently, retirees are ineligible to purchase this insurance after age 65.

There is no cost to the State. Premiums for this insurance would be paid by the retiree.

Position Paper

HB 535

The Department of Administration supports this bill. It offers retirees the choice of continuing to purchase optional group life insurance coverage beyond the current limit of age 65. This flexibility can be achieved with no cost to the state. Favorable premium rates would benefit the retiree.

J. K. Humphreys — 2-3-84

J.K. Humphreys, Director, Division of Retirement & Benefits — Date

for Glenn Roberts — 2/8/84

for Lisa Rudd, Commissioner, Department of Administration — Date

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department	Sponsor (Principal)	Bill Number
Administration	Shultz	HB 535

Department Position

The department supports this bill.

Division Director	Date	Commissioner's Signature	Date
J.K. Humphreys J.K. Humphreys	2-3-84	Lisa Rudd by Deborah Sheridan	2/8/84

GOVERNOR'S OFFICE USE

Comments:

☐ Position Noted	By	Date

SUMMARY

1. a) Related Bills (Similar or Conflicting	1. b) Other Agencies Affected by Bill
none	
2. a) Organizational Support for Bill	**2. b) Organizational Opposition to Bill**
Unknown	Unknown

3. Program Effects of Bill

This bill would allow retirees to continue to purchase optional life insurance coverage beyond the current age limit of 65.

4. Fiscal Impact: ☐ None ☒ Fiscal Note Attached

5. Amendments Proposed:

6. Comments

If this bill becomes law retirees who became ineligible in the past because of age and those who retired after reaching age 65 and were never eligible, would be given the opportunity to re-enroll in this coverage without evidence of insurability.

HB

540

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 540
Title: "..claims against a contractor's payment bond"
Sponsor: Rep. Bettisworth
Requestor: House Labor & Commerce
Date of Request: 2/10/84

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards & Safety Date: 2/13/84

Approved by Commissioner: Jim Robison Date: 2/13/84
Agency: Labor

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Bill No. House Bill No. 540

Date February 13,1984

Title "An Act relating to claims against a contractor's payment bond"

Contact: Eileen Plate, 465-2700
Bob Bacolas, 465-4870

The bonding requirements of AS 36.25 are designed to provide persons performing labor or furnishing material on a public construction project with remedies comparable to those that are available to persons performing work or furnishing material on a private sector construction project. With respect to private construction, the following points are relevant:

1. A person who performs work or supplies materials on a private project may lien the property for recovery of monies owed for wages or materials;

2. A lien on the property may be filed for up to 90 days after the last date on which the person performed labor or furnished materials; and

3. The property is lienable by workers and suppliers of the general contractor or any subcontractor.

Public property, on the other hand, cannot be liened, and the bonding requirements of AS 36.25 evolved as an equitable alternative, with the only difference being the vehicle used for recovery -- on public construction, the contractor's bond; on private construction, lienable real property.

The amendments to AS 36.25.020(b), as set out in House Bill No. 540, propose to disrupt the equity presently provided by discriminating against the person who performs labor or furnishes material to a subcontractor on a public construction project. In fact, the proposed provision that these workers or suppliers must initiate their claims against the contractor's bond within ten days from the first date labor was performed or materials were furnished effectively denies them use of the system specifically designed to assist them. Few workers or suppliers would fear that money owed them was in jeopardy after only ten days. Further, the requirements of AS 36.25.010(a)(2) clearly contemplate that the general contractor is responsible for the protection of all persons who supply labor and material in connection with the construction contract. Therefore, the proposal to treat a subcontractor's workers and suppliers differently than those of a general contractor is not only without justification, but is also contrary to the spirit of the bonding law itself.

House Bill 540 is not in the best interest of Alaska's workers, and the department opposes its passage.

APPROVED: Jim Robison

Jim Robison
Commissioner

POSITION PAPER/Department of Labor

Revised Draft

TESTIMONY OF

ALASKA CHAPTER

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

TO THE

HOUSE LABOR AND COMMERCE COMMITTEE

ON

VARYING THE NOTICE PROVISIONS TO PRIME CONTRACTORS

BY

SUBCONTRACTOR SUPPLIERS (HB 540)

SKILL RESPONSIBILITY INTEGRITY

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

1984

Draft

The change proposed in HB540 would not preclude claims of a subcontractor's supplier against a general contractor's payment bond. However, timely notice to the general contractor of the supplier's status and existence will become a prerequisite to filing a claim. This notice requirement will allow a general contractor to ensure that a subcontractor has paid all suppliers.

Under proposed HB540, a general contractor will know which persons may possibly have claims against his payment bond prior to a claim being made. Under existing law, a general contractor cannot determine, in advance of a claim being filed, which persons may be eligible to file a claim.

HB540 proposes a system somewhat analagous to the Alaska lien law (AS 34.35). In 1978 the lien laws for the State of Alaska were substantially revised. The revisions still provide protection to the subcontractor and material supplier but now subcontractor and suppliers have to take the initiative in assuring that the owner and lender are aware of their existence and ability to lien the project.

In summary, the A.G.C. believes HB540 will continue to provide protection to subcontractor suppliers but in a more enlightened and commercially reasonable manner. The A.G.C. urges this committee to consider all of the offered testimony and pass HB540 on to the next committee of referral.

Draft

The Alaska Chapter Associated General Contractors of America represents more than 800 companies including most of general contracting companies engaged in commercial construction. We appreciate the opportunity to present A.G.C.'s views on HB540.

The A.G.C. supports HB540 and offers the following brief explanation of the effect of the proposed change as we understand its intent.

Under existing law, a person with no direct contractural relationship with a general contractor, but who supplies labor or material to a subcontractor, may make a claim against the payment bond by giving the general contractor written notice within 90 days from the last date on which the person performed labor or furnished material. A general contractor has no way of knowing who may have supplied labor or materials to a subcontractor. Accordingly, a general contractor has no easy way to assure that a subcontractor has paid all his suppliers. Certification by a subcontractor that all labor and materialmen have been paid is no assurance if the certifying subcontractor is or becomes insolvent. The only "iron clad" safeguard for a general contractor is to delay payment to all subcontractors until 90 days after they have supplied labor or materials. This solution would do little to harmonize relations and increase cooperation between general contractors and subcontractors.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3900

MEMORANDUM January 27, 1984

SUBJECT: Sectional analysis of HB 540

TO: Representative John Cowdery
Chairman, House Labor and
Commerce Committee

FROM: Edward H. Hein
Legislative Counsel

Under AS 36.25.010(a)(2), a general or specialty contractor, as a condition of being awarded a contract for a public building or public works project exceeding $100,000, must post a payment bond for the protection of all persons who supply labor and materials provided for in the contract.

Under AS 36.25.020(b), a supplier of labor or materials under a contract with a subcontractor, who has no contractual relationship with the prime contractor, has a right of action against the payment bond if the supplier notifies the prime contractor within 90 days after completing the work or the delivery of all materials.

The bill amends this section to provide that the supplier would have to give notice within 10 days after beginning performance. The goal is to give prime contractors earlier notice of claims that might be made against the payment bond so that the contractors can withhold adequate amounts from the subcontractors to assure that the suppliers will be paid.

Because the bill would require that notice be given in most cases before work is completed, it will often be impossible for the supplier to "state with substantial accuracy the amount claimed", as is now required in AS 36.25.020(b). Thus, that language is deleted at lines 16 - 17 of the bill. The new language inserted at lines 18 - 23 require that the notice also identify the project, describe the work or material furnished, and state the date on which performance began.

EHH:ojb
J3/005

APRIL 17, 1984

TO: JOHN

FROM KEN

RE: HB 540

HB 540 MAKES CHANGES IN THE STATUTES DEALING WITH A CONTRACTORS PAYMENT BOND ON PUBLIC CONSTRUCTION AND PUBLIC WORKS PROJECTS. UNDER PRESENT STATUTE IF LABOR OR MATERIALS ARE SUPPLIED TO A PROJECT FOR USE BY A SUBCONTRACTOR WHO WAS HIRED BY THE GENERAL CONTRACTOR; THE PERSON OR COMPANY SUPPLYING THE LABOR OR MATERIALS HAVE UP TO 90 DAYS FROM THE LAST DATE SUCH MATERIALS OR LABOR WERE FURNISHED TO FILE A CLAIM AGAINST THE CONTRACTORS PAYMENT BOND, SHOULD THE SUBCONTRACTOR NOT PAY HIS BILLS. THE COMMITTEE SUBSTITUTE FOR HB 540 WOULD CHANGE THE STATUTE TO READ 30 DAYS FROM THE FIRST DATE LABOR OR MATERIALS WERE FURNISHED.

QUESTIONS:

1. WHAT IS WRONG WITH THE STATUTE NOW ? WHY IS SUCH A RADICAL CHANGE NEEDED ?

2. WOULD THIS CREATE AN UNNECESSARY AMOUNT OF ADDED PAPERWORK FOR THOSE SUPPLYING MATERIALS TO A CONSTRUCTION JOB ?

3. WOULDN'T THIS LEGISLATION REALLY BE FORCING THE MATERIAL SUPPLIERS, LABORERS AND SUBCONTRACTORS TO BE DOING THE GENERAL CONTRACTORS WORK. BY THAT I MEAN POLICING THE JOB ?

4. HAS THE SUPPLIERS OF BUILDING MATERIALS WORKED WITH YOU ON THIS NEW COMMITTEE SUBSTITUTE ?

Im Prase Jak

UNITED
Lumber Co., Inc.

WHOLESALE
P.O. BOX 1316
KENT, WA 98301
(206) 872-7788

UNITED LUMBER COMPANY, INC.
Building Supply & Home Center

CORPORATE HEADQUARTERS
P.O. BOX 6509 • ANCHORAGE, AK 99502
TELEPHONE (907) 243-4545

ANCHORAGE
5011 JEWEL LAKE RD.
ANCHORAGE, AK 99502
243-4545

EAGLE RIVER
P.O. BOX 458
EAGLE RIVER, AK 99645
694-2764

PALMER
P.O. BOX 1270
PALMER, AK 99645
745-2410

SOLDOTNA
P.O. BOX 2109
SOLDOTNA, AK 99669
262-9091

BETHEL
P.O. BOX 1868
BETHEL, AK 99559
543-2034

HOME CENTER
501 W. RASPBERRY RD.
ANCHORAGE, AK 99502
349-7516

March 8, 1984

The Honorable John J. Cowdery
Pouch V
Juneau, Alaska 99811

Dear Representative Cowdery:

I, in my capacity as Secretary/Treasurer and Controller for UNITED LUMBER COMPANY, INC., have recently had the opportunity to review HB 540 which amends AS 36.25.020 (called the Little Miller Act). The proposed amendment adds subsection (d) which imposes certain notice requirements on suppliers of materials, equipment to be given to general contractors in order to preserve a right of action under the Act.

I have discussed the ramifications of HB 540 with some of my colleagues in the retail/wholesale lumber industry, including representatives of Spenard Builders Supply and Superior Millwork, Inc. We are unanimous in our view that the proposed amendment (copy attached) would increase the cost of our business by placing additional account functions on suppliers. Therefore, we would urge you to vote against the passage of HB 540.

By way of background, in recent years the burden of preserving Mechanic's Lien rights for material suppliers and subcontractors has, in our view been unfairly shifted from those in the most logical and least burdened position to protect everyone's lien rights to the subcontractors and material suppliers.

For example, the Mechanics Lien Law was amended in 1979 and 1980 which resulted in changing priority between a Mechanic's Lien and a Deed of Trust securing the interim construction loan. The amendments further created the burden upon subcontractors and material suppliers to obtain an "acknowledgement of right to lien" from the owner if we were not selling directly to the owner. It has generally been the view in the retail/wholesale lumber industry that the interim financing institutions could easily monitor construction draws to insure proper disbursement to subcontractors and material suppliers, yet this burden of notice was shifted to us.

We view HB 540 as another example of such unfair and unnecessary shifting of such burdens. Certainly the general contractor on a State funded project is in the best position to determine with whom his subcontractors are dealing with in the purchase of materials. Such could be a condition of draws by the subcontractors, and checks can be made payable jointly.

MILLWORK & TRUSS
160 W. 68TH
ANCHORAGE, AK 99502
243-4545

MANUFACTURING PLANT
MILE 7½ OLD SEWARD HWY.
ANCHORAGE, AK 99502
344-7812

UNITED COMPONENT & BUILDING SYSTEMS PLANT
PALMER INDUSTRIAL PARK
PALMER, AK 99645
745-3052

SAWMILL
147½ STERLING HWY.
STARISKY, AK 99639

UNITED
Lumber Co., Inc.

Speaking from personal experience, the staff in our Credit Department doubled in order to keep up with the new notice requirements of the amended Mechanics Lien Law. Now we are faced with additional notice requirements under AS 36.25.020 if HB 540 is passed in order to protect our rights under the Little Miller Act. Additionally, the proposed amendment under HB 540 requires that we give notice to the general contractor by registered mail, a costly and time-consuming method.

We would urge consideration by you as to the effect of this unnecessary and costly amendment. We would welcome the opportunity to meet with you personally if you are in Anchorage during this current session. In the alternative, please don't hesitate to call me collect if you have any questions or if I can further elaborate upon the position of the retail/wholesale lumber suppliers.

Sincerely Yours,

UNITED LUMBER COMPANY INC.

O. Holmstrom
Secretary/Treasurer

mak
Attachment

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811

REPRESENTATIVE
ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FAIRBANKS, ALASKA 99701

Memorandum:

From: Rep. Bob Bettisworth RHB

To: John Cowdery, Chairman House Labor and Commerce Committee

Re: Bill Analysis: HB 540 "An act relating to claims against a contractor's payment bond"

The purpose of the bill is to change the timing required for notice of a claim to a contractor by a third party having a contractual relationship with a subcontractor but no contractual relationship with the contractor.

At present a person furnishing labor or materials has 90 days after the last date the person provided labor or materials to make notice of a claim. In this situation the contractor often faces claims, against its payment bond from persons or businesses, which were filed long after the contractor has paid the subcontractor. The proposed bill will require notice by the person providing labor or materials within 10 days of the date they first provide labor or materials. This will not prevent claims against the payment bond. However, it will give the contractor notice of those people or businesses which may have claims so that the contractors will be able to take measures to insure that persons furnishing labor or materials are paid when the subcontractors are paid.

The bill also eliminates the requirement to state the amount claimed. In its place is a requirement to provide the nature of the materials or work provided and the date work or materials were first provided. This is necessary because the exact amount of the claim would not be known in all cases.

Alaska State Legislature

REPRESENTATIVE
ROBERT H. "BOB" BETTISWORTH

POUCH V
JUNEAU, ALASKA 99811

211 CUSHMAN STREET
FARBANKS, ALASKA 99701

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The bill also eliminates the requirement to state the amount claimed. In its place is a requirement to provide the nature of the materials or work provided and the date work or materials were first provided. This is necessary because the exact amount of the claim would not be known in all cases.

HB

545

SUMMARY: Intent of HB 545.

It has come to my attention that there are no current laws requiring employers of food service workers to provide a half-hour break for their employees during each shift.

There is also no federal or state law requiring an employer to provide employees with rest or meal periods during a work shift. However private employment agreements and collective bargaining contracts frequently require rest and meal periods and the Alaska Dept. of Labor will enforce those private agreements. Food service workers who do not have an employment agreements or collective bargaining contracts could then be required to work through a shift without having any break time.

The intent of this legislation is to implement by statute a break time requirement.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM January 11, 1984

SUBJECT: Requiring Rest or Meal Periods for Food Service Workers (Work Order No. 13-1626)

TO: Representative Barbara Lacher

FROM: Teresa B. Cramer Teresa B Cramer 2450
Legislative Counsel

You have requested information about any current laws requiring employers of food service workers to provide a half-hour break for their employees during each shift. You have also asked for recommendations about how to require those employers to provide a break-time for their employees.

There is no federal or state law requiring an employer to provide employees with rest or meal periods during a work shift. However, private employment agreements and collective bargaining contracts frequently require rest and meal periods and the Alaska Department of Labor will enforce those private agreements. Federal regulations under the Fair Labor Standards Act (29 U.S.C. 201 - 219) recognize that employment contracts may require employers to provide rest or meal periods and address how to consider those periods when computing overtime compensation. (A copy of 29 C.F.R. 785.18 and 785.19 is attached for your information.)

The state cannot adopt laws in a field which federal statutes have pre-empted. The Fair Labor Standards Act does not address rest or meal periods. It sets a floor below which states may not go in regulating minimum wages and overtime compensation. It permits states to provide greater protections for employees than those of the federal law provided that those protections do not conflict with or frustrate the purpose of the federal law. The act does not prohibit Alaska from adopting requirements about break times.

A break-time requirement should be implemented by statute rather than by regulation. Neither AS 23.10 (the Alaska

Wage and Hour Act) nor AS 18.60.010 - 18.60.105 (prevention of accident and health hazards) speaks directly to this proposed requirement. The Wage and Hour Act establishes minimum wage and overtime compensation standards. AS 18.60.010 - 18.60.105 addresses the prevention of work-related accidents and health hazards. Since regulations providing for rest or meal periods would not directly flow from existing statutory language, the safer course to follow would be to establish the requirement by statute in general terms and permit regulations to be adopted to implement it.

TBC:lmb
L3/087

Attachment

§ 785.15 On duty.

A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employees while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employees who work away from the plant. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employee is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for his own purposes. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait. See: Skidmore v. Swift, 323 U.S. 134, 137 (1944); Wright v. Carrigg, 275 F. 2d 148, 14 W.H. Cases (C.A. 4, 1960); Mitchell v. Wigger, 39 Labor Cases, para. 66,278, 14 W.H. Cases 534 D.N.M. 1960); Mitchell v. Nicholson, 79 F. Supp. 292,14 W.H. Cases 487 W.D.N.C. 1959))

785.16 Off duty.

(a) *General.* Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

(b) *Truck drivers; specific examples.* A truck driver who has to wait at or near the job site for goods to be loaded is working during the loading period. If the driver reaches his destination and while awaiting the return trip is required to take care of his employer's property, he is also working while waiting. In both cases the employee is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Washington, D.C. to New York City, leaving at 6 a.m. and arriving at 12 noon, and is completely and specifically relieved from all duty until 6 p.m. when he again goes on duty for the return trip the idle time is not working time. He is waiting to be engaged. (Skidmore v. Swift, 323 U.S. 134, 137 (1944); Walling v. Dunbar Transfer & Storage, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); Gifford v. Chapman, 6 W.H. Cases 806; 12 Labor Cases para. 63,661 (W.D. Okla., 1947); Thompson v. Daugherty, 40 Supp. 279 (D. Md. 1941))

§ 785.17 On-call time.

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. (Armour & Co. v. Wantock, 323 U.S. 126 (1944); Handler v. Thrasher, 191 F. 2d 120 (C.A. 10, 1951); Walling v. Bank of Waynesboro, Georgia, 61 F. Supp. 384 (S.D. Ga. 1945))

Rest and Meal Periods

§ 785.18 Rest.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (Mitchell v. Greinetz, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); Ballard v. Consolidated Steel Corp., Ltd., 61 F. Supp. 996 (S.D. Cal. 1945)),

§ 785.19 Meal.

(a) *Bona fide meal periods.* Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (Culkin v. Glenn L. Martin, Nebraska Co., 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); Thompson v. Stock & Sons, Inc., 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); Biggs v. Joshua Hendy Corp., 183 F. 2d 515 (C. A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); Walling v. Dunbar Transfer & Storage Co., 3 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); Lofton v. Seneca Coal and Coke Co., 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); Mitchell v. Tampa Cigar Co., 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); Douglass v. Hurwitz Co., 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

(b) *Where no permission to leave premises.* It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

Sleeping Time and Certain Other Activities

§ 785.20 General.

Under certain conditions an employee is considered to be working even though some of his time is spent in sleeping or in certain other activities.

§ 785.21 Less than 24-hour duty.

An employee who is required to be on duty for less than 24 hours is working even though he is permitted to sleep or engage in other personal activities when not busy. A telephone operator, for example, who is required to be on duty for specified hours is working even though she is permitted to sleep when not busy answering calls. It makes no difference that she is furnished facilities for sleeping. Her time is given to her employer. She is required to be on duty and the time is worktime. (Central Mo. Telephone Co. v. Conwell, 170 F. 2d 641 (C.A. 8, 1948); Strand v. Garden Valley Telephone Co., 51 F. Supp. 898 (D. Minn. 1943); Whitsitt v. Enid Ice & Fuel Co., 2 W. H. Cases 584; 6 Labor Cases para. 61,226 (W.D. Okla. 1942).)

§ 785.22 Duty of 24 hours or more.

(a) *General.* Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If sleeping period is of more than 8 hours, only 8 hours will be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked. (Armour v. Wantock, 323 U.S. 126 (1944); Skidmore v. Swift, 323 U.S. 134 (1944); General Electric Co. v. Porter, 208 F. 2d 805 (C.A. 9, 1953), cert. denied, 347 U.S. 951, 975 (1954); Bowers v. Remington Rand, 64 F. Supp. 620 (S.D. Ill, 1946), aff'd 159 F. 2d 114 (C.A. 7, 1946) cert. denied 330 U.S. 843 (1947); Bell v. Porter, 159 F. 2d 117 (C.A. 7, 1946) cert. denied 330 U.S. 813 (1947); Bridgeman v. Ford, Bacon & Davis, 161 F. 2d 362 (C.A. 8, 1947); Rokey v. Day & Zimmerman, 157 F. 2d 736 (C.A. 8, 1946); McLaughlin v. Todd & Brown, Inc., 7 W.H. Cases 1014; 15 Labor Cases para. 64,606 (N.D. Ind. 1948); Campbell v. Jones & Laughlin, 70 F. Supp. 996 (W.D. Pa. 1947).)

(b) *Interruptions of sleep.* If the sleeping period is interrupted by a call to duty, the interruption must be

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 545
Title: "...relating to rest or meal periods for food service workers"
Sponsor: Representative Lacher
Requestor: House Labor & Commerce
Date of Request: 2/10/84

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards & Safety Date:

Approved by Commissioner: Jim Robison Date: 2/16/84
Agency: Labor

LEG:B:5
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

The Department of Labor is, from a safety and health standpoint, an advocate of the philosophy that workers need time away from their duties during the work shift, as provided for in House Bill 545. While there are presently no provisions in either state or federal law that require rest or meal periods for any class of worker, the absence of such provisions is premised upon the ability and good faith of employers and employees to negotiate suitable arrangements in this regard. This has been very workable and, generally, employers and employees do come to mutually acceptable terms on meal and rest periods. However, it appears that the food service industry has failed to satisfactorily police itself in this regard, and that workers in the industry are being denied the opportunity to negotiate for meal or rest periods which is commonly extended to workers in other industries.

Traditionally, a role of government has been to provide remedies to inequities when the more desirable self-regulating approach has failed. With this being the situation in the food service industry, it is, therefore, appropriate for government to assume the stronger role as provided for in House Bill 545.

The Department of Labor, therefore, supports passage of House Bill 545. It will not have a fiscal impact on the Department.

APPROVED:

Jim Robison

Jim Robison
Commissioner

POSITION PAPER/Department of Labor

Hotel
Employees &
Restaurant
Employees Union

Local 879

909 First Avenue — Fairbanks, Alaska 99701
907-452-2332

— *Farthest North Local* —

Daniel E. Loring
Financial Secretary-Treasurer
Business Manager

Mark Rosen
President

6 February 1984

Rep. Niilo Koponen
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Koponen,

Local 879 is pleased to see the introduction of H.B. 545, and would like to be kept informed of its progress in the Labor and Commerce Committee. As this bill is presently written, is it intended to provide workers with either a meal or a 30 minute break, but not necessarily both? It would seem to be a curious result if employers provided a meal but required the employee to eat it while on shift.

Thank you for introducing this bill, and for sending us your comments or further information on it.

Sincerely,

Beth E. Behner

Beth E. Behner
Business Agent, Local 879

P.S. Please let Rep. Ringstad know that his constituents favor this bill! BEB

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 6, 1984

MEMORANDUM

TO: Representative Barbara Lacher

FROM: David Teal
Legislative Analyst

RE: Meal Period for Food Service Workers
Research Request 84-057

You asked about state and federal laws and regulations pertaining to rest or meal periods for food service workers on an 8-hour shift. Alaska, like most states, defers to federal standards in lieu of state wage and hour regulation. Federal requirements for work breaks (except for minors) were abolished in the 1960s when equal pay and equal opportunity laws were adopted.[1]

I spoke with Don Wilson and James Sanwick, both of the Alaska Department of Labor, about states that have adopted laws and regulations governing meal periods. Washington, Oregon, California and Hawaii are some of the states that have state wage and hour requirements in addition to federal requirements.

Hawaii requires employers to provide breaks to employees who are minors, but does not require breaks for adult workers. California requires employers to provide a meal period to workers in some fields, but food service workers are not on the list of occupations covered by the regulations. A copy of California's regulations governing meal periods is attached to this memorandum.

Employers that are covered by state regulation in Oregon must provide a 10-minute break (15 minutes for minors) twice a day and must provide a meal break within 5 hours of the beginning of a shift. Oregon's

---

[1]Until the federal equal pay requirements were adopted, employers were required to provide breaks to women and children employees. Federal regulations no longer require employers to give adult employees rest or meal breaks, but they do require that employees be compensated for breaks of less than 20 minutes and meal periods of less than one-half hour.

wage and hour regulations apply only to those businesses that have gross sales of less than $362,000 per year and do not participate in interstate commerce. Over 90 percent of the employers in Oregon are covered by federal regulations.

Washington's administrative code requires employers to allow employees to take a meal break of at least 30 minutes no less than two hours and no more than five hours from the beginning of a shift. In addition, employees must receive a paid 10-minute break for each four hours of work. The provisions apply to all employers in the state.

Several people I spoke with stated that most food service workers are allowed to eat before, after or during their shifts, often for free. Several contacts mentioned that a requirement for a meal break might cause "during shift" meals to change from the traditional no cost and no lost hourly compensation situation. If food service workers in Alaska are given meal breaks, they may no longer be paid for the meal period and could be required to pay for any of the employers' food which is consumed.

If you wish us to perform a more extensive survey of states, please contact the agency.

DT

Attachment

MARCH 7, 1984

TO: JOHN

FROM: KEN

RE: HB 545

THE LANGUAGE IN HB 545 IS VERY SIMPLE, BUT IT PROPOSES ACTION WHICH IS UNPRECEDENTED IN ALASKA STATUTE. THIS LEGISLATION WOULD MANDATE THAT WORKERS IN THE FOOD SERVICE INDUSTRY BE GIVEN A 30 MINUTE REST OR MEAL PERIOD DURING WORK SHIFTS THAT LAST EIGHT HOURS OR MORE.

QUESTIONS:

1. WHY HAVE FOOD SERVICE WORKERS BEEN SINGLED OUT IN THIS BILL ?

2. HAS THIS TYPE OF LEGISLATION BEEN PASSED IN OTHER STATES ?

3. IS THERE ANY LAW ON THE FEDERAL LEVEL THAT MIGHT SUPPORT SUCH LEGISLATION ?

4. IF THIS LEGISLATION IS PASSED, DO YOU EXPECT A LARGE NUMBER OF WORKERS WILL WANT THE SAME PRIVILEGE ?.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 545
Title: "...relating to rest or meal periods for food service workers"
Sponsor: Representative Lacher
Requestor: House Labor & Commerce
Date of Request: 2/10/84

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards & Safety Date:

Approved by Commissioner: Jim Robison Date: 3/16/84
Agency: Labor

LEG:B:5
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Bill No. House Bill No. 545

Date February 15, 1984

Title "An Act relating to rest or meal periods for food service workers."

Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

The Department of Labor is, from a safety and health standpoint, an advocate of the philosophy that workers need time away from their duties during the work shift, as provided for in House Bill 545. While there are presently no provisions in either state or federal law that require rest or meal periods for any class of worker, the absence of such provisions is premised upon the ability and good faith of employers and employees to negotiate suitable arrangements in this regard. This has been very workable and, generally, employers and employees do come to mutually acceptable terms on meal and rest periods. However, it appears that the food service industry has failed to satisfactorily police itself in this regard, and that workers in the industry are being denied the opportunity to negotiate for meal or rest periods which is commonly extended to workers in other industries.

Traditionally, a role of government has been to provide remedies to inequities when the more desirable self-regulating approach has failed. With this being the situation in the food service industry, it is, therefore, appropriate for government to assume the stronger role as provided for in House Bill 545.

The Department of Labor, therefore, supports passage of House Bill 545. It will not have a fiscal impact on the Department.

APPROVED:

Jim Robison
Commissioner

POSITION PAPER/Department of Labor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: HB 545
Title: "...relating to rest or meal periods for food service workers"
Sponsor: Representative Lacher
Requestor: House Labor & Commerce
Date of Request: 2/10/84

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards & Safety Date: _____

Approved by Commissioner: Jim Robison Date: 2/16/84
Agency: Labor

LEG:B:5
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HB

569

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 14, 1984

REQUEST
Bill/Resolution No.: HB 569
Title: An Act relating to Cemetary Associations.
Sponsor: Representative Phillips
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce and Economic Dev.
Program Category Affected: Consumer Protection
BRU, Program or Subprogram(s) Affected: Banking, Securities and Corporations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Willis F. Kirkpatrick, Director (Willis F. Kirkpatrick) Phone: 465-2521
Division: Banking, Securities and Corporations Date: 2/14/84

Approved by Commissioner: Richard A. Lyon (RAL) Date: 2/21/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

February 6, 1984

TO Rep. John Cowdery
Labor and Commerce Committee Chairman

FROM Rep. Joe Hayes
Speaker

RE: HB 569/ cemetery associations

Representative Phillips has introduced HB 569 relating to cemetery associations and I have referred it to the Labor and Commerce Committee.

I had intended to introduce similar legislation, and I am supportive of this bill. I would appreciate it if you would schedule HB 569 for a committee hearing as soon as convenient so that we might be able to bring it to the floor for a vote in the near future.

Thanks.

HB 538, (cont'd)

lating to agriculture, industry, horticulture, native plants or livestock, 3) indicating past, present, or future potential of a renewable resource that is related to the community, region or state, 4) showing household arts, and 5) including general interest subjects such as hobbies, arts, crafts, photography and school education.

Rewrites definition of "agricultural and industrial fair" to mean: ". . .a community, regional or state fair that includes in its activities exhibits of agriculture, industry, horticulture, native plants, livestock, and related domestic arts produced in the community, region, or state;" (currently an "agricultural and industrial fair" means a fair, the major focus of which is displays, exhibitions, demonstrations, contests or promotions of agricultural or industrial concern to the region in which the fair is located, or any fair which, before July 1, 1980, has received a grant under this chapter;"). Identical to SB 378, page 119.

Does not provide for an effective date (becomes law 90 days after Governor signs bill).

Introduced January 24 and referred to Resources, Finance.

Motorcycle Helmets (mandatory)

HOUSE BILL NO. 539, by Reps. Cato and M. M. Miller. Would require a person driving, operating, or riding as a passenger on a motorcycle, motor-driven cycle, or snowmobile to wear an approved motorcycle helmet. Does not provide for an effective date (becomes law 90 days after Governor signs bill).

Introduced January 25 and referred to State Affairs.

Contractor's Payment Bond (claims against)

HOUSE BILL NO. 540, by Rep. Bettisworth. Relates to the rights of persons who furnish labor or materials. Under this bill a person having direct contractual relationships with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond has a right of action on the payment bond upon giving written notice to the contractor within 10 days from the first date on which the person performed labor or furnished material for which the claim is made (under current law the person has a right to action within 90 days from the last date on which the person performed labor or furnished material). Requires the notice to state the name of the person to whom the material was furnished or for whom the labor was performed, ". . . identify the public building project or public work project for which the material was furnished or for which the labor was performed, describe the material furnished and to be furnished or the work performed and to be performed, and state the date on which the material was first furnished or the work was first performed. . . ." (currently the notice must state "with substantial accuracy the amount claimed and the name of the person to whom the material was furnished or for whom the labor was performed--underlined language added to current law by this bill). Does not provide for an effective date (becomes law 90 days following Governor's signature).

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4949

BOX 142
EAGLE RIVER, ALASKA
99577

RECEIVED FEB 9 1984

Representative Randy Phillips

HOUSE DISTRICT 15

MEMORANDUM

TO: The Honorable John Cowdery
Chairman, House Labor & Commerce Committee

FROM: Representative Randy Phillips R.E.P.

DATE: February 8, 1984

RE: House Bill 569
Re: Cemetery Associations

Ken Johnson of your office recently asked for background information regarding the captioned bill, which is set for hearing next Tuesday, February 14, 1984.

I am attaching a copy of a letter I received from the Chairman of the Special Committee of Angelus Memorial Park Association in Anchorage. As you can see from his letter, the Association wishes to build a building to house much-needed administration and service-related activities. Under present law, the Association could only accomplish the building of such a structure by selling off a portion of the land it owns; in other words, present statutes prohibit the Association from financing such structures. Additionally, under present statutes, a cemetery association cannot incorporate as a non-profit association. House Bill 569 would permit this.

I have asked Legal Services to prepare a sectional analysis of the bill and I hope to have it to your office before the hearing; however, I have been advised that due to the personal bill deadline, such sectional analysis may have to wait. I have notified Mr. Buswell of the meeting and he has indicated that the Association will either send someone to Juneau to testify or will submit written testimony.

If you have any questions, please contact me.

Enclosure

EVERLASTING CARE ENDOWED

MEMBER
NATIONAL ASSOCIATION OF CEMETERIES

Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

PHONE 344-1311
OFFICE HOURS:
10 A.M. TO 3 P.M.

January 19, 1984

CEMETERY
AND
OFFICE
ON KLATT ROAD

Mr. Randy Phillips
State Legislator
Juneau, Alaska

Dear Mr. Phillips:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining to non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, were to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years ago before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association realy needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niche and storage vault. Also we can not even build a much needed administartion building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corporation is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non paid.

Sincerely,
Special Committee
Mr. Alvah C. Buswell, Jr.
Chairman

ANGELUS MEMORIAL PARK ASSOCIATION

Enclosures
This material has also been sent to Representative Joe Hayes

ALASKA STATUTES

CHAPTER 30. Cemetery Associations

Sec. 10.30.070. Creation of irreducible fund. The association may by its bylaws provide that a stated percentage of the money realized from the sale of lots and donations (AND OTHER SOURCES OF REVENUE) constitutes an irreducible fund, which may be invested in the manner or loaned upon the securities the association or the trustees consider proper. The interest or income from the irreducible fund provided for in any bylaw or as much as may be necessary shall be devoted exclusively to the preservation and embellishment of the (CEMETERY) grounds, buildings and property of the association and or corporation and the lots and space in buildings or grounds sold to the members of the association and or corporation, or to the payment of the interest or principal of the debts authorized by the association for the purchase of land, equipment, erecting buildings and improvements. Where a bylaw has been enacted for the creation of an irreducible fund, (IT) the set amount or percentage stated in the bylaw, may not be amended except for the purpose of increasing the fund. (36-5-5 ACLA 1949)

I was told to use caps & put in brackets those words to be deleted and to underline all new wording.

Office

ALASKA STATUTES

CHAPTER 30. Cemetery Associations

Sec. 10.30.090. Debts of association and or corporation. A cemetery association and or corporation may (NOT) contract debts in anticipation of future receipts, (EXCEPT) for the (ORIGINAL) purchase of cemetery land and or for other cemetery purposes, the laying out and embellishment of the grounds and avenues of the cemetery, repairing their buildings, erection of new buildings, mausoleums, columbariums, and purchasing necessary equipment, for which debts the association may issue bonds or notes. The association may secure these debts by mortgage upon its lands, except lots which have been conveyed to the members of the Association, or by security interest in no more than 50% of the irreducib fund. (36-5-5 ACLA 1949).

ALASKA STATUTES

CHAPTER 30. Cemetery Associations.

Sec. 10.30.125 Definition of "Cemetery Lot", one or more than one adjoining, lot, plot, space, grave, nich, mausoleum crypt, vault, and columbarium, for the interment of human remains.

the bank or trust company shall be governed by the provisions of ORS 128.057 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Secretary of State on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 97.810 (2) regarding endowment care funds. The Secretary of State may require the corporation to file, as often as he considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

(3) The interest or income arising from the irreducible fund provided for in this section or by any bylaws, or so much thereof as is necessary, shall be devoted exclusively to the preservation and embellishment of the grounds, buildings and property of the corporation and the lots and space in buildings or grounds sold to the members of the corporation, or to the payment of the interest or principal of the debts authorized by subsection (5) of this section for the purchase of land, erecting buildings, and improvements. Any surplus thereof not needed or used for such purposes shall be invested as provided in this section and shall become part of the irreducible fund.

(4) After paying for the land and the erection of the original buildings and improvements thereon, all the future receipts and income of the corporation subject to the provisions in this section relating to the creation of an irreducible fund, whether from the sale of lots and burial space, cremation of bodies, donations, gifts and other sources, shall be applied exclusively to laying out, preserving, protecting, embellishing and beautifying the cemetery or the crematory and grounds thereof, and the avenues leading thereto, and to the erection of such buildings and improvements as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

(5) No debts shall be contracted by such corporation in anticipation of any future receipts, except for originally purchasing the lands authorized to be purchased by it, laying out and embellishing the grounds and avenues, erecting buildings and vaults on such land, and improving them for the purposes of the corporation. The corporation may issue bonds or notes for debts so contracted and may secure them by way of mortgage upon any of its lands, buildings, property and improvements excepting lots or space conveyed to the members. [1969 c.580 §96; 1971 c.225 §1]

61.765 Selling land unsuited for burials. If in the board of directors' opinion, any portion of the lands of a nonprofit corporation organized and existing solely for the purposes of either owning or operating a cemetery or the cremation of dead bodies and the burial and care of incinerate remains is unsuitable for burial purposes or other purposes of the corporation, the board of directors may sell such portion and apply the proceeds to the general purposes of such corporation in the same proportion and manner as provided by ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. [1969 c.580 §97]

61.770 Burial lots or space; use, exemption from taxation, execution and liens; lien for purchase price of gravestone. Burial lots or space for burial of incinerate remains in buildings or grounds sold by a nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall be for the sole purpose of interment or deposit and safekeeping of incinerate remains. Such lots or space shall be exempt from taxation, execution, attachment or other lien or process, if used as intended by the purchaser thereof from such corporation, or his assigns or representatives, exclusively for burial purposes, and in no wise with a view to profit. The vendor of any gravestone, however, shall not be prevented from having and enforcing a lien thereon for all or part of its purchase price. If a suit is brought to enforce such a lien, the decree therein is enforceable thereafter; and, for the purpose of enabling the lien to be had and enforced, the gravestone shall be deemed personal property and may be severed and removed, under execution and order of sale, from the lot where it is situated and may be sold in the same manner as any other personal property. [1969 c.580 §98]

61.775 Recording plan; power to improve and regulate grounds. A nonprofit corporation organized and existing solely for the purpoees of owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall cause a plan of its land and grounds and of the lots laid out by it and of the niches or burial space in the buildings erected thereon to be made and recorded in the county in which such grounds and land are located, such lots or

Oregon

SPECIAL PROVISIONS RELATING TO ORS 97.010 TO 97.040, 97.110 TO 97.450, 97.510 TO 97.730, 97.810 TO 97.920 and 97.990

97.010 Definitions for ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

(3) "Burial park" means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(5) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(6) "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

(10) "Entombment" means the placement of human remains in a crypt or vault.

(11) "Burial" means the placement of human remains in a grave.

(12) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(13) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains.

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(18) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

(19) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "Endowment care" means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund established and maintained pursuant to the provisions of ORS 97.810 to 97.860. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. [Amended by 1955 c.545 §1; 1965 c.396 §1]

61.736 Procedure for revoking certificate of authority. ORS 57.735, relating to revocation of certificate of authority, is applicable to nonprofit corporations. [1963 c.492 §36 (enacted in lieu of 61.735)]

61.740 [Renumbered 61.984]

61.741 Application to corporation authorized to transact business in this state on December 31, 1959. Foreign corporations which are duly authorized to transact business in this state on December 31, 1959, for a purpose or purposes for which a corporation might secure such authority under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, and from December 31, 1959, such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. [1959 c.580 §80]

61.745 Transacting business without certificate of authority. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. No action, suit or proceeding shall be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state. [1959 c.580 §81]

CEMETERIES AND CREMATORIES

61.755 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation. A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution and taxation, and from any appropriation for public purposes, and lots or portions of such land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 600 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 30 acres, but if the land already held for such purpose by the corporation is all practically used the amount thereof may be increased by adding thereto not more than 10 acres at any one time. [1959 c.580 §95]

61.760 Revenues; restrictions on uses thereof. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws provide that a stated percentage of the moneys received from the sale of lots and burial spaces, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund,

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HEALTH AND SAFETY CODE

DIVISION 7. DEAD BODIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

7000. The definitions in this chapter apply to this division and to Divisions 8 and 9 of this code.

7001. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition and cremated remains.

7002. "Cremated remains" means human remains after incineration and necessary processing under Section 7054.1 in a crematory.

7003. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault interments.

(c) A crematory, or a crematory and columbarium, for cinerary interments.

7004. "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes.

7005. Except in Part 5 of Division 8 of this code, "mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

7006. "Crematory" means a building or structure containing one or more furnaces for the reduction of bodies of deceased persons to cremated remains.

7007. Except in Part 5 of Division 8 of this code, "columbarium" means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

7008. "Crematory and columbarium" means a building or structure containing both a crematory and columbarium.

7009. "Interment" means the disposition of human remains by inurnment, entombment, or burial in a cemetery or, in the case of cremated remains, by inurnment, entombment, burial, or burial at sea as provided in Section 7117.

7010. "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory and the placement of the cremated remains in a grave, vault or niche or burial at sea as provided in Section 7117 of this code.

7011. "Inurnment" means placing cremated remains in an urn and placing it in a niche.

7012. "Entombment" means the placement of human remains in a crypt or vault.

7013. "Burial" means the placement of human remains in a grave.

7014. "Grave" means a space of ground in a burial park, used, or intended to be used, for burial.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be used, for inurnment of cremated human remains.

7017. "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7019. "Cemetery corporation," "cemetery association," or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole.

7020. "Cemetery business," "cemetery businesses," and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property, including, but not limited to, any activity or business designed for the benefit, service, convenience, education, or spiritual uplift of property owners or persons visiting the cemetery.

7021. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

7023. "Plot owner," "owner," or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority.

7024. "Permit for Disposition of Human Remains" includes "burial permit" and is a permit, issued pursuant to law, for the interment, disinterment, removal, reinterment or transportation of human remains.

DIVISION 8. CEMETERIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. CEMETERY DEFINED

8100. Six or more human bodies being buried at one place constitute the place a cemetery.

CHAPTER 2. VANDALISM

8101. (a) Every person is guilty of a misdemeanor and punishable by a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail for not exceeding one year, or by both, who maliciously does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or any property in a cemetery.

(2) Obliterates any grave, vault, niche, or crypt.

(3) Destroys, cuts, breaks or injures any building, statuary, ornamentation, tree, shrub, or plant within the limits of a cemetery.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

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

February 3, 1984

FEB 03 1984

The Honorable Joe Hayes
Speaker of the House
Alaska State House of
Representatives
Pouch V
Juneau, AK 99811

Re: House Bill S69
relating to nonprofit
cemetery corporations

Dear Representative Hayes:

You have asked the Consumer Protection section of the Attorney General's office to review House Bill _____ regarding nonprofit cemeteries, and to inform you whether the Department of Law has any difficulties with the overall concept behind the bill, specifically whether it would pose a threat of injury to the consuming public dealing with nonprofit cemeteries in the state.

My understanding of the intent behind the bill is to modernize and clarify the 1949 Nonprofit Cemetery Association statute presently in effect. The bill would allow nonprofit cemetery associations to be incorporated as nonprofit corporations under AS 10.20 and would generally give the nonprofit cemetery association or corporation more flexibility in how it invests the monies in its irreducible fund, how it spends its other revenues and how and for what purposes it may contract debts. The crucial part of this updating was to add a definition of "cemetery lot" to include not only grave spaces but also mausoleum crypts, or crematory niches, since those items are often the preferred choice of modern consumers.

The Consumer Protection section in the Attorney General's office is not opposed to this bill and does not think that it will cause any harm to the public. If anything, the bill will allow those nonprofit cemetery associations operating in the state to better serve their own membership. Since these associations are like cooperatives, owned and controlled by the members, there is little danger of overreaching or abuse of the corporation's cemetery assets. The changes in this statute will only further the worthy purposes of the cemetery associations as

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they will be able to respond to the needs of their own association for the erection of new buildings, acquisition of new lands or equipment or development of new cemetery services such as mausoleums.

The last section of the bill also adds a broader definition of "cemetery lot" to the Alaska Unfair Trade Practices and Consumer Protection Act. This definition refers to AS 45.50.471(b)(24), which regulates the sales of funeral or burial goods or services before "need" (i.e. before death). Under 471(b)(24) as it presently exists, a corporation or association making advance sales of funeral goods or services is required to deposit the consumers' monies in a trust fund pending actual use by the consumer. There is presently an exemption from trust deposit for the amount paid for the actual cemetery lot and grave marker. By expanding the definition of cemetery lot, an advance purchase of a mausoleum crypt, or a crematorium deposit space of some sort, would also be exempt from this trust deposit requirement.

The Department of Law does not oppose this change, since it seems reasonable that this broader definition of cemetery lot be adopted to meet with modern day marketing of burial goods such as crematory crypts. The Consumer Protection section does not believe that broadening this definition will lead to any abuse of the advance-need funeral statute, despite what members of the public or Legislature might fear because of the recent debacle with the Valley Memorial Garden Cemetery near Palmer. (Unfortunately, most of the advance-need burial sales made by that cemetery were made before the effective date of AS 45.471(b)(24), and it was the lack of any trust requirement for any portion of the advance-need sales price which allowed the abusive dissipation of those funds by the for-profit cemetery corporation known as Valley Memorial Gardens, Inc.)

If legislators have a concern that the purchase monies from consumers who purchase cemetery lots or crematory crypts in advance need further protection, a further sentence could be added to 471(b)(24) to the effect that cemetery lots (as more broadly defined by this bill) are exempt if they are in fact, upon payment of the purchase price, "transferred" from the seller to the consumer. Although transfer is not usually made in the sense of legal property "title" transfer, designation of the space as a consumer's by the placement of a grave stone marker already marked with the consumer's name and designation of the plot or crypt as the consumer's on the official map of the cemetery should be sufficient protection.

Overall, the Attorney General's office does not see significant problems with the enactment of House Bill _____.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Connie J. Sipe
Connie J. Sipe
Assistant Attorney General
Consumer Protection Section

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

February 8, 1984

To: Labor and Commerce Committee

From: Joe L. Hayes
Speaker of the House

Re: HB 569/ cemetery associations

The following information is provided as background for this legislation.

During the past year, the Angelus Memorial Park Association in Anchorage acquired the Valley Memorial Garden cemetery in Palmer. Valley Memorial was in bankruptcy proceedings and many community residents feared that this cemetery would be lost as would many relatives buried in the cemetery.

After Angelus had come to the rescue, so to speak, of Valley Memorial Garden, it was discovered that the cemetery had never been properly surveyed, burials had been improperly made and the entire 7½ acre facility was in need of substantial capital improvement. However, state law relating to cemeteries is extremely outdated and is very restrictive as to what money and assets possessed by a cemetery association may be used for such improvements or as collateral.

The legislation is intended to remedy that situation and allow non-profit cemetery associations as Angelus more flexibility in using their funds to serve the public. This bill will allow the cemetery association to better serve its clients. As the letter from the Attorney General's office provided as backup indicates, these associations act like cooperatives and there would be little danger of abusing the corporation's assets.

In general, will allow cemetery associations to provide for the desires of today's community in the area of cemetery services.

We suggest an amendment which has been recommended by the Attorney General's office.

* Add a section 13 to read

AS 45.50.561 is amended by adding a new paragraph to read:

(9) "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault or columbarium, used or intended to be used for the interment of human remains.

This is an amendment to the unfair trade practices statutes referred to in the second page of the letter provided as further backup.

For further background, I would suggest the committee request testimony from Connie Sipe in the Consumer Protection section of the Attorney General's office. She has been instrumental in the drafting if this legislation.

EVERLASTING CARE ENDOWED

MEMBER
NATIONAL ASSOCIATION OF CEMETERIES

Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

PHONE 344-1311
OFFICE HOURS:
10 A.M. TO 3 P.M.

January 19,184

CEMETERY
AND
OFFICE
ON KLATT ROAD

Representative Joe Hayes
Alaska State Legislature
Juneau, Alaska

Atten: Mr. Jeff Day:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining to non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years ago before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association realy needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niches and storage vault. Also we can not even build a much needed administration building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corporation in our amendments is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non-paid.

Sincerely,
Mr. Douglas W. Brown
President of Board of Trustees

ANGELUS MEMORIAL PARK ASSOCIATION

JAN 25 1984

Enclosures
This material has also been sent to Representative Randy Phillips

the bank or trust company shall be governed by the provisions of ORS 128.057 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Secretary of State on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 97.810 (2) regarding endowment care funds. The Secretary of State may require the corporation to file, as often as he considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

(3) The interest or income arising from the irreducible fund provided for in this section or by any bylaws, or so much thereof as is necessary, shall be devoted exclusively to the preservation and embellishment of the grounds, buildings and property of the corporation and the lots and space in buildings or grounds sold to the members of the corporation, or to the payment of the interest or principal of the debts authorized by subsection (5) of this section for the purchase of land, erecting buildings, and improvements. Any surplus thereof not needed or used for such purposes shall be invested as provided in this section and shall become part of the irreducible fund.

(4) After paying for the land and the erection of the original buildings and improvements thereon, all the future receipts and income of the corporation subject to the provisions in this section relating to the creation of an irreducible fund, whether from the sale of lots and burial space, cremation of bodies, donations, gifts and other sources, shall be applied exclusively to laying out, preserving, protecting, embellishing and beautifying the cemetery or the crematory and grounds thereof, and the avenues leading thereto, and to the erection of such buildings and improvements as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

(5) No debts shall be contracted by such corporation in anticipation of any future receipts, except for originally purchasing the lands authorized to be purchased by it, laying out and embellishing the grounds and avenues, erecting buildings and vaults on such land, and improving them for the purposes of the corporation. The corporation may issue bonds or notes for debts so contracted and may secure them by way of mortgage upon any of its lands, buildings, property and improvements excepting lots or space conveyed to the members. [1969 c.580 §96; 1971 c.228 §1]

61.765 Selling land unsuited for burials. If in the board of directors' opinion, any portion of the lands of a nonprofit corporation organized and existing solely for the purposes of either owning or operating a cemetery or the cremation of dead bodies and the burial and care of incinerate remains is unsuitable for burial purposes or other purposes of the corporation, the board of directors may sell such portion and apply the proceeds to the general purposes of such corporation in the same proportion and manner as provided by ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. [1969 c.580 §97]

61.770 Burial lots or space; use, exemption from taxation, execution and liens; lien for purchase price of gravestone. Burial lots or space for burial of incinerate remains in buildings or grounds sold by a nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall be for the sole purpose of interment or deposit and safekeeping of incinerate remains. Such lots or space shall be exempt from taxation, execution, attachment or other lien or process, if used as intended by the purchaser thereof from such corporation, or his assigns or representatives, exclusively for burial purposes, and in no wise with a view to profit. The vendor of any gravestone, however, shall not be prevented from having and enforcing a lien thereon for all or part of its purchase price. If a suit is brought to enforce such a lien, the decree therein is enforceable thereafter; and, for the purpose of enabling the lien to be had and enforced, the gravestone shall be deemed personal property and may be severed and removed, under execution and order of sale, from the lot where it is situated and may be sold in the same manner as any other personal property. [1969 c.580 §98]

61.775 Recording plan; power to improve and regulate grounds. A nonprofit corporation organized and existing solely for the purposes of owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall cause a plan of its land and grounds and of the lots laid out by it and of the niches or burial space in the buildings erected thereon to be made and recorded in the county in which such grounds and land are located, such lots or

SPECIAL PROVISIONS RELATING TO ORS 97.010 TO 97.040, 97.110 TO 97.450, 97.510 TO 97.730, 97.810 TO 97.920 and 97.990

97.010 Definitions for ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

(3) "Burial park" means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(5) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(6) "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

(10) "Entombment" means the placement of human remains in a crypt or vault.

(11) "Burial" means the placement of human remains in a grave.

(12) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(13) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains.

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(18) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

(19) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "Endowment care" means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund established and maintained pursuant to the provisions of ORS 97.810 to 97.860. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. [Amended by 1955 c.545 §1; 1965 c.396 §1]

61.736 Procedure for revoking certificate of authority. ORS 57.735, relating to revocation of certificate of authority, is applicable to nonprofit corporations. [1963 c.492 §36 (enacted in lieu of 61.735)]

61.740 [Renumbered 61.984]

61.741 Application to corporation authorized to transact business in this state on December 31, 1959. Foreign corporations which are duly authorized to transact business in this state on December 31, 1959, for a purpose or purposes for which a corporation might secure such authority under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, and from December 31, 1959, such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. [1959 c.580 §80]

61.745 Transacting business without certificate of authority. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. No action, suit or proceeding shall be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state. [1959 c.580 §81]

CEMETERIES AND CREMATORIES

61.755 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation. A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution and taxation, and from any appropriation for public purposes, and lots or portions of such land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 600 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 30 acres, but if the land already held for such purposes by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 10 acres at any one time. [1959 c.580 §95]

61.760 Revenues; restrictions on uses thereof. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws, provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund,

1.

HEALTH AND SAFETY CODE

DIVISION 7. DEAD BODIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

7000. The definitions in this chapter apply to this division and to visions 8 and 9 of this code.

7001. "Human remains" or "remains" means the body of a deceased rson, and includes the body in any stage of decomposition and cremated mains.

7002. "Cremated remains" means human remains after incineration d necessary processing under Section 7054.1 in a crematory.

7003. "Cemetery" means any one, or a combination of more than one, the following, in a place used, or intended to be used, and dedicated, r cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault interments.

(c) A crematory, or a crematory and columbarium, for cinerary terments.

7004. "Burial park" means a tract of land for the burial of human mains in the ground, used or intended to be used, and dedicated, for metery purposes.

7005. Except in Part 5 of Division 8 of this code, "mausoleum" means tructure or building for the entombment of human remains in crypts vaults in a place used, or intended to be used, and dedicated, for metery purposes.

7006. "Crematory" means a building or structure containing one or ore furnaces for the reduction of bodies of deceased persons to cremated mains.

7007. Except in Part 5 of Division 8 of this code, "columbarium" means tructure, room, or other space in a building or structure containing hes for inurnment of cremated human remains in a place used, or ended to be used, and dedicated, for cemetery purposes.

7008. "Crematory and columbarium" means a building or structure ntaining both a crematory and columbarium.

7009. "Interment" means the disposition of human remains by rnment, entombment, or burial in a cemetery or, in the case of mated remains, by inurnment, entombment, burial, or burial at sea as ovided in Section 7117.

7010. "Cremation" means the reduction of the body of a deceased rson to cremated remains in a crematory and the placement of the mated remains in a grave, vault or niche or burial at sea as provided Section 7117 of this code.

7011. "Inurnment" means placing cremated remains in an urn and acing it in a niche.

7012. "Entombment" means the placement of human remains in a ypt or vault.

7013. "Burial" means the placement of human remains in a grave.

7014. "Grave" means a space of ground in a burial park, used, or tended to be used, for burial.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient e, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be used, for inurnment of cremated human remains.

7017. "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7019. "Cemetery corporation," "cemetery association," or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole.

7020. "Cemetery business," "cemetery businesses," and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property, including, but not limited to, any activity or business designed for the benefit, service, convenience, education, or spiritual uplift of property owners or persons visiting the cemetery.

7021. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

7023. "Plot owner," "owner," or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority.

7024. "Permit for Disposition of Human Remains" includes "burial permit" and is a permit, issued pursuant to law, for the interment, disinterment, removal, reinterment or transportation of human remains.

DIVISION 8. CEMETERIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. CEMETERY DEFINED

8100. Six or more human bodies being buried at one place constitute the place a cemetery.

CHAPTER 2. VANDALISM

8101. (a) Every person is guilty of a misdemeanor and punishable by a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail for not exceeding one year, or by both, who maliciously does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or any property in a cemetery.

(2) Obliterates any grave, vault, niche, or crypt.

(3) Destroys, cuts, breaks or injures any building, statuary, ornamentation, tree, shrub, or plant within the limits of a cemetery.

Senior Voice
OPAG

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Bankrupt Palmer cemetery's fate still in limbo

Cemetery bankruptcy affects more than 1,000 consumers.

by Rebecca Goodman

Sighs of relief swept across a federal courtroom in Anchorage as nearly 100 older consumers heard Judge Douglas Williams' decision to delay for three months abandonment of the bankrupt Valley Memory Gardens Cemetery in Palmer.

But consumers' relief may be premature and, for some, may never come.

There are still no buyers ready to take over the cemetery property.

Even worse, consumers who purchased pre-need funeral services will probably never recover their money for those items.

The 90-day delay granted by Williams allows the state Consumer Protection Office time to locate a buyer for the nine-acre cemetery.

Included in the bankruptcy case—the biggest in Alaska's history in terms of numbers of creditors involved—are over 1,000 consumers who purchased plots and pre-need funeral services from the cemetery between 1966 and 1982. Many of those consumers, frustrated and angry about their financial losses, sat through long hours of court hearings last month trying to figure out what happened to their money.

Court testimony painted a confusing picture of cemetery mismanagement and complicated land deals. It was testified that:

- Arthur Richmond, as president and major shareholder of Valley Memory Gardens, Inc., neglected to put consumers' money for pre-need services into individual trust accounts as required by state law.
- The cemetery firm used the proceeds from consumers' pre-need sales to buy more than 40 acres of residential lots in the Matanuska Valley with the intention of subdividing for profit.
- Consumers' deeds of trusts to their cemetery plots were not, according to Richmond, legal deeds of trust transferring ownership rights. The cemetery intended for those deeds to be considered "certificates of pre-arrangement" only.
- The cemetery was a major portion of collateral in a loan deal involving the cemetery firm, Arthur Richmond, and another businessman, Wayne Lofgren. They borrowed $500,000 from the Matanuska Valley Valley Federal Credit Union to finance a new business venture, then defaulted on the loan.

As the major creditor in the case, the Matanuska Valley Federal Credit Union could become the new owner of the cemetery in mid-February. However, the court is accommodating consumers by allowing the Consumer Protection Office and assistant attorney general Connie Sipe a chance to locate a buyer for the cemetery by February 17, 1983.

If the credit union becomes owner, it is uncertain what would happen to the cemetery

Continued on page 7

See related stories, pages 8, 9, 10, 11
Opinion, page 4

Bankruptcy frustrates cemetery consumers

by Rebecca Goodman

The gray-haired woman jostled through the packed courtroom clearing a path for the disabled man behind her. He moved haltingly on his one leg with crutches, searching each row for vacant seats.

The pair had already spent an hour winding up and down corridors and stairs as court officials herded consumers through two courtrooms too small to hold everyone.

It was standing room only in this big courtroom too. The man and women had to settle for vacant wall-space to lean against.

During the next two hours they listened along with more than 100 other consumers to questions and testimony in the bankruptcy proceedings of the Valley Memory Gardens cemetery.

The man grew impatient and more agitated with every question. He muttered aloud: "They act as though there's nobody even buried out there... What's going to happen to my kids' graves?"

The audience exploded when one attorney explained that consumers probably would lose not only their money, but also their cemetery plot.

Several consumers shouted. "We should've been warned if they weren't placing our money into trust accounts... Why aren't they filing criminal charges?"

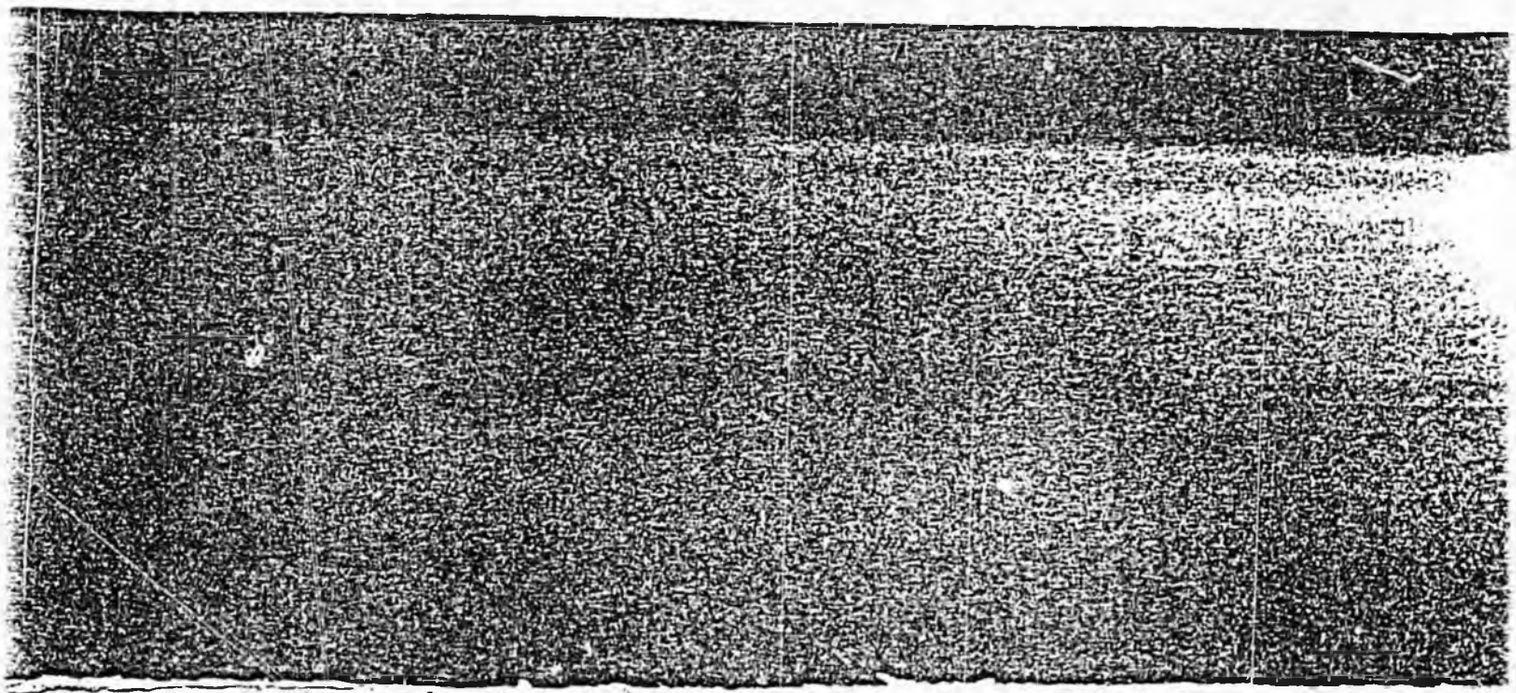
Finally the man gathered his nerve and raised his hand to speak.

"I have some questions that I think every single person in this courtroom wants answered," he began.

"I bought land and headstones and vaults at Valley Memory and I have two people buried there. I scraped together money and paid for

Continued on page 9

OAC to seek emergency funds for programs



OPINION PAGES

'Cemetery laws in this state are lousy'

"I didn't know that my cemetery plot came with a 'consumer beware' tag attached to the deed," said one disgruntled older consumer involved in the Valley Memory Gardens cemetery bankruptcy.

"Boy! The cemetery laws in this state are lousy," he fumed.

As is reported elsewhere in this issue, more than 1,000 Alaskan consumers are caught up in the Palmer cemetery's bankruptcy and stand to lose all or nearly all of the money they have paid for cemetery lots and funeral services. Probably all of them would agree with that assessment of Alaska's laws on cemetery operation.

The most startling single thing to come out of the Valley Memory case–aside from the losses suffered by individuals and families–is this:

As it stands right now, Alaska just doesn't even have basic laws regulating cemeteries.

It would certainly seem appropriate that the new state administration and the new legislature address this lack of consumer protection laws as a top priority.

This present lack of laws with teeth in them hit consumers three different ways in the Valley Memory case:

1. There are no regulatory boards overseeing cemetery sales practices.

2. There are no dedication procedures for cemeteries. (Procedures that would recognize cemeteries as special purpose property and set aside that property forever.)

3. There are no requirements that each deed in a burial plot must be recorded as property.

The main problem–lack of regulatory boards to oversee cemetery practices–means that there is no clout behind the few cemetery laws that are on the books.

For example, a 1977 law requires that individual trust accounts be established by cemetery firms to handle every pre-need sale of funeral services.

In the Valley Memory Gardens case, court testimony revealed that consumers' money for pre-need sales was held for a short while in a single collective trust prior to 1979. Then, as a financial squeeze hit the firm, the trust moneys, according to court testimony, were removed from the trust account and distributed to general fund accounts. Consumers' money vanished.

Currently, Alaska has no statutes to provide for regular checks on established trust accounts of consumers' sales funds. It is left to the cemetery firm to establish and maintain these trust accounts. As evidenced in the Valley Memory Gardens bankruptcy, the requirement to establish trust accounts is a weak law.

A second problem that hurt Valley Memory Gardens consumers was the lack of dedication procedures for cemeteries. Dedication means that designated property is recognized as a cemetery forever and cannot be abandoned. If something happens to the property to threaten its cemetery status, dedication would provide for "rescue" and maintenance by the state.

In the Valley Memory Gardens case, the cemetery was viewed as commercial property: 5,500 unsold, unoccupied cemetery plots. In a loan arrangement in 1980 with the Matanuska Valley Federal Credit Union, owners of the cemetery, used this commercial value to obtain a $500,000 loan. The cemetery with its 500 occupied gravesites became the major portion of collateral for the $500,000 loan.

When the loan was defaulted upon, consumers who had purchased plots or had relatives buried in Valley Memory Gardens were astonished to discover that mortgages could be made on cemeteries.

According to Connie Sipe, assistant attorney general for Alaska: "No one should ever be allowed to make mortgages on cemeteries; that's why dedication procedures are important. We need to restructure the laws."

The third problem area needs attention too: there are no requirements that each deed to a burial plot must be recorded as property.

In the Valley Memory Gardens case, consumers' plots do not show up in the district recorder's title records. The nine-acre cemetery property is recorded, but not each individual gravesite.

There is now some question whether consumers' deeds of trust to their cemetery plots are actually legal deeds. In court testimony, Arthur Richmond, president of the cemetery firm, stated that those deeds were for "right to future interment" only. No ownership rights were transferred according to Richmond's testimony.

Since there were no plots recorded as property in the district recorder's office and no laws requiring such a record, consumers may be the ultimate losers in this controversy over deeds.

In commenting on the case, Sipe, who is head of the state's consumer protection agency, said:

"In most states there is more protection for consumers.

"Maybe we can prevent this from happening again if the statutes are changed to protect future consumers of cemetery services. Some good may still come out of this case."

But that will only happen if the state administration and the legislature take it upon themselves to make sure that a Valley Memory Gardens case doesn't happen again.

Need information? Try OPAG's directory

Recently we attended a large meeting of senior citizens where participants were urged to voice their most pressing problems.

"There's no place we can go to get all the information we need," said one woman to a round of applause.

In a way, she is right. lady seemed to want, it does contain a wealth of information of help to the senior citizen.

Two years ago the state Division of Adult and Aging Services gave OPAG a pilot project grant to publish the first directory, a 68-page compilation of agencies, programs, organizations and business zations directly affecting seniors. These listings cover 89 different communities across the state.

Information for the directory was gathered from a variety of sources, including local senior citizen programs, local organizations and state aging officials.

Seniors have told us they like "(This is) one of the best pieces here because it is just right," he said of the booklet. "Shape and contents and handling all fit together ideally; heads (headlines) visible at a glance, clear and incisive."

A grant from the Municipality of Anchorage to OPAG included

Valley Memory Gardens:

Cemetery 20-year history reveals land deals

A legal tangle of questions remains to be answered about events leading up to the Valley Memory Gardens Cemetery bankruptcy.

To put recent events into perspective, it's helpful to look at the history of the cemetery, from 1962 to present:

1962 – Arthur Richmond purchased property for Valley Memory Gardens Cemetery on Old Palmer Highway. Richmond sold lots, vaults and funeral services. He testified during recent court hearings that no pre-need services were sold between 1962 and 1966.

1966 – Valley Memory Gardens is incorporated. Assets conveyed into the limited corporation include 20 acres with shop buildings, house, equipment and cemetery. Richmond's shareholder interest in the corporation is, by his own estimate, 85 percent. There are 10 to 12 other shareholders, all with small interests in the corporation.

In 1966 Richmond began selling a pre-need package plan that included a plot, vault and services. The average cost of these pre-need plans was $4,000. According to Richmond, land was purchased by the corporation during this period and by 1980 over 40 acres of land had been acquired with the purpose of subdividing and selling as residential lots.

Richmond testified recently that all proceeds from sales were plowed back into the cemetery corporation. Valley Memory Gardens, Inc. sold the contracts for both residential lots and cemetery plots and services to three finance corporations in exchange for cash advances. These cash advances ranged between 50 and 90 percent of the face value of the contracts. Although no total dollar figure was disclosed in recent testimony, Richmond testified that the cash advances for these contracts accounted for a significant portion of Valley Memory Gardens' operating income.

1977 – The State of Alaska amended the Alaska Consumer Protection Act to require that all funerals and other services sold to families on a pre-need basis be fully funded in individual trust accounts for the benefits of persons purchasing those services.

1978 – According to recent court testimony by Dean Erich, Valley Memory Gardens' secretary-treasurer, the corporation had a single collective trust endowment account in National Bank of Alaska that totaled approximately $200,000 to $300,000 during 1977-1978. Erich further stated that when he became a corporate officer in 1979, records indicated that these trust funds had been transferred to a general account.

1979 – Consumer Protection Office filed suit against Valley Memory Gardens, Inc. charging the cemetery with six counts of fraud in the sale of pre-need funeral services. The suit charged that Valley Memory Gardens was in violation of the 1977 law requiring trust accounts for pre-need contracts.

August 22, 1979 – Consumer Protection Office received sworn deposition from Arthur Richmond claiming that a trust account was established for pre-need services. No sum was disclosed in that deposition.

1980 – During recent court hearings, Richmond testified that he was approached by a loan broker, William Lang and an investor, Wayne Lofgren, in 1980 to arrange a $500,000 loan for needed operating funds from the 11,000-member Matanuska Valley Federal Credit Union. Richmond claims that the credit union gave the cemetery corporation $25,000, promised it another $25,000 to be [illegible] planned to use the loan money for the plant.

The collateral used for that credit union loan included the cemetery, approximately 22 acres of adjacent property and contracts from cemetery sales. Richmond claims that no attorney was present during loan transactions. Richmond also testified that Lofgren put up no collateral of his own, yet received approximately $450,000 of the $500,000 loan.

According to credit union attorney, Jan Ostrovsky, Lofgren has paid back some portion of that $500,000 loan. According to Richmond, Lofgren has paid back a $28,000 Small Business Administration loan included in the $500,000 loan package.

January 1981 – Dean Erich, secretary-treasurer of VMG, Inc., testified recently that the cemetery corporation had a single trust account during this time that totaled approximately $6,000 to $7,000.

April 1981 – Two years after it initiated the suit, the Consumer Protection Office received a consent judgement in the 1979 suit against Valley Memory Gardens. The cemetery refused to acknowledge any wrongdoing. It later appealed the order to retroactively place all money it had received since January 1, 1977 for pre-need services into separate trust accounts. The cemetery corporation claimed it was sufficient that all money was in one collective trust.

September 1981 – Valley Memory Gardens, Inc. files for bankruptcy under Chapter 11 of the U.S. bankruptcy code to allow for reorganization of the corporation.

January 1982 – The 1981 appeal by Valley Memory Gardens regarding the legality of establishing a single collective trust fund fails. The Alaska Supreme Coun upholds the earlier order that pre-need payments must be placed into individual trust accounts.

June 1982 – Bennie Leonard of Anchorage, a real estate sales representative, is appointed trustee by the bankruptcy court to take possession of all cemetery assets during bankruptcy proceedings. Services by the cemetery were officially halted June 16, 1982. No further payments were accepted by the corporation after this date.

July 1982 – Valley Memory Gardens, Inc. files for bankruptcy under Chapter 7, which mandates the complete liquidation of company assets and payment distribution to the creditors.

September 1982 – Federal bankruptcy court approves the motion to move Valley Memory Gardens into Chapter 7 bankruptcy. All consumers who have purchased services from the cemetery and received no "performance" on those purchases become creditors according to bankruptcy law.

November 16, 1982 – During abandonment hearings, a federal judge gives a 90-day continuance to allow consumer creditors time to locate a buyer for the cemetery. This move delays abandonment of the cemetery to the major creditor with a secured (mortgaged) claim, the Matanuska Valley Federal Credit Union. Connie Sipe, assistant attorney general, was given until February 17, 1983 to locate a buyer for the Valley Memory Gardens cemetery. Sipe continued to explore options and benefits of starting a non-profit cemetery association or expanding an existing one. Sipe planned to poll creditors about their opinions on the non-profit association idea in late November.

November 18, 1982 – Arthur Richmond appeared in court during continuation of the first creditors' meeting. Three hours of questioning shed little light on what happened to consumers' money. Richmond refused to answer or failed to recall numerous details about the events that led to the bankruptcy.

Alert issued to locate all creditors

The State Consumer Protection Office is seeking all consumers involved in the Valley Memory Gardens Cemetery bankruptcy case.

So far the list has grown to over 1,200 persons and is expected to reach 1,500. The state office is particularly concerned about consumers who purchased services or lots from the cemetery then moved outside of Alaska.

If you know someone who bought cemetery services and may be unaware of the current bankruptcy proceedings, contact Connie Sipe at the Consumer Protection Office, (907) 279-0428.

...during this period...over 40 acres was acquired with the purpose of subdividing and selling residential lots

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Valley Memory Gardens:

Bankrupt Palmer cemetery's fate still in limbo

Continued from page 1

property. One option open to the credit union includes sale of the cemetery lands and consolidation of existing plots into a smaller parcel of land.

"We're hoping it won't come to that," Sipe explained. "The State's No. 1 priority in this case is to preserve the cemetery and the right to peaceful burial."

Consumers must now decide what options to pursue to save the cemetery and existing plots.

Since it is unlikely that a for-profit cemetery firm would move in and take over the financial woes of the Valley Memory Gardens cemetery, the current focus is on non-profit cemetery associations.

The Consumer Protection Office is exploring alternatives for non-profit associations and is about to poll consumers on those alternatives.

One alternative would expand an existing non-profit cemetery association. The other would form an entirely new non-profit association.

"From the poll, we'll decide whether consumers feel this is worth pursuing and how much they'd be willing to spend on membership fees," Sipe said.

As far as court proceedings are concerned, many questions remain unanswered.

Richmond's questioning during a recent creditors' meeting shed little light on what happened to consumers' money. He refused to answer many questions and often could not recall answers to other questions.

Attorneys for the creditors tried to determine whether any trust funds were established by the cemetery for consumers' pre-need accounts.

Under a 1977 amendment to the Consumer Protection Act, funeral directors are required to place into individual trust accounts all funds for funerals and other services sold on a pre-need basis.

Court testimony from Richmond revealed that one collective trust may have been established sometime prior to 1979 and may have contained a total of $100,000.

Secretary-treasurer of Valley Memory Gardens, Inc., Dean Erich, testified that those trust funds were transferred into general accounts sometime after 1979.

The cemetery firm operated for years as a land development company, according to attorney for the trustee, Cabot Christianson.

"The cemetery was really only a small part of the lands owned out there," Christianson said. "There's a 38-acre subdivision, and property all over in the valley being foreclosed upon.

"It appears that the corporation took consumers' money and put it into undeveloped lands with the hopes of big money from sales of residential lots," he added.

One of consumers' biggest concerns is whether their deeds of trust to cemetery plots are actually legal deeds with ownership rights.

Across the top of most deeds issued after 1966 are the words "deed for right to be interred."

There are no seals or stamps on most deeds, and Richmond claims that the cemetery considered the papers "certificates of pre-arrangement" only, without rights of ownership.

The cemetery lots do not show up in the property records by the district recorder, and it would appear that the deeds are not considered acceptable property deeds.

In a similar case in Washington courts, certificates of pre-arrangement were not considered by the courts as real deeds of trust.

Some future ruling on the legality of these papers may be necessary if abandonment proceedings are continued in mid-February.

The court-appointed trustee for the case, Bennie Leonard, an Anchorage real estate representative, is currently reviewing all claims against the cemetery.

The biggest single claim is held by the Matenuska Valley Federal Credit Union for its $500,000 loan to Richmond, the cemetery and Lofgren.

Under bankruptcy laws, the credit union's claims take priority over all consumers' claims.

Leonard and attorneys in the case are attempting to piece together what happened in 1980 when the loan deal was arranged, then defaulted upon.

Richmond said that Lofgren intended to invest the loan money in a new fish processing plant in Palmer. Richmond said he received $25,000 of the loan and a "promise" of another $25,000 to be handed over in six months.

According to Richmond's testimony, Lofgren paid off a $28,000 Small Business Administration loan, but ended up with the remaining $400,000.

Credit union officials report that some portion of the loan was paid back by Lofgren. No other details were revealed.

Attorneys continue to explore the loan arrangement, and the questions surrounding the signing of papers. Richmond said that no attorney was present during the signing procedures and has mentioned a number of "promises" that were never placed in writing.

No criminal charges have been filed in this case, but the district attorney is following the proceedings.

According to Sipe, the case may not be resolved for another six to 12 months.

In the meantime, consumers are being informed of proceedings and requested to return their opinion polls on the matter of forming a non-profit association.

"This case points out the need for more protection for consumers," Sipe said. "Some think that we over-regulate, but it should be known that Alaska lacks some basic laws for consumer protection in this area. We need to completely re-structure cemetery laws in this state."

Cemetery president Richmond

President of Valley Memory Gardens cemetery, Arthur Richmond, has been an elusive figure throughout bankruptcy proceedings. Richmond tried - unsuccessfully - to dodge a Senior Voice photographer prior to his appearance at a recent creditors' meeting in the Federal Building in Anchorage.

Questions about deeds, trusts, money and laws surround case

Editor's note: Throughout bankruptcy hearings for the Valley Memory Gardens cemetery, consumers have struggled to understand what happened. They want to know where their money went, whether their contracts will be honored, whether criminal charges will be filed and what the state cemetery laws cover. Senior Voice tackled answers to those questions and more...

Q: What happened to consumers' money? What did Valley Memory Gardens do with pre-need funeral service payments?

A: Arthur Richmond, president of Valley Memory Gardens, Inc., has refused to answer those questions. From court testimony of other witnesses, however, it appears that the cemetery took consumers' money and, rather than placing it into trust through and invested moneys were lost.

Q: Do we have legal deeds of trust with ownership rights to our cemetery plots?

A: According to Connie Sipe, assistant attorney general, the deeds held by consumers may not actually be deeds. Most of the deeds are titled "deed for interment rights." Richmond said in court that those deeds were pre-arrangement rights, not ownership rights. It remains for the courts to figure out what consumers actually have in those "deeds."

Q: Why aren't the cemetery lots recorded as deeds of trust?

A: Apparently state law does not require deeds to burial plots to be recorded as property. Property record of cemetery lots does not show up in the official title records. Burial plots are not accepted by the district recorder.

Q: What [illegible]

vidual trust deposits for every consumer purchasing pre-need funeral services. The 1977 laws do not cover cemetery spaces, just pre-paid plans.

Q: Will criminal charges be filed against Richmond or others?

A: To bring criminal charges against Richmond would require the involvement of the district attorney. Currently the district attorney is reviewing the matter. It would have to be shown that Richmond took cor-

Continued on page 9

Valley Memory Gardens:

Few alternatives left for cemetery creditors

It's a hard lump to swallow.

No one likes being "ripped off." And no one likes the idea of plunking down more money just to hang onto what he or she already owns.

But that's the problem facing over 1,000 Anchorage area consumers, mostly older persons, as a result of the Valley Memory Gardens bankruptcy case.

The cemetery's bankruptcy is shaping up to be what the Internal Revenue Service calls a "totally worthless bad debt." Creditors who paid as much as thousands of dollars for lots and services may end up with little or nothing.

So where does that leave the persons who paid for cemetery services or lots? What alternatives are there for recouping losses or planning new funeral arrangements?

For those consumers who paid only for funeral services, but not for lots, there is little hope of recovering any money owed them by the cemetery. About the only alternative these consumers have is a possible tax write-off for bad debts.

Any consumer involved in the bankruptcy case who wants to know what their tax write-off options are should call the Internal Revenue Service for publication 548, "Deductions for Bad Debts." Call 276-1040 or write the I.R.S., P.O. Box 1500, Anchorage 99510.

According to tax specialist Marie Luzzano, "Consumers will have to prove that their contract with the cemetery is worthless and a mere bankruptcy doesn't prove that it's worthless."

In other words, to file capital loss deductions, consumers will have to wait until final distribution of assets has been made at the end of the bankruptcy hearings six to 12 months from now.

For consumers who purchased cemetery lots, the alternatives look more positive.

More than 100 consumers owed money by the bankrupt Valley Memory Gardens Cemetery line up outside federal courtrooms in Anchorage during a recent abandonment hearing. The crowds were so large that court officials had to move hearings to a larger courtroom. Involved in the case are some 1,000 consumers who purchased plots and pre-need funeral services.

If the State of Alaska Consumer Protection Office manages to locate a buyer for the cemetery before February 17, 1983, the federal bankruptcy court will not abandon the cemetery lot to the major creditor, the Matanuska Valley Federal Credit Union.

But finding a buyer won't be easy. It is unlikely that a for-profit cemetery would agree to take over Valley Memory Gaidens. The legal and financial complications alone would probably prevent such a business from being a profitable enterprise.

For that reason, the Consumer Protection Office is exploring two alternatives involving non-profit cemetery associations.

The two alternatives include expanding an ongoing non-profit cemetery association such as Angelus Memorial Park in Anchorage, or forming an entirely new non-profit association.

Either way, all consumer creditors would be asked to join the association for a membership fee that would cover equipment and caretaking costs for the cemetery. Membership would not be limited to those who purchased lots at Valley Memory Gardens; anyone could join.

A new non-profit cemetery association would require only five members to form and would be permitted to operate cemetery land so that people who have paid for plots could still be buried there in the places they have already paid for.

Cynthia Sipe, assistant attorney general with the Consumer Protection Office, is currently polling all consumers involved in the case to determine their interest level in forming a non-profit association. Sipe also wants to find out how much consumers would be willing to pay for association membership fees.

"It's up to the consumers to let me know whether they think this idea is worth pursuing," Sipe said. "A non-profit cemetery association is really the best deal we can work out."

For consumers who want to begin again to plan funeral arrangements, one local consumer-run, non-profit society assists consumers in funeral pre-arrangement details.

Whether you're interested in cremations, simple ceremonies or elaborate services, the Cook Inlet Memorial Society offers, for a $10 one-time membership fee, the opportunity to compare cost levels of various funeral services and arrange through the society's contractual agreement with a local funeral director some of the lowest-cost services available in the Anchorage area.

As a new member, you are asked to fill out a simple form giving instructions to your family and/or funeral director spelling out exactly what you want. A copy of your form is kept on file with the society and with the funeral director.

For more information about Cook Inlet Memorial Society, contact Fred Gazaway, president, at 277-2073 or write CIMS, P.O. Box 2414, Anchorage, AK 99510.

Glossary spells out explanations of bankruptcy legal terminology

Chapter 11 bankruptcy – Bankruptcy laws are federal laws that pre-empt all state laws. Chapter 11 is corporate reorganization and allows a corporation to evaluate their situation and recover, if possible.

Chapter 7 bankruptcy – Chapter 7 bankruptcy is complete liquidation of assets with no hope of reorganization. All assets are taken and divided up according to federal bankruptcy law. Valley federal court judge in a bankruptcy case to stop all actions by the corporation. It is the trustee's responsibility to figure out how to pay the biggest creditors and legally proceed to pay off debts.

Creditors – There are two sorts of creditors, those with secured claims and those with unsecured claims. The credit union is the major creditor in this case because it has a secured (mortgaged) claim on the cemetery for its the cemetery and are now owed money because the cemetery either lost their money or failed to perform on consumers' contracts.

Creditors' Committee – Group of five consumers nominated by the consumers themselves to supervise the trustee. The creditors' committee may call creditors meetings for the purpose of gathering information. Creditors' meetings are not attended by federal court judges.

Valley Memory Gardens:

Bankruptcy frustrates consumers

Continued from page 1

everything—$12,000 for all of it. My question is, do I still have it?

"And if my kids have to be moved, who's going to pay for it and who in the court will order it? And why isn't the judge here to hear this?"

The attorneys glanced at each other, not knowing where to begin to tackle the man's barrage of questions.

Breaking the uncomfortable silence, Candy Powers, clerk of court, answered his last question first.

"During the first meeting of creditors, the bankruptcy court operates without the bankruptcy judge. Please understand that this is only the beginning and it doesn't happen very fast," Powers said.

The man on crutches never did get any real answers to his questions until the proceedings ended.

That's when Connie Sipe, assistant attorney general, took over the task of fielding questions from frustrated, confused consumers.

"This is going to get more legally complicated, but I will keep you informed of everything that happens," Sipe promised.

"To answer your questions," Sipe nodded to the man on crutches, "the deeds held by consumers may not actually be deeds; it isn't a black-and-white issue.

"We're trying to figure out whether those papers are promises for interment rights or real deeds of ownership. We figure 90 percent of the consumers don't have any real deeds; they have pre-arrangement certificates."

Consumers who had begun to leave the courtroom at the end of proceedings drew closer to hear Sipe's remarks.

"And as to the removal of bodies," Sipe continued, "the state is in opposition to removal of anyone from that cemetery. We can prevent the abandonment of the cemetery if we start a non-profit cemetery association run by consumers. You must all show up at the next abandonment hearing to let the judge know how you feel. The state agrees with consumers; the cemetery should not be abandoned."

To help consumers understand the proceedings of the bankruptcy hearings, Sipe has issued summaries of events to over 1,000 consumers owed money by the cemetery firm.

During the creditors' meeting, Sipe patiently answered several dozen questions by consumers.

One older woman asked: "What happens if I die tomorrow?"

Sipe replied: "No one can be buried in that cemetery right now, everything's in limbo. About all I can say is 'try not to die for awhile.'"

Another woman asked: "When we heard it was no longer a sound business we stopped our payments into the pre-need account. Valley Memory went to a collections agency and they tried to ruin our credit rating. All we wanted was to be sure that it was a sound business. Who wants to pay for something they won't ever get to use?"

Sipe explained how Valley Memory took its consumer contracts to finance corporations in exchange for cash advances for about 60 percent of the face value of the contracts.

"Even if a business sells a payment to a third party, you still don't have to pay that third party if the original contract was broken," Sipe added. "You can see how complicated each individual case can become."

Others complained about not being notified of the bankruptcy.

"I wasn't even aware of the problem," said one man. "My wife died last spring and I ordered a headstone in July. My check was cashed by the cemetery, but no headstone ever showed up. I got nothing."

Another consumer remarked, "Richmond gave me information saying that Valley Memory Gardens belonged to a national cemetery organization and if we purchased services with him, those would be transferable to other cemeteries. Is that so?"

Sipe promised to ask Richmond this question and did so during a second creditors' meeting. Court testimony revealed that despite the $50 annual dues required for membership in the national cemetery organization, about the only guarantees provided were for yearly certificates to post on the cemetery's office wall.

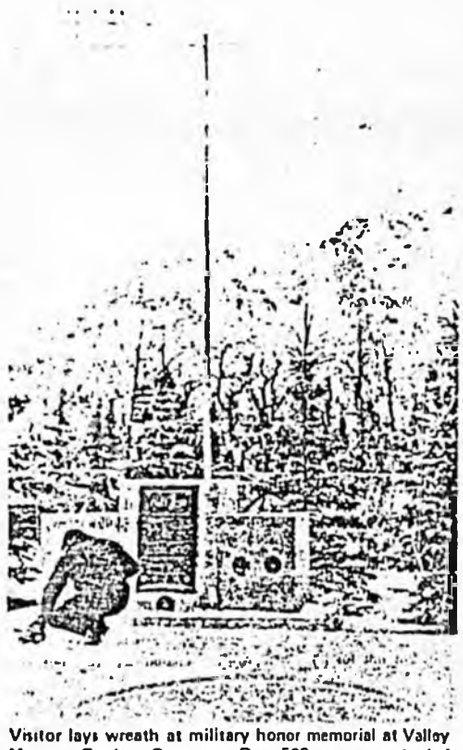
One man listened a long while to the questions and answers, then held up his deed and said, "I'll sell this to anyone who wants it—real cheap."

There was little laughter.

Sipe summed up the feelings of consumers by saying:

"We need big improvements in the cemetery laws. Too many consumers have spent considerable sums of money and have no hope of ever recovering it.

This is the hardest and saddest case I've ever dealt with."



Visitor lays wreath at military honor memorial at Valley Memory Gardens Cemetery. Over 500 persons are buried in the nine-acre Palmer cemetery.

Questions surround use of money, deeds, trust

Continued from page 7

porate funds and used them for personal uses for any criminal charges to be filed. Richmond invested funds for corporate uses in the documents reviewed by the court.

Q: Who are the major creditors with outstanding claims against the cemetery property?

A: Those with secured or mortgaged claims include the Matanuska Valley Federal Credit Union, $500,000 loan; Alaska Pacific Bank, $15,000 loan; National Bank of Alaska, $10,000 priority under bankruptcy law.

Q: What will happen if the cemetery is abandoned to the Matanuska Valley Federal Credit Union, the largest creditor?

A: The credit union is under obligation to its shareholders to get the most money possible from property and investments. That obligation may also apply to the commercial value of the cemetery property. In three similar cemetery abandonments in the State of Washington, the cemeteries were consolidated, bodies exhumed

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

February 13, 1984

SUBJECT: Sectional analysis of HB 569

TO: Representative Randy Phillips

FROM: Edward H. Hein EHH
Legislative Counsel

Section 1 allows a nonprofit cemetery to incorporate under AS 10.20 as an alternative to forming as a cemetery association.

Section 2 adds clean-up provisions necessitated by section 1.

Section 3 expands to which a cemetery's endowment fund may be put to include improvement of the grounds, buildings, and lots, and the repayment of debts.

Section 4 adds clean-up provisions necessitated by section 1.

Section 5 expands a nonprofit cemetery's authority borrow money to construct and repair buildings and mausoleums, to purchase or lease equipment, and other purposes. Such debts may be secured by mortgages on the cemetery's land, except those burial lots in which association members or corporate officers, trustees, or employees have more than a one-half interest.

Sections 6 - 11 add clean-up language necessitated by section 1.

Section 12 adds a definition for the term "cemetery lot".

EHH:ojb
J3/089

EVERLASTING CARE ENDOWED

MEMBER
NATIONAL ASSOCIATION OF CEMETERIES

Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

PHONE 344-1311
OFFICE HOURS:
10 A.M. TO 3 P.M.

January 19,184

CEMETERY
AND
OFFICE
ON KLATT ROAD

Representative Joe Hayes
Alaska State Legislature
Juneau, Alaska

Atten: Mr. Jeff Day:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining to non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years ago before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association realy needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niches and storage vault. Also we can not even build a much needed administration building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corporation in our amendments is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non-paid.

Sincerely,
Mr. Douglas W. Brown
President of Board of Trustees

ANGELUS MEMORIAL PARK ASSOCIATION

JAN 25 [illegible]

Enclosures
This material has also been sent to Representative Randy Phillips

the bank or trust company shall be governed by the provisions of ORS 128.057 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Secretary of State on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 97.810 (2) regarding endowment care funds. The Secretary of State may require the corporation to file, as often as he considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

(3) The interest or income arising from the irreducible fund provided for in this section or by any bylaws, or so much thereof as is necessary, shall be devoted exclusively to the preservation and embellishment of the grounds, buildings and property of the corporation and the lots and space in buildings or grounds sold to the members of the corporation, or to the payment of the interest or principal of the debts authorized by subsection (5) of this section for the purchase of land, erecting buildings, and improvements. Any surplus thereof not needed or used for such purposes shall be invested as provided in this section and shall become part of the irreducible fund.

(4) After paying for the land and the erection of the original buildings and improvements thereon, all the future receipts and income of the corporation subject to the provisions in this section relating to the creation of an irreducible fund, whether from the sale of lots and burial space, cremation of bodies, donations, gifts and other sources, shall be applied exclusively to laying out, preserving, protecting, embellishing and beautifying the cemetery or the crematory and grounds thereof, and the avenues leading thereto, and to the erection of such buildings and improvements as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

(5) No debts shall be contracted by such corporation in anticipation of any future receipts, except for originally purchasing the lands authorized to be purchased by it, laying out and embellishing the grounds and avenues, erecting buildings and vaults on such land, and improving them for the purposes of the corporation. The corporation may issue bonds or notes for debts so contracted and may secure them by way of mortgage upon any of its lands, buildings, property and improvements excepting lots or space conveyed to the members. [1969 c.580 §96; 1971 c.225 §1]

61.765 Selling land unsuited for burials. If in the board of directors' opinion, any portion of the lands of a nonprofit corporation organized and existing solely for the purposes of either owning or operating a cemetery or the cremation of dead bodies and the burial and care of incinerate remains is unsuitable for burial purposes or other purposes of the corporation, the board of directors may sell such portion and apply the proceeds to the general purposes of such corporation in the same proportion and manner as provided by ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. [1969 c.580 §97]

61.770 Burial lots or space; use, exemption from taxation, execution and liens; lien for purchase price of gravestone. Burial lots or space for burial of incinerate remains in buildings or grounds sold by a nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall be for the sole purpose of interment or deposit and safekeeping of incinerate remains. Such lots or space shall be exempt from taxation, execution, attachment or other lien or process, if used as intended by the purchaser thereof from such corporation, or his assigns or representatives, exclusively for burial purposes, and in no wise with a view to profit. The vendor of any gravestone, however, shall not be prevented from having and enforcing a lien thereon for all or part of its purchase price. If a suit is brought to enforce such a lien, the decree therein is enforceable thereafter; and, for the purpose of enabling the lien to be had and enforced, the gravestone shall be deemed personal property and may be severed and removed, under execution and order of sale, from the lot where it is situated and may be sold in the same manner as any other personal property. [1969 c.580 §98]

61.775 Recording plan; power to improve and regulate grounds. A nonprofit corporation organized and existing solely for the purposes of owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall cause a plan of its land and grounds and of the lots laid out by it and of the niches or burial space in the buildings erected thereon to be made and recorded in the county in which such grounds and land are located, such lots or

SPECIAL PROVISIONS RELATING TO ORS 97.010 TO 97.040, 97.110 TO 97.450, 97.510 TO 97.730, 97.810 TO 97.920 and 97.990

97.010 Definitions for ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

(3) "Burial park" means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(5) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(6) "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

(10) "Entombment" means the placement of human remains in a crypt or vault.

(11) "Burial" means the placement of human remains in a grave.

(12) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(13) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entombment cremated human remains.

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(18) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

(19) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "Endowment care" means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund established and maintained pursuant to the provisions of ORS 97.810 to 97.860. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. [Amended by 1955 c.545 §1; 1965 c.396 §11]

61.736 Procedure for revoking certificate of authority. ORS 57.735, relating to revocation of certificate of authority, is applicable to nonprofit corporations. [1963 c.492 §36 (enacted in lieu of 61.735)]

61.740 [Renumbered 61.984]

61.741 Application to corporation authorized to transact business in this state on December 31, 1959. Foreign corporations which are duly authorized to transact business in this state on December 31, 1959, for a purpose or purposes for which a corporation might secure such authority under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, and from December 31, 1959, such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. [1959 c.580 §80]

61.745 Transacting business without certificate of authority. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. No action, suit or proceeding shall be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state. [1959 c.580 §81]

CEMETERIES AND CREMATORIES

61.755 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation. A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution and taxation, and from any appropriation for public purposes, and lots or portions of such land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 600 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 30 acres, but if the land already held for such purpose by the corporation is all practically used the amount thereof may be increased by adding thereto not more than 10 acres at any one time. [1959 c.580 §85]

61.760 Revenues; restrictions on uses thereof. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws, provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund,

HEALTH AND SAFETY CODE

DIVISION 7. DEAD BODIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

7000. The definitions in this chapter apply to this division and to visions 8 and 9 of this code.

7001. "Human remains" or "remains" means the body of a deceased rson, and includes the body in any stage of decomposition and cremated mains.

7002. "Cremated remains" means human remains after incineration d necessary processing under Section 7054.1 in a crematory.

7003. "Cemetery" means any one, or a combination of more than one, the following, in a place used, or intended to be used, and dedicated, cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault interments.

(c) A crematory, or a crematory and columbarium, for cinerary erments.

7004. "Burial park" means a tract of land for the burial of human mains in the ground, used or intended to be used, and dedicated, for metery purposes.

7005. Except in Part 5 of Division 8 of this code, "mausoleum" means tructure or building for the entombment of human remains in crypts vaults in a place used, or intended to be used, and dedicated, for metery purposes.

7006. "Crematory" means a building or structure containing one or ore furnaces for the reduction of bodies of deceased persons to cremated mains.

7007. Except in Part 5 of Division 8 of this code, "columbarium" means tructure, room, or other space in a building or structure containing ches for inurnment of cremated human remains in a place used, or ended to be used, and dedicated, for cemetery purposes.

7008. "Crematory and columbarium" means a building or structure ntaining both a crematory and columbarium.

7009. "Interment" means the disposition of human remains by rnment, entombment, or burial in a cemetery or, in the case of mated remains, by inurnment, entombment, burial, or burial at sea as ovided in Section 7117.

7010. "Cremation" means the reduction of the body of a deceased rson to cremated remains in a crematory and the placement of the mated remains in a grave, vault or niche or burial at sea as provided Section 7117 of this code.

7011. "Inurnment" means placing cremated remains in an urn and acing it in a niche.

7012. "Entombment" means the placement of human remains in a ypt or vault.

7013. "Burial" means the placement of human remains in a grave.

7014. "Grave" means a space of ground in a burial park, used, or tended to be used, for burial.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient e, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be used, for inurnment of cremated human remains.

7017. "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7019. "Cemetery corporation," "cemetery association," or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole.

7020. "Cemetery business," "cemetery businesses," and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property, including, but not limited to, any activity or business designed for the benefit, service, convenience, education, or spiritual uplift of property owners or persons visiting the cemetery.

7021. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

7023. "Plot owner," "owner," or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority.

7024. "Permit for Disposition of Human Remains" includes "burial permit" and is a permit, issued pursuant to law, for the interment, disinterment, removal, reinterment or transportation of human remains.

DIVISION 8. CEMETERIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. CEMETERY DEFINED

8100. Six or more human bodies being buried at one place constitute the place a cemetery.

CHAPTER 2. VANDALISM

8101. (a) Every person is guilty of a misdemeanor and punishable by a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail for not exceeding one year, or by both, who maliciously does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or any property in a cemetery.

(2) Obliterates any grave, vault, niche, or crypt.

(3) Destroys, cuts, breaks or injures any building, statuary, ornamentation, tree, shrub, or plant within the limits of a cemetery.

HB

589

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

March 2, 1984

FOR IMMEDIATE RELEASE
CONTACT: REP. JOHN COWDERY
465-4905

HOUSE LABOR AND COMMERCE COMMITTEE AMENDMENT KEEPS SUSITNA EQUITY CLAUSE INTACT

JUNEAU - The House Labor and Commerce Committee on Friday approved House Bill 589, but added an amendment to the legislation which would ensure funding and construction of the Watana Dam phase of the Susitna Hydroelectric Project.

HB 589, authored by the Sheffield administration, proposed to repeal the so-called "susitna equity clause" as part of an attempt to finance four ailing hydroelectric projects under the direction of the Alaska Power Authority.

Rep. John Cowdery, R-Anchorage, chairman of the committee, said the amendment would delay repeal of the equity clause until construction of the Watana Dam is ensured with the establishment of a proposed major projects fund. "This is a message to the administration that Susitna supporters will not stand by idlely while attempts are made to salvage the four dam pool" said Cowdery. The representative from south Anchorage noted "this is only the first step in the process of developing a comprehensive state-wide energy program. There is obviously a lot of negotiating to be done before the problems with hydropower in Alaska are resolved".

The Labor and Commerce Committee also approved a measure appropriating 35 million dollars to help stabilize power rates for the four dam pool. Both pieces of legislation now go to the Resources Committee where further work will be done on the states energy program and the proposed major projects fund.

MARCH 2, 1984

TO: JOHN

FROM: KEN

RE: HB 589

POINTS OF DEBATE FAVORING AMENDMENT TO HB 589

THE KEY WORD IN WENDTE'S OPPOSITION DEBATE WILL BE "IF". THERE ARE TOO MANY "IF'S" OR VARIABLES STILL TO BE RESOLVED BEFORE SUSITNA SUPPORTERS WILL ALLOW THE EQUITY CLAUSE TO BE REPEALED.

1. IF POWER SALES AGREEMENTS ARE SIGNED.

2. IF PETERSBURG DOES NOT SIGN THE AGREEMENT SOON, ALTERNATIVE POWER SALES CONTRACTS WILL HAVE TO BE DRAWN UP AND THERE IS NO ASSURANCE THE FOUR OTHER COMMUNITIES INVOLVED IN THE NEGOTIATIONS WILL AGREE TO THE NEW TERMS BECAUSE:

A. THE ENTRY RATE INTO THE INITIAL PROJECT FOR THE FOUR COMMUNITIES WILL BE HIGHER.

B. THE WHOLESALE POWER RATE MIGHT ALSO BE HIGHER BECAUSE OF LESS UTILIZATION AT LAKE TYEE.

3. IF THE LEGISLATURE APPROVES A MAJOR PROJECTS FUND WHICH PRIORITIZES WATANA CONSTRUCTION, IF THE LEGISLATURE APPROVES THE COMMITTEE SUBSTITUTE FOR HB 589, IF THE LEGISLATURE PASSES HB 684 APPROPRIATING FUNDS FOR RATE STABILIZATION, IF ALL THESE PIECES OF LEGISLATION ARE PACKAGED AND APPROVED IT WILL SOLIDIFY ALASKA'S COMMITMENT TO A COMPREHENSIVE STATEWIDE ENERGY PROGRAM.

4. IF THESE STEPS ARE TAKEN I WOULD PROJECT THE "BONDING APPEAL" FOR ALASKA'S HYDROELECTRIC PROJECTS WILL ESCALATE AND THERE WILL BE NO DEFAULT ON ANY OF THE SHORT DEBTS NOW FACING THE STATE.

AS CHAIRMAN, IT IS MY INTENTION TO PASS FROM THE LABOR AND COMMERCE COMMITTEE TO THE NEXT COMMITTEE OF REFERRAL, THE COMMITTEE SUBSTITUTE FOR HB 589 ALONG WITH HB 684 APPROVING A 35 MILLION DOLLAR APPROPRIATION FOR RATE STABILIZATION.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

March 2, 1984

FOR IMMEDIATE RELEASE
CONTACT: REP. JOHN COWDERY
465-4905

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Department of Commerce & Economic Development / POSITION PAPER

HB 589: "An act relating to the Alaska Power Authority; and providing for an effective date."

My name is George Matz. I am Special Assistant to Commissioner Richard A. Lyon for the Department of Commerce and Economic Development. I am representing Commissioner Lyon who regrets that he is not able to attend this hearing because of previous commitments in Washington, D.C.

There are four points that I want to make in my testimony:

- First, HB 589 is essential to the power sales agreements and the long-term financing of the "Four Dam Pool."
- Second, the long-term financing of the "Four Dam Pool" is essential to the Energy Program for Alaska.
- Third, the power sales agreements now being negotiated by the Alaska Power Authority (APA) should be financable.
- Fourth, the Department of Commerce and Economic Development supports the terms and conditions of the power sales agreements being negotiated by the APA.

To elaborate on these points, the Energy Program for Alaska was conceived by the Legislature in 1981 when it enacted Chapter 118, SLA 1981 (SB 25). After nearly three years of gestation, we are about to witness its birth as an operating power supply system. However, nearly $200 million of interim financing must first be converted to long-term financing. How the financing occurs will determine the long-term health of the Energy Program for Alaska.

If revenue bonds are used for long-term financing, the Energy Program for Alaska will have overcome some prenatal illness and can look forward to a healthy life with ever more attractive power rates. Also, these initial projects can expect to be the parents of a family of power projects that serve the electrical needs of Alaska. Hopefully, with our improved diagnostic skills, we will prevent a recurrence of the problems previously experienced.

If long-term financing is based on additional State appropriations, the Energy Program for Alaska will draw nourishment from other State needs. Also, the program will not have demonstrated the ability to exist without 100% financial support from the State. This is not a good precedent for propagating additional power projects.

If the Energy Program for Alaska has neither revenue bond financing nor State appropriation, it will be stillborn. In financial terms that means the State would default on repayments of the interim financing.

As we approach the term of this gestation, we know that some assistance is needed to assure completion of long-term financing. Our bond counsel and underwriters warned us of some statutory problems that could impede the sale of revenue bonds. Also, the respective communities and utilities have stated that their participation is contingent on certain statutory changes.

As a result of this advice, the Governor has introduced HB 589 which includes the statutory changes required to meet the demands of both the bond buyer and the wholesale power buyer. The Administration considers each section of this bill to be essential.

The highlights of HB 589 are as follows:

1. Section 1 repeals the existing statutory requirement that industrial retail power rates can be no less than retail power rates to residential customers. This allows utilities to offer, if they wish, lower rates to large volume customers.

2. Section 1 and 2 allows the four projects that are part of the "Four Dam Pool" (Solomon Gulch, Swan Lake, Lake Tyee and Terror Lake) to be considered as one project. The significance of this is that the debt service portion of the wholesale power rate for each project will be unified rather than project-specific as currently required by the statutes. Project-specific allocation of debt service results in higher wholesale power rates for projects which are more costly and/or have unused capacity relative to other projects in the pool. However, new projects added to the Energy Program for Alaska will have project-specific rates.

3. Section 2 deletes the "Susitna clause" which otherwise would trigger substantial wholesale power rate increases for projects included in the Energy Program for Alaska. The possibility of this rate increase and the reduction that could occur in demand and revenues will have a decidedly negative effect on the ratings and interest rates of revenue bonds used for long-term financing of the "Four Dam Pool."

4. Section 2 includes a technical amendments which deletes "at the bus-bar" in order to remove ambiguity.

5. Section 3 protects the "Four Dam Pool" from the addition of new projects to the Energy Program for Alaska which could substantially increase their wholesale power rate.

6. Section 4 removes reference to the "Susitna clause" from definitions that apply to the Energy Program for Alaska.

7. Section 5, similiar to Section 1, allows utilities to establish retail industrial rates that are less than residential rates.

8. Section 6 provides an immediate effective date.

HB 589 represents a tremendous amount of analysis and negotiating. All communities or utilities that are part of the "Four Dam Pool" have had extensive opportunity to partake in drafting the concept and the language of this bill. The Administration firmly believes that HB 589 represents the best resolution to a difficult problem and the best approach for leveraging futher development of power projects in Alaska.

FEBRUARY 29, 1984

TO: JOHN
FROM: KEN
RE: HB 589

HB 589 WOULD AMEND STATE STATUTES GOVERNING THE ALASKA POWER AUTHORITY. IT WOULD COMBINE FOUR HYDROELECTRIC PROJECTS, LAKE TYEE, SWAN LAKE, SOLOMON GULCH, AND TERROR LAKE, INTO ONE POWER PROJECT WHICH WOULD BE REFERED TO AS THE INITIAL PROJECT. THE LEGISLATION WOULD ALSO REPEAL THE HIGHLY CONTROVERSIAL "SUSITNA CLAUSE", A STATUTE APPROVED BY THE LEGISLATURE TO ASSURE THE CONSTRUCTION OF THE SUSITNA HYDROELECTRIC PROJECT.

WHILE I BELIEVE THIS BILL HAS CONSIDERABLE MERIT, I AM OPPOSED TO THE REPEAL OF THE SUSITNA CLAUSE WITHOUT SOME SUBSTITUTE ASSURANCE THAT THE WATANA PHASE OF SUSITNA WILL BE CONSTRUCTED. IT MY INTENTION, AS CHAIRMAN, TO TAKE TESTIMONY TODAY ON HB 589, AND, I WOULD ASK THE MEMBERS OF THIS COMMITTEE TO CONSIDER THAT TESTIMONY AND PERHAPS A COMMITTEE SUBSTITUTE.

LEGISLATIVE BRIEFING
LABOR AND COMMERCE COMMITTEES
ENERGY PROGRAM FOR ALASKA

The Energy Program for Alaska, adopted by the Legislature in 1981, provides for State construction, ownership, and operation of power generating projects throughout the State. Program objectives are achieved by providing financing through the Power Authority for the development of new power projects and the acquisition of existing projects. The Energy Program includes a check and balance system for project development and approval, through which a project's feasibility must be approved by the Legislature before expenditures for design and construction can begin. Following legislative approval and funding, the Power Authority designs and constructs the project, which is then owned by the State.

Under the Energy Program for Alaska, the Power Authority acquired the Solomon Gulch project, then being constructed by Copper Valley Electric Association. This project serves Valdez and Glennallen. The Swan Lake project, then being developed by Ketchikan Public Utilities, was also acquired under this program. In addition, the Power Authority assumed responsibility for developing and constructing the Tyee Lake project for Wrangell and Petersburg, and the Terror Lake project near Kodiak.

These hydroelectric projects are known as the Four Project Pool, which has become the cornerstone of the Energy Program for Alaska. The Solomon Gulch project is in commercial operation; the Tyee project will soon be providing test power to Wrangell and Petersburg; Swan Lake is providing test power to Ketchikan; and the Terror Lake project is about 95 percent complete with power projected to be on-line in September 1984. With the completion of these projects, the role of the Power Authority in power generation, transmission, and the wholesale marketing of electrical energy is significantly expanding.

When the Legislature began appropriating funds in 1979 for the construction of hydroelectric projects, it was intended that these projects were to be fully financed by the State. However, declining State revenues resulting from a drop in international oil prices has forced the abandonment, at least for the foreseeable future, of full State funding of these projects. Lower oil prices have also made the short term cost of hydropower from new projects less advantageous, when compared to the cost of diesel generated electricity, than it once was expected to be. Power Authority economic and financial analyses have necessarily assumed conservative long term oil price increases although experts consider the possibility of world oil supply interruptions could dramatically revise current Power Authority projections.

In the face of the financial reality of declining State revenue, the Legislature amended the Energy Program for Alaska with House Bill 9 (HB 9) in 1982. The original legislation had established a single wholesale power rate for all Power Authority projects in the State. HB 9 changed this by establishing a new rate setting mechanism based on pooling the debt service of the projects and providing that each project carry its own operation and maintenance costs.

To meet the requirements of HB 9 and the needs of consumers in the communities served by the Four Project Pool as equitably as possible, the Power Authority has

proposed new power sales agreements with those communities served by the Four Project Pool. These agreements are the result of several months of negotiation and extensive coordination between the Power Authority, the utilities to be served by the projects, financial institutions, the Governor's Office, and the legislative leadership. Under the agreements, initial consumer rates for the four hydroelectric projects are designed so as not to exceed the cost of diesel-generated power, and in the long-run, provide more favorable rates. They should provide significant benefits to the communities served by the projects as well as communities to be served by future projects that will be included in the program.

In order to implement the proposed power sales agreements, new legislation is necessary. These legislative changes are:

- Elimination of the energy fund requirement (commonly referred to as the Susitna Clause) to reduce the potential future risk to the Four Project Pool communities
- A limitation on the impact of new projects coming into the system on the debt requirement of the first four projects
- Authorization of the sale of power to industrial users at a separate rate
- Classification of the first four projects as one project in order to issue revenue bonds as a single system
- Approval and financing of a Rate Stabilization Fund (with a total State appropriation of approximately $35 million) to off-set the difference between the costs of hydropower and diesel generated electricity during the early years of the projects.

Negotiations are still in progress with the Five communities involved in the Four Project Pool. The Power Authority plans to present its final offer to the Board of Directors for action on March 9, 1984. The communities have indicated that it will take thirty to forty-five days longer for them to ratify any agreement due to local ordinance requirements. Petersburg has indicated that they will conduct a local election on the matter on April 17, 1984.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 10, 1983

MEMORANDUM

TO: Representative Jack McBride

FROM: Jack Kreinheder
Research Staff

RE: History of Hydro Projects in Election District 1
Research Request 83-54

You requested that we summarize the development of hydro projects in Election District 1, focusing on the Swan Lake, Lake Grace and Tyee Lake sites. As you know, the Swan Lake and Tyee Lake projects are under construction by the Alaska Power Authority, while Lake Grace was considered as an alternative to the Swan Lake site.

Existing Hydro Projects in Ketchikan and Petersburg

The City of Ketchikan's electric utility generates about 45 percent of its annual power production from three existing hydro facilities at Ketchikan, Beaver Falls, and Lake Silvis. The generation capacity of these hydro units is 4,200, 5,000, and 2,100 kilowatts, respectively. The first generating unit at the Ketchikan site was installed in 1938, with another unit added in 1957. The first Beaver Falls unit was installed in 1946, with two more generators added in 1954. The Lake Silvis plant was installed in 1968.

Ketchikan's remaining power demand is met by diesel generators with a total capacity of about 18,300 kilowatts. These diesel units will be retired except for standby generation purposes when the Swan Lake project is completed.

Petersburg generates about 50 percent of its current power requirements from the Crystal Lake hydro project. This project was originally developed in 1929, with a major expansion in 1955. The current generation capacity of the Crystal Lake plant is about 2,000 kilowatts.

The City of Wrangell presently generates all of its electricity from diesel plants.

Lake Grace

Lake Grace is located about 15 miles east of Swan Lake on the west side of Behm Canal. The proposed hydro plant at Lake Grace would have been substantially larger than Swan Lake in terms of power output and cost. The Lake Grace project would provide 25,000 kilowatts (KW) of capacity and 102 million kilowatt hours (KWH) of average annual energy, in comparison to 18,000 KW of capacity and 85.4 million KWH of energy for the Swan Lake project.

You expressed an interest in how the decision was made by Ketchikan to proceed with development of the Swan Lake hydro site, rather than the Lake Grace site. The principal basis for this decision was an appraisal report prepared by R.W. Beck and Associates in June 1977 for Ketchikan Public Utilities. This report evaluated the technical and economic feasibility and compared the cost of power for hydro developments at Swan Lake, Lake Grace, and Mahoney Lake, which is a smaller site.

The R.W. Beck report found that although hydro development was feasible at each of the three sites, Swan Lake was the most economic hydro alternative which would eliminate Ketchikan's reliance on diesel fuel. The average 10-year cost of power for the Swan Lake project was estimated at 6.7 cents per KWH, compared to 7.8 cents per KWH for the Lake Grace alternative. The Mahoney Lake alternative was competitive with Swan Lake with a power cost of 6.7 cents per KWH, but the Mahoney Lake site would not generate enough power to replace all of Ketchikan's diesel generation. A summary comparison of the three projects is included in Appendix A, taken from the R.W. Beck report.

You also indicated an interest in whether the U.S. Borax mineral development at Quartz Hill was considered in the evaluation of alternative hydro projects for Ketchikan. It appears that the power requirements of the Borax development were not given significant consideration, for at least two reasons. When the Borax molybdenum discovery was first announced in 1977, Borax planned to meet its power needs by constructing its own hydro project at Wilson Lake (this plan was later dropped because of strong local opposition, due in large part to the high sport fishing value of Wilson Lake). In addition, the City of Ketchikan was primarily concerned with meeting the power needs of its residents, not of mining or other industries outside of the city.

R.W. Beck recommended that Lake Grace and Mahoney Lake be reevaluated as additional hydroelectric developments when the power output from Swan Lake nears full utilization. Lake Grace is now within the Misty Fjords National Monument, which may make future development of this site more difficult. The Lake Grace area was withdrawn under federal land classification at one time as a power project site, but is unclear whether this withdrawal was superceded by the National Monument designation.

Swan Lake

The Alaska Power Authority prepared the following brief history of the Swan Lake project, which is expected to begin producing power by January or February of 1984.

> The City of Ketchikan, having made the decision to discontinue its reliance on the use of diesel electric generation to meet rising energy demands, authorized the engineering firm of R.W. Beck in September of 1977 to investigate the feasibility of developing, as a major hydroelectric generating resource, the Swan Lake Project which is located approximately 22 miles northeast of Ketchikan near the northern end of Carroll Inlet in the central portion of Revillagigedo Island.
>
> In June of 1978, R.W. Beck issued a feasibility report indicating that a hydroelectric project which would demonstrate a benefit/cost ratio of 1.25 could be constructed at Swan Lake at a total investment cost of $80,924,000. Subsequently, the City of Ketchikan, Ketchikan Public Utilities (KPU) authorized R.W. Beck to proceed with preparation of final design of the project.
>
> The 1980 Legislature through joint resolution authorized the Alaska Power Authority to issue bonds up to the maximum amount of $120,000,000 for financing the construction of the Swan Lake Project.
>
> Construction was initiated by KPU in November of 1980. Funding for project design and initial construction was secured primarily through the proceeds or loans from the Power Authority's Power Project Revolving Loan Fund.
>
> On May 28, 1981, the Power Authority loaned KPU $35,000,000 for construction from funds which had been raised through the sale of General Obligation Bonds.
>
> On May 21, 1982, the Power Authority and KPU executed an acquisition agreement under which, in return for providing funds to complete project construction, the Power Authority will receive title to the project and as operation of the project [begins] will provide sufficient power for the City of Ketchikan's needs via a Power Sales Agreement.

The total construction cost for the Swan Lake project is now estimated at $93.5 million in nominal dollars. The target completion date is April 1984; however, the construction work is ahead of

schedule and the project may be completed as early as January 1984. Swan Lake will have an installed generation capacity of 22.5 megawatts and an annual firm energy production of about 70 million KWH. The project is expected to have about 50 percent utilization in its first years of operation; that is, about 35 million KWH of the 70 million KWH available will be used by Ketchikan Public Utilities. The year in which the full capacity of Swan Lake will be consumed depends largely on the rate of increase in future power demand, which is uncertain. However, current Power Authority projections show the project being fully utilized in about 2002.

Lake Tyee

I believe that you have seen a copy of my memo on the Tyee project to Representative Clocksin, dated February 11. Attached to that memo was a Tyee chronology prepared by the Power Authority which focused mainly on cost estimates. This chronology is also attached here as Appendix 2.

The Tyee project was originally proposed by the Thomas Bay Power Authority, a local Petersburg and Wrangell group. This group was first interested in the development of the Thomas Bay hydro site, but a reconnaissance study by the Corps of Engineers indicated that the smaller Tyee project was more feasible and cost-effective. Based on the Corps study, the Thomas Bay Power Authority dropped the Thomas Bay site in favor of the Tyee project. When the Alaska Power Authority became operational in 1978, an agreement was reached for the Authority to take over the development of the project and proceed with design and licensing work.

The Alaska Power Authority prepared the following brief history of the Tyee project.

> On December 19, 1979, the Alaska Power Authority submitted an application to the Federal Energy Regulatory Commission (FERC) for the construction of the Tyee Hydroelectric Project in the vicinity of Wrangell and Petersburg, Alaska. Our engineers, R.W. Retherford Associates/International Engineering Company (IECO), estimated the cost of the project at that time at $53,333,000, including an allowance for inflation at the rate of seven percent per year during the construction period. Procurement of long-lead-time turbines began in July 1981, in anticipation of a FERC license. FERC issued a license August 5, 1981, and the award of several additional procurement and one construction contract followed almost immediately thereafter.

The power-on-line date is scheduled for January 1984. The current estimate of the total project cost is $124 million. Available funds include $82 million in State grants and $50 million in interim financing.

The powerhouse is located in the Tongass National Forest, approximately 40 miles east-southeast of Wrangell, Alaska. The project is designed to develop the energy potential of Tyee Lake--a natural lake at Elevation 1396--convert it to electricity, and transmit the energy to the communities of Wrangell and Petersburg for distribution.

Tyee will have an initial generating capacity of 20 megawatts, expandable to 30 megawatts with the addition of a third generating unit. The project will be able to produce about 110 million KWH per year, of which about 34 million KW (31 percent) is expected by the Power Authority to be sold to Petersburg and Wrangell in the first year of operation. Based on the Power Authority's estimate of 2.5 percent annual increase in power demand, the power output from the Tyee project will not be fully utilized until the year 2033.

I have also attached as Appendix C a memorandum by George Matz of the Office of Management and Budget which outlines the history of the Tyee project from the perspective of studies and approvals.

If you have any questions or would like more specific information on any of these hydroelectric projects, please do not hesitate to contact me. Also, I plan to complete a response to your research request on Swan Lake power rates (#83-89) by March 25. This analysis will compare projected power rates for the Swan Lake project with current power generation costs in Ketchikan and discuss alternatives for reducing Swan Lake rates, if necessary.

ALTERNATIVE HYDRO PROJECTS
SUMMARY OF CHARACTERISTICS

	Swan Lake Project	Lake Grace Project	Mahoney Lake Project
BASIN HYDROLOGY			
Drainage Area Above Dam, Sq. Mi.	36.5	29.2	2.05
Avg. Drainage Area Elevation	1,800	1,500	2,500
Avg. Annual Runoff at Dam Site, A.F. ...	335,000	279,000	33,500
Avg. Annual Runoff per Sq. Mi., cfsm ...	12.7	13.2	22.4
Max. Annual Runoff at Dam Site, A.F. ...	426,360	350,900	43,050
PROJECT POWER DATA			
Avg. Annual Energy Generated, GWh	88.0	105.2	49.7
Avg. Annual Energy at Load Center, GWh .	85.4	102.0	48.2
Annual Firm Energy Generated, GWh	68.0	93.3	29.5
Annual Firm Energy at Load Center, GWh .	66.0	90.5	28.6
Dependable Capacity at Load Center, kW .	18,000	25,000	9,000
RESERVOIR			
Normal Maximum Pool Elevation	330	500	1,956
Minimum Reservoir Elevation	269	458	1,776
Reservoir Area at Normal Maximum Pool ..	1,500	2,580	68
Active Storage Capacity, A.F.	86,000	150,600	7,150
DAM			
Type	Conc. Arch	Conc. Arch	None
Crest Elevation	344	509	-
Height Above Foundation, Feet	190	150	-

TABLE W-7

	Project SWAN LAKE	Project LAKE GRACE	Project MAHONEY LAKE
SPILLWAY			
Length, Ft.	100	200	90
Crest Elevation	330	500	1,956
POWER INTAKE	Single Level on Dam	Multi-Level on Abutment	Lake Tap and Valve Chamber
POWER CONDUIT			
Tunnel:			
Diameter, Ft.	10	9	-
Length, Ft.	2,250	3,400	-
Q Maximum, cfs	1,160	920	-
V Maximum, fps	14.8	14.5	-
Penstock (Steel):			
Diameter, Ft.	9	6.5	3
Length, Ft.	70	875	6,200
Q Maximum, cfs	1,160	920	86
V Maximum, fps	18.2	27.8	12.2
POWERHOUSE			
Turbines (Type)	2-Vertical Shaft Francis	2-Vertical Shaft Francis	2-Impulse
Speed, rpm	450	600	900
Net Design Head, Ft.	291	429	1,709
Rated Capacity, Best Gate, kW Total	22,680	26,700	10,600
Discharge at Avg. Head, cfs	1,014	855	78
Avg. Tailwater Elevation	8	27	88

(Continued)

	SWAN LAKE Project	Lake Grace Project	Mahoney Lake Project
TRANSMISSION LINE			
Voltage, kV	115	115	34.5
Length, Mi. (for New Line)	25	40	4
Type	Wood-Pole	Wood-Pole	Wood-Pole
ACCESS ROADS			
New Roads, Miles	1.0	3.6	7.0

ALASKA POWER AUTHORITY

334 WEST 5th AVENUE - ANCHORAGE, ALASKA 99501

Phone: (907) 277-7641
(907) 276-0001

February 9, 1983

Mr. Jack Kreinheder
House Research Agency
Pouch Y
Juneau, Alaska 99811

Subject: Tyee Hydroelectric Project-Summary of Estimated Total Costs

Dear Jack:

As per your request, following is a brief summary on the sequence of events on the Tyee hydropower project primarily relating to cost. The summary of Board actions was extracted from our corporate minutes. Most of the actions taken by the Board were based on advice from myself and my staff.

On December 19, 1979, the Alaska Power Authority submitted a revised application to the Federal Energy Regulatory Commission (FERC) for the construction of the Tyee Hydroelectric Project in the vicinity of Wrangell and Petersburg, Alaska. Our engineers, R.W. Retherford Associates/International Engineering Company (IECO) estimated the total cost of the project at that time at $39,590,000 (1980$'s). With an allowance for inflation and interest during construction the estimated total capital investment at that time came to $53,333,000.

In September 1980, IECO submitted a revised cost estimate of $50,976,000 (August 1980$'s).

Early in 1981, the Power Authority retained EBASCO Services, Inc., to prepare an independent cost estimate. EBASCO subsequently estimated the total project cost at $96,693,000 (May 1981$'s). Escalated to the midpoint of construction, this would represent a completed cost of approximately $110 million. After reviewing the EBASCO estimate, IECO conceded that its previous estimates were low and IECO raised its estimate to $81,069,000 (June 1981$'s). EBASCO refuted this revised estimate.

Procurement of long-lead-time turbines began in July 1981 in anticipation of a FERC license. The Board of Directors was realigned by Statute in the latter part of July 1981. The FERC issued a license on August 5, 1981 and the award of several additional procurement and one construction contract followed almost immediately thereafter.

IECO continued to make monthly reports on the status of the project, including estimated total project costs. It is important to note that by the end of March 1982, IECO had increased its project estimate to $97,072,000,

including engineering costs prior to construction. In the March report the overhead transmission line was estimated to cost $12,840,000 plus a $6,000,000 contingency. Less than two months later, during the bid opening for that contract, IECO provided an engineer's estimate of $23,280,887.00--an estimate that is 24 percent above any previous estimate, including contingency funds. The actual low bid was even higher at $24,901,466.

Starting with the IECO estimate from the March 1982, report, adjusting for the actual low bid on the transmission line, and adding the estimated cost for a proposed separate substation construction contract, the estimated total project cost was increased by IECO to $110,133,000 (May 1982). This did not include approximately $5 million for owner provided insurance. During the months that followed, the total project cost has decreased and increased, slightly, as adjustments have been made for actual bids on relatively small procurement contracts..

In December 1982, and again in January 1983, senior staff of IECO and IECO's parent company, Morrison Knudson (M-K), met with representatives of the Power Authority to discuss construction management of the project, including total project costs. The latest information from IECO is that the total project cost will not exceed $124,886,100. The Power Authority has asked the parent company, M-K, to completely review this estimate. A report from the M-K staff is anticipated the second week of March 1983.

A summary of Board actions, as extracted from our corporate minutes, is as follows:

October 4, 1978 Board receives report on Tyee Project indicating that, according to the reconnaissance study by Robert W. Retherford Associates, (RWR) the Project looks favorable and that Thomas Bay Power Commission (TBPC) will soon enter into contract with RWR for Federal Energy Regulatory Commission (FERC) work and that TBPC may request the Alaska Power Authority to take over the project.

November 18, 1978 APA Board voted to make $120,000 loan to TBPC for Tyee FERC work and this would supplement the $300,000 available from the Water Resources Revolving Loan Fund (WRRLF) in order to cover the $475,000 contract with RWR.

June 21, 1979 Board makes a loan to TBPC of $60,000 for Tyee Project. TBPC and Representative E.J. Haugen request the APA take over Tyee. The Board directed staff to bring information back at next Board meeting for Project take-over.

September 27, 1979 Tyee Letter of Understanding with TBPC adopted by Board.

November 2, 1979 Board authorized Executive Director to submit FERC license application. Also passed "stop-the-clock" resolution needed for bonding.

February 7, 1980 Board agreed to extend contract for advanced Engineering

and Design to IECO for Tyee but it was later decided with legal council to seek competitive proposals.

April 18, 1980 Board selects IECO for the Engineering and Design from among three proposals.

October 23, 1980 Board informed that costs have increased from $39,000,000 to $51,000,000 and has IECO explain to Board.

April 20, 1981 Board selects consultant panel as required by FERC.

May 14, 1981 Board awards Bids for Turbines.

July 6, 1981 Board considered awarding contract for Steel Towers and Conductors but defers "notice to proceed" until after opening of major Civil Contract so that the Board could get a better fix on the true cost of the Project.

August 18, 1981 FERC license has been received. Bids for Civil construction were reviewed as were the economics of the Project based on new cost estimates. Notice-to-proceed was given on Towers and Conductors. The Board was informed that existing funds were insufficient and that interim financing would be necessary. Board deferred action until the next meeting.

September 10, 1981 Board awards Civil Works contract to Southeast Harrison Western (SEHW) after lengthy debate.

October 2, 1981 Board informed on legal actions against Tyee construction contracts. Need for interim financing was discussed and indicated a proposal would be presented to the Board in December, 1981. Risk Management's desire to use "Wrap-up Insurance" on Tyee Project was discussed and actions that would be taken to effectuate such a program.

December 15, 1981 A Finance Plan was presented to the Board. It was recommended that the Board appoint a subcommittee to review the feasibility of the Tyee Project based on present knowledge of the costs. Commissioners Ward and Mueller and Dr. Weeden were appointed to the subcommittee. The Board moved that final financing documents for financing be prepared. The economics of the Project was reviewed.

January 22, 1982 Senator Dankworth and Representative Haugen addressed the Board and recommended proceeding with interim financing. Board authorized securing of $50,000,000 in interim financing. Board awarded a contract for Underwater Cables.

May 25, 1982 The Board awarded the Overhead Transmission Line contingent upon the Legislature not passing a piece of legislation that was being considered but that subsequently was not passed. Thus on June 3, 1982 the Executive Director informed the Board of his intent to issue the award for Transmission Tower construction.

October 22, 1982 The Board awarded contract for Transformers.

I trust this information is of assistance to you. If there is any further information you need, please call on me.

Sincerely,

Eric P. Yould
Executive Director

CC:
C. Conway
Comm. D. Lyon

MEMORANDUM State of Alaska

TO Gordon Harrison
Associate Director
Office of Management and Budget
Division of Strategic Planning

DATE February 23, 1983

FILE NO

TELEPHONE NO 465-3573

FROM George Matz GM
Division of Strategic Planning
Office of Management and Budget

SUBJECT Tyee Lake Project

There has been controversy recently regarding the Tyee Lake Project. The City of Petersburg has stated that the cost of power from the project is too expensive and they may not want to sign a power sales contract under the terms initially proposed by the Alaska Power Authority (APA). This situation has lead to an examination of other questions including the projects economic feasibility and the process by which this is determined. The purpose of this memo is to provide an historical perspective on the question of economic feasibility. The information in this memo should supplement rather than duplicate information in a February 9, 1983 memo from Eric Yould to Jack Kreinheder and a February 11, 1983 memo from Jack Kreinheder to Representative Don Hocksin.

The feasibility study for the Tyee Lake Project was completed for the APA in December of 1979. The statute at this time (AS 44.56.180) required the Office of the Governor to evaluate APA feasibility studies. Since the APA was in its infancy and the Tyee Lake Project was its first project to have completed a feasibility study, no formal review was undertaken.

In 1980, the Legislature passed an omnibus energy bill (Ch 83, SLA 1980) which amended requirements for APA reconnaissance and feasibility studies. This bill also requires the Division of Budget and Management (now Office of Management and Budget) to review these studies for statutory compliance and provide a recommendation to the Governor and the Legislature for feasibility studies. However, certain projects, including the Tyee Lake Project, had been previously approved by the Legislature and were exempted from review by the Division of Budget and Management. House Joint Resolution No. 62, which had been approved by the Legislature earlier in the 1980 session, stated that the general design of the Tyee Lake Project was approved and that the APA could incur $70,000,000 in revenue bond indebtedness to finance the project.

In 1981, the Legislature once again made significant amendments to the APA statutes (Ch 118, SLA 1981). One of the more significant amendments established a Power Development Fund to be used primarily for financing construction of State owned power projects. Restrictions were placed on the use of this fund. One of these restrictions (AS 44.83.394) states that "the authority may not use money in the fund for a power project except in compliance with AS 44.83.177-44.83.187 and unless the authority determines that the project is economically feasible."

Ch 90, SLA 1981 (which was the appropriation bill which accompanied Ch 118, SLA 1981) made appropriations to begin construction on three power projects. These projects, and the amount of their respective appropriations are Tyee Lake Project - $48,000,000, Swan Lake Project - $53,000,000, and the Terror Lake Project $81,500,000. Additional appropriations in the form of a loan, had previously been made to each of these projects. These loans were converted to grants by another bill Ch 91, SLA 1981.

Although each of these projects had completed feasibility studies and received legislative approval, AS 44.83.394 required a final review of the economic feasibilty of each project before the APA could make expenditures from the Power Development Fund. The statutes are not specific as to how the economic feasibility should be determined. The APA assumed that the feasibility assessment should be treated as an updated supplement to previous feasibility studies rather than repeat the entire process.

Apparently, the APA's first attempt at complying with AS 44.83.394 was an August 13, 1981 memo from Robert Mohn, Director of Engineering to the Record (see Attachment A). The information in this memo was presented to the August 18, 1981 meeting of the APA Board of Directors to demonstrate that even with more recent and higher construction cost estimates, the Tyee Lake Project was economically feasible at the "most likely" load growth rates. Following this presentation, the Board was asked to approve the award of construction contracts which would obligate funds in the Power Development Fund. It should be noted that this was the first meeting of a newly appointed Board of Directors and not all of the Board members were familiar with statutory requirements for power projects.

Ron Lehr, a Board member and Director of Budget and Management at that time, questioned some of the points used in the presentation and requested backup information. This information was sent to Budget and Mangement where staff found the information inadequate to make a determination regarding the economic feasibility of the Tyee Lake Project. APA staff was informed of this and responded in a September 10, 1981 letter with copies of the calculations used for the August 13, 1981 memo.

Budget and Management staff reviewed these calculations, found some technical errors, and requested that corrections be made in the analysis. Apparently, the request led to a decision by the APA to provide a more complete and adequate explanation of the economic feasibility of the project. The product of this effort was a "Findings and Recommendations" report that was completed on December 2, 1981 and distributed to the Board at its December meeting. This report fully explained the assumptions that were being used and provided enough details to review the economic feasibility of the project.

Although a review by Budget and Management of the "Findings and Recommendations" report was not required by statute, a review was undertaken for the benefit of Ron Lehr who's interest was both as a Board member and State Budget Director. Ron Lehr distributed this review to the Board at its January, 1982 meeting.

The Budget and Management review (Attachment B) questioned several assumptions and calculations used in the "Findings and Recommendations" report. The conclusion of the review is that the Tyee Lake Project may not be economically feasible based on the "most likely" load forecast but should be economically feasible if the actual load should exceed the "most likely" load forecast. Some of the more significant points brought out in the review are given below.

1) If and When - The economic feasibility analysis of a power project, particularly projects having a long life such as hydro power, should not only determine "if" the project is feasible but "when" is the most economic time to begin construction. A timing exercise of this nature was not done for the Tyee Lake Project even though such an exercise is most applicable to projects which have initial overcapacity, such as the Tyee Lake Project.

2) Reserve Capacity - Neither this economic analysis or cost of power calculation considered the cost of reserve capacity.

3) Load Forecast - The base year for the load forecast was higher than actual data. Also, the load forecast assumed an increase in electric space heating even though fuel oil appears to be a less expensive alternative.

4) Alternative - A number of smaller and less remote hydroelectric alternatives were not given detailed consideration. U.S. Army Corps of Engineers data indicates that some of these projects could have lower power costs than the Tyee Lake Project. Also, since all of the projects were smaller, overcapacity would not be a significant problem.

The load forecast in the most significant and perhaps the most uncertain parameter which applies to the economic feasibility of the Tyee Lake Project. Since the load forecasts were made a few years ago, we now have the benefit of hindsight to assess the accuracy of the first few years of the forecast. This information is presented below based on the "most likely" forecast for the "Findings and Recommendations" report and the "expected" forecast for the Feasibility Study. The Feasibility Study used 1978 as the last year of actual data. Neither of these forecasts, as presented, subtract out approximately 11,700 MWh of annual generation from an existing hydroelectric facility near Petersburg.

Energy Sales (MWh) for Wrangell and Petersburg

Year	Actual	Findings and Recommendations Report	Feasibility Study
1978	29,981	---	29,981
1979	29,087	---	31,445
1980	29,788	30,535	32,990
1981	29,222	31,726	35,275
1982	30,989	32,963	37,710

In summary, commitments to the Tyee Lake Project have been slightly ahead of establishing a more rigorous process for assessing the economic feasibility of proposed APA projects. Specifically:

1) the feasibility study for the project was completed before an independent review process was firmly established by the Legislature;

2) the Legislature approved the project without benefit of an independent cost analysis as now required by statute; and

3) construction contracts had been awarded before the "Findings and Recommendations" report had been completed and before the provisions of AS 44.83.394 has been met.

HB584

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 8 1984

The Honorable Jalmar Kerttula
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the sale of power by the Alaska Power Authority. The bill amends portions of AS 44.83.398, which governs sale of power from projects in the energy program for Alaska. The amendments are necessary before power sales agreements can be signed and long-term financing can be put in place for the Lake Tyee, Swan Lake, Solomon Gulch, and Terror Lake hydroelectric projects -- the "four dam pool."

A section-by-section analysis follows.

Sections 1 (by amending AS 44.83.398(a)) and 5 (by repealing AS 44.83.398(d)) of the bill eliminate restrictions on industrial power rates that may be charged by utilities purchasing power from projects in the energy program for Alaska. The statute currently prohibits utilities from charging a retail power rate to industrial consumers that is less than the rate charged to residential consumers. The change allows utilities to offer a lower rate to large-volume consumers, or consumers who currently use their own generation sources, which should reduce the overall rate to all consumers. The authority has discussed with the utilities the use of fixed-term supply contracts with industrial users with the length of the contract limited so that, when usage of power from the hydroelectric facilities approaches capacity, more power will be available to residential consumers and they will not end up subsidizing industrial power rates.

Section 1 also provides for the combination of the Lake Tyee, Swan Lake, Solomon Gulch, and Terror Lake hydroelectric projects into one power project for the purposes of the wholesale power rate calculation in AS 44.83.398-(b)(1). This power project is referred to as the "initial project."

Section 2 deletes the "Susitna clause" in AS 44.83.398-(b)(2). Repeal of this provision is desired by both the authority and the purchasing utilities because of the potential effect on rates. It is also viewed as crucial to the long-term financing of the initial project and future projects in the energy program for Alaska. The rating services are reluctant to give a favorable rating to revenue bonds issued with this provision in place because of the possibility that ratepayers' rates could increase substantially in 1991. The rates could be high enough to reduce demand and revenues, thus jeopardizing the ability of the utilities to meet their payment obligations under the power sales contracts.

Section 2 also describes the method for determining the amounts to be allocated to each hydroelectric facility in the initial project. Under this combined system the facilities share the debt service for the entire project and there is a single cents-per-kilowatt-hour rate for debt service applicable to all four hydroelectric facilities in the initial project. The rate for costs of operations, maintenance, equipment replacement, safety inspections, and investigations is determined separately for each facility. The result is a different wholesale rate for each facility in the initial project, but a sharing of debt service which substantially reduces the wholesale rate for projects such as Lake Tyee.

Section 3 adds a sentence to AS 44.83.398(e) to allow the power authority to contractually limit the amount of debt service payable by power purchasers as a consequence of the later addition of new projects to the energy program for Alaska.

Section 4 removes the reference to the "Susitna clause" from AS 44.83.398(g).

Section 6 provides for an immediate effective date.

Sincerely,

Bill Sheffield
Governor

607
589

Alaska Power Authority
Commissioner: D Lyon
Executive Director: Lary Crawford

Board meeting, 22 February 1984

Power Sales agreements;

1. Copper Valley: close to an agreement. Jim Billingame, manager of utilitiesstates that he shows some concern of confronting his public with a cost not seen before. Presently Glennallen diesel generation is .06 PKH and proposed APA power will be .07 PKW. This constitutes a 40% increase to some. Valdez is an emphatic NO! Average monthly consumption in Glennallen is 340 KWH and translates to $90 per month, while Valdez is running an average monthly bill of 550 KWH or $151. per month. A 40% increase can be devastating.

2. Wrangell: Matt Cole (position unknown) will be taking power sales agreement to city council Thursday night (Feb 23rd) for consideration. He says discussion (informal) with council members appears good and contract may be forthcoming.

3. Kodiak: David Neese, Mgr of Muni-power. Municipality has agreed to purchase power from APA. Two suggestions: possible loans to consumers and the establishment of an advisory board.

4. Ketchikan: Rick -?--. mgr of utilities says it looks very good, contract in the making with questions as to wording of legal documents.

5. Petersburg: NO!

Management study (status report) presented by Roger McMannus of Mead consultants for FY 84, FY 85, FY 86.

Presently APA employes 69 persons

Executive Dept----------4
Planning ---------- 9
Projects ----------18
Operations ---------- 7
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Payroll People

APA is asking for an immediate increase of 16, 17 more FY 85, and an additional 9 for FY 86 to total 111 persons.

1984 Susitna contingency fund: 3.18 Million dollars
Drilling request (wantana dam) 1.9 million. if approved this will leave in the contingency fund 1.28 million.

Competitive bidding on Watana Dam drilling will be let 27 Feb 84 with awarding of contract sometime in mid April 84.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 589
Title: Relating to the Alaska Power Authority
Sponsor: Governor
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Economic Development
Program Category Affected: Development
BRU, Program or Subprogram(s) Affected: Alaska Power Authority

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: George Matz
Phone: 465-2079
Division: Dept. of Commerce & Economic Development
Date: 1/6/84

Approved by Commissioner: Richard A. Lyon
Date: 2/6/84
Agency: Dept. of Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Repeal of the "Susitna Clause" will remove the obligation that the State must appropriate $5 billion to the Power Development Fund by 1991 in order to prevent triggering of a requirement that there be a 10 percent rate of return on power project investments.

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-667
S89

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HB584

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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Alaska State Senate
Pouch V
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Section 6 provides for an immediate effective date.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

HB

610

MARCH 28, 1984

TO: JOHN

FROM: KEN

RE: HB 610 "RELATING TO CONSTRUCTION CONTRACTORS"

HOUSE BILL 610 HAS BEEN CHANGED CONSIDERABLY IN THE DRAFTING OF THIS COMMITTEE SUBSTITUTE. MOST OF THE SUBSTANCE OF THE ORIGINAL BILL 610 DEALT WITH THE CREATION OF A BOARD OF BUILDERS. IN THE COMMITTEE SUBSTITUTE, THE REFERENCE TO A BOARD OF BUILDERS HAS BEEN DELETED AND THE FOCUS HAS TURNED TO ENFORCEMENT OF CURRENT REGULATION. UNDER THIS COMMITTEE SUBSTITUTE, THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT WOULD BE GRANTED THE AUTHORITY TO HIRE INVESTIGATORS TO POLICE CONSTRUCTION JOB CITES TO INSURE ALL CONTRACTORS ON THE JOB ARE LICENSED AND ARE COMPLYING TO THE LAW. THE INVESTIGATORS WOULD BE GIVEN THE AUTHORITY TO WRITE CITATIONS FOR VIOLATIONS WHICH THEY DISCOVER DURING THEIR INVESTIGATIONS. THIS IS COVERED IN SECTION FIVE ON PAGE TWO. A SECTIONAL ANALYSIS OF THE COMMITTEE SUBSTITUTE HAS BEEN PREPARED AND PROVIDED BY THE LEGAL SERVICES DIVISION.

MARCH 28, 1984

TO: JOHN

FROM: KEN

RE: HB 610 "RELATING TO CONSTRUCTION CONTRACTORS"

THE COMMITTEE SUBSTITUTE FOR HOUSE BILL 610 IS BASICALLY A REWRITE OF THE ORIGINAL BILL. MOST OF THE SUBSTANCE OF THE ORIGINAL BILL DEALT WITH THE CRFATION OF A BOARD OF BUILDERS. IN THE COMMITTEE SUBSTITUTE, THE REFERENCE TO A BOARD OF BUILDERS HAS BEEN DELETED AND THE FOCUS HAS TURNED TO ENFORCEMENT OF CURRENT REGULATION. UNDER THIS COMMITTEE SUBSTITUTE, THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT WOULD BE GRANTED THE AUTHORITY TO HIRE INVESTIGATORS TO POLICE CONSTRUCTION JOB CITES TO INSURE ALL CONTRACTORS ON THE JOB ARE LICENSED AND ARE COMPLYING TO THE LAW. THE INVESTIGATORS WOULD BE GIVEN THE AUTHORITY TO WRITE CITATIONS FOR VIOLATIONS WHICH THEY DISCOVER DURING THEIR INVESTIGATIONS. THIS IS COVERED IN SECTION FIVE ON PAGE TWO. A SECTIONAL ANALYSIS OF THE COMMITTEE SUBSTITUTE HAS BEEN PREPARED AND PROVIDED BY THE LEGAL SERVICES DIVISION.

MARCH 8, 1984

TO: JOHN

FROM: KEN

RE: HB 610

HB 610 WAS WRITTEN IN LATE NOVEMBER AFTER A NUMBER OF HEARINGS CONDUCTED BY REP. FURNACE ON PROBLEMS RELATING TO SMALL CONTRACTORS IN ALASKA. THE PURPOSE OF THIS LEGISLATION IS TO REDUCE THE NUMBER OF CONTRACTORS WHO OPERATE IN ALASKA WITHOUT HOLDING A STATE CONTRACTORS LICENSE. DURING THE HEAVY CONSTRUCTION SEASON A LARGE NUMBER OF CONTRACTORS FROM OUT OF STATE COME TO ALASKA AND BECAUSE MANY ARE NOT LICENSED OR BONDED AND DON'T HAVE EXPENSES SUCH AS WORKMANS COMPENSATION, THEY CAN EASILY UNDER BID THOSE CONTRACTORS WHO COMPLY WITH LICENSE REQUIREMENTS. THIS BILL WOULD MAKE CHANGES IN STATUTES DESIGNED TO HELP THOSE CONTRACTORS WHO HAVE COMPLIED WITH THE LAWS OF THIS STATE.

QUESTIONS:

1. WHAT IS THE ADVANTAGE TO SMALL CONTRACTORS OF HAVING A BOARD OF BUILDERS ?

2. WHAT IS THE NEED TO INCREASE A GENERAL AND SPECIALTY CONTRACTORS BOND ?

3. HOW CAN LANGUAGE BE ADDED OR CHANGED IN THIS BILL THAT WOULD GO EVEN FURTHER IN HELPING THE SPECIALTY CONTRACTORS ?

4. WHEN HEARINGS WERE BEING HELD IN ANCHORAGE ON THIS ISSUE, A SUGGESTION WAS MADE TO REQUIRE A CONTRACTOR INCLUDE HIS LICENSE NUMBER IN ALL ADVERTISEMENTS. WAS THAT SUGGESTION ADOPTED INTO THIS BILL ?

5. HOW MANY NONE LICENSED CONTRACTORS DUE YOU ESTIMATE ARE OPERATING IN ALASKA ?

6. HOW MANY OF THOSE ARE STATE RESIDENTS THAT ARE SIMPLY NOT LICENSED ?

MARCH 23, 1984

TO: JOHN

FROM: KEN

RE: WORK SESSION ON HB 610 "RELATING TO CONSTRUCTION CONTRACTORS AND ESTABLISHING A BOARD OF BUILDERS"

THE HOUSE LABOR AND COMMERCE COMMITTEE HAS SPENT MANY HOURS WORKING TO RESOLVE THE PROBLEMS WHICH PLAGUE THE CONSTRUCTION INDUSTRY. DURING THE INTERIM, SEVERAL HEARINGS WERE HELD WITH MEMBERS OF THE INDUSTRY IN AN EFFORT TO HAMMER OUT A LEGISLATIVE SOLUTION. THE RESULT WAS HOUSE BILL 610, WHICH WE NOW HAVE BEFORE US. DURING RECENT PUBLIC HEARINGS HELD HERE IN JUNEAU AND IN ANCHORAGE, THE COMMITTEE RECOGNIZED THAT HB 610 DID NOT SOLVE ALL THE PROBLEMS WE HAD SOUGHT TO SOLVE. IN THIS WORK SESSION TODAY, I WOULD ASK THE COMMITTEE TO CONSIDER THE CONCERNS BROUGHT OUT IN PUBLIC TESTIMONY, AS WE WORK TO CONSTRUCT A BILL WHICH IS ADVANTAGEOUS TO GENERAL CONTRACTORS, SPECIALTY CONTRACTORS, AND TO THE CONSUMER AS WELL.

LICENSED AND BONDED CONTRACTORS MEETING
NOVEMBER 29, 1983
2:00 PM

The meeting was called to order my Rep. Furnace. Persons present at the meeting were:

Rep. Furnace
Rep. Cowdery
Rep. Uehling
Allairy
Ken Johnson
Steve Levi
Dianna Smith
Earl Carlyle
Ray D. Agen
James N. Malapanes
Clay Porter

Earl Carlyle passed out a paper with 15 suggestions to support specialty contractors and these suggestions were discussed in detail and the following recommendations were made:

1. Come up with a modified definition of a "Contractor". Make it mandatory for all licensed contractors to include their license number in all advertisements; including business cards, signs, newspaper ads, television ads, radio ads, and yellow pages for easier identification by the license enforcement investigator.

2. Put in the statutes that the contractors license number or administrators license number should appear on all vehicles used in the conduct of business.

3. Bonds should be increased to $5,000 and $10,000 on the initial draft.

4. Concern was expressed over the lack of enforcement offered by the Dept. of Labor and the suggestion was made to transfer the enforcement function to Dept. of Commerce and Economic Development, Division of Occupational Licensing which is a more reasonable, supervisory governmental unit. It was noted that we should give the inspectors more ability of checking for violations. Concern was also expressed with the regard to the ability of the enforcing agency to issue citations with "teeth". For further information, staff was advised to contact, Ron Wates with the Municipality at 786-8307.

5. Establishment of a statewide Board of Builders which shall meet on a monthly basis and shall include a membership of the following:
    1) Speciality Contractor
    2) Remodeling Specialist
    3) Private Sector Representative
    4) Local Government Representative
    5) Two General Contractors
    6) One Heavy Highway Contractor

6. This statement is already covered in number one.

7. It was recommended that House Counsel examine the constitutionality of legislation to terminate phone service for those companies who are inviolation of the licensing and bonding provisions of the statutes and regulations. House Counsel was contacted and staff has been informed that there is probably no constitutional question involved in the discontinuance of telephone service for those businesses which advertise falsly or falsly portray themselves as bonafied businesses. The only difficulty that could arise would be the instance in which a business phone and a personal phone are used for the same purpose and for some reason the individual could not disassociate the two entities.

8. It was noted that the laws for violators are there and the problem we are having is with enforcement. It was recommended that a monetary fine of not more than $250 a day for contractors in violation of the law (see page 15 of the Oregon law).

9. This statement is covered in suggestion number one, but it was recommended to maybe include a monetary fine of $250 a day.

10. It was noted that since there is some support for this issue, we would propose this to the drafters and let them work with some language as to how we can best do this. The general contractor is already covered, we want to reach the subcontractor.

11. It was noted that a list can be obtained, but that it takes a long time to get. A person requesting a list of contractors you should be able to get one within a certain period of time that is fairly predictable. It was recommended that we should advise that a list is available upon request for a nominal fee, if any, and that the list can be expected to be received within a two week or 30 day time frame. It was suggested that we may want to contact, Dick Lyon with the Dept. of Commerce and Economic Development to further discuss the possibilities of this of instigating this.

12. It was noted that this statement should have been on a separate sheet of paper and is not to be included under this heading because it pertains to the motor vehicle laws.

13. It was recommended that we restate this in whatever new section we develop on general contractors and specialty contractors.

14. It was recommended that a owner/builder can only build one home or one structure per year to take advantage of the owner-builder option to remain unlicensed.

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Chubrich

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
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January 10, 1984

MEMORANDUM

TO: Representative Jack McBride

FROM: Nancy Pease
Legislative Analyst

RE: Licensing and Bonding of Contractors in Other States
Research Request 83-251

Rena Bukovich of your staff requested information on the licensing and bonding of contractors in other states. Specifically, she asked how certain contractors--plumbers, electricians, builders and specialty contractors--are licensed and regulated in the following states: California, Colorado, Idaho, Michigan, Montana, Ohio, Oregon, and Washington.

Regulation of Contractors in the Eight States

Licensing. Altogether, 28 states license contractors. The licensing and bonding requirements for contractors in the eight states about which you inquired are summarized in the attached chart (see Attachment A). Of these states, Ohio is the only state which does not license contractors in any of the trades you specified (electrical work, plumbing, or general or specialty contracting). Colorado does not license general or specialty construction contractors, and Idaho and Montana require licenses of construction contractors only if they wish to bid on public works. With these exceptions, the states generally require contractors to be licensed.

Bonding. California, like Alaska, requires that all contractors post bonds with the state as a prerequisite for license approval. Washington and Michigan require bonding for electricians; the other states do not require electricians or plumbers to post bonds in order to obtain a license. Four of the eight states--California, Michigan, Oregon, and Washington--require general or specialty construction contractors to post bonds with the state. The largest bonds are required by Michigan, where a residential building contractor must post a bond of $10,000 to obtain a license.

Regulations. As requested, we are providing copies of the other states' statutes for the trades of electrical work, plumbing, and general and specialty contracting.

In some instances, we have included license applications and printed regulations supplied by the states' trade boards. Please let us know if you require further analysis of the statutes and regulations; we will be happy to summarize and compare them if needed.

Requirements for a Contractor's License

Licensing requirements for contractors vary from trade to trade and from state to state. The procedure for obtaining a license may require the applicant to complete some of the following steps:

- pass a written or oral examination;
- submit a financial statement;
- submit references from material suppliers and/or bank;
- attest to ownership of equipment and/or experience related to the given field;
- report an in-state business address;
- report personal or corporate bankruptcies;
- obtain bonding; or
- obtain insurance covering public liability, property damage, and workers' compensation.

Exemptions. Some states exempt from licensing those contractors whose contracts do not exceed a specified dollar amount. Other states waive the license requirement if a person intends to work only on his personal property. For example, Alaska does not require a person to license himself to repair his own property, while Arizona requires that work on personal property be performed by a licensed and bonded contractor if the building is to be rented or sold within one year of completion of the work. Two states, Kansas and Nebraska, license only nonresident contractors, and Delaware licenses contractors for revenue purposes only.

Limited and reciprocal licenses. In skilled trades such as plumbing and electrical work, states frequently issue licenses that limit the licensee to working at a particular skill level for which he has demonstrated competency or proven his experience. For example, Colorado licenses electrical workers at four skill levels: trainee, residential wireman, journeyman electrician, and master electrician.

In granting a license to a contractor, some licensing boards also: (1) determine the construction classification at which the contractor may work (i.e. industrial, commercial, residential, public works); and (2) set a contract bid limit based on the contractor's working capital, i.e., he may not bid over $200,000 on a single contract or over $500,000 on separate, concurrent bids.

A few states have agreed to reciprocally recognize other states contractors' licenses; for example, Michigan and Indiana permit plumbers licensed in either state to do contract work in both states.

Licensing Boards

In states which thoroughly review the qualifications of contractor applicants, the licensing procedure is usually handled by a licensing board. Typically, this board is composed of licensed, experienced contractors who are appointed by the governor or the state legislature and who convene intermittently throughout the year. Recently, many states have included members of the general public on regulatory boards so that the boards are not composed exclusively of representatives of the regulated industry or profession.[1]

Bonding Requirments

Of the 28 states that license contractors, eleven states require the contractor to be bonded as a condition of license approval.[2]

As you may know, Alaska requires a surety bond of $5,000 for a general contractor and $2,000 for a specialty contractor, or an equivalent cash deposit.[3] The surety bond, also termed a "license bond", is intended to assure payment of (1) taxes, (2) employees and suppliers, and (3) any judgments against the contractor for negligent or improper work, breach of contract, or damage to public facilities.

The bonds that some states require before they will license contractors are independent from the bonds that construction clients may require before they will accept a contractor's bid. Construction clients may

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[1]State of Tennessee "Program Evaluation on the Board for Licensing Contractors", Division of State Audit, July 1978.

[2]Ibid

[3]AS 08.18.071.

require (1) performance bonds to guarantee that the work will be completed on time and according to specifications; (2) payment bonds to guarantee that suppliers and employees will be paid; and (3) bid bonds to guarantee the sincerity of the bid.

Penalties and Enforcement

Penalties. AS 08.18.141 states that "a person acting in the capacity of a contractor in violation of this chapter is guilty of a misdemeanor." The contractor is usually given a hearing before the trade or licensing board, and if found guilty, he may be fined in addition to having his license revoked. This same penalty appears to be common among states that require contractors to be licensed.

The method of recovering damages from bonded contractors in Alaska also appears to be normal procedure in other states. The surety bond issuer is not liable for claims in excess of the amount of the bond, and claims for breach of contract are assigned a lower priority than claims for labor costs and taxes which may be owed to government units.

Enforcement. Most states share with local governments the responsibility for monitoring contractors. For example, Colorado plumbing laws prescribe that cities with populations of over 70,000 must appoint inspectors of plumbing to their local boards of health to help report violations of plumbing laws to the State Examining Board of Plumbers. In addition, Colorado's State Examining Board of Plumbers is authorized to hire its own plumbing inspectors.

In states which have a single board of licensing for contractors in all trades, enforcement duties may be divided among state agencies as well as between state and local agencies. For example, in Tennessee, the Board for Licensing Contractors only investigates complaints about licensing, while violations of the technical rules of a particular trade are dealt with by the appropriate trade board or by state health and safety agencies.

* * *

I hope you find this information useful. If we can be of further assistance, please let us know.

NP

Attachments

Attachment A
Table 1

LICENSING AND BONDING OF CONTRACTORS IN EIGHT STATES

	Electrical work	Plumbing	General Building Contracting[1]	Speciality Contracting
California[2,3]	license bond ($5,000)	license bond ($5,000)	license bond ($5,000)	license bond ($5,000)
Colorado	license ---	license ---	--- ---	--- ---
Idaho	license ---	license ---	license for public works ---	license for public works
Michigan	license bond[4]	license ---	license for residential builders ---	license[5] bond ($2,000-$10,000)
Montana	license ---	license ---	license for public works ---	license for public works ---
Ohio[6]	--- ---	--- ---	--- ---	--- ---
Oregon	license ---	license ---	license for bldg. construction bond ($6,000)	license bond ($4,000)
Washington	license bond ($3,000)	license ---	license bond ($4,000)	license bond ($2,000)

Footnotes: See Next Page

FOOTNOTES TO TABLE 1

1 AS 8.18.171 defines "general contractor" as a contractor whose business operations require the use of more than two distinct trades whose work the general contractor superintends; the terms "general contractor" and "builder" are synonymous; a "specialty contractor is a contractor whose operations do not fall within the definition of "general contractor". Contractors are persons who undertake or bid for projects to construct, alter, repair, move or demolish a building, highway, road, railroad, or a type of fixed structure, including excavation, site development and erection of scaffolds.

2 A bond of three to ten times this amount is required for the licensing of applicants who have been a party to business infractions resulting in the revocation of their own or other contractors' licenses (CRS 7071.8). Swimming pool contractors must post a bond of $10,000.

3 The co-owner of a licensed firm, or the subsidiary or joint venture partner of a licensed firm, may in some circumstances be required to post an additional bond of $2,500. CRS.7068 and CRS.7071.9.

4 The bond takes the form of a deposit to the Homeowners Construction Lien Recovery Fund. The required amount of the bond varies. MCL 338.883.

5 Contractors in the fields of residential building, maintenance, or alteration must post bonds of $2,000 for each trade for which they are licensed, not to exceed a total of $10,000. MCL.338.1504.

6 ORC 3781.102 delegates the licensing of contractors in Ohio to local governments. However, legislation is now pending before the Ohio General Assembly to establish requirements for state licensing of electrical contractors.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
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September 6, 1983

MEMORANDUM

TO: Representative Walt Furnace

FROM: David Teal
Legislative Analyst

RE: Licensed/Bonded Contractors
Research Request 83-213

Steve Levi, of your staff, asked whether or not Alaska had the least restrictive standards for licensed and bonded contractors. We contacted the Council of State Governments, the National Conference of State Legislatures and the Associated General Contractors of America to determine Alaska's standing in this regard. We discovered that training/experience requirements in Alaska are minimal relative to other states which require licensing and bonding of contractors, but that nearly half of all states do not require contractors to be licensed. Further, fewer than half of the 50 states require contractors to be bonded.

This memorandum discusses standards for contractors from three perspectives: when a licence is required; requirements for obtaining a license; and the consequences of failure to meet legal standards. Each of these topics is discussed below.

Who must obtain a contractors' license?

The attached table shows that 28 states require contractors to be licensed and that only 11 of those states require licensed contractors to be bonded.[1] From the perspective of whether or not a license is required to operate as a contractor, Alaska's standards are clearly more restrictive than those imposed by some states. However, relative to other states that require contractors to be licensed and bonded, Alaska is more liberal than some states. For example, no license is required for an Alaskan to repair his own property, while Arizona requires that work on personal property be performed by a licensed and bonded contractor if the building is rented or sold within one year of completion of the work.

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[1]The table is from a 1978 document prepared by the State of Tennessee. Much of the information appears to be outdated. More reliable information will be forwarded to you when it is received.

What is required to obtain a contractor's license?

Among those states that require contractors to be licensed, Alaska's standards are relatively nonrestrictive. Alaska does not require demonstration of knowledge or experience in order to obtain a license to contract for general building construction or repairs. Alaska requires only that an applicant complete an application, pay the registration fees, obtain a $5,000 surety bond ($2,000 for specialty contractors) or file an equivalent cash deposit, obtain a business license and provide evidence of insurance covering public liability, property damage and workers' compensation. Several states require that an applicant pass an examination and provide evidence of four or more years of experience in the construction field. Some states have more stringent requirements related to an applicant's financial situation, character, integrity, qualifications and age.

What are the consequences of failure to comply with the law?

AS 08.18.141 states that "a person acting in the capacity of a contractor in violation of this chapter is guilty of a misdemeanor." This penalty appears to be common among states that require contractors to be licensed. The method of recovering damages from bonded contractors in Alaska also appears to be normal procedure in other states. The surety bond issuer is not liable for claims in excess of the amount of the bond, and claims for breach of contract are assigned a lower priority than claims for labor costs and taxes which may be owed to government units.

* * *

The Associated General Contractors of America has written a letter on this subject to each state. When results from that survey are available, they will be forwarded to your office. Previous work by the House Research Agency on the subject of contract bonding is attached to this memorandum. I hope you find the information useful.

DT

Attachments
Research Request 80-147
Exhibit I, State of Tennessee Program Evaluation

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

JULY 2, 1974

Mr. Victor L. Lowe
Director
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Lowe:

This is in response to your request for comments on the draft report entitled "Surety Bonds in Federal Construction: A Study of Their Application and Effectiveness."

[See GAO note 1, p. 40.]

Operation of the Program

Before we get into the specific areas listed, we must bear in mind that the report itself is 14 months old, and we should like to provide an update on the statistical data listed in the report as of March 31, 1973, and bring that up to May 20, 1974. The Surety Bond Guarantee Program is the fastest growing program of the SBA. Following is a table indicating levels of activity:

Fiscal Year	No. Guarantees Approved	No. Contracts Awarded	Value of Contracts
1971 (Pilot)	21	7	$ 312,252
1972	2,316	1,339	$ 94,434,157
1973	8,657	5,597	$ 351,169,011
1974 (Thru 5/20/74)	11,856	8,150	$ 571,426,269
TOTAL	22,850	15,093	$1,017,361,689

The total number of contractors that have received this assistance since the inception of the program had been 8,342. There are 99 sureties that are currently participating in the program. Approximately 35 percent of our total guarantees are for minority contractors.

Next, we should like to outline the procedures through which an applicant goes in obtaining a surety bond guarantee: (1) The contractor obtains a copy of our application form from one of our district offices or, in most cases, through a broker or agent. (2) The original application goes directly to our surety bond personnel in the regional office, a copy to the surety, and an information copy to our local district office.

If an agent or contractor is unable to locate a surety willing to participate in our program in his area or feels that the sureties are unreasonable in their underwriting standards, our offices are prepared to give him a list of the sureties which have demonstrated a responsiveness to our program. Agreement with the surety industry provides that, if a surety decides that it cannot issue a bond even with an SBA guarantee, SBA will be supplied with the reasons for decline. Three major reasons for declination are:

1. The financial package is inadequately prepared,

2. The surety feels that the contractor does not have sufficient working capital to handle the contract under consideration, or

3. There is a lack of sufficient technical and/or managerial skills to perform the contract or to handle the extra managerial and financial load of one more contract in addition to his work in progress.

SBA can and does assist the contractor to eliminate deficiencies by the following means:

1. Refers the contractor to funded organizations which specialize in assisting the contractor in putting his financial package together properly.

2. Refers the contractor to SBA loan specialists for consideration of either a working capital loan or the revocable, revolving line of credit, which was designed specifically for construction contractors.

3. Refers contractor to our management assistance personnel.

If the surety decides that a bond can be issued with our guarantee, they will forward to our office a copy of the contractor's financial statement, together with a copy of our Surety Bond Guarantee Underwriting Review, SBA Form 994-B. The SBA Form 994-B is primarily a checklist of virtually all of the normal underwriting requirements that a surety would check out prior to issuing a bond, be it with SBA or on their own. Upon receipt of the Underwriting Review, the financial statement, and the surety's recommendation, the SBA makes its own underwriting review, and, if favorable, completes the guarantee agreement and returns it to the surety.

The following is an update on our claims and defaults. We compute our loss ratios on a quarterly basis, the last of which was as of April 20, 1974. At that time we had 548 default notifications, with 393 of these that have established incurred loss of $9,260,21[illegible] Th. incurred loss figure included paid losses plus reserves. In computing our loss ratios, we use our average sized contract of $68,000 and prorate the contract over a 10 month period. In other words, our $68,000 contract is 50 percent completed in 5 months and 100 percent complete in 10 months. Our loss ratio, based on completed commitments, is 1.24 percent.

SBA loss RATIO

The sureties compute their loss ratios on an earned premium basis rather than commitments. An average contract of $68,000 would carry a 1 percent premium. Therefore, the industry loss ratio, based on earned premiums, would be 124 percent versus 1.24 percent on commitments.

We break down our loss ratio by region as well as by surety. At any given time we can determine the loss ratio of a specific surety company, either nationwide or in any region.

All claims are handled out of our Central Office. Our field office sends us a copy of the complete underwriting file. A desk audit is made on each claim submitted. In addition to normal verification and audit of claims data, we also assure that the surety made no misrepresentations, etc., as well as attempting to establish reasons for default. We have found that the reasons our contractors go into default are basically the same as those that the sureties sustain under normal programs - insufficient capitalization to carry them over when they run into trouble, and going beyond their capacity. Only about 3 percent of our contracts go into default. Therefore, we have a success rate of 97 percent.

As a matter of information, we also have broken down some other statistical data with regard to our loss ratios. A study made by us in February shows the surcharge rate companies had a 1.56 percent loss ratio versus a 1.34 percent for the standard rate companies. This includes only those companies that have one or more losses. The commitments of the other companies are not included.

Minority contractors have established a 1.8 percent loss ratio versus non-minority at a 1.1 percent loss ratio. Our four largest producers in this program have the following loss ratios: 1.58 percent, 2.3 percent, 1.67 percent, 2.58 percent. These are all smaller companies that specialize in smaller contracts. One of the major companies, which is one of the largest surety bond writers in the country, has established a loss ratio of 1.60 percent in our program. A copy of the loss ratios is enclosed with this report and, as you will note, one company has a 7.5 percent loss ratio. However, there were only two claims that were quite substantial and would be considered as shock losses in determining loss ratio. We will debar any surety that has a consistent and inordinately high unexplained loss ratio.

We have taken the position, unless Congress feels to the contrary, that a 2 percent loss ratio on commitments should be the maximum allowable in the program. This, we feel, is a reasonable loss expectation for the marginal contractor. As a comparison in loss ratios, GAO reports show that sureties have a 51 percent loss ratio on government work, based on their premiums. Converting this to our method of computation would show a .51 percent loss ratio on the "blue chip" contractors. Comparing this contractor to the marginal contractors that we are dealing with, our loss ratio of 1.24 percent would fall in line with the intent of the program.

.51% vs. 1.24% SBA

Need for Increased Participation by SBA in Program Operations

Our position is that any contractor who meets our size standards is eligible to apply for surety bond guarantee assistance. The initial evaluation of the contractor is up to the surety. The premiums charged by sureties include efforts expended in the prequalification of contractors. This is a function that we feel should be performed by the surety itself. Our function is only reviewing what the surety has submitted to us and to see whether it falls in line with our legislative and regulatory requirements. The industry itself does not have any iron-clad formal underwriting criteria. Each case must stand on its own merits. We feel this same procedure should be followed within our own program. However, we do have our underwriting review, which is an official checklist for the industry of the information we expect them to develop in order to make an underwriting determination. As we have mentioned earlier, should a surety decide that a contractor does not qualify for a bond, even with an SBA agreement, and, if we feel that the contractor can perform, we will refer him to a more responsive surety.

One factor which makes it difficult to establish formal underwriting guidelines for the sureties is that these guidelines can be used to turn down applicants, as well as to make them eligible. As a rule of thumb, for construction contractors, many sureties require a ratio of 1 to 10 of the contractor's net quick assets to his total work in progress. There are cases where the surety may want a 1 to 5 ratio. There are other cases where another surety may go 1 to 20 on a specific contractor. Availability of additional credit, size of the job, and the amount to be subcontracted are all elements that enter into a decision on net quick asset requirements. If we were to establish a standard of, say 1 to 15, a ratio of less would automatically trigger a decline by the surety industry. It would become too complex to establish these types of standards. The industry itself has general guidelines in their normal underwriting; we expect them to use their guidelines, consider that these are marginal contractors, and that the SBA will accept risks that the industry would normally decline. All we ask them to do is to give us the normal underwriting data with all of the facts and their opinion as to whether the contractor can perform the specific contract. Based on that analysis, SBA will further analyze the facts presented and make a subjective judgment.

We have even had cases where we have extended our guarantee where the contractor had a deficit net worth and where he performed successfully. However, we could not write a guideline that would permit the issuance of a guarantee to a contractor with a deficit net worth. Such a determination would depend upon the individual contractor and circumstances of the specific case.

A contractor has every right to appeal to SBA for assistance should he be turned down by a surety, and, as a matter of fact, frequently does. We have met with several minority contractor associations throughout the country. There is a favorable consensus among these groups.

The question of "graduation" is a difficult one. The sureties do not notify us when they take a contractor out of our program and put him into their own. The only assumption we can make is that, if there is no activity in a particular file for 6 months to a year, we can assume that the contractor, if he has not gone into claim, has gone into the surety's normal business. We do, however, have certain guidelines for our surety bond personnel in the field. As an example, a valid reason for keeping a contractor in our program after he completes several jobs could be that his financial statements show insufficient earnings to justify bonding him without SBA support. Another reason is that the contractor is increasing the size of job or total work program beyond what the surety would accept in its standard business. Again, this is a form of graduating from small contracts to larger contracts.

There is considerable room for upward mobility within the program. The average job is now $68,000. Our limit is $500,000. We also find that the marketplace itself assists in this area. We have noted that even in the cases of some surcharge rate companies, which may not write standard rate bond business, a contractor who can qualify for standard business will go with one of the major companies. The reason for this is twofold:

(1) The contractor will not pay the higher premium if he can avoid it, and

(2) There is a certain pride among contractors when they can get bonding on their own with one of the major sureties.

We must remember that the contractors in our program are considered marginal and no contractor wants to be tagged with that label for any longer than absolutely necessary. In checking with one of the large producers in the surcharge rate area, we find that they average 1-1/2 contracts before they lose a client to one of the other surety companies. Our national average is less than two contracts per contractor since the inception of the program.

When we originally discussed the prospects of this program with the industry, one of the objections of the industry in handling our type of business - the marginal contractor - was the fact that the administrative expense alone, aside from the losses, would be far greater than the normal business. Our experience so far has proven this to be the case.

In February we had a meeting with 19 surety companies, each of which write 1 percent or more of our total volume. Combined, they represented 89 percent of the total volume in our program. Also attending were representatives of the American Insurance Association, the Surety Association of America, and the Agents' Associations. The purpose of the meeting was to discuss premium sharing, percentage of guarantee, and contractors' fees.

The major companies expressed a willingness to increase the SBA share of the premium and to consider a reduced guarantee percentage. They also stated that they were losing money on the program. Our analysis of their activity would bear this out.

The smaller companies took a very strong position on maintaining the present fee and guarantee structure. They stated that they were making money on the program, that increased fees and decreased guarantees would eliminate profit, and that without profit they would not remain in the program.

There are many factors to consider. Why are the major companies willing to participate in the program at loss? Is it because their big business clients are applying subtle pressure to eliminate competition? Is it because they know that the smaller sureties cannot remain in the program at a loss?

To remain in the program with higher fees or a lesser guarantee, the smaller sureties would have to tighten up on their underwriting. What would the effect be on the minority contractor? The loss rate on his business is 1.8 percent versus 1.1 percent for nonminority. With a tightening of underwriting standards, the benefits of the program would be denied to those who need it most.

We are not prepared to adjust either the fees or percentages of guarantee at this time. We will, however, make adjustments at such a time as our continuing analyses might justify.

We are enclosing a list of all the sureties participating in our program as of May 20, 1974 (from the inception of the program). This list includes the number of contracts and the dollar values by region and total. As you will note, there are many sureties listed that are national companies but have written very few bonds through our program in the almost 3 year period since its inception.

The report also states that the maximum allowable premium rate that SBA permits was $20.00 a thousand and a change to $15.00 a thousand under contemplation. Our maximum allowable rate as of March 1973 is $15.00 per thousand for the first $50,000 and $10.00 per thousand on amounts in excess of $50,000. Therefore, we only allow the additional 1/2 percent on the first $50,000. Any surety that is using the standard 1 percent in their normal business, because of filing with the various state insurance departments, must use the same rate for the business with the SBA program. Therefore, there are very few companies charging the 1-1/2 percent rate, though it is true that a substantial amount of our volume comes from sureties which charge the higher rate. We have no quarrel with those sureties which are in the program for profit. Profit, if kept within reasonable bounds, is a perfectly legal and proper incentive.

Lack of Incentives

Our experience in the program alone seems to dispute this point.

1. For the surcharge rate companies, their records show that a contractor, on the average, has 1-1/2 contracts prior to leaving them.

2. The total number of contracts in the program versus the number of contracts guaranteed is still less than two contracts per contractor.

It is true that the surcharge rate companies would prefer to keep the contractor with them for a longer period of time, but, because of market conditions and the lower rates with the standard surety companies, the contractor automatically will go where the price is right. It must also be noted that publicly the Surety Association and American Insurance Association have indicated to us that they feel the program is getting too large. Therefore, they are encouraging their members to graduate contractors out of our program and write them in as their standard business. This philosophy of the industry is understandable. They are afraid of any government interference in the surety bond field. Total underwritings through the SBA are probably between 1 to 2 percent of the total value of construction bonds written throughout the country, and it is evident that they do not want government participation to become a much bigger factor than it now is.

We have found no instance where the surety found that it was advantageous, economically or administratively, to allow the contractor to default rather than provide financial and technical assistance. On the contrary, the sureties check with us on all claims and we work together in attempting to handle claims in the best way possible. There are many cases where the sureties have financed the contractor. When the surety finances the contractor, we do not provide any funds to the surety while they have the funds in a controlled account. However, once the funds are expended from the account, then the sureties receive their 90 percent reimbursement. This is much the same way that claims are handled between the sureties and their reinsurers. So again, we have found no cases where the surety has defaulted a contractor rather than go through additional administrative expense in trying to have the contractor himself complete the job. It is an unfortunate fact that, once a marginal contractor defaults, the chances of his survival are minimal. In a few cases, however, through the mutual efforts of SBA and the surety, we have been able to help a contractor so that he corrected his default and was able to continue in business.

Conclusions

Based on the information given herein, we feel that we have covered the three points in your recommendations:

[See GAO note 1, p. 40.]

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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MEMORANDUM July 1, 1980

TO: Representative Patrick O'Connell

FROM: Anne DeVries, Issues Analyst AD

RE: Availability of Contract Bonding
Research Request No. 147

This memorandum is in response to your request for research on the availability of contract bonding for small contractors. I understand you are interested in possible legislative action to relieve the problems some contractors face in obtaining contract bonds in amounts over $500,000.

Summary of Findings

Briefly, there are three major findings from this research:

- Overall, contractors are able to get bonding in the amounts for which they are qualified. It is not evident that sureties are denying bonds to contractors on the basis of criteria which are irrelevant to their ability to complete a contract.

- A State reinsurance program is the major way in which bonding could be made more available. The primary problem of such a program is that it would expose the State to financial losses on defaulted contracts.

- The availability of bonding is important to contractors because bonds are required for most public works contracts. An alternative to making bonds more available is to modify access to public contracts. The State has two main alternatives: to raise the amount of the contract below which no bonding is required, or eliminate bonding altogether. There are two problems with these alternatives: they expose the state to financial losses from defaulted contracts and they shift the responsibility of determining contractor qualifications from a non-political body, the surety, to the State. These are the same problems that the surety system was designed to eliminate.

Introduction to the Question of Bond Availability

Contract bonding is the way in which a corporate surety, usually a large insurance company, extends its financial backing to qualified construction contractors. It is a means of assuring the construction client that he will not have to suffer a financial loss because the contractor fails to complete a contract. The demand for bonds arises primarily from the public sector as bonds are a means of protecting the taxpayer from contract losses.

In return for a service fee, a surety company will bond any contractor it deems qualified to do the work for which a bond is required. If the contractor defaults on the job, the surety is obligated to assure that the contract is satisfied with no financial loss to the client. If the surety incurs a loss in meeting its obligation to the client, it will take action against the contractor to recover its losses. Under established surety underwriting practices, the risk of financial loss from default remains with the contractor. As a consequence, the surety will bond only those contractors in situations where it anticipates that no default will occur, and where the contractor is financially able to cover any losses that may occur (if, for instance, where one of the principals dies and the firm cannot complete the contract). The availability of bonding, therefore, is determined by the criteria surety underwriters use to define a "qualified" contractor.

Interest Groups

The question you have raised concerning the availability of contract bonding directly affects the economic interests of four groups, often in conflicting ways. The interests of these groups - the contractors, the sureties, the construction clients and the State - are described in this section.

The Contractors: As a group, contractors share two interests:

- They desire ready access to work, and to the extent that the lack of bonding denies access, they want ready access to bonding as well.

- They would like to limit competition to qualified contractors. An unqualified contractor may be the low bidder because he lacks full knowledge of costs and potential problems in a job. He may get a contract and then fail to perform. This creates "unfair" competition to qualified contractors.

Obviously, those contractors who have no trouble obtaining bonds do not necessarily see their interests enhanced by measures making it easier for other contractors to secure the same means of access to work.

The Sureties: As a group, sureties share an interest in making money. However, there are two types of surety companies with distinctly different ways of making money:

- Standard sureties make money by writing all the bonds they can. However, as they are not compensated for risk, they adhere to underwriting criteria that are established based on the presumption of "no losses".

- Specialty sureties make money by exploiting the government subsidy inherent in the Small Business Administration's re-insurance program. This is discussed in greater detail later in the memorandum.

The Construction Clients: Demand for bonding originates primarily from the public sector, all discussion in this memorandum will focus on the interests of municipal, state and federal construction clients. As a group, these entities share two interests:

- They want to protect the taxpayers' interests by obtaining the best quality construction work at the lowest price.

- In order to insure the lowest feasible costs, state and federal governments want to insure adequate competition among qualified contractors by removing any artificial impediments to competition, such as minority discrimination.

- They want to protect themselves from the claims of suppliers or laborers who were not compensated by a contractor on a public works job. Bonds are necessary as public works are not subject to liens designed to protect suppliers and laborers on private jobs.

The State: The State, as a protector of its citizens, wants to:

- Insure that citizens are not prevented from enjoying their livelihoods by the arbitrary acts of others, such as a private company discriminating against minorities.

- Insure that citizens have "fair" access to all work that the state provides.

Of these four parties, the State faces the strongest conflicting interests. It may want to make access to bonding easier in order to insure some of its citizens better access to their livelihoods, while at the same time it is the largest single beneficiary of the contract bonding system. This conflict will be the focus of this memorandum.

What is Contract Bonding?

Construction is an inherently risky business. A contractor can fail to perform on a job for any number of reasons:

- Key personnel die or become disabled, either physically or emotionally - a divorce or death in the family, a drinking problem, etc.
- He is overextended; either he has committed his firm to too much work or to a job which may have unexpected problems beyond his capability to solve.
- He has inadequate supervision.
- He has an inefficient operation.
- He lacks the appropriate job cost accounting records and procedures.
- He has uninsured losses.
- He is the victim of employee dishonesty.
- He has submitted an improper bid: it may contain mistakes, it may not allow for unforeseen contingencies and/or price increases, or it may not have adequately provided for overhead.
- He has failed to arrange proper financing.
- He has made a poor selection of venture partners.
- He is adversely affected by weather conditions.

Awarding a contract to the "lowest qualified bidder" increases the risks of a project, for the contractor who wins the job has given himself the smallest possible financial cushion with which to absorb the cost of any problems.

The construction client recognizes that these problems can occur and he has two alternative ways to protect his interests:

- If a contractor fails to perform, the client can arrange to complete the job himself and take legal action against the contractor.

- He can require that the contractor secure the backing of another party who will assure the client that he will suffer no financial loss from a contractor failure. This third party may be an individual or a corporate surety.

Under either alternative, the client pays for the cost of this protection. In the former instance, he incurs the costs directly; in the latter, the cost of the surety's bond is included in the bid price.

Types of Bond Required: Three types of contract bonds are generally required:

Performance bonds guarantee that the work will be completed in accordance with the plans and specifications and at the contract price.

Payment Bonds guarantee that the suppliers and employees of the contractor will be paid. Payment bonds are required on all public works projects because that property cannot be made subject to a Mechanics and Materialmen's Lien which protects these interests on private projects. A payment bond also makes it easier for suppliers to get credit, as they are assured of being paid.

Bid Bonds guarantee the sincerity of the bid. A bid bond in the amount of 10% to 25% of the bid is usually required. If a contract is awarded to a bidder who is then unable to secure the other required bonding or for some reason cannot enter into a contract, the bid bond is forfeited. A surety will usually issue a bid bond only when it is prepared to issue payment and performance bonds, as required.

Both payment and performance bonds are required because it is possible for a contractor to finish a job and then "leave town" before his suppliers and employees are paid, or he might meet his obligations to his suppliers and employees without satisfactorily completing the job.

Underwriting Requirements: The surety decides whether or not to provide bonding to a contractor through a careful analysis of his job history and financial capacity. This process is termed underwriting. It is underwriting which determines the availability of contract bonding.

There are two major factors considered in underwriting:

- The total amount of work the contractor will have if he is awarded the contract for which a bond is required.

- A combination of his performance record, his experience with the type of work required by the contract, the suitability of his equipment and the skill of his employees for the type of construction, the soundness of his bid and his financial capability.

The contractor will usually be asked to supply his bond agent or broker with the following:

- Financial statements for the last three years. Depending on the size of the job and the surety, these statements may have to be prepared by a certified public accountant and may have to be auditied.

- Completion of a contractor questionnaire which requires resumes of experience — job size, client, etc.

- A letter from his banker stating his credit experience with the contractor - what credit has been extended, how it has been handled, what credit is available for the upcoming contract, etc.

- Two or three letters of recommendation from former clients.

- One to two letters of recommendation from major suppliers.

An underwriter evaluates two aspects of the contractor's financial status: the amount of working capital he has in relation to the dollar volume of his projected workload and his net worth. Sufficient working capital is necessary to cover cash outlays for which the contractor will be reimbursed later. Contractors are usually paid on work as it is completed, therefore they must finance each portion of the work themselves. In addition, clients retain a portion of the payment, usually 10%, until the project is completed in order to guarantee performance. The contractor has to finance that 10% for the duration of the project. Without adequate working capital, a contractor may have to stop work on the project and be in default on the contract. A contractor's net worth, total assets less total liabilities, is the second component of his financial status that is important to a surety. The surety relies on a contractor's net worth as the primary loss paying fund, should the contractor default on the contract and the surety incurs losses in completing the contract.

Cost of Bonding: Contractors are charged a premium for the bonds they are issued. The premium is determined by the amount of the bond, the duration of the bond obligation and the type of contract being bonded: as the amount of the bond increases, the cost per thousand dollars of bonding declines; as the duration of the bond obligation lengthens beyond a specified period, the cost of the bond increases; and as the complexity of the construction task increases, the cost of the bond increases. The Surety Association of America has established rates which are used by most standard sureties; in its rate setting manual, it divides construction contracts into three major groups:

Class B	These are the most difficult types of construction involving architectural building construction, most engineering construction, concrete and excavation work performed underground or in or under water, etc.
Class A	These are general contracts and subcontracts of generally less difficult nature than those included within Class B such as most earthmoving work of a non-excavation nature, etc.
Class A-1	Contracts of this description include those generally less difficult than "B" or "A" of the construction classification and contracts for furnishing and installing, or installing only, or providing various services and equipment, such as a data processing contract.

As an example of the rate structure, the premium established for a Class B contract is 1.2% of the contract amount under $500,000, .725% of the next $2,000,000; .575% of the next $2,500,000; .525% of the next $2,500,000; and .48% for any additional amounts. This covers a bond obligation of 24 months.

The premium charged by a surety is distinctly different from that charged by an insurance company. The surety premium is not meant to create a loss-paying fund as an insurance premium does. In insurance, risk is transferred to the insurer, whereas in bonding that risk remains with the contractor. The function of a premium is clearly stated in the following excerpt from a Surety Association of America publication:

> Suretyship transaction does not intend a transfer of risk from the contractor to the surety. .... The surety's obligation is collateral or secondary to the contract obligation assumed by the contractor.. The surety's fee is essentially a flat rate charge for the services performed by the surety and as such it is more related to averting or controlling loss than to funding ultimate loss."
>
> The Unseen Services of a Surety, Surety Association of America

Reinsurance and Cosuretyship: A surety has two options for limiting his exposure on a contract bond: reinsurance and cosuretyship. Reinsurance is a means of sharing the premium and risk with another company; and it is a standard practice in the industry. The most commonly used mechanism is for the reinsurer to take a percentage of the premium (net of commission) and to assume the same percentage of any loss. The SBA program is a form of reinsurance; however, the government assumes a disproportionately large share of the risk for the premium it receives.

Cosuretyship is the means by which two or more sureties jointly issue a bond. Each surety has a limit on the amount of single bond it can write, depending on its financial position; this limit is established by the U.S. Treasury. By jointly issuing a bond with another surety, a surety can bond a contractor for an amount greater than the Treasury limit of either surety. Most cosuretyship arrangements limit the liability of each surety to a specified amount.

Regulations Pertaining to the Contracting Industry

The following sections outline the State's requirements for entry into the contracting business and its requirements for bonding on public works contracts.

There are about 3,000 contractors licensed by the State to operate in Alaska. About half of these are general contractors, the remainder are specialty contractors.*

According to AS 8.16, in order for a construction contractor to operate in the state, he must be issued a certificate of registration by the Department of Commerce and Economic Development. The following are required before a certificate is issued:

- a completed application
- a registration fee of $100 for a general contractor and $50 for a specialty contractor
- a surety bond of $5,000 for a general contractor and $2,000 for a specialty contractor or an equivalent cash deposit
- public liability and property damage insurance no less than $20,000 for property damage, $50,000 for injury or death to one person and $100,000 for injury or death to more than one person.

The surety bond, also termed a "license bond", is intended to assure payment of:

- all taxes and contributions due the state and political subdivisions
- payments to all persons furnishing labor or material or renting or supplying equipment
- payments for all amounts that may be adjudged against the contractor by reason of negligent or improper work, breach of contract or damage to public facilities occurring in the course of a construction project.

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* AS 8.18 defines a contractor as "a person who, in the pursuit of an independent business, undertakes or offers to perform, or claims to have the capacity to perform, or submits a bid for a project to construct, alter, repair, move or demolish a building, highway, road, railroad, or any type of fixed structure, including excavation and site development and erection of scaffolding; a "general contractor" is a contractor whose business operations require the use of more than two distinct trades whose work the general contractor superintends." A specialty contractor is one involved in only one or two distinct trades.

In addition to this bond, the State requires payment and performance bonds on construction work exceeding $50,000 in value. AS 36.25 establishes the minimum bond coverage; the contracting officer is empowered to increase these amounts as he sees fit. The bond requirement can be satisfied by either a corporate surety, a large insurance company, or by two individual sureties who "shall each justify in a sum equal to the amount of the bond". The relevant portions of the statute are quoted below:

> . . . before a contract exceeding $50,000 for the construction alteration, or repair of a public building or a public work of the state or a political subdivision of the state is awarded to a general or specialty contractor, the contractor shall furnish to the state or political subdivision of the state the following bonds, which become binding upon the award of the contract to that contractor.
>
> (1) a performance bond . . . .; the amount of the performance bond shall be equivalent to the amount of the payment bond.
>
> (2) a payment bond . . . for the protection of all persons who supply labor and material in the prosecution of the work provided for in the contract; when the total amount payable by the terms of the contract is not more than $1,000,000, the payment bond shall be in a sum of one-half (50%) the total amount payable by the terms of the contract; when the total amount . . . is more than $1,000,000 and not more than $5,000,000, the payment bond shall be in a sum of 40% of the total amount . . .; when the total amount . . . is more than $5,000,000 the payment bond shall be in the sum of $2,500,000.

The statute also provides for a municipal exemption which allows municipalities to exempt contractors from these bonding requirements on contracts not exceeding $400,000 if the following conditions are met:

- The contractor has been licensed in the state for a period of two years and his principal office is in the state.
- The contractor has certified that he has not defaulted on a contract awarded to him during the previous three years.
- The contractor submits a financial statement, prepared within a period of 9 months preceding the submission of a bid, . . .

certified by a public accountant . . . demonstrating that the contractor has a net worth of not less than 20% of the amount of the contract for which the bid is submitted.

The total amount of all contracts which the contractor anticipates performing during the term of performance of the contract for which a bid is submitted does not exceed the reported net worth by more than seven times.

The Federal statutes, the Miller Act, served almost verbatim as a model for the State statute. There are only two differences: the Federal government requires bonds for all contracts in excess of $2,000 and it leaves the amount of the performance bond to the discretion of the contracting officer.

While the State statute requires a combination of payment and performance bonds amounting to 100% of the contract amount on jobs under $1,000,000, 80% on jobs between $1,000,000 and $5,000,000, and a flat bond of $5,000,000 on jobs over $5,000,000, in practice 100% bonding is required on all projects over $50,000. On projects which involve federal money, a 100% performance bond and a 100% payment bond is usually required. Municipal practices differ with the municipality and the source of funds it is spending; however, they are usually at least as strict as the state practices.

The Alaska Bond Market: Contracts bonds are supplied by 71 companies licensed to do business in Alaska. All are regulated by the Division of Insurance of the Department of Commerce and Economic Development, to which they must submit their premium rates for approval.

There are three types of firms: the standard companies, the specialty companies which are involved in the SBA reinsurance program, and sub-standard companies. This last group is able to supply bonds for the most marginal contractors by charging higher rates. It is not a significant part of the market.

The standard companies dominate the bonding market. The four largest companies, Travellers, Firemen's Fund, Fidelity and Deposit of Maryland, and Safeco, control over 50% of the Alaska market. Forty-nine companies, each writing less than $50,000 in premium annually, account for only 5% of the market.

In 1978, the last year for which data is available, $5.6 million of

direct premiums were written for surety bonds on Alaskan construction. Premiums average about 1% of the bond amount, so approximately $562.6 million of construction jobs were bonded. Direct losses to surety companies, net of recoveries, were $0.2 million, or 4% of the premiums written or .04% of the construction activity. The table below summarizes bonding activity since 1974.

TABLE 1

Surety Bonding Activity in Alaska, 1975 - 1978

	1975	1976	1977	1978
Number of Companies	93	70	68	71
Direct Premiums (000)	$3950.5	$4178.0	$4442.0	$5626.0
Direct Losses (000)	$1838.7	$ 964.0	$2863.0	$ 209.0
Losses/Premiums	47%	23%	64%	4%

Source: Insurance Reports for 1977-1979, issued by the Department of Commerce and Economic Development, Division of Insurance.

As you are aware, some small contractors have noted a tightening in the availability of bonds. They are unable to get the same levels of bonding that they have gotten in the past or they are unable to find sureties willing to write larger bonds for them. Apparently, they are experiencing the impact of tighter underwriting standards which have been made necessary by the large losses the sureties suffered in the mid-1970's, as indicated on Table 1; normal surety losses average between 5% to 10% of premiums while losses in Alaska got as high as 64% in 1977. One surety termed Alaska the "cemetery" of surety companies.

According to members of the industry who have followed the developments in the Alaska market, underwriting standards by most sureties were relaxed in the early 1970's in response to competitive pressures. Sureties are in the business of writing bonds and the primary limitation on the amount of bonds they write is their underwriting criteria. In

the late 1960's, a company entered the Alaska market agressively seeking business by writing bonds more readily than the existing companies. It offered larger bonds and larger bonding capacities to firms in order to take business away from competitors. The other companies were forced to match its tactics in order to retain customers. By the mid-1970's, this company, which had followed the same strategy across the country, was incurring large losses and decided to leave the surety business.

The problem of losses due to loosened underwriting standards was exacerbated by the recession in the mid-1970's. High interest rates affected a contractor's ability to get financing and inflation adversely affected his ability to project costs for materials and labor; both could lead to default on a contract.

As a response to these problems, some sureties chose to leave the Alaska market, while the remaining ones revised their underwriting criteria. One broker characterized this as a return to normal underwriting practice after a period of too-loose underwriting. He noted that the market in Alaska is "coming back". The current market has been characterized as the best one in Alaska for years; the comment that "any qualified contractor can get bonding" was made repeatedly by the surety representatives interviewed.

Means of Increasing Bond Availability

It is the question of what constitutes a "qualified contractor" which is central to the issue of availability. For the client, bonding serves a twofold purpose: it protects him from financial loss and it is a means of pre-qualifying contractors who want to bid on work. The client is protected by the surety's financial stake in only bonding qualified contractors. Because contract bonding is both a form of credit and a pre-qualification process, there are always some contractors who are unable to secure bonding for jobs which, in the opinion of the surety, exceed their financial or technical capability. Consequently, it is impossible to judge whether the contractors who have been experiencing problems in bonding are being subjected to unfair discrimination or are simply not sufficiently qualified to warrant the surety's financial commitment. If, through additional extensive research, it is found that there is some significant pattern of discrimination against a particular type or class of contractor, the State has two types of approaches to relieve their dilemma:

- It can permit sureties to lower their underwriting standards by assuming a large share of the risk of contractor defaults.

- It can remove the bonding requirement, on all jobs or on jobs over a certain amount, and assume the surety's dual functions. The State would be responsible for recovering its own losses on contractor defaults and it would have to devise a means of pre-qualifying contractors. These qualifications could reflect preferences to particular types of contractors if it could be shown they had been excluded unjustly from work because of surety discrimination.

There are variations on these approaches; however, these are the two major ones which have been considered by the Federal government in its frequent reviews of the surety bonding process.

Again, I have been unable to conclude that any group of contractors has been denied bonding for reasons unrelated to their ability to perform. As a third-party, often the State of Alaska, relies on bonding to protect the taxpayers and simplify its contracting process, it would seem that such a pattern of discrimination would have to exist before the State encourages the lowering of underwriting standards or becomes its own surety. That reservation aside, the following section describes how the Small Business Administration's reinsurance program works. This is the type of program which the State could implement if it choose the first of the two alternatives listed above.

The SBA Program

The Small Business Administration manages a program of reinsurance for contractors with annual gross sales of less than $3.5 million who are unable to get bonding with a standard surety company. The SBA program will issue a bond up to $1 million. The average SBA bond in the Pacific Northwest Region is about $70,000. This program was originally intended to help minority contractors secure bonding. It has since been expanded to include all small contractors as a way to insure their access to the bond market, and hence to public construction jobs.

The standard market takes the theoretical approach to surety bonding - it bonds contractors assuming there will be no losses and charges a premium, not based on risk, but to cover the costs of offering the service. On the other hand, the sureties which specialize in SBA bonds - the specialty

market - are more liberal in their underwriting criteria because the federal government is subsidizing the defaults of less "qualified" contractors who are bonded through the program.

The contractor pays a higher price for SBA bonding than he would if he qualified for bonding in the standard market. Table 2 presents a comparison of the premiums charged for bonds of different amounts under the standard surety rates and the SBA rates. The standard surety charges 1.2% of the contract amount for the first $500,000 and .0725% for up to the next $2,000,000 of bonding. In return for this premium, the surety is obligated to the full extent of the contract amount. These are the maximum rates charged for the most risky class of contract according to the Surety Association of America rate filing.

For the specialty surety, the maximum premium is 1.5% on amounts less than $250,000 and 1.0% on the balance of the bond. In addition, the SBA charges .2% of the contract amount as a service fee. Therefore, on a $250,000 bond issued by the SBA, the contractor pays 1.7% of the contract amount, compared to 1.2% for similar standard bond. The surety retains 80% of the premium and the remainder goes to the SBA. For its 80% premium, the surety takes 20% of the risk of default (10% if the bond is less than $250,000). The SBA assumes 80% of the risk of default (90% if the bond is less than $250,000) and receives 20% of the premium and the .2% service charge.

The SBA makes it attractive for sureties to bond contractors through its program by taking a disproportionately large share of the risk for the premium it receives. Table 3 illustrates the cost of this reinsurance program to the SBA. Table 3 assumes a 1.25% loss rate on each bond; this is the loss experience for the Pacific Northwest over the life of the SBA program. This loss is divided between the surety and the SBA and then compared to the premium income each received. For instance, on a $500,000 bond the loss is assumed to be $6250 or 1.25% of the bond. The SBA would cover 80% of that, or $5000. In issuing this bond the SBA received $1250 in premium and $1000 in service fees, a total of $2250. The SBA incurs a loss/premium ratio of 225% by assuming the larger share of the risk while the specialty surety has a more moderate 25% loss ratio. Overall, the loss ratio is 86.2%. This compares unfavorably with the national average of 5% to 10% and the most recent Alaskan performance of 4%. Table 3 also illustrates why some contractors have trouble getting SBA bonding over $250,000. The loss ratio doubles on these larger bonds because the government is assuming less of the risk; therefore, the specialty sureties have lost some of their incentive to take chances on weaker contractors.

Standard sureties, the ones writing the majority of the business in Alaska, generally do not participate in the SBA program. They have a number of objections to it:

- The paperwork demands are great. A contractor has to be underwritten each time he wants a bond. This requires the compilation of financial statements, letters of recommendations, etc. for each bond application. A standard surety avoids this problem by establishing a bond capacity, good for up to a year, on which the contractor can draw.

- Paperwork requirements create time delays. For instance, bonds over $500,000 must be approved by the SBA's Washington D. C. office.

- The SBA duplicates the underwriting work of the sureties to some extent.

- However, the overriding objection to the program is that "unqualified" contractors are placed in competition with "qualified" contractors, those who got bonding in the standard markets. Standard sureties see themselves as applying one standard to a contractor - whether or not he can complete the job - if the contractor can not mmet this standard, then he should not be given bonding.

It is likely that a State program similar to the SBA's would face simila: problems: . duplication of work done in the private sector, creation of a bureaucracy, the resistance of standard sureties, etc. However, the two most important problems it would face are:

- the cost of defaulted contracts, and

- the difficulty of defining limits to the program

These are clearly related. The SBA program began to help minorities, the victims of racial discrimination. It was expanded to help all "small businesses" and is under pressure to increase its limits to raise the definition of "small". A state program would be faced with a similar dilemma of pressures for an ever expanding scope. And clearly, financial losses from defaulted contracts would be a function of how broadly the State defined the group of contractors worthy of subsidy and the extent of the subsidy it offered.

It has not been possible to provide an extensive analysis of the SBA program within the time frame of this research. The detailed questions which would require answers before any State program is considered, are:

- Why are contractors in the SBA program unable to get bonding elsewhere? (Minorities excluded)
- Why is the loss ratio so high? How does this relate to the composition of contractors in the SBA program?
- How many contractors are able to grow out of the SBA program into the standard surety market?
- What are the administrative costs of the program?
- Based on a range of assumptions about the scope of the program, the amount of the risk assumed by the State and loss experience, what are the potential costs to the State?

Modifications of Bonding Requirements

The State has another alternative way of addressing the problems some contractors face in obtaining bonds, and hence access to public work: it could eliminate all bonding on State jobs or it could increase the contract amount below which no bonding is required. There are two problems with this approach. First, the State would have to duplicate the capabilities of existing sureties. It would require personnel to arrange for the satisfactory completion of contracts in default and to bring legal action against defaulting contractors for any losses it incurred. In addition, it would require the development of criteria to determine which contractors were qualified to bid on State contracts. One of the reasons for the creation of the surety system was to remove the "qualifying" process from the potential distortions of the political process. If the State became its own surety, on some or all contracts, its loss experience would primarily be determined by the appropriateness of its qualifying criteria in relation to contract requirements.

As this memorandum has shown, underwriting is a subjective process. It has been impossible to determine, within the time frame of this work, whether any conditions exist which limit bonding available in a way that warrants action by the State to increase availability of bonding. The standards that sureties established are intended to protect the client,

notably the State of Alaska, and any actions to change underwriting standards to increase availability may create serious problems for the State. I will send shortly selected portions of a report to Congress on the surety industry and its effect in preventing contract losses to the federal government. This may be of interest to you. If you have any additional questions, please let me know.

AHD/bf

COMPARISON OF LOSS/PREMIUM RATIOS FOR THE SPECIALTY SURETY AND THE SBA

	BOND AMOUNTS				
	$249,999	$250,000	$500,000	$750,000	$1,000,000
SPECIALTY SURETY					
-Loss	312	625	1,250	1,875	2,500
-Premium	3,000	3,000	5,000	7,000	9,000
-Loss/Premium	10.4%	20.8%	25.0%	26.8%	27.8%
SBA					
-Loss	2,812	2,500	5,000	7,500	10,000
-Premium	750	750	1,250	1,750	2,250
-Service Charge	500	500	1,000	1,500	2,000
-Premium + Service Charge	1,250	1,250	2,250	3,250	4,250
-Loss/Premium + Service Charge	225.0%	200.0%	222.2%	230.8%	235.3%
OVERALL					
-Loss/Premium + Service Charge	73.5%	73.5%	86.2%	91.5%	94.3%

House Research Agency

July 1, 1980

COMPARISON OF STANDARD AND SPECIALTY SURETY RATES

	BOND AMOUNTS				
	$249,000	$250,000	$500,000	$750,000	$1,000,000
STANDARD SURETY					
Surety's Premium[1]	3,000	3,000	6,000	7,813	9,625
Exposure	249,999	250,000	500,000	750,000	1,000,000
Cost to Contractor	1.2%	1.2%	1.2%	1.0%	1.0%
SPECIALTY SURETY					
Total Premium[2]	3,750	3,750	6,250	8,750	11,250
SBA's Premium[3]	750	750	1,250	1,750	2,250
Surety's Premium[4]	3,000	3,000	5,000	7,000	9,000
Surety's Exposure[5]	25,000	50,000	100,000	150,000	200,000
SBA's Exposure[6]	249,999	200,000	400,000	600,000	800,000
Cost to Contractor[7]	1.7%	1.7%	1.5%	1.4%	1.3%

For Class B contracts: 1.2% for 1st $500,000, 0.725% for next $2,000,000 per the Surety Assoc. of America rate filing.

Maximum premium of 1.5% on 1st $250,000, 1.0% on amounts over $250,000 per SBA fact sheet.

20% of the premium.

80% of the premium.

10% for bonds less than $250,000, 20% for bonds equal to or greater than $250,000.

Balance of the contract amount.

Include 0.2% for SBA service fee on all bonds.

House Research Agency

July 1, 1980

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

MEMORANDUM July 16, 1980

TO: Representative Patrick O'Connell

FROM: Anne DeVries
Issues Analyst

RE: Contract Bonding
Research Request No. 147 (Additional Material)

I have enclosed three excerpts from a report on the use of surety bonds in federal construction prepared by the General Accounting Office and submitted to the U.S. Congress. This report concluded that the government should not eliminate bonding and become its own self insurer. In addition, the report found problems in the ability of the SBA program to meet its objective of providing a transitional program for a marginal contractor.

One problem facing the SBA which I did not address was the involvement of organized crime in the specialty surety business. Recently, NBC Nightly News examined abuse of the SBA program in Chicago, where it is believed that fraudulent claims are being submitted by sureties fronting for organized crime. I do not know much about this beyond the NBC news story. However, if the State does consider a SBA-like program, this potential type of abuse may need to be examined more closely.

AHD/bf
Enclosure

EXHIBIT 1

States Licensing General Contractors

States	License Contractors	License Subcontractor	Dollar Limit	Bond Requirements
1. Alabama	Yes	No	$20,000	No
2. Alaska	Yes	No	1,000	$2,000 Surety
3. Arizona	Yes	No	NA	1,000 to 15,000
4. Arkansas	Yes	Yes	20,000	No
5. California	Yes	Yes	100	2,500
6. Florida	Yes	No	NA	No
7. Hawaii	Yes	No	NA	No
8. Louisiana	Yes	No	30,000	bond(1)
9. Maryland	Yes	No	5,000	amount-NA
10. Michigan	Yes	No	200	No
11. Mississippi	Yes	Yes	10,000	No
12. Montana	Yes	No	15,000	No
13. Nevada	Yes	Yes	NA	amount-NA
14. New Mexico	Yes	No	NA	No
15. North Carolina	Yes	No	30,000	No
16. North Dakota	Yes	Yes	500	No
17. South Carolina	Yes	No	30,000	No
18. Tennessee	Yes	Yes(2)	50,000	No
19. Utah	Yes	Yes	NA	bond(3)
20. Virginia	Yes	Yes	30,000	No
21. Washington	Yes	No	250	1,000 to 2,000

States Licensing Specialty Contractors

States	Type of License	Bonding Requirements
22. Idaho	Public Works Contractors	No
23. New Jersey	Electrical Contractors	No
24. Oregon	Residential Building Contractors	($3,000 bond requir
25. Wyoming	Electrical Contractors	No
26. Delaware	Registers Contractors for revenue only	No
27. Kansas	Nonresident Contractors	$1,000 bond require
28. Nebraska	Nonresident Contractors	$1,000 bond require

(1) Surety Bonds required for taxes on nonresident contractors.
(2) License only subcontractors who perform heating and ventilating, air conditioning, electrical, and plumbing work where the contract cost exceeds $50,000.
(3) 50 percent performance bond for public works contract.

amount NA-dollar amount not available.

Source: State of Tennessee Program Evaluation

REPORT TO THE CONGRESS

Use Of Surety Bonds In Federal Construction Should Be Improved

Multiagency

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

LCD-74-319

JAN. 17, 1975

ELIMINATING CURRENT BONDING SYSTEM DOES NOT APPEAR WARRANTED

We evaluated (1) the effectiveness of the current bonding system and (2) the economic and administrative feasibility of eliminating bonds and having the Government become a self-insurer.

In general, surety bonds and the surety companies provide

1. Financial protection to Government agencies against losses resulting from defaults.

2. Financial recourse for subcontractors, suppliers, and laborers.

3. Financial and technical aid for contractors.

The lack of cost data and the lack of Federal experience, particularly with respect to the latter two functions, prevented us from reducing the issue of self-insurance to a strictly quantitative determination. The monetary value of the individual services provided by sureties could not be isolated. Because the Federal agencies have had no experience in providing these services, they could not state what the cost would be if the Government assumed such services.

In the absence of comparable quantitative data, we could not develop measurable evidence supporting either elimination or retention of the current bonding system. The major participants in the system--Federal construction agencies, contractors, subcontractors, suppliers, etc.--generally voiced opinions that surety bonds were needed and that the current system was effective and should be continued.

As discussed below, Federal construction agencies do not, at this time, have the ability to duplicate some of the services provided by sureties. Particular factors arguing against the Government's becoming a self-insurer are the lack of legal means, administrative machinery, and in-house expertise for handling claims of subcontractors, suppliers,

could develop the necessary capabilities, it would probably prove costly to the Government.

Although we do not recommend eliminating the current bonding system, we feel that the Government is not benefiting as much as it could from surety bonds. Chapter 5 discusses those areas where the Federal construction agencies can improve their participation in the system.

CLAIMS OF SUBCONTRACTORS, SUPPLIERS, AND LABORERS

The basic purpose of the Miller Act is to provide a means of recourse for subcontractors, suppliers, and laborers on Federal construction projects. Payment bonds provide the means by which subcontractors, suppliers, and laborers can submit claims against contractors, even in the absence of defaults.

We examined selected project files at 9 Federal construction agencies, including files relating to 75 defaulted contracts. For 17 of the defaults, we examined the project files at both the Federal agency and the cognizant surety company. In many instances, subcontractors, suppliers, or laborers submitted claims or voiced complaints directly to the Federal agencies. Because these projects were bonded, the Federal agencies simply referred the complaints to the appropriate surety company. The fact that sureties handled the claims removed potentially major legal and administrative problems from the Federal construction agencies.

The surety industry has said that it does not keep overall statistics on the amount of claims submitted and paid on Federal construction projects. To ascertain the prevalence of claims, we reviewed selected surety companies. Presented below are examples of the situations we found.

Example 1

On a $36,000 Navy contract, a subcontractor submitted a claim for $29,000 to the surety company, citing nonpayment by the contractor. The surety maintains that,

$10,130. The surety also noted that its attempts to recover its loss from the contractor had so far proved unsuccessful.

Example 2

The contractor got into difficulty simultaneously on three multimillion dollar Federal projects. The surety allowed the contractor to complete all three projects and funded settlements with subcontractors and material suppliers. The surety cited payments on such claims of over $540,000, plus incurred expenses of over $20,000 and said that, so far, it had recovered only about $85,000 from the contractor.

However, in other instances the sureties contested subcontractors' and suppliers' claims. It is apparent that the sureties do not automatically pay all claims submitted under payment bonds. Rather, the sureties make certain determinations regarding the validity of the claims and the effect that payment or nonpayment will have on the sureties' financial exposure and on contract completion.

If bonds were eliminated, some other system for protecting subcontractors, suppliers, and laborers would have to be devised. Most Federal construction agencies believe that a workable system cannot be developed. The agencies feel that, even if a system could be developed, the administrative cost to the Government to operate the system likely would be high.

FINANCIAL AID TO CONTRACTORS

The surety keeps a bonded contractor's work program under surveillance to guard against the contractor overextending its total resources and thus subjecting the surety to potential financial losses. Should the contractor get into difficulty, the surety may be able to arrange for the loan of supervisory personnel, skilled technicians, or special equipment from other contractor clients of the surety. In addition, a surety sometimes provides or arranges for financial assistance to a contractor in trouble.

provide in-house technical assistance to a contractor. However, the agencies currently have no legal means, administrative machinery, or resources to provide financial aid to contractors in trouble.

As shown in the following examples, the surety companies can and do provide financial assistance to contractors.

Example 1

A contractor involved in a Federal dam project for the Corps of Engineers, Department of the Army, experienced a serious cash shortage that threatened its ability to continue operations. The surety elected to support the contractor and secured a $1 million line of credit for the contractor at a commercial bank. The surety guaranteed advances under the line of credit. As a result of the surety's aid, the contractor avoided default and completed the project.

Example 2

The contractor exhausted its capital at the time it was involved with nine bonded projects, including eight Federal jobs. The surety provided the contractor with enough capital to pay construction costs and to satisfy outstanding bonded job obligations. Surety payments on the Federal jobs totaled $138,500, plus legal and other expenses of over $5,000. The surety eventually was reimbursed.

It was evident from our study that the decision to provide financial aid to contractors was generally based strictly on sureties' concern for minimizing potential losses. If the surety determined that immediate financial aid would be less costly than the loss from default, the aid was provided. However, if the surety felt that it would be potentially less costly to take over the contract, the contractor was allowed to default.

DEFAULTS ON FEDERAL CONSTRUCTION

From the nine Federal agencies reviewed, we tried to obtain detailed data on the default history for a 10-year

period and the relationship of defaults to total construction activities. Only one of the nine agencies was able to provide complete information.

An analysis of the limited information available indicates that (1) most agencies experienced very few defaults and (2) the value of the defaulted contracts represented a very small portion of the total value of all construction contracts. For example, for the period 1963-72, AEC, NASA, and HEW were able to identify only five, two, and six defaults, respectively.

The Corps of Engineers was the only agency able to provide complete data comparing defaults to total construction activities. For the 10-year period, the Corps had 73 defaulted contracts having a total contract award value of about $30 million. During the period, the Corps awarded about 20,000 contracts valued at about $11.7 billion. The number of defaulted contracts represented less than one-half of 1 percent of total contract awards. On the basis of the total value of all contract awards, the value of the defaulted contracts was also less than one-half of 1 percent.

Generally, the cost of performance and payment bonds represents about one-half of 1 percent to three-quarters of 1 percent of the total contract price. Accordingly, it appears that sureties' losses on the Corps' defaulted contracts were considerably less than the bond premiums earned from such contracts. Surety figures show that, for all Federal contracts, the direct losses incurred averaged 51 percent for the period 1959-70--total premiums of about $241 million versus direct losses of about $123 million.

In comparing these figures to the total premiums paid on direct Federal construction (about $24 million annually), it appears that the Government could self-insure against losses from defaults if Federal construction agencies could keep losses from defaults, including the administrative cost of handling defaults, below $24 million annually. The agencies could not determine what their administrative costs would be if they had to assume the responsibility for handling defaults.

The above approach does not consider:

1. The costs related to the other services provided by sureties, particularly paying claims and providing financial aid to contractors.

2. What the default ratio would be if surety bonds were eliminated.

If bonds were eliminated, these two issues would become particularly important. Unless some substitute method was devised to handle claims and provide contractors with financial aid, defaults would increase.

Other factors affect the ratio of losses to premiums earned. When a default occurs, sureties try to minimize their losses through various legal sanctions against the defaulting contractor, such as attachment and subsequent liquidation of the contractor's equipment and personal assets. If the Government became a self-insurer, it would have to take similar actions or face the prospect of higher loss ratios.

Most agencies expressed satisfaction with sureties' efforts on defaulted contracts. Our review of defaulted contracts at both the Federal agencies and the surety companies generally supported the agencies' observations. Sureties were usually prompt in attempting to reach agreements with the agencies regarding arrangements for completing the projects. Generally the sureties (1) cooperated with the agencies in completing the projects and (2) honored the agencies' claims for reimbursement of additional contract costs incurred in completing the projects. As discussed in chapter 5, we believe the agencies, besides being reimbursed for increased contract costs, should also be reimbursed for the administrative costs incurred in handling defaults.

CONCLUSIONS

Because of the unavailability of cost data and the Government's inexperience in providing certain surety-type services, we could not quantitatively determine:

1. The value of the services provided by sureties particularly the value of handling claims of su contractors, suppliers, and laborers and providing financial aid to contractors in trouble.

2. Whether it would be economically feasible for Federal construction agencies to assume these services and have the Government become a self-insurer.

Therefore we do not recommend eliminating the curren bonding system. Factors arguing against the Government's becoming a self-insurer are its lack of legal means, admi: istrative machinery, and in-house expertise for handling claims and providing financial aid to contractors.

AGENCY COMMENTS AND OUR EVALUATION

The Federal construction agencies supported our conclusion that there was no basis for recommending elimination of the curr nt bonding system. For example, the Department of Defense (DOD) stated that it strongly supporte our "conclusion that the present basic system of performan and payment bonds in construction should be retained."

The Office of Management and Budget expressed the opinion that we might review the issues in greater detail. On the basis of factors cited in this chapter, however, we do not believe that additional review effort would produce enough meaningful data to make a definitive decision on the Government's becoming a self-insurer.

CHAPTER 6

SBA BOND GUARANTEE PROGRAM

As part of our study, we examined SBA's bond guarantee program. The program's basic objectives are to (1) provide bonds for small and minority contractors who cannot obtain bonds in the open market and (2) increase the viability of these contractors so they can make the transition ("graduate") to the regular bonding system. We believe that the program would be more effective if SBA developed formal criteria for graduating participating contractors and established a monitoring system to insure that sureties are complying with such criteria.

PROGRAM OPERATION

The bond guarantee program, established pursuant to Public Law 91-609 (15 U.S.C. 694a-b), allows SBA to guarantee, for a fee, any surety company against up to 90 percent of its losses resulting from a small contractor's breach of the terms of a bid, performance, or payment bond. To qualify, a contractor must be a small business with annual sales under $750,000 and be able to show that a surety bond is required and could not be obtained on reasonable terms and conditions without an SBA guarantee. The guarantee is limited to surety bonds on contracts up to $500,000.

SBA stated that, as of May 20, 1974, it had guaranteed bonds on 15,093 contracts having a total value of about $1 billion. As of that date, 99 sureties were participating in the program.

To obtain a bond, a contractor applies to a bond broker of its choice. The contractor furnished the broker with the necessary financial data, work history, and other information. If the broker decides that the contractor may be bondable, he refers the application to surety companies he represents until he finds a surety willing to bond the contractor.

A surety company which is interested in the contractor's application decides whether to (1) bond the contractor without an SBA guarantee, (2) bond with an SBA guarantee, or (3) not bond under any circumstances. If the surety determines an SBA guarantee is necessary, it sends a letter with supporting data to the appropriate SBA regional office

[illegible] SBA makes its own underwriting review and, if it is favorable, completes the guarantee agreement and returns it to the surety company.

When the bond is issued, the contractor pays SBA two-tenths of 1 percent ($2 per $1,000) of the contract's face value. In the case of partial bonds (less than 100-percent bonds), the contractor pays SBA either two-tenths of 1 percent of the contract's face value or 20 percent of the total premium charged by the surety, whichever is less. The contractor must also pay the surety the total bond premium, 10 percent of which the surety pays to SBA as its fee for the guarantee.

Claims and defaults

SBA officials stated that losses resulting from defaulted contracts were 1.24 percent of total completed contracts backed by guarantees.

Initially, reserves to cover potential claims resulting from payment defaults were about $400,000, or 1 percent of the $40 million in bonds outstanding. SBA subsequently raised reserves to about 2 percent because of an increase in the number of claims.

Defaults and claims against SBA bond-guaranteed contractors are handled by the sureties. SBA gives each surety written authorization to deal with such problems in a manner which is routine for the company and conducive to mitigating losses and insuring satisfactory completion of the contract.

Sharing ratios and premiums

The SBA program is often referred to as the "90-10 program" because of the method used to distribute risk exposure to premiums earned. SBA guarantees 90 percent of the risk

sureties participating in the program incur only a 10-percent risk for 90 percent of the bond premiums collected.

The authorizing legislation stated that SBA could guarantee up to 90 percent of the penal amount of the bond in return for a reasonable portion of the premiums collected from the contractors. The disparity in the relationship of risk to premiums resulted from the uncompromising position taken by the surety industry during negotiations. According to SBA officials, the surety industry dictated the terms under which it would participate in the program. One condition the industry insisted on was that SBA had to agree to accept 90 percent of any loss for no more than 10 percent of the premiums collected. SBA agreed, and the industry indicated a willingness to reassess the adequacy of SBA's 10-percent share after 2 years of experience.

In February 1974, SBA met with surety representatives to reassess the "90-10" ratio. No change resulted from the meeting.

SBA's apparent lack of forcefulness in dealing with the industry was explained as being the result of the industry's take it or leave it proposition for SBA. SBA officials made the following observations.

---If SBA had not been willing to accept 90 percent of the risk, the industry would not have been willing to participate in the program.

--The surety's premium on the average guaranteed bond is not large and has to be shared with SBA and the broker.

--The 10-percent risk the surety faces makes it more responsible than it would be if it bore no risk whatsoever.

Sureties are allowed to charge higher premium rates for guaranteed bonds. Normally, bonds cost contractors $10 per $1,000 for contracts up to $100,000. However, for bonds issued under the SBA program, sureties were allowed to charge a rate up to $20 per $1,000. In March 1973, the rate

was changed to $15 per $1,000 for the first $5,000 and $10 per $1,000 thereafter.

NEED FOR INCREASED SBA PARTICIPATION IN PROGRAM OPERATIONS

The need for increased SBA guidance and program management is apparent. Specifically, SBA should provide formal guidelines and improved procedures for graduating guaranteed contractors.

According to SBA, the program is too new to have an adequate basis for graduation procedures, and the program operates under the assumption that a "surety will make every effort to graduate a contractor."

Because SBA does not have formal graduation procedures or a monitoring system, it does not know (1) the number of graduated contractors or (2) the number of contractors still in the program that should have been graduated. Therefore, SBA has not been able to determine the extent to which the program was accomplishing its objective.

CONCLUSIONS

It is apparent to us that, unless SBA develops adequate procedures for graduating contractors, its ability to insure that the program is accomplishing its objectives will be impaired. Accordingly, we believe SBA should develop formal criteria for graduating participating contractors into the regular bonding system and establish a monitoring system to insure that sureties are complying with such criteria.

RECOMMENDATION

We recommend that the Administrator of SBA direct that formal criteria be developed for graduating participating contractors into the regular bonding system and a monitoring system be established to insure that sureties are complying with such criteria.

AGENCY COMMENTS AND OUR EVALUATION

The Administrator, SBA, disagreed with our findings, conclusions, and recommendation regarding the bond guarantee program. With respect to our recommendation, he stated that SBA has established criteria by which its field offices will question the sureties on why a particular contractor is remaining in the program and not being graduated. SBA thinks, however, that the forces at work in the marketplace will

vised.

After receiving its comments, we asked SBA to provide us with a copy of the established criteria. SBA officials stated that there was no written criteria, just an understanding among SBA's field offices to review a contractor's file when a surety applies for a guarantee.

The officials acknowledged that SBA has no systematic method for determining whether a contractor has, in fact, graduated. It should be recognized that "marketplace conditions" could produce results other than graduation, such as a contractor no longer being in business or maybe being involved in projects that do not require bonds.

We still believe the program would be more effective if our recommendation were implemented. Following are comments from those Federal construction agencies--GSA, Transportation (DOT), and NASA--that discussed the SBA section of the report.

GSA--"Since the recommendations directed primarily toward SBA would generate certain benefits for the procuring agencies participating in the small business programs, we also support those recommendations."

DOT--"We do not object to the recommendations concerning the Small Business Administration's involvement in the Surety Bond Guarantee Program."

NASA--"We believe the GAO findings to be accurate and their recommendations sound."

Our report was also reviewed by representatives from the Surety Association of Amer[illegible] the American Insurance Association, the Reinsurance Association of America, the National Association of Surety Bond Producers, and several surety companies. All the representatives stated that the SBA section of the report was an accurate description of the SBA program and how it is currently operating.

After carefully considering SBA's informative response, we still believe our report accurately reflects the current state of the bond guarantee program, a view supported by the Federal construction agencies and the surety industry. We believe that implementation of our recommendations will make the program more effective and its goals more readily attainable.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

To: House Labor and Commerce Committee

From: Walt Furnace, Chairman

Date: September 26, 1983

This interim the House Labor and Commerce Committee is specifically looking into the question of licensed and bonded contractors.

At the present time there are a multitude of contractors who are leading the public to believe that they are both licensed and bonded though neither is the case. Should these contractors produce inferior work, the consumer is often left with no recourse other than to repair the damage out of his own pocket.

Further, sometimes a licensed and bonded contractor will produce inferior work and the cost of his damage exceeds the bond posted. Again, this means that consumer often has no recourse but to pay for repairs out of his own pocket.

The intent of the hearings in Fairbanks, Ketchikan and Anchorage is to seek an answer to the following three questions:

1) Are there enough serious abuses of the law to suggest that the Legislature should demand stricter enforcement of the licensing and bonding sector?

2) Are there enough serious abuses to the consumer by licensed and bonded contractors to warrant the establishment of some testing and credentialling of those businesses who represent themselves to the public as licensed contractors?

3) Is the amount of bonding sufficient and, if not, is there another reasonable manner in which the consumer can be protected financially from inferior work by licensed contractors?

STATE OF ALASKA

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(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

To: All members of the House Labor and Commerce Committee

From: Representative Walt Furnace, Chairman

Date: September 21, 1983

RE: Licensed/Bonded Contractors

Enclosed please find a selection of materials you may find informative for the meetings on September 26 and October 3.

MEMORANDUM State of Alaska

TO: Connie Sipe
Chief, Consumer Protection
Department of Law-Anchorage

DATE: March 23, 1982

FILE NO:

TELEPHONE NO:

FROM: Deborah Feldman
Investigator
Consumer Protection-Anchorage

SUBJECT: Contractors

I examined approximately 97 consumer complaint files filed in the Anchorage Consumer Protection Office between January 1979 and February 1982 -- a little over 3 years worth of complaints. These contractor complaints do not involve any consumer complaints against plumbers, furnace repair people, or electricians. Also, complaints against developers, architects, designers, and real estate agents are not included, although in a number of cases consumers had home improvement or home construction related complaints against these kinds of professionals. A breakdown on the categories of complaints is as follows:

General Contractor/Home Builder	41
Landscape/Excavating	18
Home Improvement Installations (glass, fireplace, tile, flooring)	9
Insulation/Roofing	7
Drywall/Painting	6
Masons/Asphalting	4
Fencing Installation	4
Drilling	4
Carpenter	2
Other	1
Total	97

Below is a breakdown of contractor complaints by years:

1979	27
1980	32
1981	29
1982 (Jan/Feb)	8
Total	97

The figures available for 1982 reflect that 8 complaints have already been filed with the Consumer Protection Section. Projected over the course of the year the 1982 total could be 48 complaints, a 33% increase over the next highest year, 1980. This would seem to be a conservative projection, as there will be approximately 4,500 housing starts in Anchorage alone this year. With this increased building activity it is likely that there will be a substantial increase over the year.

A breakdown by area is as follows:

Anchorage	76
Outlying areas (Willow, Wasilla, Palmer)	8
Kenai area	8
Bush	4
Fairbanks	1
Total	97

The following is a list of dwelling unit starts in Anchorage for 1980 and 1981. Also listed is the projected number of starts for 1982.

Dwelling Unit Starts

1980	1,071
1981	2,601
1982 (projected)	4,000-4,500

The figures almost speak for themselves. The projected growth in dwelling unit starts for the Anchorage ara will be between 35% and 43%.

The impact of this increased activity upon the consumer is obvious. More contractors will be competing for this new business and our experience with the oil pipeline boom indicates that many of these new contractors will be "take the money and run" types.

Comments Regarding These Complaints:

Although it was difficult to do so, I attempted to evaluate the legitamacy of the consumer's complaint by reading through the entire file, including the business's response to the complaint. In approximately three cases out of the 97, consumers appeared to have perhaps been unreasonable in their complaints (e.g., demanding repairs past the warranty time, demanding changes in the contract after work had commenced). In one additional case, the business claimed that it sold the house as a private party and that our office had no jurisdiction over the repair complaint.

In approximately 90% of the remaining cases, the business either (a) did not respond to the consumer complaint; (b) had disappeared or absconded with money; (c) gave a partial correction or adjustment to the consumer; or (d) disputed the consumer's version of the facts. In these latter cases, our office usually ended up referring the consumer to a private attorney or small claims court because our office does not have the resources to assess in any depth evidence presented in an individual complaint. For example, businesses often disputed that there existed any corrective work for them to do or that the corrective work was so small in nature that it did not fall under any warranty or guaranty. Another problem is that verbal agreements were often made between the contractor and the consumer, eventually leading to many contract disputes over the terms of the agreement which could not be readily evaluated.

Because of the above-mentioned factors present in these disputes between consumers and contractors, our resolution rate on these disputes is very low -- approximately 10% consumers achieved a satisfactory settlement through our office. This is a much lower rate than our normal rate (40%) of resolution of consumer complaints through mediated settlement.

In addition to written complaints, our office receives a number of phone-in complaints against contractors. Our information officer takes these phone-in complaints but also generally refers consumers with contracting complaints to Ocupational Licensing and the Department of Labor. In many cases, the consumer calls us in the hopes that the Consumer

Protection Office can intervene legally on the consumer's behalf. Often when the consumer finds out this is not the case, he/she may file directly in court or go to Occupational Licensing or the Department of Labor without filing a written complaint with Consumer Protection. In fact, the more serious or legally urgent the contractor complaint, the more strongly we urge seeing a private attorney and then we often do not get a written consumer complint on those cases.

In reviewing our phone logs, our information officer estimates that at least 55-60 additional contractor complaints were received by the Consumer Protection Office in 1981. These complaints are not reflected in the previously discussed charts because written complaints were not formally processed in these phone-in cases. Total estimated contractor complaints (not including plumbers, electricians, etc.) for 1981 alone could be 87-92.

There is a high percentage of contracting businesses which shut down, enter bankruptcy, or simply disappear after a consumer complaint is filed, making any kind of resolution of a complaint pretty impossible.

Complaints About Quality of Contractor's Work
(1979-1982 sample from 97 total number of written complaints)

Major delays	12
*Deviation from Original Plan	6
*Extra Charge/Cost Overruns	5
*Defective Work/Major/ Structural	35
*Defective Work/Finish/ Cosmetic	22
*Defective Work/Code Violation	6
*Defective Work/Operational	11
*Incomplete Work/Major	9
*Incomplete Work/Finish/ Cosmetic	26
*Incomplete Work/Operational	4
*Clean-Up	4
Total	140

Note: Categories which reflect complaints of a more major or serious nature have an (*) asterisk. Total number of serious complaints from these categories is 82 or 59% of all 140 allegations. (The figure is conservative since the other categories also contain complaints which are more serious in nature but are not counted in the 59% figure as time has not permitted more detailed analysis to be made of these complaint categories.) Also, below are listed some other serious problems consumers encounted with contractors as far as method of doing business which are not accounted for in the 59% figure.

Misrepresentations Connected with Contractor Complaints
(1979-1982 from 97 total written complaints)

Misleading or False Advertising	20	(approximately)
Misrepresentation Qualifications, Licensing, etc.	9	
Promised Corrective Work Not Done	20	
Misrepresented Terms of Agreement	13	
Misrepresented Money Would Be Refunded	3	
Not properly licensed.	?	
Total	65	

Other Related Problems
(1979-1982 from 97 total written complaints)

Lien Threatened	2
Lien Filed (separate from above)	2
Verbal Abuse or Physical Threat by contractor	6
*Contractor Disappeared/ Went Out of Business	8
Damages Incurred by Faulty Work	5
*Contractor Absconded with funds	17
Warranty/Guaranty Not Honored	20
Total	58

* Figures available for 1981 only - 9 contractors unlicensed, 4 unknown, 16 licensed.

Note: In 25 of 97 complaints the contractor either absconded with money, disappeared, could not be contacted, went out of business or went bankrupt.

Comments

1. These charts represent an extremely conservative estimate of the kinds of complaints consumers have against contractors. In a number of cases I suspect that many additional misrepresentations were made to the consumer, but the consumer did not report these misrepresentations, (e.g. concerning warranty that repairs would be done, that the contractor was licensed and bonded.) Similarly, in many of the other categories such as "warranty," "clean-up," "damages," the consumer may not have reported these problems if he/she had a more pressing concern such as a major building defect.

2. In almost every instance, people who filed written complaints against contractors were not "nit-picking" about one or two minor items to be corrected under warranty, for example. The greatest number of complaints against contractors fell under the category of major defective and/or incomplete work. In addition, those consumers who had more minor, cosmetic or finish work to be done presented lists of four or more items for which they had been waiting a long time for correction by the contractor.

3. Definitions -- "Major" or "structural" defects are those defects which are substantial and may prevent normal use of the home.

"Cosmetic" or "finish" work defects include defects which are less substantial and which may not keep the homeowner from enjoying the normal use of the home. Items in this category include bubbling or warping of counters, defective painting or staining, cracked plaster, chipped walls, loose nails, and warped or damaged flooring.

"Operational" defects include defects in mechanical, electrical, or plumbing items. Most common examples in this category are defective or incomplete plumbing fixtures which cannot be used, defective fireplaces which cannot be used, and defective heating and/or cooling systems which cannot be used.

"Warranty" category is counted only when the consumer alleges a warranty obligation exists that is not met or where it is otherwise obvious from the nature of the complaint that a warranty obligation has not been met.

"Deviation from plans" primarily refers to instances where a general contractor alters construction from what was originally agreed to or from what was on the blueprint.

"Clean-Up" refers to cases where contractors have left a major mess for the consumer to pick up after.

General Patterns

1. The overwhelming majority of complaints are by condominium or homeowners against the general contractor/builder. Most complaints are from the Anchorage area (including Eagle River).

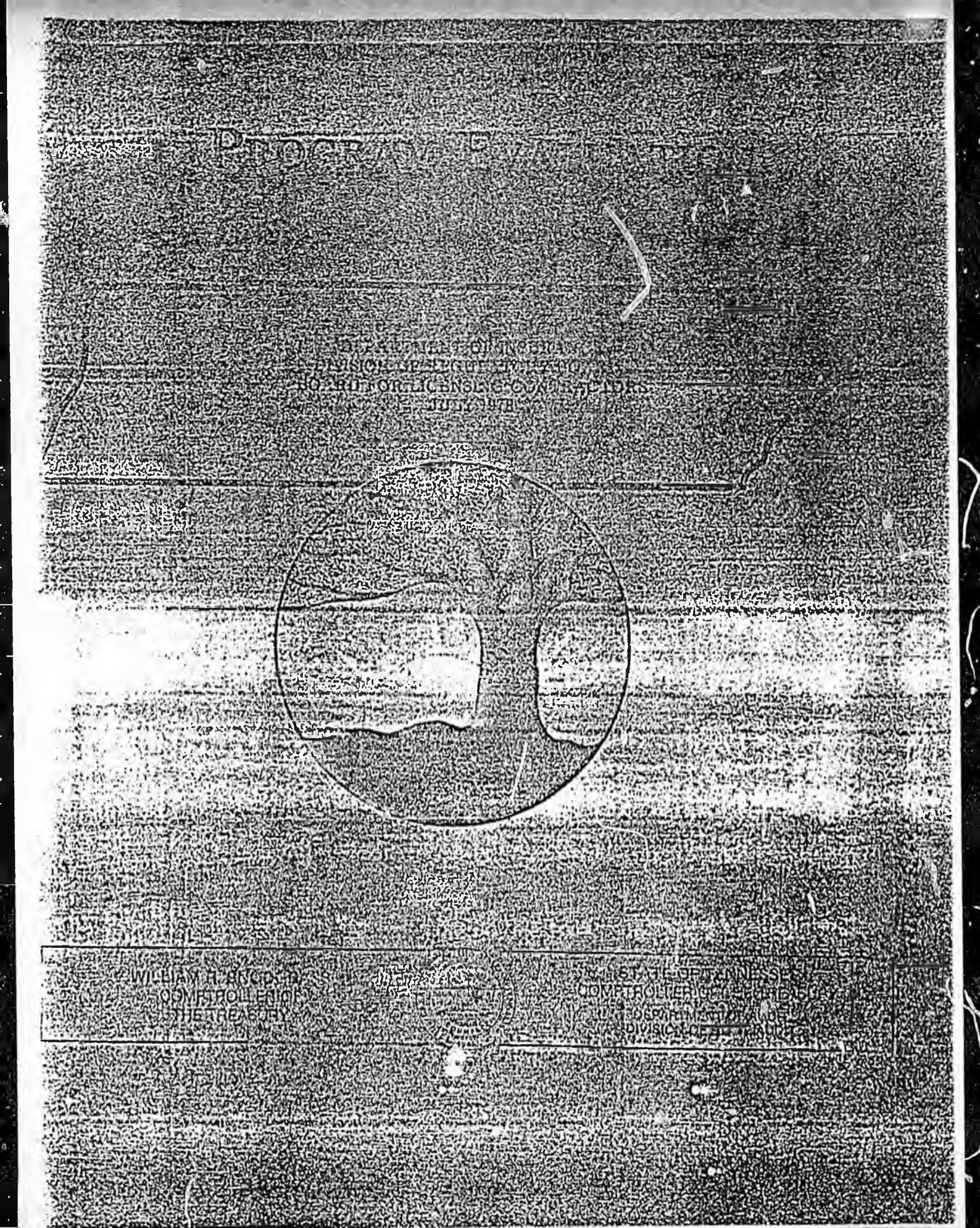
2. The greatest number of complaints involve allegations of major structural problems or defects such as structurally defective foundations, leaky roofs, improper roof or deck construction, missing structural support and improper grading or drainage leading to flooding.

3. The second greatest area of complaint involved incomplete work such as missing trim, unpainted surfaces, incomplete plumbing fixtures, missing windows, doors, screens, decorations, missing carpet and tiling. Our office also received a number of complaints concerning major unfinished work by contractors such as missing fixtures, unfinished lot grading, unfinished carpentry work.

4. Next category involved more minor, cosmetic, or visual defects such as blistered paint, cracked plaster, warped counters and floors, improper carpet installation, pitted or unlevel asphalt.

5. In every case involving general contractors, consumers attempted to have the contractor correct the problems complained about, but were unsuccessful in these efforrs. In

most cases, the consumer tried to work with the contractor for several months after "closing" a deal before filing a complaint with the Consumer Protection Office.



LIMITED PROGRAM EVALUATION
BOARD FOR LICENSING CONTRACTORS
JULY 1978

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE EVALUATION

This limited program evaluation of the Board for Licensing Contractors was conducted in accordance with the Tennessee Governmental Entity Review Law, Tennessee Code Annotated, Title 4, Section 29. The evaluation is intended to aid the legislative evaluation committee in determining whether the Board for Licensing Contractors should be abolished, continued, or restructured.

OBJECTIVES OF THE EVALUATION

The primary objective of the limited program evaluation was to address the criteria for review outlined in TCA 4-2911 and 4-2912. The secondary objective was to determine the issues involved in licensing contractors. An attempt was made to gather all pertinent information relating to these issues, and any other information which would aid the legislative evaluation committee.

SCOPE AND METHODOLOGY

The scope of the evaluation was the activities of the Board for Licensing Contractors for the last three years—1975, 1976, and 1977. This report is based on the following:

- Examination of minutes, correspondence, and other records of the board;
- Questionnaires completed by the board and its executive director;
- Intereviews with board members, staff, and other state and local officials;
- Interviews with licensing and consumer officials of the southeastern states;
- Correspondence with other states and national organizations;

- Examination of resource materials and publications concerning contract construction; and

- Observation of board meetings.

HISTORY AND BACKGROUND

The first legislation regulating the construction industry in Tennessee was passed in 1931. Under the first law only general contractors were licensed. The original law defined a general contractor as any person who completed or improved a structure where the cost exceeded $10,000.

The original law was repealed in 1945. The 1945 law included provisions for the licensure of subcontractors who contracted work in excess of $10,000. In addition this statute fixed standards of qualification and eligibility, provided for revocation of licenses for cause, and provided penalties for other violations.

In 1965 an amendment was passed that exempted residential contractors in counties with populations less than 60,000. According to the 1970 census only ten counties in Tennessee have populations over 60,000. As a result of this amendment, 46 percent of the population in Tennessee is not affected by the residential licensing requirement. If there is a public purpose involved in licensing homebuilders in urban areas, there should also be a public purpose in licensing rural homebuilders. The feeling of the current board is that the law should apply equally to both rural and urban homebuilders.

In 1972 the contractors act was amended again. The major alteration was to clarify that only subcontractors engaged in performing plumbing, electrical, heating, ventilating, or air conditioning work were required to be licensed. The 1972 amendments also raised the minimum contract amount which necessitated the licensing of contractors and subcontractors from $10,000 to $20,000.

In 1976 a new contractors licensing act was passed. The act included the update and revision of obsolete and ambiguous sections of the previous law. It also provided for certain exemptions and bidding provisions (see Summary of the Current Law, page 8). In 1977 the minimum contract amount requiring a contractor and subcontractor license was increased from $20,000 to $50,000.

SUMMARY OF THE CURRENT LAW

1. The Tennessee Board for Licensing Contractors is created by TCA 62-604, and is charged with the administration of that act.

2. This act applies to: any person, firm, or corporation engaged in contracting in this state where the cost of the completed structure or improvement, or of different structures and improvements under the same contract, exceeds $50,000. The act applies to subcontractors who engage in electrical, plumbing, heating or ventilating and air conditioning classifications or contracting where the amount of the subcontract is equal to or greater than $50,000.

3. This act does not apply to: any person, firm, or corporation in a county with under 60,000 population according to the 1970 census, who engages in his county of residence in the construction of residential buildings; any person, firm, or church that owns property and constructs thereon single residences, farm buildings or other buildings for individual use, not for resale, lease, rent or similar purpose.

4. An applicant for a first-time license is charged a fee of $75, and a renewal fee of $35 is charged each year after that.

5. Each approved applicant is issued a license to construct in certain classifications, i.e., industrial, commercial, residential, and a single contract limit above which he may not bid, e.g., $100,000, $1,000,000, $2,000,000.

6. Every contract awarded for more than $50,000 requires that each bidder represent his license number, classification, and expiration date on the outside of his bid. Penalties are provided for violation of this provision.

The board is authorized to:

1. Administer the contractors licensing act, rules and regulations;

2. Make bylaws, rules, and regulations;

3. Determine the qualifications of candidates (experience, education, finances, and equipment);

4. Conduct written or oral examinations;

5. Determine classifications and bid levels;

6. Revoke or suspend (after a hearing) any license or renewal granted;

7. Initiate inquiries and investigations;

8. Prosecute violators subject to the approval of the Commissioner of Insurance.

STATE COMPARISONS

As shown in Exhibit 1 on page 10, there are 28 states that in some manner license or register contractors or subcontractors. Twenty of these states license contractors in a manner similar to Tennessee. Four states license only some specialty contractors—for example, electrical contractors—two states license only nonresident contractors, and Delaware licenses contractors for revenue purposes only. Of the eight states bordering Tennessee, all license contractors except Kentucky and Georgia.

Eleven states which license contractors in some manner require surety or performance bonds from non-resident, general, or public works contractors. Different bond payments are required in order to assure that nonresident contractors pay taxes, and that general or public works contractors complete their awarded projects. The Tennessee contractors act does not require any surety or performance bonds.

There is great variability in the state laws regulating contractors. Before issuing a license most states require the assessment of an applicant's financial statement, bank and material supplier references, construction experience and equipment. Several states require contractors to report any personal or corporate bankruptcies to the board; however, the Tennessee law does not include such a provision.

ORGANIZATION AND STAFFING

The Board for Licensing Contractors consists of seven licensed contractors appointed by the governor for seven-year terms. The board is composed of one subcontractor, one homebuilder, and five other licensed contractors who have had at least ten years of construction experience.

The administrative staff to the board consists of one executive director, one executive aide, three clerk II's, one typist, and one investigator (see Exhibit 2, page 11 for organization chart). The major functions of the administrative staff pertain

EXHIBIT 1

States Licensing General Contractors

States	License Contractors	License Subcontractor	Dollar Limit	Bond Requirements
1. Alabama	Yes	No	$20,000	No
2. Alaska	Yes	No	1,000	$2,000 Surety
3. Arizona	Yes	No	NA	1,000 to 15,000
4. Arkansas	Yes	Yes	20,000	No
5. California	Yes	Yes	100	2,500
6. Florida	Yes	No	NA	No
7. Hawaii	Yes	No	NA	No
8. Louisiana	Yes	No	30,000	bond(1)
9. Maryland	Yes	No	5,000	amount-NA
10. Michigan	Yes	No	200	No
11. Mississippi	Yes	Yes	10,000	No
12. Montana	Yes	No	15,000	No
13. Nevada	Yes	Yes	NA	amount-NA
14. New Mexico	Yes	No	NA	No
15. North Carolina	Yes	No	30,000	No
16. North Dakota	Yes	Yes	500	No
17. South Carolina	Yes	No	30,000	No
18. Tennessee	Yes	Yes(2)	50,000	No
19. Utah	Yes	Yes	NA	bond(3)
20. Virginia	Yes	Yes	30,000	No
21. Washington	Yes	No	250	1,000 to 2,000

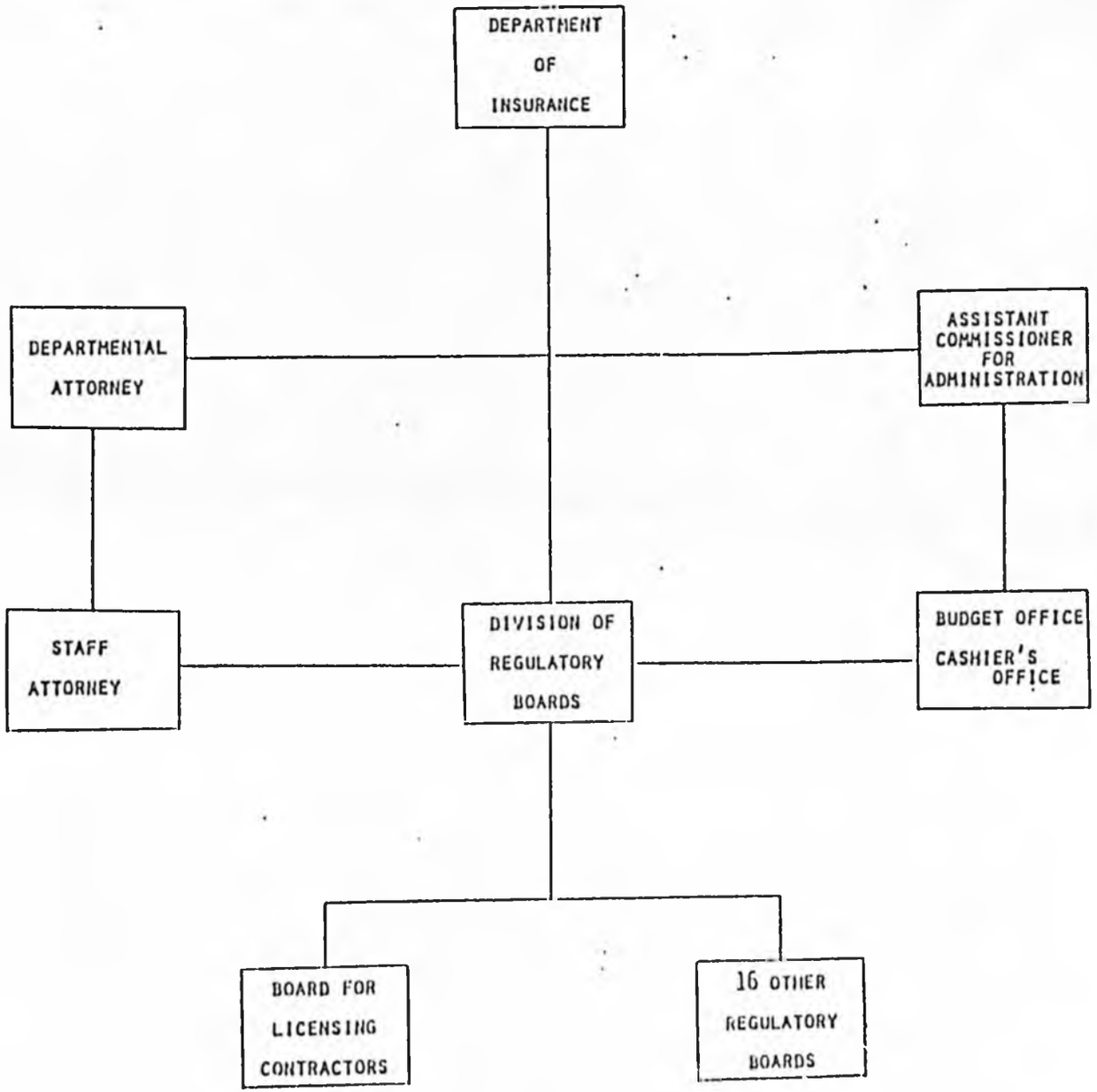
States Licensing Specialty Contractors

States	Type of License	Bonding Requirements
22. Idaho	Public Works Contractors	No
23. New Jersey	Electrical Contractors	No
24. Oregon	Residential Building Contractors	($3,000 bond require
25. Wyoming	Electrical Contractors	No
26. Delaware	Registers Contractors for revenue only	No
27. Kansas	Nonresident Contractors	$1,000 bond requirem
28. Nebraska	Nonresident Contractors	$1,000 bond requirem

(1) Surety Bonds required for taxes on nonresident contractors.
(2) License only subcontractors who perform heating and ventilating, air conditioning, electrical, and plumbing work where the contract cost exceeds $50,000.
(3) 50 percent performance bond for public works contract.

amount NA-dollar amount not available.

EXHIBIT 2. ORGANIZATION CHART: BOARD FOR LICENSING CONTRACTORS



to licensing and renewal activities. The staff is responsible for compiling the roster, renewing licenses, issuing original licenses, preparing for board meetings, and all related notification and clerical work.

The board has proposed in its fiscal year 1978-79 budget to computerize the licensing process at a cost of $2,894. The computer could send out renewal notices and type renewal licenses, post renewal payments, notify delinquent contractors, keep track of expired licenses, type the annual roster, type and address all mailing labels and keep a record of all licensing information such as bid limits and classifications. These are essentially the same functions a Clerk II now performs. Generally, a computerized system requires careful planning for successful implementation. A computerized system is usually added when it results in savings in time and personnel costs.

Recently many states have included public members on regulatory boards. This trend has resulted from criticism that licensing boards are composed exclusively of representatives of the regulated industry or profession. The Tennessee Board for Licensing Contractors does not have a public member.

The board is required by law to meet six times per year (in January, March, May, July, September, and November) for interviewing applicants and evaluating applications and extensions of bid limits. Each session lasts two to three days and board members are compensated for travel and boarding expenses but receive no per diem. Members of all other regulatory boards in the Department of Insurance receive compensation (salary or per diem) and travel and boarding expense. In all other southeastern states that license contractors, board members receive per diem payments.

LICENSING ACTIVITIES

1. Licensing Procedures

According to the contractors' rules and regulations 0680-1-.01, an applicant desiring to be licensed must have reference inquiries from: (1) an architect or engineer; (2) a bank; (3) a material or supplies dealer; and, (4) another contractor. The candidate must also complete a personal questionnaire covering his business finances, equipment and experience. For bid limits under $500,000 the financial statement in the questionnaire may be prepared by the applicant and notarized; if not prepared by the applicant it must be signed by a certified public accountant (CPA), a public accountant (PA), or a bank officer. For bid limits over $500,000 the financial statement must be prepared by a CPA, PA, or bank officer. The financial statement required of the applicant is a balance sheet, which is not required to be audited, and which may or may not reflect an accurate picture of his financial situation. The board has the authority to require an audited financial statement before a license is issued; however, they have not utilized this authority.

After all reference and questionnaire forms have been properly completed the applicant is scheduled for a hearing with the board. During the hearing, or interview, the board divides into groups to question the applicant in order to insure that he has proper experience, finances, and equipment. If the applicant's finances are on the "light side" as determined by the board, the board will require the applicant and/or partners to indemnify the company. Indemnification is a procedure which requires that applicants send in current personal financial statements and agree to stand personally liable for their company's actions. Subsequent to the interview the board determines the classification and bid limit that is warranted by the applicant's finances,

experience, and equipment. For example, an applicant might be granted a license to engage in the classifications of residential and commercial building with a per contract bid limit of $200,000. This does not restrict the licensee from taking on any number of jobs at this bid limit. For example, a contractor with a $100,000 bid limit could have ten or fifty jobs for $100,000 each underway at any one time. Therefore, the bid limit in itself is not an effective method of insuring financial responsibility.

In the first year of the board's operations, 177 general contractors were licensed. As of 1977 over 6,511 contractors and subcontractors were licensed by the board. According to the board, from 1974 to June 1977, 33 applicants, or 1.45 percent of those who applied, were denied licenses.

Reasons for Application Denials

A.	Insufficient Working Capital	21
B.	Lack of Experience	3
C.	Bad Recommendations	5
D.	Lack of Required Information Submitted	3
E.	Information Submitted Falsified	1

2. Classification

There are approximately 200 different classifications of construction work in Tennessee. There is no easy way to get an accurate total number of classifications, due to the lack of a standardized or uniform classification system. The effect of this is that it is not clear what types of construction activities the board is authorizing when it issues a license. This is especially true in specialized fields of contracting such as utility construction. The board has realized these difficulties and has been working on a new classification system which should be adopted sometime in the spring of 1978.

The idea behind classifying contractors is to make sure that contractors engage in only the categories of work for which they are qualified by experience and expertise. Although currently no guidelines exist for determining whether or not a contractor is qualified in a certain classification and there are difficulties in the standardization of categories, classifying contractors is still one of the most effective means available to the board to assure quality construction. It is especially important in the more technical areas of construction which demand more expertise—for example, high rise buildings or sewage treatment plants.

3. Criteria for Licensing

As previously mentioned, the factors the board considers when issuing a license are the applicant's experience, equipment, references, and financial situation. The principal determinant appears to be the applicant's financial situation and the second most important is evidently experience. The applicant's references are not verified, and it appears to be sufficient to have access to the right type of equipment to be licensed.

Neither the contractors law nor the rules and regulations states any criteria to guide the board in its decisions. The rules and regulations 0680-0-.01 state "Sufficient finances, equipment, and experience must be shown to enable the contractor to do the work applied for, in the discretion of the Board" (emphasis added). How the board arrives at the classifications and bid limits that are granted is unclear. For example, there are no established criteria regarding the experience requirements or the examination.

Five of the eight southeastern states that license contractors require applicants to pass written examinations before licensure. The written examinations cover the applicant's general knowledge in the classification of work

applied for, general knowledge of construction methods, safety, health and lien laws of each states. The southeastern states that require examinations are shown below:

Southeastern States		Examinations
1.	Virginia	written*
2.	Florida	written
3.	Louisiana	written
4.	North Carolina	written
5.	South Carolina	written
6.	Tennessee	oral or written
7.	Alabama	oral or written
8.	Mississippi	oral or written

*written exam required for plumbers and electricians

Currently, the Tennessee Board for Licensing Contractors gives an interview or oral exam. The board prefers an interview over a written test for the following reasons:

1. Knowledge of the contractor concerning experience, equipment, and specialties is examined through the interview.

2. Some contractors cannot pass a written exam but can perform quality construction work.

3. Compiling a fair test on methods, specialties, etc., would be difficult.

4. An exam on safety and lien laws would be unfair because they are constantly changing.

5. Some construction companies or corporations are highly specialized and rely on several partners' expertise to run their companies. Therefore, it would be difficult to test only one partner, and unfair to test all.

The arguments for a supplemental written exam are:

1. More objectivity is instilled in the board's decision-making.

2. Greater uniformity in the granting of licenses is assured.

3. Increased assurance is obtained that contractors are familiar with state health, safety, and lien laws.

Tennessee does not have any stated criteria for determining bid levels. The board has followed an unofficial policy of issuing a bid limit of 10 times the candidate's quick assets.[1] However, the board frequently deviates from this policy. In a random sample of 110 renewal financial statements, original licenses, and extensions, 31.8 percent of the bid levels were over 10 times the applicant's quick assets, and 17.2 percent had negative net working capital.

Other states have established minimum criteria that candidates must meet to be licensed at a certain bid level. For example, in North Carolina:

> Total current assets of at least $7,500 in excess of total current liabilities are required for a Limited License. Total current assets of at least $35,000 in excess of current liabilities are required for an Intermediate License. Total current assets of at least $65,000 in excess of total current liabilities are required for an Unlimited License.[2]

Written minimum criteria give notice to the applicant of what is required for a bid limit, allow for greater uniformity between bid levels, and help to assure continuity of action when the composition of the board changes. For example, a minimum standard for a bid limit of $50,000 might be one year of experience in the type of construction classification sought, and a net working capital of $5,000.

Several members of the board expressed the view that applicants' experience and expertise are adequately checked through the interview. However, observation of the interviews revealed them to be quite brief—five to ten minutes long—and emphasizing the financial status of the applicant.

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[1] Quick assets, or net quick, is (current assets-inventory) - current liabilities.

[2] Correspondence with C. S. Scatton, Assistant to Secretary-Treasurer, North Carolina Licensing Board for Contractors, January 11, 1978.

Renewals

Licensed contractors are required by law to renew their licenses annually and pay a renewal fee of $35. Before 1972, contractors were required to submit renewal forms prior to December 31 of each year. Contractors licensed after 1972 are required to send in renewals during the month of original licensure. Although renewals were staggered by this change, approximately 30 percent (or 2,000) of the renewals still come in during November and December. As a result of this peak workload, the activity of the administrative staff increases for two months, and decreases in other months. A possible solution is to stagger renewal dates so the workload will be equalized throughout the year.

Beginning in November 1976, contractors were required to send in current financial statements in order to renew their licenses. The rationale for this requirement is that the financial status of a contractor can change drastically from one year to the next. The board is currently in favor of lowering the bid limits of contractors with financial problems, although they have not lowered bid limits in the past. They have not set up any criteria to aid in making decisions on lowering bid limits, and they emphasize that limits should be lowered only when there is a clear need, not just because a contractor has a bad year.

Although the procedure requiring financial statements is commendable, the board does not require the financial statements to be audited. Assets could easily be overstated, liabilities understated, or the statements otherwise prepared in a misleading manner. Requiring that all financial statements be audited every year would probably impose an unjustifiable burden on contractors. However, unless the statements are audited, the board has no assurance of their reliability except for the contractor's integrity. Many

contractors already submit audited statements. The board could obtain assurance of the validity of financial statements and otherwise ease the burden on contractors by periodically requiring that statements be audited.

The Board for Licensing Contractors has not reviewed any of the renewal financial statements submitted since they were first required in 1976. The board has an informal agreement with the Comptroller of the Treasury, Division of State Audit to review the financial statements of contractors. The state auditors calculate net worth and net working capital for each contractor, review the financial statements, and "red flag" those with problems for the board's attention. During calendar year 1977 over $20,000 was charged for these services; however, the results of the work have not been utilized. According to the executive director of the board, the renewal financial statements have not been utilized because of a shortage of personnel in the office of the board and a failure of State Audit to return the financial statements in a timely manner. The statements were not returned in a timely manner because of the lack of emphasis put on them by the board. The result has been that the statements have been filed away without the board's consideration, in effect wasting the $20,000 paid to the Division of State Audit to review them. Another result has been the approval of renewals without reviewing the financial statements, thereby granting license renewals to contractors whose financial positions may have changed. In these cases, if the financial statements had been examined, the board might have required further evidence of financial stability or lowered the license limits of some contractors.

A further difficulty with the current renewal procedure is that financial statements have been taken from the office of the board for review by State Audit, sometimes for extended periods of time. According to the executive

director of the board, it is often necessary to refer to those files which are removed from the office. The board has requested an Auditor III position for the review of financial statements in their office. This position was approved in the fiscal year 1978-79 budget. The auditor should save both money and time in reviewing the financial statements. However, to perform his or her job adequately the workload would have to be rearranged so that a manageable number of renewals were due each month.

ENFORCEMENT

The Board for Licensing Contractors only investigates complaints about unlicensed contractors, licensed contractors bidding on contracts over their bid limit, or contractors bidding in areas of construction for which they are not licensed. Most of these investigations stem from written complaints, telephone complaints, and Dodge Reports. Dodge Reports is a periodical which publishes construction projects up for bid, the contractors who bid on the projects, the bid prices, and the contractors who are awarded the projects. The board's investigator examines these reports to assure that contractors are properly licensed, classified, and within their proper bid levels. The emphasis of the investigative work is not on the quality of contractors' work.

In addition to investigating licensing violations, the investigator has attempted to inform municipal building and housing inspectors as to which contractors are required to be licensed by the state. According to the investigator, many licensing violations could be resolved by local building inspectors. TCA 62-621 states in part: "No official of the State, or any political subdivision thereof, shall issue a permit or contract work order to any applicant therefor, to do contract work, unless such applicant at the time holds a license as a contractor under the provisions of this chapter..." According to the board, cooperation by the building inspectors has been weak in the areas of issuing building permits to contractors who are not properly

licensed, and in the referral to the board of complaints about the quality of contractors' work. Improved cooperation and coordination of efforts between the board and the building inspectors could expedite the enforcement of the law.

TCA 62-617 stipulates that it is the duty of the board before granting a renewal to gather or receive satisfactory evidence that a contractor has paid all state, municipal and county taxes. The board presently requires a notarized statement from the contractor stating that all taxes have been paid; however, not all contractors have submitted these statements. The board has not verified the statements that were submitted or followed up on those that were not.

RATIONALE FOR LICENSURE

The construction industry's main characteristics are its low profit margin, competitive bidding, and its reaction to the trends in the national economy. All of these characteristics promote a high failure rate. It is theorized that the licensing of contractors protects the public welfare by qualifying applicants so they can better react to the economy and thus maintain financial responsibility. It is also postulated that the qualification of contractors promotes better quality work, and that the Board for Licensing Contractors serves as a forum for public complaints. Theoretically, the classification of contractors protects the public by assuring that the contractor possesses the minimum level of financial means, experience, and expertise to engage in the specific area of construction for which a license is sought.

How do these theories hold up in practice? First, the Board for Licensing Contractors does not effectively assure financial responsibility. The bid limits established by the board are for per contract bids, and do not prevent a contractor from having ten or a hundred projects of that size in progress at one time. Also the procedure for arriving at those bid limits is questionable; it is not based upon any stated criteria and can be circumvented in several ways. Renewal financial statements have not been utilized by the board; consequently, contractors who might once have had sound financial positions could now have limits greater than their resources justify.

Second, the Board for Licensing Contractors presently does not assure the competence of contractors. The references contractors submit are not verified, the interviews are quite brief, and there are no minimum criteria established for either experience or financial responsibility. Further, although the board inspector is vigorous in seeking out contractors who are not licensed, in the past the board has not actively reviewed complaints regarding the quality of contractors' work.

Although the Board for Licensing Contractors is a group of dedicated individuals who have tried to protect the public as well as possible within the framework of the current law, the net effect of the operations of the board has not been the protection of the public. On the other hand, the public has not been adversely affected by the licensing of contractors. In essence the gains to the public from licensing have not been commensurate with the burden on contractors of complying with another set of government regulations. It is not clear what the effects of terminating the board would be; however, 22 states in no way license contractors.

ALASKA JOURNAL OF COMMERCE & PACIFIC RIM REPORTER

Crackdown sought on no-license contractors

By PAUL LAIRD
AJC Editor

Earl Carlyle is a painting contractor who's mad as hell and isn't going to take any more.

A licensed painting contractor who's mad as hell nd isn't going to take any more.

The owner of Earl's Custom Home Painting in Anchorage, this uncaped crusader is conducting a one-man campaign to mobilize licensed specialty contractors throughout Alaska and force the state to crack down on unlicensed contractors in all trades.

"I don't know about doing research," he said. "I do know about raising a lot of hell. I'm tired of living in a trailer and not being able to prosper even after seven years in business."

What he lacks in research expertise he compensates for in ability to match names in a state directory of licensed contractors against names of contractors listed in the Yellow Pages of the Greater Anchorage telephone directory.

State law prohibits unlicensed contractors from advertising. Nonetheless, Carlyle says he's found nearly 500 contractors without licenses advertised in the phone book.

State Rep. Walt Furnace, R-Anchorage and chairman of the House Labor & Commerce Committee, said many contractors don't bother to secure state licenses because the process is time-consuming.

"The process isn't cumbersome, but it is time-consuming," he said. "We all have a thing about filling out forms."

While requirements for contractors' licenses aren't that stringent, they do require somewhat of a commitment from the applicants. To secure licenses, contractors must have bonding, insurance and workers' compensation programs.

Carlyle said that by avoiding those requirements, unlicensed contractors are able to underprice those with licenses, and they also sidestep accountability for their work.

He said his investigation of the problem through classified advertising in daily newspapers and bidding forms published by general contractors for their projects leads him to believe the 500 unlicensed contractors in the Yellow Pages are only the tip of the iceberg.

During the suimmer, there would be as many as 2,000 unlicensed contractors operating in the Municipality of Anchorage, he said.

Furnace said most unlicensed contractors in the Anchorage area seem to be subcontractors, It's licensed companies operating in a subcontractor capacity that seem to be injured most.

Carlyle said some licensed contractors in Alaska have been forced out of business by price undercutting from unlicensed competition, both from within Alaska and Outside. Others have been forced to live indefinitely from one job to the next.

"Fly by nighters" who "guarantee their work right up to the time when the plane leaves" cost his business about $500,000 in jobs during his first five years of painting contracting, he said. Now he's beginning to live off referrals.

"These fly by nighters bring their out-of-state prices with them, and a licensed contractor can't compete," he said. "They don't keep books, they don't pay taxes and they don't incur the expenses of doing business here during the winter.

"They just come in the spring and split in the fall when it gets cold. They don't have to eat their mistakes; the consumer does."

Earlier this year he engineered a write-in campaign of more than 1,000 of the state's specialty contractors to the governor, key legislators and other state officials. Goal of the campaign was to build awareness of the problem and to prompt stricter enforcement of state law barring unlicensed contractors from working in Alaska.

One legislator reported receiving more than 1,000 letters from specialty contractors throughout Alaska.

"That must mean there are 1,000 specialty contractors who are as mad as I am," Carlyle said. "I think we're starting to get some attention now."

Although the Anchorage painting contractor said he's contemplating another mailing blitz, the first one apparently found its mark.

Furnace said his committee is studying the problems of local hire and unlicensed contractors before the next legislative session begins in January, and public hearings will be scheduled for Anchorage, Fairbanks, Ketchikan or Juneau and possibly Bethel or Kotzebue sometime this month.

"At this point we don't know what the overall effect of unlicensed contractors operating in the state is, and we don't know how severe the income loss is to licensed contractors," Furnace said. "That's what we hope to determine from testimony at these hearings."

Carlyle blames the unlicensed contractor problem on spotty enforcement by the state, and Furnace agrees. The Anchorage legislator said the Department of Commerce & Economic Development division responsible for enforcement—the Division of Occupational Licensing—has been stymied by manpower shortages.

There are too few people responsible for keeping track of too many things in the division," Furnace said. He added he believes the problem is not a lack of money in the department's budget, but rather questionable priorities of how the money is spent.

"There's never been a shortage of money (in the department)," he said. "The shortages in enforcement manpower have been the result of the way the money is allocated."

A number of approaches to the problem are being considered, and notification of this month's hearings will be mailed to nearly 2,000 specialty contractors statewide to generate responses to existing proposals and other ideas.

The Anchorage painting contractor said he expects widespread support for the move to push for stricter enforcement, but he also anticipates resistance from some general contractors who capitalize on the availability of cheaper unlicensed subcontractors.

He said he's encountered a handful of subcontractors afraid to become active in the involvement for fear general contractors will refuse them work.

Established contractors' organizations won't resist the move, he said, but some individual general contractors who use unlicensed subcontractors will lobby against it.

"We're going to need strong organization before the legislative session starts if we want to accomplish anything," he said.

Though shoddy workmanship and lack of accountability are major problems with unlicensed contractors, Carlyle said the state should not instate written examinations to assure competency.

"Some real artists and craftsmen couldn't pass a written test, but they could certainly pass a test on the job," he said.

Carlyle received an assurance from a special assistant to Gov. Bill Sheffield late in the spring that the Division of Occupational Licensing has been working with the Department of Law to develop a citation program to enforce regulations restricting unlicensed contractors.

The special assistant wrote Carlyle that some names he supplied to the division indeed are practicing without licenses, and those violators were sent warning letters.

"The list of names will be monitored for compliance and are potentially the first to be cited when the program begins if they are not licensed," the special assistant wrote.

Furnace said he believes many of the violators simply don't know they're not complying with state regulations, and he hopes to avoid an enforcement approach that will be punitive.

"Some contractors think all they need is a business license," he said. "It's one of the problems of the easy entrance and easy exit in business in Alaska."

He added he hopes the problem can be addressed at least partially without adding to state statutes.

"The main thing is that we have to prevent unlicensed people from posing as experts by advertising," he said.

A possible solution, the Anchorage legislator said, is soliciting voluntary cooperation from newspapers of general circulation and from the people who compile the Yellow Pages.

By screening unlicensed contractors from advertising, those sources could prevent unlicensed contractors from posing as experts, Furnace said. One Anchorage daily already operates under that policy, he added, but the other doesn't

"We'd like not to have to put that kind of thing into statute form, but we do need the help of the private sector in attacking the problem," Furnace said.

He added he doesn't believe the licensing process on the books now is in need of revamping.

An aide to Furnace said the following list of solutions is being studied, but some are believed unworkable. The legislator's office is soliciting reactions to and suggestions about these proposals:

- Require all contractors to include contracting license numbers in all advertising.
- Require contractors to place signs on both sides of their vehicles stating company names and contracting license numbers.
- Increase bonds for specialty contractors to $5,000 and for general contractors to $15,000.
- Give enforcement inspectors authority to check identification and issue citations.
- Establish a state division for policing contracting laws.
- Mandate that enforcement officers to police newspapers, Yellow Pages, television and radio for violators.
- Adopt legislation requiring telephone utilities to disconnect service for unlicensed contractors.
- Impose stiffer penalties for violators.
- Prohibit state agencies from contracting with unlicensed contractors and licensed contractors who subcontract to unlicensed subcontractors. Prohibit projects using unlicensed contractors or subcontractors from taking advantage of state financing or refinancing for one year.
- Have a computerized list of contractors available on demand that would include the kind of contractor, license number, company name and address.

Proposals for ensuring compliance with local hire laws include requiring the submission and monitoring of a statement of the percent of work force to be hired locally when state funds are involved, requiring quarterly filings of compliance statements and the use of spot audits and penalties.

TRLabor

HB 610

Amendments Proposed:

1. Delete all reference to a board.
2. The below amendments if the bill is passed.

Page 1 - Delete reference to a Board of Builders.

Line 11 - Delete
Lines 18 to 20 - Delete.

Page 3, line 13, section 8 - Delete.

Insert between lines 18 and 19, page 3:

*Section AS 08.18.011 is amended to read:

Sec. 08.18.011. REGISTRATION REQUIRED. (a) It is unlawful for a person to submit a bid or work as a contractor until that person has been issued a certificate of registration by the Department of Commerce and Economic Development. A bid submitted for work as a contractor by a person or firm not registered under this chapter prior to the bid is invalid and shall be rejected.

(b) A bid submitted for contracts involving electrical work by a registered contractor who is not a licensed electrical administrator, or does not have in his employ, an electrical administrator qualified under AS 08.40.090 is invalid and shall be rejected. A registered electrical contractor who has been retained must qualify under AS 08.40.090.

(c) A general or specialty contractor registered under this chapter, prior to bidding on a contract involving electrical work, must

(1) be an owner licensed as an electrical administrator and licensed to perform electrical work in the category to be performed under the contract on which the contractor is bidding, or;

(2) have in his employ, prior to bidding, a person licensed as an electrical administrator in the category of the work to be performed under the contract on which the contractor is bidding.

Line 23 - Delete "By the Board".

*Sec. 2. AS 08.18.026 is amended to read:

Sec. 08.18.026. ELECTRICAL CONTRACTORS. (a) The department may not issue a certificate of registration as an electrical contractor to an applicant unless the applicant is, or employs, a person currently licensed as an electrical administrator under AS 08.40.

(b) Each applicant for an electrical contractor's certificate of registration may employ more than one electrical administrator.

(c) If the relationship of the [ONLY] electrical administrator with a registered electrical contractor is terminated, the contractor must notify the department within seven days following the termination. Registration is void 30 days after termination [THE NEXT REGULARLY SCHEDULED EXAMINATION] unless the electrical contractor has hired a licensed electrical administrator in the interim.

Insert after line 20, page 4:

*Sec. 3. AS 08.18.121 is amended to read:

Sec. 08.18.121. SUSPENSION AND REVOCATION OF REGISTRATION. (a) If the insurance required in AS 08.18.101 ceases to be in effect, the registration of the contractor shall be suspended until the insurance has been reinstated.

(b) If a final judgment impairs the liability of the surety upon the bond or depletes the cash deposit so that there is not in effect a bond undertaking or cash deposit in the full amount prescribed in AS 08.18.071, the registration of the contractor involved shall be suspended until the bond liability in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.

(c) If a bonding company cancels its bond of a contractor the contractor's registration shall be revoked. The contractor may again obtain registration by complying with the requirements of this chapter.

(d) If a licensed contractor fails to fulfill the contractor's obligations as set out in AS 08.18.071 the contractor's license shall be suspended for a period of time the commissioner determines is appropriate. After three suspensions the contractor's license may be permanently revoked.

(e) Proceedings to suspend or revoke a license issued under this chapter are governed by the Administrative Procedure Act (AS 44.62).

(f) If the commissioner of commerce and economic development or the commissioner of labor determines that a person is acting as a contractor in violation of this chapter, the commissioner of commerce and economic development or the commissioner of labor shall give written notice prohibiting further action by the person as a contractor. The prohibition continues until the person has submitted evidence acceptable to the commissioner [OF LABOR] showing that the violation has been corrected.

(g) A person affected by an order issued under this chapter may seek equitable relief preventing the commissioner of commerce and economic development or the commissioner of labor from enforcing the order.

(h) The departments of commerce and economic development and labor may investigate alleged or apparent violations of this chapter. Upon demand, a contractor or his representative must produce evidence of current registration. Refusal or failure to provide proof of current registration constitutes violation of this chapter.

(i) Registered contractors utilizing subcontractors shall ensure that these contractors meet the registration requirements of this chapter.

Page 4, lines 21 to 29, section 13 - Delete question - Why a highway specialist?

Page 5, lines 1 to 23 - Delete.

Line 24, Section 15 - As read, this section would take the jurisdiction away from the Department of Labor, Mechanical Inspectors and Department of Commerce and Economic Development Investigators.

We would prefer to see the authority for issuance of misdemeanor citations with mandatory court appearance. This would demand the "fly-by-night operators" to become licensed or leave the industry. The citation program should extend to legitimate contractors using unlicensed subcontractors.

*Sec. 4. AS 08.18.131 is amended to read:

Sec. 08.18.131. INJUNCTION. In an action instituted in the superior court by the commissioner of commerce and economic development or the commissioner of labor or a [THE] commissioners' [COMMISSIONER'S] representative, a person acting in the capacity of a contractor in violation of this chapter may be enjoined from doing so.

*Sec. 5. AS 08.18.141 is amended to read:

Sec. 08.18.141. MISDEMEANOR. A person acting in the capacity of a contractor in violation of this chapter is guilty of a misdemeanor. An authorized representative of the commissioner of commerce and economic development or the commissioner of labor may issue a misdemeanor citation to a person, firm, partnership, corporation, or any other entity that is doing contracting work if the person, firm, partnership, corporation, or other entity does not have a valid certificate of registration under AS 08.18.011 or AS 08.18.026.

Section 17, lines 7 to 14 - Delete.

If not, then line 9 - Change to quarterly if necessary. This should be by regulation, not statute.

Line 12 - Delete telephone numbers.

Section 18, line 22 - Delete.

HDT/wfs22884b

TESTIMONY OF

BILL REEVES

ALASKA CHAPTER

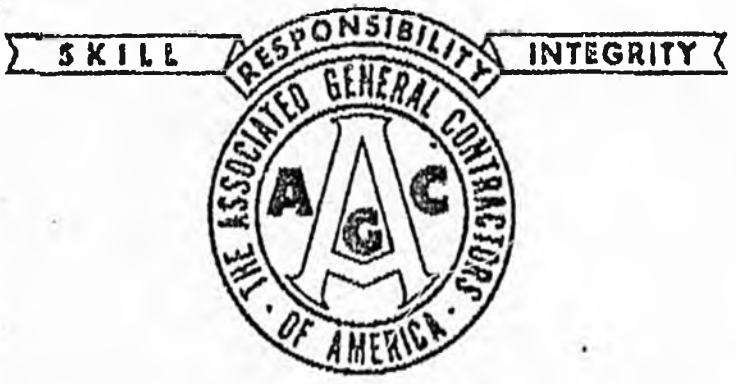
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

TO THE

HOUSE LABOR AND COMMERCE COMMITTEE

ON

LEGISLATION ESTABLISHING A BOARD OF BUILDERS (HB 610)



The Alaska Chapter, Associated General Contractors of America, (A.G.C.) represents more than 800 companies, including most of the general contracting companies engaged in commercial construction. We appreciate the opportunity to present A.G.C.'s views on HB 610.

The A.G.C. opposes HB 610. In its present configuration, HB 610 includes commerical contractors within a statutory framework aimed at residential home contractors. A.G.C. urges this committee to scrutinize any legislation creating any new "Board" as the State is presently inundated with Boards and Commissions. Finally, A.G.C. opposes the broad powers vested in the proposed Building Board by this legislation. There are no standards of conduct established or criteria other than basic licensing requirements. In short, a "board" is not necessary to enforce what is already the law.

Specifically, A.G.C. objects to the creation and all references to a "Board of Builders". The inappropriateness of the formation of this board is nowhere more apparent than in Section 13 of proposed House Bill 610. Section 13 attempts to create and defines the membership of the Board of Builders. Three general contractors are provided for in this section, one of which must be a "remodeling specialist" (a term which seemingly contradicts the term "general contractor") and one of whom is a Highway specialist. The one remaining "general contractor" Board member would be picked from general contractors with such varied expertise as a residential contractor building five houses a year, a residential housing contractor building 200 multi-family units per year, a commercial building contractor constructing small shopping centers, a commercial building contractor constructing large public and private buildings such as the Convention Center, ARCO or SOHIO buildings, a heavy and industrial general contractor constructing such items as major hydroelectric projects and refining plants, and any one of more than hundreds of different contractors with different areas of focus. All of these contractors will have

different perspectives; therefore, it seems inappropriate to elevate to a special status a remodeling specialist and a highway specialist.

With respect to including the registration number on stationery and on vehicles as required by Section 11; the A.G.C. recommends modification if this provision is felt to be necessary. We recommend that Page 4, Lines 7-9 be changed to read:

c) A motor vehicle displaying the name of a contractor shall also display the registration number of the contractor.

We further recommend an effective date of January 1986 to allow for utilization of supplies which do not contain the registration number.

The Alaska Chapter, A.G.C. does not oppose increasing the bond limits as provided in Section 12. In fact, A.G.C. does not oppose raising the bond limits even further.

In summary, the Alaska Chapter, A.G.C. opposes all of the provisions of HB 610 with the exception of raising the bonding limits for contractors.

The labor and commerce committee appears to be responding to a statewide need on two separate and unrelated issues. First, is the claim by many licensed residential contractors that they are competing with unlicensed contractors -- in particular the small specialty subcontractor. Second, many home purchasers complain of construction quality and the inadequate legal remedy that presently exists - especially if the contractor is no longer in the state.

HB 610 as proposed will not solve either problem. Unlicensed contractors are illegal under present law - creating a "board" will not solve the problem. Shoddy construction and an inadequate remedy for home purchasers will continue as long as home purchasers do not check into the reputation of the contractor. Raising the bonding limits to $10,000 still will not provide an adequate safeguard.

The Alaska Chapter A.G.C. submits that the present system can work if everyone knows the laws that presently exist, and if the bonding limits are increased to an effective level. Present laws prohibit an unlicensed contractor from suing for compensation or a breach of contract. A public awareness campaign of this fact may stimulate many individuals to obtain licenses.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 610
Title: "An Act establishing a Board of Builders."
Sponsor: Rep. Furnace
Requestor: Labor & Commerce
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Economic Dev.
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	0	72.6	76.2	80.0	84.1	88.2
200 TRAVEL	0	36.3	38.1	40.0	42.1	44.2
300 CONTRACTUAL	0	87.9	92.3	96.9	101.8	106.9
400 SUPPLIES	0	1.8	1.9	2.0	2.1	2.2
500 EQUIPMENT	0	12.6	0	0	0	0
600 LAND & STRUCTURES	0	6.1	6.4	6.7	7.0	7.4
700 GRANTS, CLAIMS	0	0	0	0	0	0
800 MISCELLANEOUS	0		0	0	0	0
TOTAL OPERATING	0	217.3	214.9	225.6	237.1	248.9
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	217.3	214.9	225.6	237.1	248.9
FEDERAL FUNDS						
OTHER						
TOTAL	0	217.3	214.9	225.6	237.1	248.9

POSITIONS:

FULL-TIME						
PART-TIME -seasonal	0	3	3	3	3	3
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by the Sponsor

ANALYSIS: Attach a separate page for analysis (See Attached)

Prepared By: Darrell Miller Darrell Miller Phone: 465-2535
Division: Occupational Licensing Date: March 6, 1984

Approved by Commissioner: Richard A. Lyon Date: 3/8/84
Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

FISCAL ANALYSIS
HB 610

Assumptions:

This bill creates a new seven member board to govern an established licensing function within the Department of Commerce and Economic Development, Division of Occupational Licensing, Construction Contractors.

There are currently approximately 7,000 licensed contractors and an estimated 2,500 to 3,000 contractors that have not renewed their registration and are considered inactive.

This bill is silent on the number of meetings that the board shall hold each year. In the absence of specific statutes, AS 08.01.070(2) shall prevail. This states that each board shall hold a minimum of one meeting each year. With the number of licensed contractors, it is anticipated that it would be necessary for the board to hold at least quarterly meetings and in geographic locations of the State to cover Southeastern, Interior and Southcentral, with at least two of the meetings to be held in Anchorage, with each meeting, including travel time, being three days duration, in order to competently address the business of the board.

Travel and Per Diem costs would be incurred for board members and division administrative support staff to attend the board meetings.

This bill does not address the registration or renewal fee structure, as specified in AS 08.18.041, therefore no fiscal impact would be incurred on revenue.

The bill does provide for civil penalties for violations, however it would be extremely difficult to project any revenue from civil penalties imposed on licensed contractors by the board.

The bill does not address the issue of geographic areas of the State that board members shall reside in as a criteria for appointment to the board to ensure equal representation for contractors throughout the State. It is anticipated that three of the board members would be from the Interior area, three for Southcentral and the remaining one would be from the Southeastern area. Travel cost projected is based on this assumption.

This bill transfers the enforcement responsibility for construction contractor statutes and regulations from the Department of Labor to the Department of Commerce and Economic Development, Board of Builders. Additional Investigative personnel would be required for this activity and travel and per diem costs would be incurred for investigations.

HOUSE BILL NO. 610

100 PERSONAL SERVICES - (FY '84 Salary Schedule with a 5% inflation factor projected for succeeding Fiscal Years)

2 Investigators, Range 18A, General Goverment, Seasonal - 6 months each (March through September) 1 located in Anchorage and 1 located in Juneau	$ 46,299.48
1 Investigator, Range 18E, General Goverment, Seasonal - 6 months (March through September) to be located in Fairbanks	26,301.85
Total:	$ 72,601.33

200 TRAVEL (Estimated)

2 Staff travel from juneau to attend board meetings:

Anchorage: 2 meetings Transportation: $400.00 each x 2 staff x 2 meetings =	$ 1,600.00
Per Diem: 2 staff - 2 meetings 3 days each @ $80.00 per day =	960.00
Fairbanks: 1 meeting Transportation: 2 staff x $475.00 each =	950.00
Per Diem: 2 staff 3 days each @ $90.00 per day =	540.00

Board Travel:

Transportation: Juneau meeting 3 members from Anchorage @ $400.00 each =	1,200.00
3 members from Fairbanks @ $475.00 each =	1,425.00
Per Diem: 7 members - 3 days each @ $80.00 per day =	1,680.00
Transportation: Anchorage meeting 1 board member from Juneau @ $400.00 each x 2 meetings =	800.00
3 board members from Fairbanks @ $250.00 each x 2 meetings =	1,500.00
Per Diem: 7 board members 3 days each x 2 meetings @ $80.00 per day =	3,360.00

Transportation: Fairbanks meeting	
1 board member from Juneau @ $475.00 =	475.00
3 board members from Anchorage @ $250.00 each =	750.00
Per Diem: 7 board members @ $90.00 per day x 3 days each =	1,890.00
Investigator Travel:	
Fairbanks: 1 Investigator - 1 airline trip per month @ $300.00 x 6 months =	1,800.00
Per Diem: 8 days per month @ $90.00 per day x 6 months =	4,320.00
Juneau/Anchorage: 2 Investigators 1.5 airline trips per month each @ $300.00 x 6 months =	5,400.00
Per Diem: 8 days per month per Investigator @ $80.00 per day x 6 months =	7,680.00
TOTAL TRAVEL:	$36,330.00

300 CONTRACTUAL (Estimated costs)

Postage, telephone and operating costs, 3 Investigators @ $250.00 per month each x 6 months =	$ 4,500.00
Investigator Leased Vehicles, dry,W/Maintenance:	
Juneau: 1 vehicle @ $425.00 per month x 6 months =	2,550.00
Anchorage: 1 vehicle @ $410.00 per month x 6 months =	2,460.00
Fairbanks: 1 vehicle @ $540.00 per month x 6 months =	3,240.00
Fuel: 3 leased vehicles @ estimated $175.00 per month each x 6 months =	3,150.00
Disciplinary Hearings:	
Estimated 36 hearings under the Administrative Procedure Act for disciplinary sanctions with an estimated cost per hearing @ $2,000.00 =	72,000.00
TOTAL CONTRACTUAL:	$87,900.00

400 COMMODITIES (Estimated costs)

Stationery, Typewriter ribbons, pens, pencils, tablets, and other miscellaneous desk top supplies: 3 Investigators @ $100.00 per month each x 6 months =	1,800.00

500 EQUIPMENT (One time cost - FY '85 only- based on estimated Juneau costs for FY '85)

3 Investigators- Juneau, Anchorage and Fairbanks:

3 Desks, double pedestal, 60" x 30" @ $568.22 each =	$ 1,704.66
3 Chairs, Executive Swivel, with arms @ $313.30 each =	939.90
3 Typewriters, IBM Correcting Selectric with dual pitch, 15.5 inch paper capacity @ $1,369.36 each =	4,108.08
3 Typewriter Tables @ $135.65 each =	406.95
3 Calculators, Desk, printing and display, 12 digit, @ $364.66 each =	1,093.98
3 Chairs,Side without arms, contour style @ $114.60 each =	343.80
3 Recording Machines, Lanier, portable @ $775.87 each =	2,327.61
3 Book Cases, with adjustable shelves (3) @ $164.69 each =	494.07
3 File Cabinets, 5 drawer, legal with lock @ $406.91 each =	1,220.73
TOTAL EQUIPMENT COSTS:	$12,639.78

600 LAND & STRUCTURES (Estimated costs)

Office space for 3 Investigators:

Juneau: 150 square feet @ $2.25 per foot per month x 6 months =	$2,025.00
Anchorage: 150 square feet @ $2.00 per foot per month x 6 months =	1,800.00
Fairbanks: 150 square feet @ $2.50 per foot per month x 6 months =	2,250.00
TOTAL LAND & STRUCTURES COST:	$6,075.00

TOTAL OPERATING COSTS:	$217,346.11

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Investigator III				18A	GGU				
2.	TYPE OF POSITION: SFT	STAFF MONTHS: 6	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: AWA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	17,790.00	
6.	Benefits	2,905.11	
7.	Supplemental Benefits	1,090.53	
8.	Fixed Benefits	1,364.10	
9.	TOTAL PERSONAL SERVICES	01	23,149.74
10.	Travel	02	6,540.00
11.	Contractual	03	5,100.00
12.	Commodities	04	600.00
13.	Equipment	05	4,213.16
14.	Other -land & structures		2,025.00
15.	TOTAL COST		41,627.90

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	41,627.90
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

This position would be necessary to implement the provisions of HB 610, which creates the Board of Builders and transfers investigations and enforcement of Construction Contractor statute, AS 08.18, and regulations adopted to implement the statute, from the Department of Labor to the Department of Commerce and Economic Development. This would be a seasonal position of 6 months duration to conduct investigations into alleged violations of AS 08.18, and of alleged violations of the regulations and orders of the Board of Builders during the peak months of the construction season.

13 REQUEST FOR NEW POSITION

01-1136 (7/82) - 13

AGENCY: Commerce and Economic Development
PROGRAM: Consumer Protection
BRU: Occupational Licensing
COMPONENT: Investigations

Revised Date

FY 84

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Investigator III				18A	GGU				
2.	TYPE OF POSITION: SFT	STAFF MONTHS: 6	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: EBA	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL		ADDITION	
4.	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
	PERSONAL SERVICES			
5.	Salary		17,790.00	
6.	Benefits		2,905.11	
7.	Supplemental Benefits		1,090.10	
8.	Fixed Benefits		1,364.10	
9.	TOTAL PERSONAL SERVICES	01		23,148.74
10.	Travel	02		6,540.00
11.	Contractual	03		5,010.00
12.	Commodities	04		600.00
13.	Equipment	05		4,213.26
14.	Other- land & structures			1,800.00
15.	TOTAL COST			41,312.00

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	41,312.00
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

This position would be necessary to implement the provisions of HB 610, which creates the Board of Builders and transfers investigations and enforcement of Construction Contractor statute, AS 08.18, and regulations adopted to implement the statute, from the Department of Labor to the Department of Commerce and Economic Development. This would be a seasonal position of 6 months duration to conduct investigations into alleged violations of AS 08.18, and of alleged violations of the regulations and orders of the Board of Builders during the peak months of the construction season.

13 REQUEST FOR NEW POSITION

AGENCY Commerce and Economic Development

PROGRAM Consumer Protection

BRU Occupational Licensing

COMPONENT Investigations

Revised Date

FY 84

01-1136 (7/82) - 13

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Investigator III				18E	GGU				
2.	TYPE OF POSITION: SFT	STAFF MONTHS: 6	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: JBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	20,364.00	
6.	Benefits	3,325.44	
7.	Supplemental Benefits	1,248.31	
8.	Fixed Benefits	1,364.10	
9.	TOTAL PERSONAL SERVICES	01	23,301.85
10.	Travel	02	6,120.00
11.	Contractual	03	5,790.00
12.	Commodities	04	600.00
13.	Equipment	05	4,213.26
14.	Other - land & structures		2,250.00
15.	TOTAL COST		42,275.11

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	42,275.11
19.		I-A Receipts	1007	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

This position would be necessary to implement the provisions of HB 610, which creates the Board of Builders and transfers investigations and enforcement of Construction Contractor statute, AS 08.18, and regulations adopted to implement the statute, from the Department of Labor to the Department of Commerce and Economic Development. This would be a seasonal position of 6 months duration to conduct investigations into alleged violations of AS 08.18, and of alleged violations of the regulations and orders of the Board of Builders during the peak months of the construction season.

13 REQUEST FOR NEW POSITION

AGENCY Commerce and Economic Development

PROGRAM Consumer Protection

BRU Occupational Licensing

COMPONENT Investigations

Revised Date

FY 84

01-1136 (7/82)

Assoc. General Contractors Amendment.

HB 610 (L&C)

Section 5, Page 2, Line 13:

Adds a new section authorizing the Department of Commerce and Economic Development enforcement and citation powers.

Section 6, Page 3, Line 15 and Section 7, Line 25 and 26:

This subsection addresses the authority of the commissioner of labor but, adds "or the commissioner of commerce and economic development".

RECOMMENDATION:

Either the Department of Labor or the Department of Commerce and Economic Development have enforcement and citation authority but, not both. This would help avoid the potential for conflicting regulations and actions.

Section 3, Page 1, Line 29:

Adds that all advertising and contracts are to include the registration number.

RECOMMENDATION:

Most telephone yellow page advertisements are prepared long in advance. The effective date of this bill is July 1, 1984 therefore any advertising appearing in a telephone book after that date would be in violation. An effective date of January 1, 1986 for Section 3 would avoid this problem.

Section 1, Page 1, Line 12 and 13:

The word "person" is used. It is unclear if "person" means an individual person hired to do some work or a firm that is a specialty contractor.

RECOMMENDATION:

The language be clarified to indicate that this section is addressing the hiring of a specialty contractor firm and not and an individual person.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: March 28, 1984

REQUEST
Bill/Resolution No.: CS HB 610
Title: "An Act relating to Construction Contractor"
Sponsor: Labor & Commerce Committee
Requestor Labor & Commerce Comm.
Date of Request: 3/28/84

FISCAL DETAIL
Agency Affected: Commerce & Econ. Dev.
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES	0	72.6	76.2	80.0	84.1	88.2
200 TRAVEL	0	19.2	20.2	21.2	22.2	23.3
300 CONTRACTUAL	0	15.8	16.6	17.4	18.3	19.2
400 SUPPLIES	0	1.8	1.9	2.0	2.1	2.2
500 EQUIPMENT	0	12.6	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	0	5.9	6.1	6.4	6.7	7.1
700 GRANTS, CLAIMS	0	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	0	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	0	127.9	121.0	127.0	133.4	140.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	127.9	121.0	127.0	133.4	140.0
FEDERAL FUNDS						
OTHER						
TOTAL	0	127.9	121.0	127.0	133.4	140.0

POSITIONS:

FULL-TIME						
PART-TIME	0	3	3	3	3	3
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

NOT IDENTIFIED BY THE SPONSOR

ANALYSIS: Attach a separate page for analysis SEE ATTACHMENTS

Prepared By: Darrell Miller Phone: 465-2535
Division: Occupational Licensing Date: 3/28/84

Approved by Commissioner: Richard A. Lyon Date:
Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

FISCAL ANALYSIS

CS HB 610

Assumptions:

This bill does not address the registration or renewal fee structure, as specified in AS 08.18.041, therefore no fiscal impact would be incurred on revenue generated by licensing.

This bill does provide for civil penalties for violations, however it would be extremely difficult to project any revenue generated from civil penalties imposed under the provisions of this bill. A fiscal impact would be incurred on revenue generated from civil penalties.

The provisions of this bill transfers the enforcement responsibility for the construction contractor statute and regulations from the Department of Labor to the Department of Commerce and Economic Development. This will require additional investigative personnel for this activity and travel and per diem costs would be incurred for investigations as well as personal services.

CS HOUSE BILL NO. 610

100 PERSONAL SERVICES: (FY '84 salary schedule with a 5% inflation factor projected)

2 Investigators, Range 18A, General Goverment, Seasonal - 6 months each (April through September) located in Anchorage	$46,299.48
1 Investigator, Range 18E, General Goverment, Seasonal - 6 months (April through September) located in Fairbanks	26,301.85
Total Personal Services:	$72,601.33

200 TRAVEL: (Estimated)

Anchorage: 2 Investigators - 1.5 airline trips per month each @ $300.00 x 6 months	$ 4,400.00
Per Diem: 8 days per month per Investigator @ $80.00 per day x 6 months	7,680.00
Fairbanks: 1 Investigator - 1 airline trip per month @ $300.00 x 6 months	1,800.00
Per Diem: 8 days per month @ $90.00 per day x 6 months	4,320.00
Total Travel Costs:	$19,200.00

300 CONTRACTUAL: (Estimated)

Postage, telephone and operating costs: 3 Investigators @ $250.00 per month each x 6 months	$ 4,500.00
Investigator Leased vehicles, dry W/Maintenance:	
Anchorage: 2 vehicles @ $410.00 per month each x 6 months	4,920.00
Fairbanks: 1 vehicle @ $540.00 per month x 6 months	3,240.00
Fuel: 3 leased vehicles estimated @ $175.00 per month each x 6 months	3,150.00
Total Contractual Costs:	$15,810.00

400 COMMODITIES: (Estimated costs)

Stationery, typewriter ribbons, pens, pencils, tablets and other miscellaneous desk top supplies: 3 Investigators @ $100.00 each per month x 6 months	$1,800.00

500 EQUIPMENT: (One time cost - FY '85 only)

3 Investigators: 2 Anchorage and 1 Fairbanks:

3 desks, double pedestal, 60" x 30" @ $568.22 each	$ 1,704.66
3 chairs, executive swivel, with arms, @ $313.30 each	939.90
3 typewriters, IBM correcting Selectric with dual pitch, 15.5 inch paper capacity @ $1,369.36 each	4,108.08
3 typewriter tables @ $135.65 each	406.95
3 calculators, desk, printing and display, 12 digit, @ $364.66 each	1,093.98
3 chairs, side without arms, contour style, @ $114.60 each	343.80
3 recording machines, portable, Lanier, @ $775.87 each	2,327.61
3 bookcases with 3 adjustable shelves @ $164.69 each	494.07
3 file cabinets, 5 drawer, legal with lock, @ $406.91 each	1,220.73
Total Equipment Cost:	$12,639.78

600 LAND & STRUCTURES: (Estimated Costs)

Office Space:

Anchorage: 2 Investigators - 150 square feet @ $2.00 per foot each per month x 6 months	$3,600.00
Fairbanks: 1 Investigator - 150 square feet @ $250.00 per foot per month x 6 months	2,250.00
Total Land & Structures Cost:	$5,850.00
TOTAL OPERATING COST:	$127,901.11

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Investigator III				18A	GGU				
2.	TYPE OF POSITION: SFT	STAFF MONTHS: 6	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	17,790.00	
6.	Benefits	2,905.11	
7.	Supplemental Benefits	1,090.10	
8.	Fixed Benefits	1,364.10	
9.	TOTAL PERSONAL SERVICES	01	23,148.74
10.	Travel	02	6,540.00
11.	Contractual	03	5,010.00
12.	Commodities	04	600.00
13.	Equipment	05	4,213.26
14.	Other - Land & Structures		1,800.00
15.	TOTAL COST		41,312.26

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	41,312.26
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

This position would be necessary to implement the provisions of CS HB 610, which transfers the investigations and enforcement of Construction Contractor statute, AS 08.18, from the Department of Labor to the Department of Commerce and Economic Development. This would be a seasonal position of 6 months duration to conduct investigations into alleged violations of AS 08.18 and alleged violations of the regulations in 12 AAC 21, adopted to implement the provisions of AS 08.18, during the peak months of the construction season.

13 REQUEST FOR NEW POSITION

01-1136 (7/82) - 13

AGENCY Commerce & Economic Development

PROGRAM Consumer Protection

BRU Occupational Licensing

COMPONENT Investigations

Revised Date 3/28/84

FY 84

	POSITION TITLE			RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Investigator III			18A	GGU				
	TYPE OF POSITION	STAFF MONTHS	RP NUMBER / PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
2.	SFT	6			EBA				

3. CONTINUATION LEVEL ____ ADDITION ____

4. JUSTIFICATION

This position would be necessary to implement the provisions of CS HB 610, which transfers the investigations and enforcement of Construction Contractor statute, AS 08.18, from the Department of Labor to the Department of Commerce and Economic Development. This would be a seasonal position of 6 months duration to conduct investigations into alleged violations of AS 08.18 and alleged violations of the regulations in 12 AAC 21, adopted to implement the provisions of AS 08.18, during the peak months of the construction season.

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	17,790.00	
6.	Benefits	2,905.11	
7.	Supplemental Benefits	1,090.10	
8.	Fixed Benefits	1,364.10	
9.	TOTAL PERSONAL SERVICES	01	23,148.74
10.	Travel	02	6,540.00
11.	Contractual	03	5,010.00
12.	Commodities	04	600.00
13.	Equipment	05	4,213.26
14.	Other - Land & Structures		1,800.00
15.	TOTAL COST		41,312.26

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	41,312.26
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

13 REQUEST FOR NEW POSITION

AGENCY Commerce & Economic Development

PROGRAM Consumer Protection

BRU Occupational Licensing

COMPONENT Investigations

Revised Date 3/28/84

FY 84

01-1136 (7/82) - 13

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
1.	Investigator III				18E	GGU				
	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
2.	SFT	6				JBA				

3.	CONTINUATION LEVEL		ADDITION
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	20,364.00	
6.	Benefits	3,325.44	
7.	Supplemental Benefits	1,248.31	
8.	Fixed Benefits	1,364.10	
9.	TOTAL PERSONAL SERVICES	01	26,301.85
10.	Travel	02	6,120.00
11.	Contractual	03	5,790.00
12.	Commodities	04	600.00
13.	Equipment	05	4,213.26
14.	Other - Land & Structures		2,250.00
15.	TOTAL COST		45,275.11

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	45,275.11
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

This position would be necessary to implement the provisions of CS HB 610, which transfers the investingations and enforcement of Construction Contractor statute, AS 08.18, from the Department of Labor to the Department of Commerce & Economic Development. This would be a seasonal position of 6 months duration to conduct investigations into alleged violations of AS 08.18, and alleged violations of the regulations in 12 AAC 21, adopted to implement the provisions of AS 08.18, during the peak months of the construction season.

13 REQUEST FOR NEW POSITION

AGENCY Commerce & Economic Development

PROGRAM Consumer Protection

BRU Occupational Licensing

COMPONENT Investigations

Revised Date 3/28/84

FY 84

01-1136 (7/82) - 13

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M March 27, 1984

SUBJECT: Construction contractors
(CSHB 610(L&C))

TO: Representative John Cowdery
Chairman, House Labor and Commerce Committee

FROM: Tamara Brandt Cook TBC
Deputy Director
Division of Legal Services

Here is the section by section analysis that you requested of the draft CSHB 610(L&C).

Section 1 makes it unlawful for a general contractor to authorize a person to begin work as a specialty contractor unless the person is registered.

Section 2 prohibits the commissioner of commerce and economic development from issuing a registration or renewing a registration of an applicant whose registration has been revoked or suspended or against whom a fine has been imposed until the period of revocation or suspension has expired and the fine has been paid.

Section 3 requires that advertising and contracts include the contractor's registration number.

Section 4 raises the amount of bonds to $10,000 for a general contractor and $5,000 for a specialty contractor.

Section 5 requires the department of commerce and economic development to provide investigative services to enforce AS 08.18. A peace officer or employee designated to conduct investigations may issue a citation for a violation of AS 08.18. Each day a violation continues is a separate violation. The Supreme Court is required to establish a schedule of bail amounts for violations. A person cited may deliver to the clerk of the court in which the citation is filed the amount of bail and a copy of the citation

indicating that the right to an appearance is waived, a plea of no contest entered, and bail is forfeited. Forfeiture of bail is a complete satisfaction for the violation. If the person cited fails to pay the bail amount or to appear in court, the citation is considered a summons for a misdemeanor.

Section 6 allows the commissioner of commerce and economic development as well as the commissioner of labor to prohibit a person from engaging in action as a contractor in certain situations.

Section 7 allows a person affected by an order issued by the commissionor of commerce and economic development, as well as those affected by an order from the commissioner of labor, to seek equitable relief.

Section 8 allows the commissioner of commerce and economic development as well as the commissioner of labor to seek an injunction against a person acting in the capacity of a contractor in violation of AS 08.18. A civil penalty not to exceed $250 may be imposed for each violation and each day that an unlawful act continues is a separate violation.

Section 9 provides that a person acting in the capacity of a contractor in violation of AS 08.18 is guilty of a class A misdemeanor. A class A misdemeanor is punishable by a term of imprisonment of not more than one year and by a fine of not more than a $5,000.

Section 10 prohibits a state agency, corporation or authority from lending money for construction of a project that is constructed in violation of AS 08.18.011 and requires the lending institution to make reasonable efforts to determine whether construction is proceeding in accordance with that section before releasing money under a construction loan.

Section 11 adds a definition of department for purposes of the chapter.

Section 12 ties the effective date to the beginning of the new fiscal year.

TBC:ojb
J5/020

HB

611

M E M O R A N D U M

DATE: 29 March 1984

TO: Representative Rick Uehling

FROM: John Geary

RE: Dental Hygienists, CSHB 611

You have requested that I review CSHB 611 an act relating to dentists and dental hygienists. This act, introduced by Representative Walt Furnace, consists of 41 sections which divide into three major topics.

1. Sections 1-15 regulate the practice of dental hygienists.

2. Sections 16-21 regulate the board of dental examiners who oversee both dentists and dental hygienists.

3. Sections 22-41 amends the current regulations of dentists.

For such an overall lengthy bill it reads coherently and is popular with the dentists themselves

MARCH 29, 1984

TO: JOHN

FROM: KEN

RE: HB 611 "RELATING TO DENTISTS AND DENTAL HYGENTISTS"

HB 611 WOULD UPDATE THE CURRENT STATUTES WHICH GOVERN THE LICENSING, EXAMINATIONS, AND PRACTICES TO WHICH DENTISTS AND DENTAL HYGENTIST MUST COMPLY. THIS BILL IS INTENDED TO GIVE MORE CLARITY TO THOSE STATUTES WHICH COVER: LICENSES AND REGISTRATION, TESTING OF APPLICANTS, DISCIPLINARY SANCTIONS, AND THE OPERATION OF THE BOARD OF DENTAL EXAMINERS. TO DATE THE COMMITTEE HAS HELD ONE PUBLIC HEARING ON HB 611, AND SINCE THAT TIME REPRESENTATIVES OF THE DIVISION OF LICENSING, THE BOARD OF DENATL EXAMINERS, THE ALASKA DENTAL SOCIETY, AND THE DENTAL HYGENTISTS SOCIETY, HAVE MET. IT IS MY UNDERSTANDING THAT THE BASIC PROBLEMS HAVE BEEN WORKED OUT. DURING TO TODAYS SESSION I HOPE ANY OTHER NECESSARY CHANGES CAN BE MADE TO THE LEGISLATION.

Delete all references to certificate or registration. Retain the word license.

Page 1

Line 12 add current after "without a."

Line 12/13 delete all after [and a current certificate of registration].

Line 15 delete [and registration].

Line 16 delete [and registration].

Page 2

Line 5 delete [a professional dental or dental hygiene association]. Insert [Another Dental Licensing jurisprudence].

Line 9 delete [and registration].

Page 3

Begin on Line 1. Oppose as unnecessary. The language can be restrictive to the board. The size of the board and number of applicants could be burdensome to meet this statutory requirement.

Line 18 add this new sentence [If the board has reason to believe the applicant cannot practice safely on a clinical patient].

Line 20 delete [REGISTRATION AND].

Line 21 delete [If the applicant passes the examination].

Line 21 change "t" to "T".

Line 28 and 29 delete. Retain only the term of license or licensure.

Page 4

Line 6, 7 and 8 delete words "registration or registration certificate".

Line 29 change to (5) license renewal fee.

Page 5

Section 10

Line 19, 20 and 21 request the direct and indirect term be clarified.

Line 21 add (b) eliminate intra oral (Lois Reeder).

Section 11

Recommend the wording be changed to: (Begin on line 24) "The board may revoke or suspend the license of a dental hygienist, after a hearing, or may reprimand, censure, or discipline a licensee, if the board finds that the licensee...." This change would give the board the authority to act timely for minor infractions without threating the loss of a license.

Line 28

(1) delete or change the word knowingly.

This causes an extra burden of proof on the disciplinary body. It offers an affirmative defense or raises an issue that could cloud the main concern. It is fair to assume a licensee of this intelligence level would not participate in securing a license except by the same method the licensee applied.

Page 6

Line 1 add "or registration."

Line 5 and 6 delete (3) as unnecessary. Item (2) of the same section would cover the false or misleading advertising.

Line 6 delete [in violation of regulations adopted by the board].

Line 15 delete as over stating. "Severe" need not be stated if one is dependent on a substance such as alcohol or drugs so their reliability to protect the public is a question.

Section 12

Delete Section 12 beginning on line 25 continuing on to page 7, line 9. (Per Lois Reeder, and agreed by DOL).

Line 28 delete the word "Board." The board sits as the final judge they should not be the "investigators."

Page 7

Line 2 - Oppose. Prejudgment could be dangerous to fairness. The panel could recommend for reprimand or censure, not for hearing.

Page 9

Begins addressing AS 08.36 Dentist

Line 5 and 6 change after the word "state" who teaches or demonstrates clinical techniques at a seminar or limited course of instruction.

Line 9 to 11. Delete (4) instructors should be the first to be licensed.

Line 26 and 27 delete [FOR CAUSE] . Board members should be appointed and removed by the Governor.

Page 10

Section 18

Line 1 change [is] to "may be"

Line 5 - change "once" to read four.

This would allow proper budgeting. If once or one the agency would be able to budget for one meeting.

Line 12 to 14 - Delete as unnecessary beginning with "The department shall reimburse a member, etc...."

Page 11

Line 21 - This is fine, however, should it be required in statute?

Line 27 - Item (11). OK. However, the Association of Dental Hygienist wanted to respond.

Line 28 add the word "specific" after for.

Line 29 change special to "specific" and after training add "as determined by."

Page 12

Section 21

Oppose to and request deletion of lines 13 to 17. This not only circumvents state hiring procedures but dictates the service which the investigator will serve under ("exempt").

The current system provides for investigation when funded. Contractual monies are available for hiring expert help in the professional evaluations when needed. At present, there is insufficient cases to have one investigator serve just the dental board.

Line 26 and 27

The Dental Board requests change of the word "is a" to "has" on line 26 and line 27 after graduate add or will graduate.

Page 13

Section 24

Line 8 change [30] to 45.

Line 21 change [shall] to may. The board will have the latitude to follow the national acceptable standard; however, if the national standard falls below the State level, the board is not statutorily required to follow it.

Line 27 add "if the board has reason to believe the applicant cannot practice safely on a clinical patient."

Page 14

Line 5 add "regulation of."

Page 15

Section 27

Line 1 delete "professional association peer review procedure."

Line 2 change "professional dental association" to ANOTHER DENTAL LICENSING JURISDICTION.

Section 29 (continues on to page 16)

(b) delete as unenforceable. Licensing should be as stated in the above AS 08.36.246(a)(1), (2) and (3) as all that is necessary.

Page 16

Section 30

Line 9 to 11 delete.

Opposed as increasing the number of board members.

Page 17

Section 33

Line 17 to 22 (see prior recommendation Section 11)

Line 23 - Delete "knowingly."

Page 18

Line 16 delete the word severe.

Line 24 add "in violation of."

Line 26 add after "board" - through the Division of Occupational Licensing

Reason - Board members are not always available.

Delete all of Section 34 beginning on page 18 and continuing to line 12 of Page 19.

Page 21

Line 11 add after "who" teaching or

Line 12 add after "a seminar or limited course of instructions." Delete the word "meeting."

Line 15-17 - delete. The Dental Hygienist School requires a current licensed dentist (see AS 08.32.095(1)).

Page 22

Section 40

Delete. The purpose of this new section is unclear. It enables one to violate this chapter under research.

HDT/kkkB41
32884b

Sec. 08.36.140. Out-of-state examination. If an applicant requests the board to hold an examination outside the state, the board may require the applicant to pay the transportation costs to the members of the committee conducting the examination. (Sec 3 art III ch 186 SLA 1955)

Sec. 08.36.150. Examination in out-of-state dental schools. The examination committee, with the approval of the board, may conduct an examination in the clinic of an approved dental school within the continental limits of the United States and admit to the examination a dental student in his last year of school who would otherwise be eligible for admission to examination and licensing in the state upon completion of his education. (Sec 3 art III ch 186 SLA 1955)

Sec. 08.36.170. Partial examination. A student at least 19 years of age who has satisfactorily completed regular courses of instruction in dentistry in at least two different school years at an approved dental school, and who is certified by the dean of the college as having satisfactorily completed the subjects included in Section I of the examination may take Section I of the examination. If the student passes Section I and subsequently takes the full examination, the requirements of Section I are waived. (Sec 5 art III ch 186 SLA 1955)

Sec. 08.36.200. Waiver of written examination. The board may waive the requirement for written examination for an applicant who holds a certificate from the National Board of Dental Examiners that he has passed the theoretical or written examination given by the national board. (Sec 8(a) art III ch 186 SLA 1955)

Sec. 08.36.280. Temporary permit. (a) The board may issue a one year temporary permit without examination to an applicant to practice dentistry in a locality requested by the applicant if the locality is of the type specified in (2) of this subsection and the applicant

(1) meets the requirements of Sec 110 of this chapter;

(2) desires to practice dentistry in a city or rural village which does not have a resident licensed dentist in active general practice;

(3) has a license in good standing to practice dentistry in a state, territory, district or possession of the United States;

(4) tenders and pays the fee prescribed in AS 08.36.290(9).

(b) The board may authorize a temporary permittee to practice dentistry in more than one city or rural village of the type specified in (a)(2) of this section.

(c) The board may annually renew a temporary permit upon written appliction of an applicant and upon payment of the prescribed fee if the applicant has not committed an act which is a ground for revocation in Sec. 310 of this chapter, but in any case, within two years from issuance of his first temporary permit, the applicant must pass a board exam.

(d) A temporary permit may be revoked, suspended or annulled, or the permittee may be reprimanded, censured or disciplined by the board in the same manner and for the same cause as a licensed dentist under Sec. 310 of this chapter.

(e) The board shall grant or deny an application for a temporary permit within 60 days after it is received. (Sec 15 art III ch 186 SLA 1955; am Sec 4 ch 26 SLA 1965; am Secs 8, 9 ch 121 SLA 1972; am ch 59 SLA 1982)

MARCH 21, 1984

TO: JOHN

FROM: KEN

RE: HB 611 "RELATING TO DENTISTS AND DENTAL HYGENTISTS"

HB 611 WOULD UPDATE THE CURRENT STATUTES WHICH GOVERN THE LICENSING, EXAMINATIONS, AND PRACTICES TO WHICH DENTISITS AND DENTAL HYGENTIST MUST COMPLY. THIS BILL IS INTENDED TO GIVE MORE CLARITY TO THOSE STATUTES WHICH COVER: LICENSES AND REGISTRATION, TESTING OF APPLICANTS, DISCIPLINARY SANCTIONS, AND THE OPERATION OF THE BOARD OF DENTAL EXAMINERS.

QUESTIONS:

1. THIS BILL HAS A STRONG EMPHASIS ON DISCIPLINARY ACTIONS. IS THERE SERIOUS PROBLEMS IN THE INDUSTRY TODAY THAT WARRANTS THIS IN THE BILL ?

2. WHAT ARE THE FEELINGS ON THIS BILL OF THE DENTAL ASSOCIATIONS AND DENTAL SOCIETIES AROUND THE STATE ?

3. PARAGRAPH D OF SECTION SEC. 11, PAGE 6 LINE 19 SUGGESTS A CONTINUING EDUCATION PROGRAM SHOULD BE IN PLACE. AT

THE PRESENT IS THERE A REQUIREMENT FOR CONTINUING EDUCATION AND IF SO HOW IS IT MEASURED ?

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB No. 611
Title: "An Act relating to dentists & dental hygienists"
Sponsor: Rep. Furnace
Requestor: L&C & H.E.S.S
Date of Request: February 13, 1984

FISCAL DETAIL
Agency Affected: Commerce & Economic Dev.
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		1.2	0	0	0	0
300 CONTRACTUAL		1.5	1.3	1.4	1.5	1.6
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	2.7	1.3	1.4	1.5	1.6
CAPITAL						
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	2.7	1.3	1.4	1.5	1.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by the sponsor

ANALYSIS: Attach a separate page for analysis (see attached)

Prepared By: Darrell Miller Phone: 465-2535
Division: Occupational Licensing Date: 2/16/84

Approved by Commissioner: Richard A. Lyon Date: 3/16/84
Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HOUSE BILL NO. 611

FISCAL ANALYSIS:

Assumptions: If adopted in its present form, this bill would require regulations be adopted to implement the provisions of Sec. 17, paragraphs (10), (12) and (13), and Sec. 27. This would be a one time cost for FY '85 only for travel and contractual costs.

Sec. 17, paragraph (11), would require a continuing contractual cost for advertising of a summary of disciplinary actions by the board.

200 TRAVEL

1 staff travel to Fairbanks and Anchorage to conduct public hearings on proposed regulations.

Fairbanks:	Transportation - 1 trip	$ 450.00
	Per Diem: 2 days @ $90.00	180.00
Anchorage:	Transportation - 1 trip	375.00
	Per Diem: 2 days @ $80.00	160.00
	Total	$1,165.00

300 CONTRACTUAL

Advertising costs for public notices of proposed regulations and public hearings; 3 major newspapers, one time only X $100.00 each. (one time cost - FY '85 only)	$ 300.00
Advertising cost for quarterly publication of the summary of disciplinary actions; 3 major newspapers, one time only X $100.00 each = $300.00 X 4 quarters=	1,200.00
(7% inflation factor projected for succeeding fiscal years) Total	$1,500.00

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M March 20, 1984

SUBJECT: Sectional analysis of HCS CSHB 611 (Dentists and Dental Hygienists)

TO: Representative John Cowdery
Chairman, Labor Commerce

FROM: Teresa B. Cramer Teresa B. Cramer
Legislative Counsel

You have asked for a sectional analysis of CSHB 611 (L&C). The bill can be considered in three parts. Sections 1-15 amend AS 08.32, regulating the practice of dental hygienists. Many of the amendments transfer regulations applying to hygienists but codified in AS 08.36, regulating dentists, into AS 08.32.

The second set of amendments, found in sections 16-21, relate to the Board of Dental Examiners which regulates both dental hygienists and dentists.

The third part of the bill amends the regulation of dentists and is contained in sections 22 through 41.

Sections Relating to Dental Hygienists

Sections 1 and 2 Clarify the requirement that hygienists be registered as well as licensed.

Section 3 Permits dental hygienists licensed in another state to apply for a temporary license pending receipt of their Alaska licensing examination results.

Section 5 Clarifies the composition and content of the licensing examination.

Sections 6 and 7 Clarify the requirement that registrations be renewed every four years. Section 7 is modeled on AS 08.36.250 which currently applies to hygienists as well as to dentists.

Section 8 The penalty for late renewal under AS 08.01.100(b) is $10.

Section 9 Gives the board the power to set licensing fees by regulation. AS 08.36.190 currently sets fees for dental hygienists and dentists by statute.

Section 10 Adds reference in AS 08.32.110 to requirement that hygienists who administer local anesthetics be certified.

Section 11 Paragraph (2) adds fraudulent billing for services as a basis for imposing discipline. Paragraph (3) limits discipline for false or misleading advertising to instances in which the advertising violates regulations adopted by the board. Paragraph (6)(D) adds unfitness because of failure to keep informed of current professional theories and practices as grounds for imposing discipline.

Section 12 Adds a new section to provide that a panel of the board will screen consumer complaints before the complaint reaches an adjudicatory hearing under the Administrative Procedure Act.

Section 13 Transfers provisions in AS 08.36.320 to AS 08.32 and adds language in subsection (c) to permit the board to suspend the license of a dental hygienist who refuses to submit to a physical or mental examination.

Section 14 Makes failure to comply with a regulation of the board a violation and changes the penalty for a violation to a Class B misdemeanor (punishable by a fine of no more than $1000 (AS 12.55.035) and by imprisonment for no longer than 90 days (AS 12.55.135).

Section 15 Adds new provisions modeled on AS 08.36.350 to permit the hygienists listed to practice without a state license. Subsection (b) holds those dental hygienists to the same standard of care as licensed hygienists.

Sections relating to the Board of Dental Examiners

Section 16 Adds a requirement that the dental hygienist on the Board of Dental Examiners have practiced in Alaska for five years.

Section 17 Adds language to suspend a dentist or dental hygienist from the board if an accusation alleging unprofessional conduct has been filed under the Administrative Procedure Act. The suspension lasts until the decision of the board is final under AS 44.62.520.

Section 18 Permits a majority of the board to call a meeting in the absence of a call of the president.

Section 19 Adds specific authorization for the department to reimburse board members for expenses.

Section 20 Paragraph (a)(3) expands the required content of the board's annual report. Paragraph (a)(10) requires that the board publish information about its disciplinary decisions annually. Paragraph (a)(11) permits the board to provide for education and training requirements for special procedures and to issue permits or certificates to those who meet those requirements. Paragraph (a)(12) clarifies existing powers of the board. Paragraph (b)(2) permits the board to authorize the inspection of records of dentists to monitor compliance with AS 08.32 and 08.36.

Section 21 Authorizes the board to hire an investigator. The board currently has no staff.

Sections relating to dentists.

Section 22 Deletes reference to permits. The bill repeals AS 08.36.280 which provides for temporary permits. Dentists practicing in isolated areas under AS 08.36.271 are exempt from the chapter under AS 08.36.350.

Sections 23 and 27 Require that all applicants for licensing pass the national board examination before taking the state exam.

Section 25 Clarifies the composition and structure of the licensing examination.

Section 26 The penalty under AS 08.01.100(b) for late renewal is $10.

Section 28 Deletes the requirement that dentists register with the clerk of the superior court.

Sections 29 and 30 Require that applicants for specialist licenses be eligible for diplomate status with a specialty board and that a licensed specialist take part in the licensing procedures.

Section 31 Adds subsection (b) requiring that dentists who are renewing their registrations report to the board any suits filed against them based on the quality of their professional services.

Section 32 Rewrites the fee statue to allow the board to set fees by regulation rather than providing for specific amounts by statute.

Section 33 Paragraph (2) adds fraudulent billing for services as a basis for imposing discipline. Paragraph (3) limits discipline for false or misleading advertising to instances in violation of regulations adopted by the board. Paragraph (10) makes a dentist who fails to report a death occurring in the dentist's office liable to discipline.

Section 34 Adds a new section to provide that a panel of the board will review complaints about professional services before an accusation is filed under the Administrative Procedure Act adjudicatory hearing procedures. (See also Section 12)

Section 35 Deletes reference to dental hygienists

Section 36 Adds language to permit the board to suspend the license of a dentist who refuses to submit to a mental or physical examination.

Section 37 Makes dentists who violate regulations of the board subject to sentencing. A Class B misdemeanor carries a maximum fine of $1000 (AS 12.55.035) and imprisonment for no more than 90 days (AS 12.55.135).

Section 38 Paragraph (a)(5) clarifies exemptions for licensed clinicians. Paragraph (a)(6) exempts from licensing instructors in an accredited dental educational institution. Paragraph (a)(7) exempts dentists providing emergency care. Subsection (b) holds dentists exempt from licensing to the same standard of care as licensed dentists

Section 39 Paragraph (7) defines the practice of dentistry to exclude owners and managers of dental facilities.

Section 40 Adds a new section to provide rights to dentists. Paragraphs (3) and (4) permit dentists supervising research in a research institution chartered by the state or in a school accredited by the American Dental Association to perform procedures that would otherwise violate this chapter. Paragraph (4) requires that the dentist notify the board of any procedures to be performed on patients. The board may disapprove the procedures.

Section 41 Repeals five sections of the law.

AS 08.36.140 permits the board to hold a licensing exam outside the state.

AS 08.36.150 permits students in their last year of dental school to take the licensing examination and permits the board to give the exam in an out-of-state dental school.

AS 08.36.170 permits students to take sections of the state licensing examination at different times.

AS 08.36.200 permits the board to waive the state written exam for applicants who have passed the national board examination.

AS 08.36.280 provides for temporary permits to dentists practicing in a city or rural village which does not have a resident licensed dentist in active general practice.

TC:ojb
J4/105

HB

633

FEBRUARY 28, 1984

TO: JOHN
FROM: KEN
RE: OPENING COMMITTEE COMMENTS ON HB 633

HOUSE BILL 633, SPONSORED BY OUR COLLEAGUE REP. FURNACE, WOULD AMEND TITLE 21 OF THE ALASKA STATUTES. UNDER PRESENT LAW THE FEES REQUIRED FROM THOSE WORKING IN THE INSURANCE INDUSTRY, ARE ESTABLISHED BY THE LEGISLATURE. IF THIS BILL IS ADOPTED, THE LEGISLATURE WOULD NO LONGER BE RESPONSIBLE SETTING THESE FEES. INSTEAD, THIS BILL WOULD GRANT AUTHORITY, UNDER STATE REGULATIONS, TO THE DIRECTOR OF THE DIVISION OF INSURANCE TO ESTABLISH FEES FOR THE INDUSTRY .

QUESTIONS:

1. WHY CAN'T THE DIVISION OF INSURANCE SUBMIT CHANGES IN THE FEE STRUCTURE TO THE LEGISLATURE FOR APPROVAL RATHER THAN CHANGING THE STATUTE ?

2. HAS THE DIVISION OF INSURANCE EXPERIENCED PROBLEMS IN THE PAST WITH A LEGISLATURE WHICH REFUSED TO COOPERATE WITH THE DIVISIONS REQUESTS ?

3. What was [illegible] Behind The Present [illegible].

4 - Needed [illegible] Amendment.

5 - Report - Fo[illegible]

HOUSE BILL 633
PROPOSED FEES

			FY 83	FY 84	FY 85
Sec. 21.06.250 (a)					
1 (A) domestic insurers	[$100]	1,000	2,000	2,000	2,000
foreign insurers	[$100]	1,000	7,975*	15,000	15,000
(B) annual continuation of certificate of authority	[$ 65]	100	53,610*	85,000	85,000
(C) reinstatement of certificates of	[$ 65]	500	-0-	-0-	-0-
(D) amending certificate of authority	[$ 10]	100	200	2,000	2,000
(2) filing amendment of articles of incorporation, domestic and foreign insurers	[$ 10]	100	470	4,700	4,700
(3) filing bylaws or amendments thereto required	[$ 10]	100	3,410	34,100	34,100
(4) filing annual statement of insurer, other than as part of application for original certificate of authority	[$ 10]	100	8,800	88,000	88,000
(5) (A) application for original license, and including issuance of license, if issued,					
(i) individual	[$ 35]	50	7,000	10,000	10,000
(ii) firm or corporation	[$ 75]	100	2,000*	2,700	2,700
(B) annual renewal or continuation of license					
(i) individual	[$ 35]	50	20,010*	28,600	28,600
(ii) firm or corporation	[$ 75]	100	18,135*	24,200	24,200
(C) Appointment of agent or general agent, each insurer	[$ 5]	10	2,000	4,000	4,000
(D) annual renewal of appointment of general agent or agent, each insurer	[$ 5]	10	37,812*	75,620	75,620
(E) temporary license	[$ 35]	50	-0-	-0-	-0-
(6) nonresident general agent or agent's license					
(A) individual	[$ 75]	100	7,500	10,000	10,000
(B) firm or corporation	[$150]	200	1,500	2,000	2,000
(C) annual renewal or continuation of license	[$ 75]	100	65,000*	86,700	86,700
(7) broker license					
(A) application for original license and including issuance of license if issued--resident					
(i) all line broker	[$100]	200	1,500	3,000	3,000
(ii) property-casualty broker	[$ 75]	150	2,000*	4,050	4,050
(iii) life-disability broker	[$ 75]	150	300	600	600
(B) annual renewal or continuation of license--resident					
(i) all line broker	[$100]	200	5,050*	10,100	10,100
(ii) property-casualty broker	[$ 75]	150	13,200	26,400	26,400
(iii) life-disability broker	[$ 75]	150	3,600	7,200	7,200

(C) application for original license and including issuance of license, if issued--nonresident					
(i) all line broker	[$250]	500	1,000	2,000	2,000
(ii) property-casualty broker	[$150]	300	1,000	1,800	1,800
(iii) life-disability broker	[$150]	300	450	900	900
(D) annual renewal or continuation of license-nonresident					
(i) all line broker	[$250]	500	20,700*	41,500	41,500
(ii) property-casualty broker	[$150]	300	4,500	9,000	9,000
(iii) life-disability broker	[$150]	300	750	1,500	1,500
(8) solicitor license					
(A) application for original license, including issuance of license if issued	[$ 15]	50	-0-	-0-	-0-
(B) annual continuation of license	[$ 15]	50	-0-	-0-	-0-
(9) general agent or agent license, life, disability issuance and annuities					
(A) application for original license, including issuance of license, if issued,					
(i) individual	[$ 35]	50	70	100	100
(ii) firm or corporation	[$ 75]	100	150	200	200
(B) annual renewal or continuation of license,					
(i) individual	[$ 35]	50	2,400*	3,400	3,400
(ii) firm or corporation	[$ 75]	100	425*	500	500
(C) appointment of general agent or agent, each insurer	[$ 5]	10	10	10	10
(D) annual renewal of appointment of general agent or agent, each insurer	[$ 5]	50	20	200	200
(10) [examination] application for license as general agent, agent, broker, solicitor or adjuster, each [examination] application	[$ 10]	20	8,130	16,260	16,260
(11) surplus line broker license					
(A) application for original license and for issuance of license, if issued--resident	[$100]	200	200	400	400
(B) application for original license and for issuance of license, if issued--nonresident	[$300]	600	1,200	2,400	2,400
(C) annual renewal or continuation of license--resident	[$100]	200	3,700	7,400	7,400
(D) annual renewal or continuation of license--nonresident	[$300]	600	14,850*	29,400	29,400
(12) adjuster license					
(A) application for original license and for issuance of license if issued--resident	[$ 35]	70	70	140	140
(B) annual renewal or continuation of license--resident	[$ 35]	70	3,710	7,420	7,420

(C) application for original license and for issuance of license, if issued--nonresident	[$ 75]	150	75	150	150
(D) annual renewal or continuation of license--nonresident	[$ 75]	150	2,443*	4,800	4,800
(13) isurance vending machine license, each machine,each year	[$ 35]	70	-0-	-0-	-0-
(14) for issuing any other certificate required or permissible under law	[$ 5]	25	2,080	10,400	10,400
(15) for accepting service of process	[$ 5]	25	1,565	7,825	7,825
(16) for copy of insurance code, actual printing cost plus postage;			280	280	280
(17) for copy of insurance report, actual printing cost plus postage;			-0-	-0-	-0-
(18) for any printed material furnished by the director not mentioned above, the director may charge the actual cost of printing plus handling and postage;			485	485	485
(19) for limited license (travel insurance agent)	[$ 25]	40	275	550	550
(20) [Repealed]					
(21) rating bureaus (for a three-year license)	[$100]	300	450*	1,200	1,200

(b) The director shall promptly deposit with the commissioner of revenue to the credit of the general fund of this state all fees received by him under this section. (1 ch 120 SLA 1966; 1-6 ch 113 SLA 1974; 1 ch 206 SLA 1976)

Surplus Lines Statement Fee**	261,358	225,000	225,000
Retalitary Fees	140,548	140,548	140,548
Penalties**	67,418	96,720	96,720
TOTALS	801,034	1,138,458	1,138,458
BUDGET	976,000	991,600	1,083,900
	— 174,966	146,858	54,558

* Figures given by Division of Insurance

** Vary with Volume

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill amending the current structure for fees collected by the division of insurance, Department of Commerce and Economic Development under AS 21.

Insurance license and other related fees are currently set by statute and may be adjusted only through legislation. This bill proposes to remove these fee structures from the statutes and provide that they may be set instead by regulation. This will mean that the fees may be adjusted to more nearly reflect actual costs to the state for the services rendered, without the need to repeatedly request statutory changes. The director of the division of insurance, Department of Commerce and Economic Development, will have the responsibility for adopting the fee-setting regulations.

The statutes currently setting fees for the division of insurance do not provide adequate revenue to the state to cover the division's present budget. Most of the fees were set by statute in 1966 and have not been increased since. In order to permit adjustment of insurance fees to more closely approximate the actual cost of services, I urge your prompt action on this measure.

Sincerely,

Bill Sheffield
Governor

WKEA
AS 21.06.25

	Current User Fee	Recommended User Fee	Projection on # of Applications	Estimated 1984 Income	Date of Last Statute Change
Certificate of Authority Domestic and Foreign	100	750	50	37,500	1966
Annual Continuation of Certificate of Authority	65	150	950	140,500	1966
Reinstatement of Continuation of CTF of A	65	150	1	150	1966
Amending CTF of A	10	100	40	4,000	1976
Filing Articles of Incorporation	10	25	1	25	1966
Filing Bylaws or Amendments	10	25	10	250	1966
Filing Bylaws or Amendments	10	25	20	500	1966
Filing Annual Statements	10	100	950	95,000	1966
Resident Agent License Individual Application	35	50	150	7,500	1966
Resident Agent-Firm Application	75	150	10	1,500	1966
Agent Renewal-Individual	35	50	350	17,500	1966
Agent Renewal-Firm	75	150	135	10,125	1966
Appointment of Agent or General Agent of Company	5	10	100	1,000	1966
Annual Renewal of Agent or General Agent Appointment	5	10	3,250	32,500	1966
Temporary License	35	35	0	0	1966
Nonresident General Agent or Agent's License	35	75	30	2,250	1966
Individual	35	75	30	2,250	1966
Firm	150	200	10	2,000	1966
Annual Renewal of Nonresident Agent or General Agent's License					
Individual	75	75	300	22,500	1966
Firm	75	100	250	25,000	1966

	Current User Fee	Recommended User Fee	Projection on # of Applications	Estimated 1984 Income	Date of Last Statute Change
Application for					
All Lines Broker	100	150	10	1,500	1974
Property Casualty Broker	75	100	10	1,000	1974
Life and Disability Broker	75	100	10	1,000	1974
Renewal-Resident Broker					
All Lines Broker	100	150	45	6,750	1974
Property Casualty Broker	75	100	20	2,000	1974
Life and Disability Broker	75	100	20	2,000	1974
Application for Original License-Broker/Nonresident					
All Lines Broker	25[illegible]	250	4	1,000	1974
Property Casualty Broker	15[illegible]	200	10	2,000	1974
Life and Disability Broker	150	200	5	1,000	1974
Renewal for License-Broker/Nonresident					
All Lines Broker	250	250	60	15,000	1974
Property - Casualty Insurer	150	200	70	14,000	1974
Life & Accident & Health Insurer	150	200	10	2,000	1974
Application for Solicitors License	15	25	10	250	1966
Renewal of Solicitors License	15	25	5	125	1966
Application for General Agent Life and Disability					
Individual	35	50	20	1,000	1966
Firm	75	150	10	1,500	1966
Life and Disability Agent Renewal					
Individual	35	50	350	17,500	1966
Firm	75	150	135	10,125	1966
Appointment by Company to Agents and G/A	5	10	100	1,000	1966
Renewal Appointment	5	10	3,250	32,250	1966
Examination Application for Agent-G/A, Broker, Solicitor or Adjuster	10	15	250	3,750	1974

	Current User Fee	Recommended User Fee	Projection on # of Applications	Estimated 1984 Income	Date of Last Statute Change
Examination Fee Payable to Testing Contractor					
Application for Surplus Lines Broker					
Resident	100	150	3	450	1966
Nonresident	300	500	3	1,500	1966
Renewal of					
Surplus Lines Broker	100	150	28	4,200	1966
Non Resident Surplus LIne Broker	300	500	58	29,000	1966
Application - Adjuster License	35	50	10	500	1966
Renewal - Adjuster License	35	50	125	6,250	1966
Application - Nonresident Adjuster	75	100	2	200	1966
Renewal-Nonresident Adjuster	75	100	35	3,500	1966
Insurance-Vending Machines	35	50	3	150	1966
Miscellaneous Certificates	5	10	60	600	1966
Service of Process	5	15	200	3,000	1966
For Limited License	25	25	16	400	1966
Rating Bureaus 3 Years	100	150	3	450	1966
				566,750	
Surplus Lines Filing Fee 1/2% of 50 million				250,000	
				816,750	
Retaliatory Fee				95,000	
				911,750	

#115

#011 (Buch)

1984 LEGISLATIVE PROPOSAL REQUEST FORM

AGENCY: Commerce and Economic Development

SUBJECT OF PROPOSED BILL: Repeal of insurance fees as set by statute in order that they can be set by regulation.

BRIEF SUMMARY: Insurance fees are currently set by statute. They can be adjusted only by means of the legislative process. The current fees, most of which were established as long ago as 1966, (see attached)
(Attach a more detailed explanation if you can.)

ESTIMATED FISCAL IMPACT:

OTHER STATE AGENCIES CONSULTED/AFFECTED: none

CONSTITUENT GROUPS:
Those opposed:

Those in favor:

Those yet to be contacted:

Has this or a substantially similar bill been introduced (and not passed) in the legislature in a previous session? Yes ____ No ____

If so, please state: Bill number _____
Dept. of Law log no: J-77-___-___
(if it was a Governor's bill)

PREFERRED HOUSE OF INTRODUCTION:

RATE THE BILL'S IMPORTANCE TO DEPARTMENT BY PRIORITY #:

DRAFT ATTACHED: Yes xx No ____ Not finalized ____

COMMISSIONER'S SIGNATURE: Richard A. Lyon

DATE:

are inadequate to reflect the costs of the services provided. It is proposed that fees would be more appropriately placed in regulation where they can be adjusted upwards or downwards to reflect true costs and eliminate the need to repeatedly ask for statutory change.

In FY 83, income from the various fee charges was $801,034. The budget for the Division was $939,823. The proposed fees would more closely approximate the actual cost to provide services to the user and balance the Division's budget.

Perhaps only sections 1, 11, 14 and 29 need be included in the bill and the revisor of statutes could pick up the remaining conflicting statutes. This would avoid a lengthy bill which appears more complicated than it is.

HB

654

Further Reflections on the Alaska Relationship with East Asia

Over the past two decades, a new international order has emerged in East Asia. Composed of twelve nations with market economies, fringed by four nations with socialist, or command economies, and one nation, China, moving from a command to a market economy, the order has at its center Japan and the United States.

The basis of the international order is mutual economic benefit. Each member nation hopes to stimulate its growth through economic cooperation. At present, trade is the most developed tie. Each East Asian nation trades more with the other East Asian nations than it does with nations outside of East Asia. Led by Japan and the United States, investment between the nation-states is also starting. Japan seems most interested in the developing nations; the United States seems most interested in the newly industrialized states.

The growth rates of developing and newly industrialized states is high, with some East Asian nations having growth rates in the double digits. Clearly, East Asia will be at the forefront of the world's economic activity in the years ahead.

Alaska, by both geographic and economic logic, belongs to this new international order. Yet, at the present time,

none of the other nations in the international order recognize the relationship. Alaska is seen as part of the United States, its fate immutably hooked to that of the United States, the articulation of its interests emanating from Washington.

Alaska's greatest task, then, is to demonstrate that it is part of this new international order. While part of the United States, its interests are not necessarily identical to the interests of the lower forty-eight states. It does not rely on Washington for the articulation of its interests. It can speak for itself. Alaska has much to contribute to the development of the other East Asian and Southeast Asian states. Alaska has much to gain from this contribution.

If the international order is cooperative, it is also competitive. Alaska belongs to the resource rich nations. Indonesia, Malaysia, Australia, and Thailand are other examples. It must compete with them. And, in many respects, Alaska is behind the power curve.

Political philosophy is a case in point. Alaska has derived its rules of governance from early American and European experience. It believes that the state should participate in business only to the extent of regulating it. The East Asian states, on the other hand, derive their rules of governance from the Japanese experience, the last of the big powers to modernize. They believe, and the Japanese believe, that the state has the responsibility of fostering development. Government should be a partner of business.

The developmental state is not a socialist state. In a socialist state, the authorities control all the factors of production, are relatively indifferent to price and to competition. In the developmental state, the authorities are most selective about where they intervene. They protect if not strengthen the terms of competition. They accept the discipline imposed by cutthroat pricing.

The East Asian nations have development strategies. These strategies are delineated in plans. These plans are important for two reasons. First, their preparation requires both government officials and businessmen to come together to establish goals and set priorities. Dreams are made real and practical. Second, the plans serve as advertisements. They inform other nations what will be happening. The other nations can shape their plans to make best use of their advantages. The other nations can learn whether or not they wish to invest in the plan-writing nation. There have been many instances where the plans have served as the basis for international cooperation.

The East Asian nations push their interests overseas. They do this three ways: through international organizations--ASEAN is a case in point; through the rigorous training of its officials in diplomacy and developmental economics; and through the establishment of large embassies.

Each East Asian nation has representation in the capital of every other Asian nation as well as in the capitals of each industrialized state. These embassies report on the developments, show the flag, develop friendships, and encourage trade and investment. They are worth every penny invested in them.

What should Alaska be doing?

First of all, Alaska should look to its governing mechanisms. Should the Alaskan government reflect America at the time of the Civil War, should it remain in its philosophy a regulatory state? Or should the Alaskan government look overseas to late nineteenth century German, to postwar Japan, and now to South Korea, Singapore, and Taiwan to become a developmental state?

Second, Alaska should figure out where it is going. There are lots of tested but different developmental strategies to review. And there is plenty of room to argue over how detailed and who should actually undertake and participate in these reviews. But there is little question that some sort of a strategy set down is some sort of a plan is needed.

Finally, Alaska needs a foreign service. Currently, Alaska has a small office in Tokyo. Its personnel are of high quality. Its manager is politically savvy. They represent Alaska well. But the office is miniscule compared to the embassies of the other Asian states, many of whom have staffs that number in the hundreds, all aggressively pushing their nation's interests.

So much for broad statements. Now let me offer some detailed comments.

In terms of product, Alaskans are probably correct in first concentrating on the sale of energy--oil, gas, and coal.

Alaska has comparative advantage over the other energy states in two respects: It has short lines of supply not easily subject to interdiction unless the interdicting state wishes to mess with the U.S. Navy. And political conditions in Alaska are such that politics will not disrupt production.

But Alaskans should aggressively start to push their other resources--fish, lumber, minerals, and hydro-electric power. Japanese and Korean companies are beginning to peddle Alaskan resources in the other countries of East Asia and in the United States. They should not be discouraged. But the Alaskans should do more themselves.

Finally, Alaska should try to take advantage of conditions in the other Asian nations. Two examples immediately come to mind. Because of high power costs, the Japanese aluminum industry is no longer internationally competitive. It is declining and the Japanese government is prepared to look to foreign sources for its aluminum ingots. Why shouldn't this industry move to Alaska, where power is cheap?

A second example is cement. During the trip, we heard the officials of the DAE LIM Company boast that they had built and were running the world's largest cement plant. That plant with its other plants may supply the domestic needs of Korea as well as the needs of the Korean construction firms overseas. But certainly, DAE LIM wishes to further profit by exporting its cement technology, too. Should it not be invited to look at conditions in Alaska to determine if there is room for a cement industry?

Finally, during the trip we heard frequently businessmen, politicians, and officials say that they often transited Alaska. I have come to conclude that most of the world's leaders have at one time or another stood around in the international lounge in th Fairbank or Anchorage airport for an hour or so, waiting for their plane to be fueled for an ongoing flight. Shouldn't these airports have small theaters where the Alaskan government could show films, with sound tracks in several languages, extolling what Alaska has and what Alaska can do?

In terms of target nations, Alaska should concentrate on Japan. It is the world's second largest economy. Its appetite for natural resources is voracious. It has a substantial and growing imbalance of trade with the United States and it has an impatient and complaining American government leaning on it to correct this imbalance. These factors suggest that Japan should be willing to buy Alaskan products.

But not all factors favor Alaska. For over a century, the Japanese have said that they have the responsibility for leading Asia, for developing conditions of peace and prosperity in the other Asian nations. That means that the Japanese look more favorably south than they do north. Secondly, Japan has spent much time and treasure developing resources in Southeast Asia and Australia. It will not put aside this investment readily. Thirdly, Asians have the ties to and know how to sell to the Japanese, something that the Alaskans cannot do, yet.

Finally, the Japanese have become accustomed to and know how to deflect Washington complaints. They are aware that both Japan and the United States have again entered an upward phase of the business cycle and during these upward thrusts, Washington officials do not push their economic interests vigorously.

These negative factors lead me to conclude that Alaska will first be able to succeed in its overseas efforts in Korea. It has a booming economy. It has government officials in other states and these officials are favorably disposed towards the United States. It has an unfavorable balance of trade with the United States and both its businessmen and officials want to correct that. Korea does not have any political goals in Southeast Asia, though it is dallying with the idea of helping the Chinese develop Manchuria and the Russians to develop Siberia with the aim of outflanking the North Koreans. Finally, Korea has a healthy appetite for raw materials, particularly energy.

Alaska should not overlook Taiwan. It, too, is short of energy and raw materials and favorably disposed, for political reasons, to purchases from the United States. The Philippines are presently in political turmoil. But that will pass. Although rich in some resources, it is short of energy. It is another potential market for Alaska. Finally, Alaska should be extending feelers to Hong Kong and Singapore. They, too, have high growth rates, resource shortages, and want to establish closer ties with the United States.

February 8, 1984

The Honorable John Cowdery
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Cowdery:

Jim Clark has urged me to propose that you consider my continued association with the State to assist in making Alaska the focal point of a resource relationship with the Pacific Rim countries. As you know, these countries have historically looked to Southeast Asia and the South Pacific for their resources. The notion of looking north is something that they have really only recently considered.

The exchange of legislative missions has created awareness among some Japanese political leaders of Alaska's potential, not only for supplying resources, but also for enhancing Japan's security relationship with the U.S. The same can be said for Korean political leaders. Efforts such as the legislative mission need to be continued and accelerated within these political establishments to broaden support for the concept.

This is a matter about which I feel very strongly. I share Ambassador Mike Mansfield's view that the United States' bilateral relationship with Japan is the most important in the world and I would like to do everything I can to enhance it. Korea is also important. Enhancing and protecting these relationships by the sale of Alaska's resources to the Pacific Rim and by Japanese and Korean investment in Alaska are obvious things we can do.

I am going to be in Japan for a good deal of this year working on a book. I believe that I would be in a good position to attempt to explain Alaska's potential within Japanese political circles, at the highest levels. Moreover, since it would be appropriate to include Bill Overstreet in these efforts, I believe we could create a mechanism to cause Alaska's viewpoint to be made known with these people on a continuing basis.

If you feel this warrants further discussion, please let me know.

Very truly yours,

Nathaniel B. Thayer

Dr. Nathaniel Thayer

SAIS

School of Advanced International Studies
The Johns Hopkins University

13 February 1984

Representative John Cowdery
Pouch V
Juneau, Alaska 99811

Dear John,

I enclose a copy of my trip report. For some unknown reason, the hotel never cabled it to you, though I instructed them to do so.

I look forward to testifying tomorrow.

Sincerely,

Nathaniel B. Thayer
Director of Asian Studies

Enclosure

(202) 785-6267

セイヤー
PROF. NATHANIEL B. THAYER
DIRECTOR OF ASIAN STUDIES

SCHOOL OF ADVANCED INTERNATIONAL STUDIES
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1740 MASSACHUSETTS AVENUE, N.W. WASHINGTON, D.C. 20036

Further Reflections on the Alaska Relationship with East Asia

Over the past two decades, a new international order has emerged in East Asia. Composed of twelve nations with market economies, fringed by four nations with socialist, or command economies, and one nation, China, moving from a command to a market economy, the order has at its center Japan and the United States.

The basis of the international order is mutual economic benefit. Each member nation hopes to stimulate its growth through economic cooperation. At present, trade is the most developed tie. Each East Asian nation trades more with the other East Asian nations than it does with nations outside of East Asia. Led by Japan and the United States, investment between the nation-states is also starting. Japan seems most interested in the developing nations; the United States seems most interested in the newly industrialized states.

The grown rates of developing and newly industrialized states is high, with some East Asian nations having growth rates in the double digits. Clearly, East Asia will be at the forefront of the world's economic activity in the years ahead.

Alaska, by both geographic and economic logic, belongs to this new international order. Yet, at the present time,

none of the other nations in the international order recognize the relationship. Alaska is seen as part of the United States, its fate immutably hooked to that of the United States, the articulation of its interests emanating from Washington.

Alaska's greatest task, then, is to demonstrate that it is part of this new international order. While part of the United States, its interests are not necessarily identical to the interests of the lower forty-eight states. It does not rely on Washington for the articulation of its interests. It can speak for itself. Alaska has much to contribute to the development of the other East Asian and Southeast Asian states. Alaska has much to gain from this contribution.

If the international order is cooperative, it is also competitive. Alaska belongs to the resource rich nations. Indonesia, Malaysia, Australia, and Thailand are other examples. It must compete with them. And, in many respects, Alaska is behind the power curve.

Political philosophy is a case in point. Alaska has derived its rules of governance from early American and European experience. It believes that the state should participate in business only to the extent of regulating it. The East Asian states, on the other hand, derive their rules of governance from the Japanese experience, the last of the big powers to modernize. They believe, and the Japanese believe, that the state has the responsibility of fostering development. Government should be a partner of business.

The developmental state is not a socialist state. In a socialist state, the authorities control all the factors of production, are relatively indifferent to price and to competition. In the developmental state, the authorities are most selective about where they intervene. They protect if not strengthen the terms of competition. They accept the discipline imposed by cutthroat pricing.

The East Asian nations have development strategies. These strategies are delineated in plans. These plans are important for two reasons. First, their preparation requires both government officials and businessmen to come together to establish goals and set priorities. Dreams are made real and practical. Second, the plans serve as advertisements. They inform other nations what will be happening. The other nations can shape their plans to make best use of their advantages. The other nations can learn whether or not they wish to invest in the plan-writing nation. There have been many instances where the plans have served as the basis for international cooperation.

The East Asian nations push their interests overseas. They do this three ways: through international organizations--ASEAN is a case in point; through the rigorous training of its officials in diplomacy and developmental economics; and through the establishment of large embassies.

Each East Asian nation has representation in the capital of every other Asian nation as well as in the capitals of each industrialized state. These embassies report on the developments, show the flag, develop friendships, and encourage trade and investment. They are worth every penny invested in them.

What should Alaska be doing?

First of all, Alaska should look to its governing mechanisms. Should the Alaskan government reflect America at the time of the Civil War, should it remain in its philosophy a regulatory state? Or should the Alaskan government look overseas to late nineteenth century German, to postwar Japan, and now to South Korea, Singapore, and Taiwan to become a developmental state?

Second, Alaska should figure out where it is going. There are lots of tested but different developmental strategies to review. And there is plenty of room to argue over how detailed and who should actually undertake and participate in these reviews. But there is little question that some sort of a strategy set down is some sort of a plan is needed.

Finally, Alaska needs a foreign service. Currently, Alaska has a small office in Tokyo. Its personnel are of high quality. Its manager is politically savvy. They represent Alaska well. But the office is miniscule compared to the embassies of the other Asian states, many of whom have staffs that number in the hundreds, all aggressively pushing their nation's interests.

So much for broad statements. Now let me offer some detailed comments.

In terms of product, Alaskans are probably correct in first concentrating on the sale of energy--oil, gas, and coal.

Alaska has comparative advantage over the other energy states in two respects: It has short lines of supply not easily subject to interdiction unless the interdicting state wishes to mess with the U.S. Navy. And political conditions in Alaska are such that politics will not disrupt production.

But Alaskans should aggressively start to push their other resources--fish, lumber, minerals, and hydro-electric power. Japanese and Korean companies are beginning to peddle Alaskan resources in the other countries of East Asia and in the United States. They should not be discouraged. But the Alaskans should do more themselves.

Finally, Alaska should try to take advantage of conditions in the other Asian nations. Two examples immediately come to mind. Because of high power costs, the Japanese aluminum industry is no longer internationally competitive. It is declining and the Japanese government is prepared to look to foreign sources for its aluminum ingots. Why shouldn't this industry move to Alaska, where power is cheap?

A second example is cement. During the trip we heard the officials of the DAE LIM Company boast that they had built and were running the world's largest cement plant. That plant with its other plants may supply the domestic needs of Korea as well as the needs of the Korean construction firms overseas. But certainly, DAE LIM wishes to further profit by exporting its cement technology, too. Should it not be invited to look at conditions in Alaska to determine if there is room for a cement industry?

Finally, during the trip we heard frequently businessmen, politicians, and officials say that they often transited Alaska. I have come to conclude that most of the world's leaders have at one time or another stood around in the international lounge in the Fairbank or Anchorage airport for an hour or so, waiting for their plane to be fueled for an ongoing flight. Shouldn't these airports have small theaters where the Alaskan government could show films, with sound tracks in several languages, extolling what Alaska has and what Alaska can do?

In terms of target nations, Alaska should concentrate on Japan. It is the world's second largest economy. Its appetite for natural resources is voracious. It has a substantial and growing imbalance of trade with the United States and it has an impatient and complaining American government leaning on it to correct this imbalance. These factors suggest that Japan should be willing to buy Alaskan products.

But not all factors favor Alaska. For over a century, the Japanese have said that they have the responsibility for leading Asia, for developing conditions of peace and prosperity in the other Asian nations. That means that the Japanese look more favorably south than they do north. Secondly, Japan has spent much time and treasure developing resources in Southeast Asia and Australia. It will not put aside this investment readily. Thirdly, Asians have the ties to and know how to sell to the Japanese, something that the Alaskans cannot do, yet.

Finally, the Japanese have become accustomed to and know how to deflect Washington complaints. They are aware that both Japan and the United States have again entered an upward phase of the business cycle and during these upward thrusts, Washington officials do not push their economic interests vigorously.

These negative factors lead me to conclude that Alaska will first be able to succeed in its overseas efforts in Korea. It has a booming economy. It has government officials in other states and these officials are favorably disposed towards the United States. It has an unfavorable balance of trade with the United States and both its businessmen and officials want to correct that. Korea does not have any political goals in Southeast Asia, though it is dallying with the idea of helping the Chinese develop Manchuria and the Russians to develop Siberia with the aim of outflanking the North Koreans. Finally, Korea has a healthy appetite for raw materials, particularly energy.

Alaska should not overlook Taiwan. It, too, is short of energy and raw materials and favorably disposed, for political reasons, to purchases from the United States. The Philippines are presently in political turmoil. But that will pass. Although rich in some resources, it is short of energy. It is another potential market for Alaska. Finally, Alaska should be extending feelers to Hong Kong and Singapore. They, too, have high growth rates, resource shortages, and want to establish closer ties with the United States.

FEASABILITY STUDY:
ESTABLISHING A SEPARATE
ALASKAN TRADE OFFICE IN KOREA

Submitted To: The Honorable Joe Hayes,
Speaker of the House of Representatives
of the State of Alaska

Submitted By: Michael M. Gay
6917 Old Seward Highway
Anchorage, Alaska 99502
(907) 276-2733

TABLE OF CONTENTS

I - PURPOSE AND METHODOLOGY

A. Purpose and Scope.

The primary purpose of this report is to provide the Alaska House of Representatives with a feasibility study for the establishment of an Alaska trade office in Korea, as well as a set of guidelines and recommendations, including proposed goals and objectives, for the establishment, staffing and operation of such an office.

The scope of this feasibility study is limited to the following specifically requested topics and areas:

1. Outlining the current structure of the Alaska State Asian Office (ASAO) in Tokyo, including staffing and costs of operation;
2. Analyzing the operation and functions of the ASAO; evaluating its effectivness and examining the option of extending its operation to include the rapidly increasing trade relations and activities in Korea;
3. Reviewing the activities of other states that have established trade offices in Korea;
4. Providing a history of Alaska-Korean trade efforts and activities;
5. Outlining the strongest areas of Korean interest in Alaska and examining the potential economic benefits to the state from increased trade with Korea and from increased Korean investment in Alaska;
6. Synthesizing the materials and information gathered from Korean business people and governmental officals, especially information regarding Korean government and business practices and protocol; and
7. Setting forth and discussing the main reasons for the desirability and feasibility of establishing a seperate Alaska trade office in Korea and outlining a plan for the setting up, staffing and operation of such an office.

B. PROCEDURES FOLLOWED

This study was accomplished in three phases. The first was aimed at obtaining ideas and information from various Alaskan business people and public officials regarding the establishment, functions, goals and policies of an Alaskan trade office in Korea. The organizations contacted in this regard included the Alaska-Korea Business Council (AKBC), and the Anchorage offices of the U.S. Department of Commerce, the International Trade Administration, and the Resource Development Council for Alaska, Inc. Numerous Alaskans presently involved or contemplating being involved in trade with Korea were also interviewed.

The second phase was conducted in Seoul, Korea. Interviews were held with Korean government and business leaders to obtain their ideas and information regarding the establishment of an Alaskan trade office in their country. Among the government agencies, trade associations and business groups contacted were the following:

Korean Foreign Ministry;
Korean Ministry of Commerce and Industry;
Economic Planning Board;
National Tax Administration;
Korea-U.S. Economic Council;
Korea Trade Association (KOTRA);
Samsung Company, Ltd.;
Hyundai Company, Ltd.;
Kukge-ICC Corporation;
Daewoo Corportion;
Kolon Corporation;
Namju Development Corporation;
Various middle-sized and smaller Korean business enities;
Seoul office of the U.S. Embassy, Commercial Section;
Seoul office of the U.S. Chamber of Commerce.

The third and final phase of this study involved the synthesizing of all the data collected in the first two phases, focusing on the areas specifically requested by the Alaska State House of Representatives and as set forth in the preceding subsection.

C. General Results.

The contacts that were made and the interviews that were conducted in both Alaska and Korea revealed a remarkable degree of interest from all sources. The amount of candid and positive input from Alaskan and Korean business people and government officials was very encouraging, but somewhat unexpected in light of what appears to have been a very limited amount of communication and sharing of detailed business and trade information between Alaska and Korea in the past.

II - HISTORY OF ALASKA-KOREAN TRADE

A. Limitations.

There is very little documentation available that specifically deals with past and current trade activities between Korea and Alaska. Most of the information obtained for this study was the product of interviews with individuals familiar with , or was derived from publications that addressed only small portions of the overall picture or included information on Korea that was only incidental to other topics. As a result, it is impossible to present an accurate, comprehensive and up to date summary of Alaska-Korea trade activities. Thus, what follows is only a general overview with a capsule history and figures on the recent level of trade, as to which some examples and statistics were available.

B. Capsule History.

Until very recently direct trade between Alaska and Korea has been relatively sparse compared to trade activities between Alaska and Japan, for example.

Alaska-Korean trade activities have generally involved exporting Alaskan natural resouce products, particuarly fish, timber and coal, to Korea. In addition, some Korean firms have supplied industrial materials for Alaskan capital projects, and in a few cases Korean firms have been awarded contracts to construct all or substantial portions of such projects. In more recent years, Korean firms have participated and shown a strong interest in continuing to

participate in joint ventures with Alaskan businesses, especially those involved in natural resource extraction and development.

C. Level of Trade.

As to the specific level of Alaska-Korean trade activities, according to a table in the 1980 Alaska Statistical Review listing the value of Alaskan imports and exports by nation for selected years between 1970 and 1979, in 1970 Korea ranked 4th as a recipient of Alaskan exports, behind Japan, India and Canada. In 1979, Korea again ranked 4th, this time behind Japan, India, and the People's Republic of China. Japan was clearly the dominant export market for Alaska, receiving over 80% of all Alaskan exports, while Korea does not appear to have been a significant market during the 1970's.

According to statistics from the Alaska Department of Commerce and Economic Development on, Alaskan exports to East Asian markets for the years 1978 through 1982, Korea was consistantly ranked behind Japan and the People's Republic of China until 1982, when it surpassed the latter. However, it should be noted that in 1982 the sale of 2 reconditioned jet aircraft to Korea accounted for over half the total yearly figure.

It should further be noted that the statistics mentioned above reflect only exports that were shipped directly to Korea from Alaska. Many Alaskan products have been and are being exported to Japan, whose trading companies then sell

them to Korea. Furthermore, some Alaskan products have been and are being transported to the contiguous United States before being shipped to Korea, and no statistics are available for all these types of transactions.

III - OTHER STATES' TRADE OFFICES[1]

According to a 1980 survey, 33 states were represented in that year by trade offices in 66 foreign countries. This had increased from 20 states in 1977.[2] While some states may have added or closed foreign trade offices in the last three years, international trade staff for such national organizations as the National Association of State Development Agencies (NASDA), the National Conference of State Legislators (NCSL), and the Council of State Governments (CSG) indicated that the level of activity is about the same currently. NASDA is in the process of compiling an updated list of state foreign trade offices, which should be available later this year.

In almost all cases, the foreign trade offices are associated with their state's economic development agency. In a few cases, the office represents the state's agriculture agency, and in some states different agencies share an office. In some cases, rather than representing a state, an office will represent a port authority or some other regional entity. For the purposes of our discussion, we have not included any state offices which are limited to promoting tourism, although some state trade offices do serve this function in addition to other duties.

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[1]This section of the study was provided by Jonathan Sherwood of the House Research Agency.

[2]National Governors' Association, Export Development and Foreign Investment; The Role of States and its Linkage to Federal Action, 1981, p. 22.

Foreign trade offices are most frequently staffed by personnel employed directly by state government, as is the case with Alaska. In many cases, these are regular employees of the parent agency, who are routinely rotated to their home state. However, some states contract with one or more foreign consultants to represent their state. In addition, several western states operate the Old West Commission, which has had joint trade offices in both Europe and Asia.

Foreign trade--and consequently the activities of state foreign offices--is often classified into two broad categories: (1) investment; and (2) trade. Investment, also called reverse investment or foreign investment, refers to business transactions in which foreign companies invest capital in the state, frequently by opening a manufacturing plant.

Trade, the second kind of activity, involves the exporting of goods to foreign markets. According to Marsha Clarke, with NASDA, state foreign trade office activity is fairly evenly divided between the promotion of these two functions, at least on the global scale. State offices in developed countries like Japan may place a higher priority on encouraging investment; in developing nations, state offices may place a greater priority on expanding markets, as these countries are less likely to have firms interested in developing operations in the U.S.

The trade offices of other states also collect trade intelligence for their state. However, according to Ms. Clarke, it is difficult to identify how much time is devoted to this activity, as it tends to be performed in conjunction with the office's promotional activities.

According to a 1983 study prepared for the Alaska Legislature by Dupere and Associates, once a state foreign office has made contact with a foreign firm interested in doing business with the U.S., the state's home office provides the U.S. business contact.

The Dupure report and other articles on foreign trade offices emphasize the importance of strong direction and support for state foreign offices from their parent agency. The home office must be able to identify the appropriate business contacts for foreign business interests who contact the state's foreign office, and to identify which in-state businesses expressing interest in exporting their products are serious candidates for foreign trade.

Ms. Clarke stated that the typical cost for a foreign trade office would be between $100,000 and $300,000. She noted that the upper limit generally provides for a large operation, but also cautioned that Tokyo was substantially more expensive than other locations. A 1982 survey indicated that the number of employees per office varied from 1 to 8, with 2 or 3 employees being the most common

staffing pattern. The largest number of employees in the Japanese offices surveyed was six.

Asian Offices.

According to Marsha Clarke, her most recent information shows that 19 states now have foreign trade offices in Japan.[3] In addition, California, which does not have a state office there, has several port authorities, including Long Beach and Oakland, which operate offices in Japan. Most of these offices are regional in scope; however, some of the offices are intended to deal strictly with Japan. States which currently have offices in Japan are listed below:

Alabama	Indiana	Michigan	Pennsylvania
Alaska	Kentucky	Missouri	South Carolina
Florida	Louisiana	New York	Virginia
Georgia	Maryland	North Carolina	Washington
Illinois	Massachussettes	Ohio	

In addition, Illinois has an office in Hong Kong and Missori has an agriculture representative in Singapore. None of the individuals we contactaed was aware of any state with an office in Korea.[4]

According to Ms. Clarke, state foreign offices in Japan usually place much more emphasis on encouraging foreign investment and little emphasis on increasing exports. Ms. Clarke explained that this is a result of Japan's long-

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[3]This compares with 14 states in 1980.

[4]We received an excerpt of a recently published book on foreign trade office activity which refers to a possible office in Korea. The excerpt does not provide detail on the status of the office; it is not clear whether an office has been opened or was merely planned.

standing trade restrictions on the importation of manufactured goods and agricultural products. Traditionally, these have made it very difficult for the U.S. businesses to export goods to Japan. While some of these restrictions have been lifted in recent years, Ms. Clarke stated that the direction of states' trade office activities in Japan have not changed significantly. The Dupere study also found that most state offices in Japan devote more time to promoting Japanese investment in the U.S. than to promote trade.

IV - KOREAN GOVERNMENT, BUSINESS AND CULTURAL PRACTICES AND PROTOCOL

A. Interrelationship.

There is a very close interrelationship between Korean governmental, business and cultural practices and protocol, the degree and extent of which is completely foreign to most Americans. This chiefly stems from the fact that modern Korean industrial society is founded on close cooperation between government and private sectors. Government agencies are responsible for establishing and implementing short and long term goals that set the tone for the private sector[1], and government agencies then openly and freely provide broad, efficent assistance to private enterprises willing and able to help pursue and fullfil the chosen goals.

The closely knit ties between government and private sectors regarding economic and industrial matters is interwoven, overlapped and, in essence, held together by unique cultural practices and rules of protocol and etiquette.

B. Basic Principles.

Like all other countries, and even specific regions within a country, in Korea there are many peculiarities and practices that have come to be recognized as proper and correct etiquette in the business community, as well as in governmental and social cicles. And although they may differ in form and vary with specific circumstances, Korean

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[1]The economic Planning Board (EPB), an agency within the Ministry of Commerce and Industry, sets and implements the economic and commercial plans, goals and policies for the entire country.

governmental, business and cultural practices and protocol are essentially based on certain fundamental principles which, to most effectively, efficiently and profitably conduct business in Korea, must be acknowledged, learned and adhered to.

The strongest and most basic principles of proper Korean etiquette and protocol are respect, courtesy and seniority. These are universal norms, but nowhere are they more strongly ingrained and adhered to than in Korea.

Furthermore, the concept of seniority does not merely refer to age, although that certainly is a valid consideration, but also applies to rank, status and relative position, with which Koreans are intensely concerned. Thus, it is equally improper to be overly courteous to someone of lesser social status, job position and age as it is to be curt and inattentive to someone of greater seniority.

For obvious reasons, this study cannot deal with all, or even most, of the specfic practices and rules that apply to even the most basic of situations. The examples that follow, however, can serve as a general introduction and guide in this area.

C. Specific Customs.

Korean business people and government officials are very modern and westernized in their attire. They tend to dress formally and conservatively, wearing suits that are of traditional colors and muted patterns, with white shirts and subdued ties. The wearing of loud colored, leisure type

clothing and accessories is generally considered in poor taste when attending to business and governmental affairs, even if after normal business hours.

Koreans have an extremely strong work ethic that they are very proud and concious of. It is bad form, even in jest, to condone the wasting of working time and resouces. Long lunches or work breaks are frowned upon unless warranted by a special occassion or at the insistance of a higher ranking host, and it is equally frowned upon to show up too early for a business appointment, as it is considered rude and insulting to be more than a few minutes late.[2]

Normal handshakes are the accepted form of greeting. Bowing is usually reserved for greetings between Koreans themselves and westerners are not required or expected to engage in that particular custom.

The traditional Korean way of writing names is to place the family (or last) name first, followed by the first and then the middle name. This tradition is slowly changing, however, and many Koreans now use the western method of first, middle and then last name. It is proper etiquette to refer to an individual by his or her family (last) name preceded by Mr. or Mrs. It is not appropriate to use first names unless specifically requested by the individual involved.

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[2]Actually, if one has a choice in the matter, it is better to be a few minutes late than early because this is apt to waste less of your Korean host's time.

At the first meeting with a Korean business person or government official, it is appropriate and expected to let the host intiate and lead the conversation and the meeting. First meetings are usually short and the Korean host will most often focus on non-essential matters. In-depth discussions about vital topics are normally reserved for later meetings, but even then it is not at all unusual for a Korean host to somewhat abruptly change the subject. This normally indicates that the former topic of discussion is closed for that meeting, and it is best not to insist on discussing that particular matter further.

As a general rule, Korean business people and government officials will not complete a transaction of any significance at the first meeting. The main reason for this is that they put a great deal more emphasis than Americans on establishing a personal rapport with the other party before entering into serious or final discussions and negotiations.

D. Culture and Arts.

A recent (December, 1982) publication of the Korean Ministry of Culture and Information titled Looking Ahead contains (at pages 56 and 57) the following colorful description of Korean culture and arts:

> Korean culture has a special flavor all its own, a unique blending of change with traditions stretching back some 5000 years into the mists of mystery and myth, of animistic, Buddhist, and Confucian beliefs. Korea is a kaleidoscope of sights and its unique taste can be found in the resplendent rainbows of "tanchong" that color the palaces

and temples throughout the country; the lively motions of an ageless farmers dance; the richly vibrant sounds of exotic musical instruments; the slow, subtle movements of the shoulders, hands, and neck of the court dancers; and the soft, curving roof lines floating ever so gently heavenward.

Each dynasty produced its own unique artistic forms, not to mention the world's first moveable metal printing types some 220 years before the Guttenberg invention, and the Hangul alphabet, perhaps the most scientific system of writing in general use in any langauge.

Korea's arts are colored with symbolism reflecting a people who wanted to be happy, have progeny, live long, and enjoy good luck. Even today, furniture, linens, clothes, all accessories including hairpins, outside walls, gates, chimneys, etc., are adorned with the five elements, ten symbols of longevity, four directional animals, twelve animals of the oriental zodiac and propitious adeographs; a spicy mixing of shamanistic, Taoist, and Buddhist beliefs.

Much pottery and many paintings, especially folk paintings, are rather whimsical, reflecting the artist's own sense of humor and playfulness. While academic painters tended towards almost monochromatic landscapes conveying an impression of serenity and oneness with nature, the charmingly naive and unpretentious folk paintings reflect the actual life of the people.

Ceramics, especially the blue-green Koryo celadons produced more than a thousand years ago, are by far the most famous class of the nation's art objects. The Yi Dynasty forsook the delicate and intricate to produce simple, robust forms of an unpretentious and spontaneous style. No matter which of nature's shapes are suggested. Korean potters created some of the most beautiful elongated curves ceramic history has known, curvaceous lines soaring with energy, lines that were perfected and made more approachable and warm.

So too is Korean dance warm, earthy and alive with a character all its own. Unlike other Asian dances, the dance in and of itself never tells a story but strives only to communicate a mood. Stepped by silk-clad court ladies the ancient court dances are characterized by dignity and grace. Not so the folk dances farmers improvised

during planting and harvest times, a slithering of airborne paper streamers from the crown of gyrating headdress, while acrobatics mounting in a crescendo of frenzy, a fleeting flash of straw sandals, shuffling in the dust, competing with complex cross rythms of drum, gong and bugle.

Music, especially court music, is both nasal and shrill; slow long-held notes dissolving into lacy arabesques punctuated by the single thump of a drum, one pungent stroke of gong, chime or cymbal. Outlining vast arching melodies, the tones sound strangely piquant.

Musical events, especially folk ones, are often punctuated by boisterous cries of delight and encouragement from the audience as traditionally, the enjoyment of these art forms is in the participation and not merely the watching.

E. Sense of National Identity.

Modern Koreans are extremely conscious of and concerned with projecting, maintaining, enhancing and getting outsiders to acknowledge and accept their unique national identity. To say that Koreans are not pleased or even that they are insulted when associated or sterotyped or analogized with other oriental cultures, especially the Japanese, is to vastly understate the matter. At the very least, such behavior is considered a serious breach of etiquette and to most Koreans signifies a disrespectful and insulting ignorance of oriental cultures and history.

This is a very important point for any American who desires to have smooth, successful and profitable dealings with Korea to constantly keep in mind. Its significance cannot be overly emphasized.

For example, in the course of conducting this study in Korea, it was extremely difficult to even raise, much less

seriously discuss, the option of extending the operation of the ASAO office in Tokyo as a viable alternative to establishing a seperate trade office in Korea. That particular notion of having to deal with outsiders through the Japanese carries a strong and extremely negative stigma among Korean business people and government officials who unanimously share in the goal of reversing the virtually complete economic control and exploitation that Japanese trading companies exerted for so many years over the Koreans.[3]

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[3]This strong sense of national identity and feverish need to disassociate themselves from Japanese dominance underlies the Koreans' notorious aggressiveness and competitiveness in the area of international trade, which in turn provides the basis for their dramatic successes in that area.

V - KOREAN INTERESTS IN ALASKA

A. Korean Interests Generally.

Because of Korea's lack of natural resouces, it must secure stable and longterm supply sources elsewhere. Thus, Alaska's natural resources are considered a prime source of acquisition by the Koreans, who are also interested in marketing their goods and services in Alaska. This study will highlight the most serious areas of interest the Koreans have in Alaska, which are as follows:

1. Potential Acquisitions in Alaska:
   a. Coal and hardrock minerals;
   b. Oil and petroleum products;
   c. Liquified natural gas (LNG);
   d. Fisheries;
   e. Timber resources;
   f. Agriculture.

2. Potential goods and services to be provided to Alaska:

   a. Heavy industrial machinery, equipment, tools and materials;
   b. Construction and infrastructure development projects;
   c. Joint ventures in various areas, ecspecially those involving natural resource development;
   d. Airline passenger and cargo services.

B. Governmental Policy.

The Korean Ministry of Energy and Resources strongly encourages private businesses to get involved in the development and purchase of natural resources from foreign countries with which, as a part of the general plan, trade and commerce can also be implemented or increased. To the Koreans, the key to resource development abroad lies in securing a stable supply of energy sources on a long term

basis. Since this requires a great deal of capital, it is the recommendation of the Korean Ministry of Energy and Resources that energy exploring and consuming firms engage in natural resource development in foreign countries by way of consortiums and joint ventures.

C. Coal and Strategic Minerals.

Because of the oil shocks of 1972 and 1979, Korea has undertaken an aggresive program of increasing the uses of coal and nuclear power to supply its energy needs. Furthermore, the most recent trend has been to rely more heavily on coal than nuclear power, which has fallen into disfavor due to the escalating costs of nuclear power plant construction and the increased safety regulations and standards that must be established and implemented.[1]

In 1980, a Korean corporation, the Sun Eel Shipping Company, Ltd., signed a long term (10 years) contract to purchase 7 million metric tons of coal from the Usibelli Coal Mine near Healy. In 1983, Sun Eel and another Korean company, the Korean Electric Power Coporation, further agreed to export 800,000 metric tons of coal annually from the Usibelli Coal Mine through the coal loading facilities that are presently being constructed in Seward.

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[1]This information was obtained primarily from interviews and discussions with various Korean Government officials, including: the director of the American Division of the Foreign Ministry, J.J. Ryung, and his subdorinate in charge of the North American sector, S.H. Kim; and the director of the American Trade Division of the Ministry of Commerce and Industry, S.H. Chang.

The Koreans are also involved in another coal development project through a joint venture between a consortium of Korean coporations called the Korea Alaska Development Coporation (KADCO) and Chugach Natives Corporation, Inc., who are the owners of the coal field being developed near Cordova. This Alaskan-Korean joint venture is named the Bering River Development Corporation and it has very promising prospects because the coal to be extracted is of higher quality, and value, than that from the Usibelli Coal Mine. However, the joint venture faces and has been dealing with a major problem in that the coal fields are located approximately 30 miles from the ocean and transportation and loading facilities need to be constructed.

D. Oil and Petroleum Products.

Even though, as previously mentioned, Korea is gearing up to decrease her oil dependancy, it will be some time before her oil imports are substantially reduced. Korea currently purchases a little over $6 billion worth of oil annually from the Middle East, which is a highly unstable and distant market. Thus, in terms of stability and logistics, it is very clear that Alaska would be a much better source of crude oil for the Koreans, who have consistently expressed an interest in purchasing, and becoming involved in the development of, Alaskan crude, and who are also very interested in being allowed to explore that possibility if and when the federal export restrictions are removed.

If a gas line is constructed, and if exsisting federal restrictions are removed, Korea would also be an ideal potential consumer of Alaskan LNG. Of course, the level of LNG, as well as crude oil, imports by Korea depends on a host of other factors, especially price. But the interest is certainly there,[2] and the Koreans' entry as a competitor among potential buyers and investors would be of obvious benefit to Alaska.

As to other petroleum products, several Korean coporations are presently considering importing various items such as unleaded gasoline, reformate and residual fuel oil.[3]

In conclusion, although Alaska-Korean trade in oil and petroleum products has not yet gotten off the ground, it clearly appears that Korea is a potentially good customer who is willing and able to participate in the infrastructure development that is necessary to market those resources.

E. Fisheries.

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[2]Although there appears to be some question about Korea's potential as an Alaskan crude oil and LNG purchaser due to its long term commitments to obtain those resources from other countries, virtually all of the coporate and government officials contacted in Korea expressed a keen interest in these areas. In this regard, see the notes of interviews conducted in Korea Attachment D hereto; and also see the January 10, 1984 letter from Samsung President J.H. Kyong, in Attachment C hereto, which states: "we have expressed our keen interests in the Alaskan LNG and petrochemical project when Mr. Hickel visited seoul (sic.) last December. To facilitate our efforts, Samsung is opening an Anchorage offices (sic.), beginning this January."

[3]This information was obtained from two officials of the Alaska-Korea Business Council (AKBC), Loren Lounsbury and Robert Breeze.

The export of Alaskan seafood products to Korea has been one of the largest items of trade in the past several years.

As far as fisheries and fish processing activities are concerned, until very recently foreign entities, including Korea, conducted entirely self-sufficent operations. The more recent trend, however, has been the formation of joint ventures between American trawlers and foreign processers. Korea has been very active in this trend and there is every indication that it will continue to do so and that the number of Korean-Alaskan joint ventures will rapidly increase.[4]

F. Agriculture.

Although in the past there has not been much agricultural trade between Alaska and Korea, there is an existing beef exporting operation near Homer and two large Korean firms have initiated a project in the Kenai area that entails the leasing of University of Alaska land for the raising and slaughter of cattle to be shipped to Korea.[5]

Some work is presently being done in the area of growing and exporting grain products from the Mat-Su Valley to Korea and other Pacific Rim countries. It appears that the success of this project largely depends on experimental research being

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[4]Thus, according to a memorandum dated January 17, 1984, from House Research agency analyst Jonathan Sherwood to Speaker Hayes' office, 8 of the 17 joint ventures approved by the North Pacific Fisheries Management Council in December, 1983, involved Korean firms.

[5]This information was also obtained from AKBC members Lounsbury and Breeze.

done at and in conjunction with the University of Alaska on the development of new types of grains capable of being produced in large quantities here in Alaska. Due to its high demand and needs, Korea is an ideal potential market for the export of these grain products, and if successful the venture promises to be very benficial, in terms of jobs and revenue, to Alaska.[6]

G. Korean Investments in and Goods/Services Provided to Alaska.

As previously discussed, Korean investment in Alaska presently consists of joint ventures in coal, timber, fisheries and the raising of reindeer.[7] The current level of this investment is significant, rapidly increasing and, as further discussed below, there is very strong Korean interest in its continued expansion.[8]

Korean firms have provided and are providing a large and increasing amount of heavy industrial products, materials and services to Alaska. Although there are no available

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[6] This information was obtained from interviews with Hyoung "Henry" Kim, the president of Topex Industries, Inc., an Alaskan coporation with offices in Anchorage that is involved in the project discussed.

[7] The Nana Regional Native Corporation in Kotzebue is engaged in a Korean joint venture that involves raising and maintaining a herd of 6,000 reindeers, with the horns of slaughtered animals being exported to Korea and the meat being consumed by local Eskimos.

[8] In addition to the other specific joint ventures and projects mentioned in this report, AKBC member Robert Breeze recently indicated that a large Korean company, the Korea Ship Building and Engineering Coporation, has made serious and detailed proposals to build a modern ship repair and building facility at Seward.

figures as to the dollar level of these transactions, they include the following:

1. An $118.4 million saltwater treatment plant that the Korean firm, Daewoo, constructed and delivered to ARCO on the North Slope in 1983;
2. The Hyundai Corporation, the largest in Korea, provided the structural steel for the new Sohio Building in Anchorage; and
3. Hyundai is also erecting the transmission towers for a section of the Anchorage-Fairbanks power intertie.

The Koreans are especially interested in expanding the goods and services that have been and are being provided to Alaska. In terms of their potential to do so, it should be noted that in the last decade Korea has made a dramatic emergence in the world community as a heavily industrialized nation that does not need to take a back seat to anyone, with specific areas of expertise in the manufacturing of steel products; pipe; plant construction; heavy equipment; petrochemical industries; ship building and repairing; and general construction services.[9]

Because the Koreans are highly modernized and technologically sophisticated, and because they have a highly skilled and low priced labor force, they are very competetive in all the above areas, which has been and will be of substantial benefit to Alaska as Korean involvement in

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[9]This information was obtained from interviews with officials of the largest Korean Corporations, or conglomerates, whose annual sales figures and diversity of interest, expertise and projects are extremely impressive, as indicated in the brochures found in Attachment "C" hereto.

construction and infrastructure development projects continues and expands.

H. Potential for Future Trad .

Most Alaskans who are involved or contemplating being involved in trade with Korea unanimously agree that there is vast potential for increased trade, with the export of Alaskan natural resources as the most promising area. Of course, the major drawbacks of inadequete infrastructure and governmental regulations are usually also focused on by both Alaskans and Koreans interested in seeing trade in this area expand.

In general, Koreans view Alaska as an ideal trading partner because of its wealth of natural resources; its proximity to Korea; and its political stability compared to other sources of vital natural resources.

All of the major Korean corporations and government agencies contacted as part of this study expressed a keen interest in intiatiting or expanding their trade with Alaska.

For example, Director K.S. Choo, speaking for himself and on behalf of president M.J. Chung of Hyundai Heavy Industry, the largest private business entity in Korea, stated that his group of companies is interested in the following areas of trade with Alaska: steel; pipe; coal; timber; heavy industrical products; construction machinery and materials; and red meat.[10]

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[10]See notes on 1/11/84 interview with Mr. Choo in Attachment B hereto.

Mr. S.N. Sonh, the manager of natural resources of the Daewood Corporation, Korea's second largest private business enity, stated that his companies are interested in pre-cast cement; rolling stocks; LNG; coal; oil; ship building and repair; and textiles.[11]

Mr. J.H. Kyong, the president of Samsung Corporation, the third largest private business enity in Korea with annual gross revenues of approximately $2.5 billion, stated that his group of companies are interested in coal; timber; LNG; steel; heavy industrial products; oil and petroleum products; steel structures; pipe; heavy construction machinery, vehicles and tools; and joint ventures with Alaskan native corporations and other Alaskan entities, especially those involved in natural resource development.[12]

Mr. J.J. Kim, the executive vice-president of Kukje-ICC Corporation, the fourth largest private business entity in Korea with annual gross revenues of approximately $2.2 billion, stated that his group of companies are interested in LNG; coal; timber; oil and petroleum products; heavy component parts; heavy equipment; and joint ventures with Alaskan native coporations and other Alaskan entities, especially those involved in natural resource development.[13]

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[11] See notes on 1/13/84 interview with Mr. Sonh in Attachment B hereto.

[12] See notes on 1/9/84 interview with Mr. Kyong in Attachment B hereto.

[13] See notes on 1/9/84 interview with Mr. Kim in AttachmentB hereto.

The contacts undertaken for this study in Alaska and Korea leave little doubt that the potential for future trade is extremely promising. Indeed, given the strong interest and enthusiasm, and considering the mutually compatable needs and desires, on both sides, it appears to be inevitable that Alaska-Korean trade will continue and will expand. And it seems quite possible that this expansion will take place at an unprecedented rate, with obvious and potentially substantial benefits to both trading partners. Furthermore, it is also obvious that the Alaska state government can be of great assistance in fostering and enhancing this fruitful climate. Thus, the establishment and maintenance of an Alaskan trade office in Korea which can provide, as part of its functions, information about business and investment opportunities to both groups, and can serve as a contact point for Alaskan and Korean businesses, seems to be a logical and appropriate step in the right direction at this time.[14]

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[14]The major drawbacks to the rapid expansion of Alaska-Korea trade, as expressed by business and government leaders on both sides, are Alaska's lack of adequate infrastructure for resouce development; the lack of sophistication and expertise in international trade among Alaskan businesses; the lack of consistant and positive governmental policies regarding resource development; and state and federal governmental restrictions and requirements. Of course, the Alaska state government can also be of major assistance in mitigating or removing some of these obstacles.

VI. - POTENTIAL ECONOMIC BENEFITS TO ALASKA

A. Generally.

As a general proposition, it is obvious that Alaska will reap economic benefits from increased trade with Korea, and from increased Korean investments in the state.

B. Level and Frequency.

As to the level and frequency of those benefits, there is inadequate, up to date information available on which to base any detailed estimates, other than to say that, as reflected in other sections of this report, there are various factors indicating that they are apt to be substantial, frequent and capable of rapidly increasing. Those factors include but are not limited to the following:

1. The vast natural resources that Alaska possesses;
2. The great and increasing needs that Korea has for those resources;
3. Alaska's acute need to develop infrastructure to successfully and profitably market its resources;
4. Korea's willingness and ability to invest and participate in the development of Alaskan infrastructure;
5. Korea's rapidly growing capability and expertise in providing high quality goods and services at highly competitive prices; and
6. Korea's commercial and industrial aggressiveness and the healthy competitive affect this will have among potential providers of goods and services to Alaska, and among potential purchasers of Alaska's exports.

C. Nature and Extent.

As to the nature and extent of the benefits, the immediate benefit will be a broadening of Alaska's economic base stemming from the steady, thoughtful development of its

natural resources.[1] This should result in more jobs for Alaskans and a broader tax base as the infracture needed to market the resources is expanded and refined.

Just as success breeds success, a strong economy will breed a stronger economic base to sustain and benefit future generations of Alaskans. The long-term view shows that the potential for development of Alaska's resources, and the infrastructure necessary to market them, has barely begun, and that the process now under way can be controlled and guided in the proper direction, so as to make the Alaskan economy steadier and safer in the coming years.

For example, the imminent purchase of the Alaska Railroad will need to be coupled with private investments in further infrastructure development before the state can reap the maximum benefits. And the continuing expansion of the petroleum industry also needs to be tied to further infrastructure development so as to assure that the diversification necessary to stabilize and thoughtfully expand the Alaskan economy will occur.

The Korean business and government officials interviewed for this study understand and are more then willing to participate in fulfilling these Alaskan goals. And they openly acknowledge that it is in their best, long range interest to do so, as part of the price they are willing and

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[1] Of course, it is the Alaska legislature's function to make sure that the development of the state's natural resources takes place in a steady and thoughtful manner.

able to pay to obtain the vital natural resources so desperately needed by their country.

VII. - FUNCTIONS, OBJECTIVES AND EFFECTIVENESS OF ASAO

A. ASAO's Primary Area of Service.

The Alaskan State Asian Office (ASAO) located in Tokyo, Japan, has an interesting and intriguing history dating back to its founding in 1965 that was detailed in a recent study[1] and clearly indicates that despite its recently changed name, the ASAO has been and is primarily, if not solely, involved in providing contacts and services with and regarding Japan, rather than any other Asian country. This conclusion is further supported by an examination of pertinent documents and an interview conducted for this study by House Research Agency analyst Jonathan Sherwood with Vince O'Reilly, Deputy Commissioner of Commerce and Economic Development,[2] which indicates that the ASAO has devoted very little, if any, time or resources to Korea or the two other countries--Taiwan and China--that it is supposed to service.[3]

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[1] Alaskan State Asian Office Study, January, 1982, submitted by Agritrade International, Inc. to the Department of Commerce and Economic Development, at pages 10-14.

[2] See January 17, 1984, memorandum from Mr. Sherwood to House Speaker Hayes' office, at pages 2-3.

[3] For examples, Mr. O'Reilly stated that the contacts and activities of the ASAO with Asian countries other than Japan is so negligible that virtually no records thereof are kept and no estimates can be made; and the 2 ASAO monthly reports detailing activities in September and October of 1983, which are in Attachment "D" hereto, show that the only contact with Korea during the 2 month period involved was a trip on October 12, 1983, to attend a funeral of the Korean government officials killed in the Rangoon bombing.

B. FUNCTIONS AND OBJECTIVES.

As mandated in the appropriate executive budget documents, the primary purposes and functions of the ASAO are to:

1. Provide the Alaska business community with pertient intelligence on market prices and conditions, product utilization, etc.;
2. Locate and establish business contacts which are interested in Alaskan products and investments;
3. Act as a catalyst to assist Alaska and foreign business persons to meet and conduct business;
4. Establish foreign government contacts which are important to Alaska, and introduce them to the state's economic trade and development policies; and
5. Establish a favorable image of Alaska in foreign countries.[4]

As previously mentioned, it is quite clear that the ASAO is only exercising the functions and fulfilling the objectives listed above in regard to Japan. For example, as to the first function and objective, it is obvious that the ASAO cannot provide "pertinent intelligence on market prices and conditions" in Korea if its only contacts with that country in a 2 month period is a single trip there to attend a funeral.[5]

C. Effectiveness.

It is difficult, if not impossible, to evaluate the effectiveness of the ASAO without some measurable and meaningfull criteria. However, during its years of operation Alaskan exports to Japan have risen dramatically and it is predicted that they will reach the $1 billion mark

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4See footnote 2, above, and accompanying text.
5See footnote 3, above, and accompanying text.

in the next year or two'[6] and this is in itself an indication of the ASAO's strong effectiveness.

However, once again it must be pointed out that the ASAO's effectiveness is only in relation to Alaskan trade with Japan. Certainly, based on the previously mentioned information, it would be unwarranted to attribute the dramatic recent rise in Alaskan exports to Korea[7] to the ASAO.

6A U.S. Department of Commerce, Division of International Trade, study listing the level of Alaska exports to Asian countries through November, 1982, indicated that in 1981 the total exports to Japan were approximately $934 million. This decreased in 1982 to approximately $888 million, but the director of the U.S. Department of Commerce's Anchorage office, Richard Lenahan, concurs with the $1 billion in the next year or two prediction.

[4]The same study mentioned in footnote 6, above, shows that exports to Korea rose from approximately $20 million in 1981 to around $95 million through November of 1982.

VIII. - EXPANDING THE ASAO TO SERVICE KOREA

A. Only Protocol Functions and Objectives Being Provided Re Korea.

As pointed out in the preivous section of this report, the ASAO is not, in any meaningful sense, providing any services in regard to Korea.

The ASAO is not, in any meaningful sense, providing the Alaska business community with pertinent intelligence on market prices and conditions, product utilization, etc., in regard to Korea. It is not and it cannot perform this function because to do so would require a presence or representation in Korea, and that has not occured and is not occuring.

The ASAO is not and cannot locate and establish business contacts in Korea which are interested in Alaska products and investments because to do so would require a presence or representation in that country, and that has not occured and is not occuring.

The ASAO is not and cannot act as a catalyst to assist Alaska and Korea business persons to meet and conduct business because to do so would require a presence or representation in Korea, and that has not occured and is not occuring.

However, the ASAO is apparently making some effort, and planning to increase those efforts,[1] to establish government

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[1]This information was obtained by House Research Agency anaylist Jonathan Sherwood through interviews with Alaska state officials and review of applicable documents for this study.

contacts which are important to Alaska, and introduce them to the state's economic trade and developmental policies, and to establish a favorable image of Alaska in Korea.

It should be noted that the latter activities being performed and contemplated by the ASAO in regard to Korea are in the nature of a liason or protocol function and objective.

B. Feasability.

The question of whether it is feasible for the ASAO to expand its present or contemplated functions and objectives so as to perform and fulfill them in regard to Korea, has already been answered in the negative, for obvious reasons. The gathering of pertinent, or useable, intelligence on market prices, conditions, product utilization, etc., in Korea is a function that cannot conceivably be performed without being present or represented in that country. And the same is true for locating and establishing business contacts and acting as a catalyst for business transactions. These are activities that require virtually day to day attention and cannot be performed in any meaningful sense from another country.

C. Other Considerations.

Thus, the only way to expand the ASAO to service Korea is to limit its activities in that country to those it is already performing or contemplating, which is mainly a laison or protocol function. Increasing the contacts the ASAO has with Korea will not substantially alter the nature of that

function unless those contacts are increased to the point where it becomes pratical and necessary to have a representative permanately stationed in Korea, and to establish a permanant ASAO branch office there.

However, there are reasons that such an alternative to establishing a seperate Alaskan trade office in Korea is ill-advised and should be rejected.

As previously mentioned and discussed in this report Koreans have a strong sense of national identity and they are very sensitive about being rated second to Japan.[2] Indeed, all the Korean business and government officials interviewed for this study pointed this out, and some of them expressly stated that they would consider the expansion of the ASAO in Tokyo to service Korea as relegating Korea to the postion of being a second class citizen.[3]

Other Koreans interviewed for this study had more practical objections. Thus, Mr. Rhim, the executive director of the Korea-U.S. Economic Council (KUSEC) pointed out that to be effective, an Alaskan representative in Korea must be knowledgeable of Korean business protocol and must have an understanding of Korean business practices and their ramnifications.[4] Mr. Kyong, the president of Samsung Corporation, stated that a Tokyo laison office would not be efficent because of the amount of time lost due to travel,

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[2]See section IV, subsection E, above.

[3]See notes on 1/11/84 interview with Mr. Choo, the director of the Hyndai Corportion, in Attachment B hereto.

[4]See notes of 1/31/84 interview with Mr. Rhim in Attachment B hereto.

reporting and follow up. He also pointed out that his company had experienced these very difficulties with their own corporate branch office structure in other parts of the world.[5]

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[5]See notes on 1/9/84 interview with Mr. Kyong in Attachment B hereto.

IX - PROS AND CONS OF ESTABLISHING A SEPERATE ALASKA TRADE OFFICE IN KOREA

A. The Pros Among Koreans.

Virtually all of the Korean business people and government officials interviewed as part of this study agreed that the establishment of a seperate Alaska trade office in Korea would not only be of great potential benefit to both Koreans and Alaskans, but would also constitute a positive and much needed step in the direction of fostering better trade relations that might have immediate, practical results.

The Koreans were sophisticated and realistic enough to understand that although Alaska is a wealthy state in many respects, like most other governmental bodies throughout the world, it also has limitations on the amount of public funds it can devote to business promotional activities such as the establishment, staffing and operation of a foreign trade office. Nevertheless, virtually all of them seemed to have a very difficult time understanding why the Alaska state government doesn't already recognize that the tremendous potential economic benefits to be derived from fostering trade relations with Korea at this time far outweigh the

costs of establishing, staffing and operating a modest trade office in their country.[1]

Koreans are very aware and proud of the fact that their country is presently the United States' 12th largest trading partner; that Korea is one of the largest importers of U.S. grain products and livestock; and that Korea has incurred and continues to incur a substantial trade deficit in its dealings with the United States.

Koreans are also very keenly aware of the rapid, unprecedented increase in trade with Alaska during the past few years, and they generally view the opening of an Alaskan trade office in Korea as an ideal way to encourage Korean businesses, who can usually obtain extensive cooperation and assistance from the Korean government, to actively get involved in trade activities with Alaska.

As indicated in the notes of the interviews conducted in Korea contained in Attachment D hereto, virtually all the Korean business and government leaders contacted felt that an Alaskan trade office in their country could fulfill the vital and necessary functions of providing detailed information about Alaska and being a point of contact for Korean and Alaskan business entities. Furthermore, there

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[1] Attachment "C" hereto contains letters from three of the major Korean corporations contacted whose expression of support for the proposed trade office are representative of all the other business and government leaders interviewed. Furthermore, one of those letters, from Jung Ju Kim, Executive Vice President of the Kukje - ICC Corporation, expresses the widespread desire and need for detailed information about Alaska, which is a perceived function of an Alaskan trade office in Korea.

was widespread interest in being provided access to information about government regulations affecting trade, and other technical matters necessary to engage in or expand business activities in and with Alaska.

B. The Pros Among Alaskans.

The view among Alaskan business persons and officials interviewed was equally one-sided in favor of establishing a seperate trade office in Korea, and virtually all the Alaskans who are presently involved or contemplate being involved in trade with Korea emphasize the strong need for such a source of detailed information about Korean groups, opportunities, procedures and other factors vital to efficient and profitable trade with that country.

C. The Cons.

From the Korean side there were not any objections to the proposed Alaskan trade office, and from the Alaskan side the only negative point to the establishment, staffing and operation of a seperate trade office in Korea was its cost. In this regard, although it can be said that setting up an office the size of the ASAO in Tokyo is prohibitive and perhaps unjustifiable at this time, virtually everyone will agree that a smaller office in Korea, with a small staff, does not seem excessive in light of the substantial potential benefits to be derived by fostering trade with Korea at the present time.

X - CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions.

Based on the information obtained in this study, the conclusion that is not only feasible but appropriate and even necessary to establish a seperate Alaskan trade office in Korea is inescapable.

In just the past few years, the level of Alaskan exports to Korea has dramatically increased[1] and there has been an increase in Korean investment in Alaska, with every indication that these trends will continue and rapidly expand in the future, thus providing substantial potential economic benefits to Alaska.[2]

All these things, and more, indicate that the state should endeavor to realize these potential economic benefits, and that the establishment of a seperate trade office in Korea that can fully perform and fulfill all the functions and objectives of the ASAO in Tokyo will be a significant, positive step in that direction. In this regard, the option of expanding the ASAO to adequately service Korea is unfeasible and, insofar as the Koreans themselves are concerned, unthinkable, demeaning and thus inherently contradictory to the basic objective of improving Alaska's image in that country.

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[1] See section V, subsection F, and section VII, subsection C, footnote 7, above. The latter refers to a study showing that the level of Alaskan exports to Korea rose from $20 million in 1981 to $95 million in 1982..

[2] See section VI, subsection B, above, for a list of factors responsible for this trend.

B. Recommendations.

In addition to recommending that a seperate trade office in Korea be established as soon as possible, the following recommendations are also offered:

1. Location: as suggested and explained by the executive director of KUSEC[3] and the vice-president of the US Chamber of Commerce in Korea,[4] the Alaskan trade office should be located in the central business district of Seoul, close to the United Government Building and the U.S. Embassy, not only because of easier access to government and business headquarters, but also because such a location is perceived by Koreans as a status symbol of which they are extremelly conscious.[5]

2. Staffing: the Alaskan trade office should have, as a minimum staff, an executive director, a deputy director and a secretary. It is important to have a deputy director because there should always be someone in the office of sufficient rank to host important visitors while the executive director is attending important functions.

3. Qualifications: either the executive or deputy director must be fluent in Korean and be able to read and write the language. In general, these individuals should be business oriented professionals, preferably with experience in Korean-Alaskan trade, rather than dignitary types. This is in keeping with the tenor of the office, which should be oriented more toward the business functions than

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3See notes on 1/10/84 interview with Mr. Rhim in Attachment D hereto.
4See notes on 1/10/84 interview with Brigadier General (retired) Frederick C. Krause in Attachment D hereto.
5See section IV, subsection B, above, where the basic principles of seniority, courtesy and respect and discussed, pursuant to which, having an office in an inferior location would be a breach of Korean business etiquette.

the laison or protocol functions.[6]

4. Duties and Goals: The Alaskan trade office should have the same basic functions and objectives that are presently mandated for the ASAO in Tokyo, which are to:

   a. Provide the Alaska business community with pertinent intelligence on Korean market prices, conditions, product utilization and related matters;

   b. Locate and establish Korean business contacts which are interested in Alaska products and investments;

   c. Act as a catalyst to assist Alaskan and Korean business persons to meet and conduct business;

   d. Establish Korean government contacts which are important to Alaska, and introduce them to the State's economic trade and development policies; and

   e. Establish a favorable image of Alaska in Korea.

5. Proposed Annual Budget.[7]

Executive Director	$ 60,000.
Deputy Director	40,000.
Secretary	10,000.
Office Rent	24,000.
Office Equipment	10,000.
Office Expenses	12,000.
Office Supplies	1,200.
Printing	1,200.
Entertainment	12,000.
Misc. Costs (licenses, etc.)	10,000.
Total	$180,400.

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[6] As previously discussed in section VI, subsection B, above, this is in recognition of and in compliance with the strong Korean work ethic, pursuant to which the appointment of dignitary-type individuals with no prior experience in or detailed knowledge of Korean-Alaskan trade would be viewed as inefficent and unwise. This is not to say, however, that the protocol or laison function and objective should be ignored.

[7] Detailed estimated costs of office space, housing, transportation, schooling and other expenses were provided by the vice president of the U.S. Chamber of Commerce in Korea. See notes on 1/10/84 interview with Brigadier General (retired) Frederick C. Krause in Attachment B hereto.

6. Placement.[8]
The Alaskan trade office in Korea should be placed under the jurisdiction of the Department of Commerce and Economic Development, where the ASAO in Tokyo is presently placed. This is consistant with the practice followed by virtually all states that have foreign trade offices.[9]

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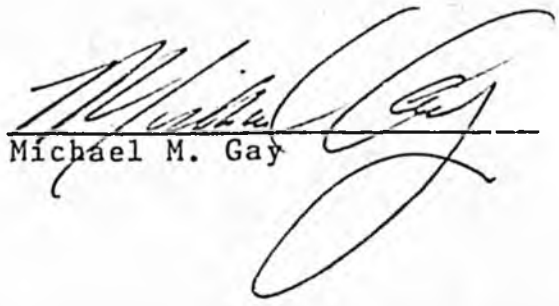
[8] Detailed estimated cost of office space, housing, transportation, schooling and other expenses were provided by the vice president of the U.S. Chamber of Commerce in Korea. See notes no 1/10/84 interview with Brigadier General (retired) Fredrick C. Krause in Attachment B hereto.

[9] See section III, above, containing the following statement: "In almost all cases, the foreign trade offices are associated with their state's economic development agency."

SUBMITTAL

This report is being respectfully submitted on the 14th day of February, 1984, to Alaska House of Representatives Speaker Joe Hayes by



Michael M. Gay

ATTACHMENT "A"

Letters from Korean business leaders.

KOLON INTERNATIONAL COR

C P O BOX 1052 SEOUL KOLON BLDG 45 MUGYO-DONG JUNG-GU, SEOUL, REPUBLIC OF I
TEL: 771-57 / CABLE ADD KKK TRADE SEOUL / TLX KKK TRDG K23226, KKK TRDG K2
KOLONT K26591

January 16, 1984

Mr. Joe L. Hayes
Speaker of the House of Representatives.
Alaska State Legislature

Dear Sir,

It is an honor for us to express our sincere gratitude to you for Alaska State's intention to open a trade office in Seoul. We firmly believe this planned office will do much to increase trade and business relations between Alaska and Korea.

We, Kolon International Corp., very much welcome your proposal, and as an importer-exporter and investor, will be foremost to use this plannned-office in the future. And we sincerely hope that we may be able to offer you any assistance in the establishment and functioning of this office.

We hope that sometime in the near future your plan will include a trip to Korea and at that time you will offer us the opportunity of receiving you at our main offices.

We send you our best regards and intentions both to you and entire state of Alaska.

Sincerely Yours,

KOLON INTERNATIONAL CORP.

Yong J. Kong

Yong Jo Kong
Managing Director

CC: Mr. Michael M. Gay

The International Division of Samsung Group

SAMSUNG CO., LTD.

C.P.O BOX 1144, SEOUL, KOREA TEL : 771 33 TLX : SAMS K23657/7130/7180

Jan 10, 1984

Mr. Joe L. Hayes
Speaker of The House
Pouch V
State Capital
Juneau, Alaska 99811

Dear Mr. Hayes :

It is my great pleasure to take this opportunity to give our whole-hearted welcome and support to your initiating a feasibility study of opening a trade office in Seoul.

Samsung Co., Ltd. is already participating in the Bering coal field development project through our KADCO consortium since 1981 and now we are also studying timber development project with Seulaska corp.

Moreover, we have expressed our keen interests in the Alaskan LNG and petrochemical project when Mr. Hickel visited seoul last December. To facilitate our efforts, Samsung is opening an Anchorage offices, beginning this January.

If your trade office would be established in seoul, reciprocating our Korean efforts as soon as possible, we are sure a bilateral trade between Alaska and Korea can be tangibly activated. Economic cooperation, especially in the fields of natural resources, agriculture, construction and plants for Alaska based industry etc., would be something to watch with great expectations.

We hope your wise vision would bring success and good results.

Sincerely,

Joo Hyon Kyong
President
Samsung Co., Ltd.

CC : Mr. M. Gay

KUKJE-ICC CORPORATION
TRADE & MANAGEMENT
C.P.O BOX 747 Seoul, Korea
CABLE : KUKJECO SEOUL
TELEX : KUKJECO K22534-6, K26548, K27251, K23745
PHONE : 771-61/771-81

CONSTRUCTION
C.P.O BOX 6358 Seoul, Korea
CABLE : "IGECON SEOUL"
TELEX : IGECON K28611
PHONE : 761-8151-9/735-7661-6

Date: January 15, 1984

His Excellency
Mr. Joe L. Hayes
Speaker of the House
Alaska ~~State Legislature~~

Your Excellency :

Few days ago, I had an opportunity of meeting Mr. Michael M. Gay who was introduced to me by Mr. Pio Y. Park. At this meeting we discussed many interesting topics regarding the Korea-Alaska business potentials and possibility of establishing a Alaskan office here in Korea.

As I am in the position of developing oversea businesses within our corporation, I am keenly aware of the fact that overall informations about the state of Alaska or lack of them may influence significant future business decisions. Most of the Korean business men, including myself, have very romatic notions about the Alaska but see few business potentialities. To be more specific, we do not know the details of the natives and Alaskan State, the commercial laws, the labor relationships and other federal laws that may govern the Korean side involvements.

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CONSTRUCTION
C.P.O BOX 6338 Seoul, Korea
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PHONE : 720-8151~9/725-7461~5

By establishing the Alaskan office in Korea will solve and clear all of these questions. What is more important in my opinion is that it will create both Alaska and Korean exposures that are both benefitial to each other.

In our judgement, the timing is right and hope that you will set up such an office in Korea.

Very truly yours,

Jung Ju Kim
Executive Vice President
Kukje-ICC Corporation

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 654
Title: "An Act relating to Alaska Foreign Offices ...."
Sponsor: Hayes
Requestor: House Labor/Commerce
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Economic Development
Program Category Affected: Economic Development
BRU, Program or Subprogram(s) Affected: Economic Development Advocates BRU International Trade Component

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		101.1	106.2	111.5	117.1	123.0
200 TRAVEL		25.0	26.3	27.6	29.0	30.5
300 CONTRACTUAL		293.9	308.6	324.0	340.2	357.2
400 SUPPLIES		14.0	14.7	15.4	16.2	17.0
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		434.0	455.8	478.5	502.5	527.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		434.0	455.8	478.5	502.5	527.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Lois Cook, Director Phone: 465-2505
Division: Administrative Services Date:

Approved by Commissioner: Richard A. Lyon Date: 2/22/84
Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Personal Services - 101.1 - One Far East Representative

Travel - 25.0

Contractual - 293.9

Communications -	35.0
Printing & Advertising -	13.0
Space Expense & Fees -	90.0
Repair & Maintenance -	2.0
Equipment Rental -	4.0
3 Contract Nationals -	78.0
Contractual Funds -	17.9
Hospitality -	37.3
Miscellaneous -	16.7

Commodities - 14.0

ATTACHMENT C

State Foreign Trade Offices

WESTERN CONFERENCE
THE COUNCIL OF STATE GOVERNMENTS

720 SACRAMENTO STREET, 3rd FLOOR SAN FRANCISCO, CALIFORNIA 94108 (415) 986-3760

December 19, 1983

John Sherwood
Alaska House Research Agency
Pouch Y
Juneau, AK 99811

Dear John:

Enclosed are the materials I found on states' foreign trade promotion offices.

Enclosure 1 is from a publication that the Council of State Governments (CSG) did earlier this year, Economic Development: A Survey of State Activities. The information from the study was gathered in a survey sent in September of 1982. Bob Reinshuttle, the contact person at CSG that I gave you, produced the finished report.

Enclosure 2 is from a report produced by the National Governors' Association in 1981. The report, Export Development and Foreign Investment: The Role of States and its Linkage to Federal Action, was developed using information NGA gathered through a survey of state officials.

Enclosure 3 is excerpted from a book written by John Kline, State Government Influence in U.S. International Economic Policy (Lexington Books, 1983). The chapter I have sent you provides more detailed background on state export promotional activities, including foreign trade offices. I recommend the entire book if you are looking for information on other aspects of state foreign-trade activities.

The National Association for State development Agencies (NASDA) did its own survey on states' export promotion activities (I gave you Marsha Clarke as a contact there). The NASDA survey is probably the most recent work in that area.

I hope all of this is helpful to you. Call me if you have any questions or if our office can provide you with further assistance.

Sincerely,

Mark Klender
Policy Analyst

MKsk/WC10a-01

CHAPTER 5

INDUSTRIAL DEVELOPMENT: ADVERTISING, MEDIA PROMOTION AND PUBLICATIONS

Comparison between state expenditures for non-tourist advertising and promotion in fiscal 1982 shows a striking contrast. Six states spent nothing, while 11 spent over $500,000. The largest expenditures for advertising and promotion were by New York ($6.95 million), Maryland ($1.2 million), and Kentucky ($1 million). Other significant expenditures were by Florida, Louisiana, Massachusetts and Pennsylvania.

In fiscal 1983 budgets, the recession was reflected in nearly every state, and there was much debate in the legislatures and executive offices as to whether promotional budgets should be increased to attract more business and industry to the state, or reduced as part of an overall budget reduction plan. Eight states chose the latter by reducing expenditures (Arizona, Florida, Georgia, Hawaii, Kentucky, Mississippi, Montana, and Wisconsin). Most states, however, decided that a greater commitment should be made to promote their state as a good place to do business. As a result, five states will spend above a million dollars on that activity: New York ($9.38 million requested), Michigan ($1.5 million), Maryland ($1.3 million), Massachusetts ($1.05 million), and New Mexico ($1.033 million).

Of the states whose budgets have received final approval, the largest percentage increases will take place in Illinois, Michigan, Oregon, Tennessee, Utah, Vermont, Washington and West Virginia. It is interesting to note that many of these states have suffered the most severe budgetary and economic difficulties during the past few years.

Caution should be used in making direct comparisons between state budgetary figures. States which spend very different dollar amounts for advertising and promotion may nevertheless be spending comparable percentages of their total budgets for that purpose, and in a few cases a special promotional effort may have swelled the promotion budget out of proportion to past expenditures.

Of the 45 states responding to this question, 24 indicated that the amount allocated for promotion and advertising is determined exclusively by the legislature, while 19 said expenditures are determined by administrative decision. In Nevada and Virginia, the decision is made by both legislative and administrative action. (See Table 13.)

Advertising Media

Forty-four states indicated that they advertise through one or more of the following media: newspapers, magazines, radio, television, billboards and direct periodicals. California, Minnesota and New Hampshire do not advertise but produce their own publication. Colorado does not budget for advertising and promotion. (See Table 14.)

Field Representatives

Field representatives cover two basic areas: in-state, to provide services to local industry, communities and development groups; and out-of-state, to make contact with industrial prospects, provide them with information on locations in the state, and render location assistance to prospects once they move into the state. Overall, field representatives provide information, technical and coordinating services.

Twenty-four states employ in-state field representatives. Kansas has such a proposal under consideration, and Alabama uses regular line staff to meet these responsibilities. Eight states use field representatives for work outside the state, and 19 use field representatives outside the United States.

Seven states reported having information centers located outside their own jurisdiction. The two most popular locations are New York City and Washington, D.C. Centers there primarily provide industrial development and trade facility information to interested persons.

Foreign Offices to Promote Industrial Development and Trade

Twenty-three states reported having at least one foreign office engaged in promoting state products, providing information, and assisting foreign corporations who may be interested in locating a plant within their state. Most states have their offices in Japan, Belgium and West Germany; however, other locations include England, China, Canada, Mexico, Brazil, Switzerland, France and The Netherlands. Most foreign offices focus on a region rather than merely concentrating their efforts on the country in which they are located. The exceptions are Michigan, whose office in Tokyo works only with Japanese repre-

Canada. Virginia employs the largest staff in its foreign offices (six in Japan and eight in Belgium). The average number of staff per foreign office is three; however, larger staffs are commonly placed in European offices.

Within the past five years, 10 states have expanded their foreign operations (Alabama, Florida, Georgia, Illinois, Maryland, Missouri, Nebraska, New York, North Carolina, Pennsylvania and Virginia), while two states have reduced their visibility in other parts of the world (Louisiana and Washington). Ohio recently shifted its West Germany office to Belgium. Three states (Maryland, Missouri and Ohio) plan to expand their foreign operations in 1983, and Illinois opened an office in Japan in January. (See Tables 15 and 16.)

State	Regional Focus	Number of Employees											Office Changes in Last Five Years	Planned Changes in 1983
		Japan	Belgium	West Germany	England	China	Canada	Mexico	Brazil	Switzerland	Netherlands	France		
Alabama	Yes except Japan	4		1	2					2			Expand	None
Connecticut	Yes			2									None	None
Florida	Yes	•		2									Expand	None
Georgia	Yes	3	3				1						Expand	None
Illinois	Yes	1	7			2			5				Expand	Japan open 1/83
Indiana	Yes	1	2										None	None
Iowa	Yes			2									None	None
Kansas	...			•	•									
Louisiana	Yes			1									Reduction from 2 to 1	None
Maryland	Yes	2	3										Expand	Expand
Massachusetts	...	•	•											
Michigan	Yes except Japan	2	5.5										None	None
Missouri	Yes	2		3		1					1		Expand	Expand
Nebraska	Yes	•		•									Expand	None
New York	Yes except Japan /Canada	2		2	2		4						Expand	None
North Carolina	Yes	2		2									Expand, Japan opened	None
Ohio	Yes	3	4										W. Ger. replaced by Belg.	Expand
Pennsylvania	Yes	•		•	•			•				•	Expand	None
South Carolina	Yes		2										None	None
Texas	No							2					None	None
Vermont	No						2.5						None	None
Virginia	Yes	6	8										Expand	None
Washington		3 contract staff											Reduction	None

* Consultant on contract.

Foreign Offices

An important part of trade organization for many states is the overseas offices. Although there has been some debate in the past over their utility and cost effectiveness, the continuing increase in the number of overseas offices indicate their importance to states' commercial interests overseas. Data compiled in 1976 show nineteen states with overseas offices. This survey, conducted in October 1980, indicates that thirty-three states are represented overseas and that there are sixty-six offices. Some of these offices (those organized by regional commissions) are shared by several states, while several states have more than one office to represent them around the world.

States have this kind of continuous representation in all parts of the world. Europe was the first target when states began to set up these offices more than a decade ago. Japan then became a focus of activity. Now seventeen different countries host state representatives. Most of these offices have regional responsibiliites, making it clear that state economic activities reach into most parts ofthe world.

Our survey data showed that overseas offices could be categorized by the type of authority administering them. First, there are offices maintained by the state unit charged with primary responsibility for increasing international commerce (the economic development office or similar department) or by closely allied offices (such as those in charge of tourism). Secondly there are offices maintained by quasi-public, semi-autonomous state organs, such as port authorities. Finally, there are offices operated by regional organizations such as non-state port authorities or planning commissions. Some states, particularly in the West, work through this kind of office rather than

TABLE II.4 - STATE OFFICES ABROAD

	BELGIUM	DENMARK	FED. REP. OF GERMANY	FRANCE	GREAT BRITAIN	GREECE	THE NETHERLANDS	SWITZERLAND	BRAZIL	COLUMBIA	MEXICO	PANAMA	AUSTRALIA	HONG KONG	JAPAN	SINGAPORE	CANADA
ALABAMA					X			X									
ALASKA		X	X														
ARIZONA																	
ARKANSAS	X																
CALIFORNIA																	
COLORADO																	
CONNECTICUT			X														
DELAWARE	*									*				*	*		
FLORIDA			X												X		
GEORGIA	X		*			*									X*		
HAWAII																	
IDAHO															**		
ILLINOIS	X								X					X			
INDIANA							X			X							
IOWA			X														
KANSAS																	
KENTUCKY	X																
LOUISIANA	X		X	X							X	X	X	X			
MAINE																	
MARYLAND	X				X									X	X		
MASSACHUSETTS	X														X		
MICHIGAN	X														X		
MINNESOTA																	
MISSISSIPPI																	
MISSOURI			X													X	
MONTANA			**												**		
NEBRASKA			**												**		
NEVADA																	
NEW HAMPSHIRE																	
NEW JERSEY	*				*			*		*					*		
NEW MEXICO																	
NEW YORK					X										X		
NORTH CAROLINA			X												X		
NORTH DAKOTA			**												**		
OHIO	X														X		
OKLAHOMA																	
OREGON															**		
PENNSYLVANIA			***												***		
RHODE ISLAND																	
SOUTH CAROLINA	X														X		
SOUTH DAKOTA			**												**		
TENNESSEE																	
TEXAS											X						
UTAH																	
VERMONT																	X
VIRGINIA	X								X						X		
WASHINGTON															X	X	
WEST VIRGINIA																	
WISCONSIN																	
WYOMING			**												**		

X = one or more state offices
* = Regional Ports Authority offices
** = Regional Planning Commission offices
*** = Private state group offices

maintaining their own facilities abroad.[10] Appendix III lists state overseas offices of all types.

Staffing arrangements for overseas offices also varied. In some cases the staffs were employed by the state and solely represented the state. In other cases, the state retained only a consultant or business contact, either on its own or through a regional planning commission.

Different state departments, such as economic development offices and port authorities (or even the same) sometimes maintained separate offices in different foreign country. In other cases, different departments from the same state shared offices or consultants in the same foreign country. For a list of overseas representation by state and country, see Table II.4.

Policy Implications and Recommendations

This chapter outlines the continuing increase in foreign trade activities by states. Figures on overseas trade missions, the hosting of foreign delegations (whether or not visits are directly tied to commercial exchanges), and the proliferation of state offices overseas suggest the scope of the states' activity. Organizational developments also give expression to expanding overseas interests. Traditional bureaucratic organs have been given new responsibilities and in some cases specialized agencies have been created. The emergence of a substantial number of trade-related interests within states has required special mechanisms to foster cooperative relations between state governments and their trade communities. Advisory councils in which the entire trade community is represented have been organized by some governors to deal with this situation. In other states the proliferation of trade activities and interests remain to be

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10/ A fourth type, unofficially representing the state of Pennsylvania, was operated by a private state regional economic development association.

area within the state. New Hampshire, which targeted both rural and economically depressed areas, noted that a labor market sufficient to meet an industry's needs was one of its basic criteria used in assisting firms wishing to relocate there. Table III.8 provides a summary of internal targeting by the states.

Foreign Area Targeting

A look at where states choose to market state products or to seek overseas investors is instructive in several ways. It suggests the extensiveness of state-based commercial networks around the world. Foreign areas where state effort is most concentrated are identified, as is the presence of state activity in those international markets with the greatest potential.

Taken collectively, state overseas interests reach into most areas of the world. The major regions identified for market development are Europe, Asia and Latin America. It does not appear from the survey that states have given much attention to the trade opportunities available in Eastern Europe, Africa, or West Asia.

That states' export promotion efforts do give greater focus to well-established markets is apparent if we note those cases where specific countries are mentioned. In questionnaire responses, states tended to identify regions or continents rather than individual countries. The list of countries which were also specified includes only modern or rapidly modernizing countries. For the most part, specific countries within Third World markets were not identified.

The survey provides no surprises in the area of targeting investment. For most states the major sources of foreign investment are the developed countries. Western Europe, Canada, and Japan focus most state effort. A few states do look to the rapidly modernizing economies of Taiwan, Mexico, and South Korea.

A detailed breakdown of where states concentrate their overseas activities is provided in Table III.9. It illustrates the considerable diversity of states in their targeting of international business. Of the forty-four states from which data was collected regarding foreign targeting and export promotion,[4] thirty-one concentrated on particular geographical areas. Vermont, while not engaging in targeting per se, has participated in trade shows and missions held in West Europe and Latin America. Wyoming had no targeting policy; it confined its international business activities to participation in the Old West Regional Commission, leaving to that organization such policy decisions. The eleven states did not specify any specific region or country for export promotion include: Arizona, Colorado, Delaware, Georgia, Iowa, Nebraska, Nevada, North Carolina, Pennsylvania, South Dakota, and Utah.

Among the thirty-two states targeting foreign areas for export promotion, regions or continents were specified sixty-two times, particular countries twenty-four times. Preferences for European and Asian regions were equal (twenty each), followed closely by Latin America (eighteen). Two states identified the Pacific Rim countries. The particular countries mentioned as targets for export promotion were: Canada (by 5 states); Mexico (by 4 states); Japan (by 3 states); Germany (by 2 states); and Taiwan (by 2 states). Argentina, Australia, Brazil, China, Denmark, New Zealand, South Korea, and Venezuela were each mentioned by one state.

Of the forty-six states for which data was collected regarding foreign targeting and reverse investment, thirty-five concentrated on particular areas overseas. As in the case of export promotion, Wyoming leaves such targeting up to its regional commission. The twelve states that do not target specific foreign areas for attracting investment

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[4]/ Insufficient data for Louisiana, North Dakota, South Carolina, and West Virginia.

TABLE III.9 - REGION/COUNTRY TARGETS OF STATE INTERNATIONAL BUSINESS ACTIVITY

	Export Promotion	Reverse Investment
ALABAMA	Central/South America, Far East, Europe	Europe, Far East
ALASKA	Japan, Germany Denmark, Taiwan	Germany, Denmark, Taiwan
ARIZONA	---NONE---	Japan, West Europe, Taiwan, South Korea
ARKANSAS	Europe, Far East	Europe, Japan
CALIFORNIA	Mexico, Canada Pacific Rim Countries, E.E.C., South America	Japan, E.E.C.
COLORADO	---NONE---	---NONE---
CONNECTICUT	Europe, South America, Asia	West Europe (Germany, Switzerland, England, Belgium, Netherlands), Scandinavia (Sweden, Denmark), Asia-Japan
DELAWARE	---NONE---	---NONE---
FLORIDA	Latin America, Europe, Far East	Canada, Europe, Japan
GEORGIA	---NONE---	Japan/Far East, Europe, Canada
HAWAII	Japan, Canada, Asia/Pacific	Japan, Canada
IDAHO	Latin America, Asia, Europe	---NONE---
ILLINOIS	E.E.C., Far East	---NONE---
INDIANA	South America, Europe, Far East	Europe, Japan
IOWA	---NONE---	Europe
KANSAS	South America, Far East, Europe	Europe
KENTUCKY	Europe, South America, Far East	Europe, Japan

TABLE III.9 (CONT)

	Export Promotion	Reverse Investment
LOUISIANA	(1)	(1)
MAINE	Europe, Canada, Far East	Europe, Canada, Far East
MARYLAND	Far East, West Europe	Far East/China, West Europe, Canada
MASSACHUSETTS	West Europe	West Europe, Japan, Canada
MICHIGAN	Latin America, Asia, Europe	Europe, Japan
MINNESOTA	Europe, Canada Latin America	---NONE---
MISSISSIPPI	Central America, South America	Germany, England, Canada
MISSOURI	West Europe, East and Southeast Asia, and Latin America	West Europe, East Asia, and Canada
MONTANA	Pacific Rim Countries, South America	---NONE---
NEBRASKA	---NONE---	---NONE---
NEVADA	---NONE---	---NONE---
NEW HAMPSHIRE	Europe (all countries), South America (Venezuela, Brazil, Argentina), Australia-Asia (Australia, New Zealand, Taiwan, South Korea, Japan, China)	Europe (England, France, Germany, Italy, Spain, Scandinavia), Canada, Australia, South Africa
NEW JERSEY	Latin America	West Europe, Japan
NEW MEXICO	Mexico	---NONE---
NEW YORK	(2)	North Europe, United Kingdom, Japan
NORTH CAROLINA	---NONE---	West Europe, Japan
NORTH DAKOTA	(1)	(1)
OHIO	Asia, Latin America, West Europe	West Europe, Japan
OKLAHOMA	Canada, Mexico West Germany	Canada, Mexico, West Germany, Japan

TABLE III.9 (CONT)

	Export Promotion	Reverse Investment
OREGON	Far East, Southeast Asia Western Latin America	Europe, Japan
PENNSYLVANIA	---NONE---	Japan, West Europe
RHODE ISLAND	E.E.C.	West Europe
SOUTH CAROLINA	(1)	(1)
SOUTH DAKOTA	---NONE---	---NONE---
TENNESSEE	Latin America, Asia, Europe	Japan, Germany, Other European Countries
TEXAS	Mexico	---NONE---
UTAH	---NONE---	---NONE---
VERMONT	(3)	Canada, Europe
VIRGINIA	Europe, Far East Latin America	West Europe, Japan
WASHINGTON	Asia-Pacific	Europe, Asia
WEST VIRGINIA	(1)	Japan, West Germany, England
WISCONSIN	South America, Far East	Europe, Far East
WYOMING	(4)	(4)

(1) Insufficient Data
(2) Target specific areas, but none listed
(3) No specific targeting, but have participated in trade missions/shows in West Europe and Latin America
(4) Left up to regional planning commission

include: Colorado, Delaware, Idaho, Illinois, Minnesota, Montana, Nebraska, Nevada, New Mexico, South Dakota, Texas, and Utah.

Europe and the Far East are, almost exclusively, the regions where states go to seek investment. A rank order of specific countries mentioned by number of states suggests what are regarded as the best sources of investment money. This pattern is illustrated in Table III.10.

TABLE III.10 - COUNTRIES TARGETED FOR STATE INVESTMENT PROMOTION BY NUMBER OF TIMES MENTIONED ON QUESTIONNAIRE

Country	No. Of Times Mentioned
JAPAN	20
CANADA	11
GERMANY/WEST GERMANY	7
ENGLAND/UNITED KINGDOM	5
DENMARK	2
TAIWAN	2
AUSTRALIA	1
BELGIUM	1
FRANCE	1
ITALY	1
MEXICO	1
NETHERLANDS	1
SOUTH AFRICA	1
SOUTH KOREA	1
SPAIN	1
SWEDEN	1
SWITZERLAND	1

Six states targeted specific foreign areas for export promotion, but not for reverse investment. These states include: Idaho, Illinois, Minnesota, Montana, New Mexico, and Texas. In terms of general policy, all of these states strongly encourage export promotion and strongly discourage, mildly discourage, or at least are neutral toward, reverse

foreign investment. Six states also targeted specific foreign areas for reverse investment, but not for export promotion. These states include: Arizona, Georgia, Iowa, North Carolina, Pennsylvania, and Vermont.

Policy Implications and Recommendations

To speak of state trade policy is really only to refer to the collective activities that states perform in promoting international business. No state appears to have anything approximating an articulated policy relating to trade. A few states are so minimally involved in international trade it would be difficult to accurately identify a trade posture, much less a policy. Yet the idea of trade policy, and its development in the states, gives an instructive focus to the findings of this chapter.

From the collective activities of the typical state it is possible to derive the elements of a policy framework. Foreign investment and export promotion are both strongly encouraged. The longstanding interest of states in inv[illegible] continues, although there is increasing interest in export pro[illegible]ion. The higher priority given exports is evident. Larger allocations of the state's international budget go for trade expansion. States offer a full range of export services in response to a whole range of needs within an expanding state trade network. It seems that states have generally rejected a strategy of making state exports more profitable. That approach would only serve one category of business within the state -- the experienced exporter. In providing a number of programs, the state reaches firms with no experience, those who might export but don't know how, those who want to but need assistance, and those who do export and want greater market opportunities. By sponsoring a variety of promotion programs, states assure that there is an appropriate program for most businesses in the expanding trade environment. This strategy is compatible with the finding that state programs are generally geared to small manufacturing firms with fewer than five years of experience in

see pg. 59 for foreign affairs activities

5 State Trade-and-Investment Promotion

The most obvious manifestation of state-government involvement in international economic matters is the growth of state trade-and-investment promotion activities. These efforts have developed a structural dimension that demonstrates some of the organizational changes states experience in responding to international economic forces. While the national government encouraged initial state involvement in international promotional activities, this intergovernmental relationship has recently exhibited some competitive as well as cooperative aspects in both programmatic and policy terms.

State-government promotional efforts affect U.S. policy outcomes primarily through indirect means at the program-implementation level. Trade activities generally support the achievement of national export-expansion goals while state investment promotion can conflict with national policy regarding the use of public incentives. The growth of state promotional programs thus offers evidence of the overlapping government interests created by international-interdependence trends and resultant state influence on U.S. policy outcomes.

The State Economic Interest

The growth of state promotional activities, including their interface with national programs, can be understood only within the context of their importance to state economic interests. Chapter 3 detailed some of the broad impact of interdependence at the state level, but a clearer picture emerges when one considers the role international-market factors can play in a state's economic-development strategy.

A growing export sector, for example, can provide a dynamic base for the expansion of production and employment within a state. In case after case during the 1970s, states reported growth in production for exports running two or three times higher than general manufacturing production. Benefits to a state's economy from increased exports, especially when indirect and other "multiplier" effects are considered, can also go far beyond immediate production jobs into area such as transportation, finance, insurance, and greater state tax revenues.

The particular experience of several states might help to illustrate both the economic importance and the organizational support now given to international trade as a central facet of a state's economy. Illinois became involved i n

actively promoting exports in 1967, utilizing the Illinois Department of Business and Economic Development in which an International Marketing Department was established. By 1976 over 346,0[illegible] workers in Illinois were employed full time in manufacturing exports, [illegible] percent of the state's total work force earning all or part of their income [illegible] export activities. Exports jumped from 4.3 percent of the gross state product in 1972 to 10.2 percent in 1974. The following year, the state exported $6.8 billion in manufactured goods, $2.2 billion of agricultural products, and in the process collected $680 million in taxes from this export production.

In the Chicago area, manufacturing employment declined from the mid-1960s to the mid-1970s, but jobs attributable to manufacturing exports almost doubled during this decline. The Chicago Association of Commerce and Industry estimated that the city's export growth had added 60,000 jobs in the area over this ten-year period. More dollar shipments of manufactured goods were sent out of Chicago than any other statistical metropolitan area.[1]

Florida is another state that consciously set out to tie its economic fortunes into the foreign-trade sector. The oil-price shocks in the early 1970s nearly decimated the tourism and construction industries that formed the backbone of Florida's economy. In response Florida conceived a strategy of aggressively promoting foreign trade, especially focusing on its port activities, which by 1978, had paid off handsomely. Exports from the Tampa and Miami areas alone generated $4 billion annually in revenue and involved over 167,000 people. Statewide the export trade accounted for 8 percent of total personal income, double the proportion for the 1960s. State initiatives in terms of trade missions, information, establishment of foreign-trade zones, authorization of foreign-bank activity, and others helped link the state more securely into expanding world markets.[2]

While exports have provided a beneficial area for state business development, the importance of this role goes beyond its utility as a timely area of economic growth, as useful as that may be. Many other purely domestic sectors have also provided spurts of economic activity at different times. The export area, however, offers some additional benefits in terms of the countercyclical potential of foreign-market sales.

Countercyclical benefits of foreign trade stem from the normally different economic growth rates prevailing in various parts of the world at any given time. While there are occasions when the worst-case scenario of global recession sets in, it seldom occurs simultaneously, and the more normal pattern has been for some countries to be gearing up their economies while others are sliding into slower-growth periods. Exports can help stabilize U.S. employment if demand from abroad counters declining U.S. sales, while later U.S. economic recovery then could cushion a falloff in overseas economic activity.

The practical utility of ties to broader world markets became apparent in business experiences during the 1974–1975 U.S. recession. At a series of public hearings around the country sponsored by the U.S. Commerce Department in 1976, numerous witnesses testified to the production and employment impact of export sales during the recession. Typical of the stories were these:

> More than 6,000 employees (out of 31,000 total) at Dow Chemical Corporation were engaged in $650 million of export business in 1975. Exports provided enough of a cushion during the recession that only 100 employees were laid off even though production volume declined 20 percent.[3]
>
> Emerson Electric Company of St. Louis, Missouri concentrated on domestic growth until 1970, when international market development became a corporate objective. By the 1974–1975 recession, Emerson's international business was growing by 22 percent while domestic business declined by 5 percent, counterbalancing by some 900 jobs the employment loss brought on by the recession.[4]
>
> The Executive Director of the Texas Industrial Commission (which includes the state's International Trade Division) testified that the state was one of the least affected during the recession due to involvement in the export sector. Information from major Texas companies showed that expansion of international sales had allowed them to maintain or even add to their labor forces during the recession.[5]

This last testimony pinpoints the direct interest of state governments in the countercyclical benefits of foreign trade—keeping people employed (and paying taxes rather than drawing state unemployment-compensation benefits). An international-trade base is best built, of course, during relatively good economic periods when time and resources are available to develop the strong export position needed to help counteract later cyclical downturns. Studies by the Indiana Department of Commerce showed a large number of small- to medium-sized companies interested in exporting that needed assistance to enter overseas markets. The state reportedly concluded that export-promotion efforts also offered the best avenue for increasing and diversifying the state's economic base in the face of declines in the domestic durable-goods market. As a result, a private nonprofit corporation, Indiana Export, Inc. (IEI), was created to provide specialized counseling to firms on how to expand into export operations. It is estimated that up to 20,000 jobs may be created over the next five years as a result of expected increases in export sales.[6]

International-trade ties thus help provide a better, broader "cushion" against hard times than business plans limited to intra- or even interstate economic expansion. Along with the positive benefits of normal industrial expansion from increased exports, this countercyclical potential helps provide an additional rationale for an active state-government role in trade promotion.

Structuring State Promotional Activities

From rather modest beginnings, state promotional activities have expanded tremendously over the last decade. This section discusses the nature, growth, and current dimensions of these programs, using both aggregate measures and specific state examples. It should be noted, however, that the rapid changes occurring in this area quickly overtake specific, snapshot examples, which are therefore employed for illustrative purposes only. Descriptions of individual state programs and statistics would need to be updated almost continuously to retain their complete accuracy.

While foreign-trade promotion can be seen as an extension of traditional state business-development programs, the actual methods employed demonstrate a mix of both normal and rather unconventional state services. Programs include trade missions, information and training seminars, trade shows at home and abroad, export directories and newsletters, computerized distribution of trade leads, and other such aids, administered through international business departments and often with the assistance of overseas state offices.[2]

The organizational pattern for administration of state trade-promotion activities reflects the diversity one might expect given the fifty states' historical, geographic, economic, and policy priority differences. While most efforts seem to be coordinated out of international divisions within a state's commerce department, a significant and sometimes lead role is played in other states by the agriculture department. Other forms of public and sometimes private bodies can also serve as central directing, coordinating, and/or advisory devices. Linking mechanisms within a state are essential since many "partners" are often required to formulate an effective trade-promotion program, including port authorities, tourism agencies, foreign-trade-zone authorities, transportation and economic development departments, chambers of commerce, world-trade councils, and local governments. (For a more complete discussion including examples of several state organizational structures, see the 1981 NGA report on *Export Development and Foreign Investment: The Role of the States and Its Linkage to Federal Action.*)[3]

State expenditures on trade promotion have become very substantial in dollar amounts as well as in the establishment of specialized program mechanisms and state executive-time commitment. As shown in table 5-1, the states in 1980 reported spending $18,855,550 on export-promotion activities. Utah was the sole state with no direct expenditures, while nearly two-thirds of the states allocated $100,000 or more to export promotion and four states (Ohio, Illinois, Virginia, and Maryland) spent over $1 million.

The allocation of state personnel to international business activities shows a similar impressive commitment. While the numbers include individuals working on investment promotion as well as trade activities, some

Table 5-1
State Expenditures on International Business Promotion

	Total International Business Expenditure	*Export Promotion*	*Reverse-Investment Promotion*	*Other*
Alabama	375,000	273,750	101,250	—
Alaska	745,000	372,500	372,500	—
Arizona	134,000	107,200	26,800	—
Arkansas	350,000	175,000	175,000	—
California	403,835	234,224	121,151	48,460
Colorado	132,000	120,120	11,880	—
Connecticut	250,000	75,000	150,000	25,000
Delaware	100,000	30,000	70,000	—
Florida	684,000	458,280	225,720	—
Georgia	795,000	310,050	484,950	—
Hawaii	195,000	107,250	27,300	60,450
Idaho	50,000	47,500	2,500	—
Illinois	1,642,000	1,527,060	114,940	—
Indiana	929,541	752,042	158,022	46,477
Iowa	358,616	240,273	118,343	—
Kansas	100,000	70,000	30,000	—
Kentucky	994,500	576,810	417,690	—
Louisiana	250,000	25,000	225,000	—
Maine	174,000	90,740	22,685	61,075
Maryland	1,980,491	1,287,319	693,172	—
Massachusetts	450,000	45,000	405,000	—
Michigan	1,100,000	682,000	418,000	—
Minnesota	200,000	188,000	12,000	—
Mississippi	300,000	150,000	120,000	30,000
Missouri	900,000	729,000	153,000	18,000
Montana	298,529	277,632	20,897	—
Nebraska	197,688	195,711	1,977	—
Nevada	5,000	5,000	—	—
New Hampshire	50,000	20,000	30,000	—
New Jersey	450,000	315,000	135,000	—
New Mexico	90,000	70,000	—	20,000
New York	1,300,000	845,000	455,000	—
North Carolina	950,000	503,500	446,500	—
North Dakota	102,000	99,960	2,040	—
Ohio	2,320,000	1,832,800	487,200	—
Oklahoma	334,600	247,604	80,304	6,692
Oregon	393,225	361,767	15,729	15,729
Pennsylvania	478,700	263,285	215,415	—
Rhode Island	45,000	11,250	33,750	—
South Carolina	500,000	100,000	400,000	—
South Dakota	145,000	139,200	5,800	—
Tennessee	440,100	193,644	290,466	—
Texas	795,477	739,794	47,729	7,955
Utah	0	0	0	0
Vermont	52,500	6,825	45,675	—
Virginia	2,564,115	1,487,187	1,076,928	—
Washington	370,000	333,000	7,400	29,600

able 5-1 continued

	Total International Business Expenditure	Export Promotion	Reverse-Investment Promotion	Other
'est Virginia	71,545	35,773	17,886	17,886
'isconsin	110,000	82,500	27,500	—
'yoming	15,000	15,000	—	—
Totals	25,671,932	18,855,550	8,500,099	387,324

ource: Adapted from *Export Development and Foreign Investment: The Role of the State and s Linkage to Federal Action* (Washington, D.C.: National Governors' Association, 1981).

50 personnel were engaged in state international business activities in 1980. Only two states devoted less than a full-time position to these tasks while the verage state designated eleven individuals to this function and Virginia opped the list with fifty-nine employees. While fully comparable data is ot available from all states for preceding years, reported figures for at least ne-half the states demonstrate a clear expansion in both personnel and budet expenditures from 1976 to 1980. New Mexico was the only state in twenty-our to show a decrease, while the average state quadrupled its expenditures nd at least doubled its personnel commitment.[9]

Few states provide direct financial incentives for exports (in contrast to nvestment promotion, as will be discussed). New York offers an export tax ncentive, Michigan subsidizes booth space in state-sponsored trade shows, nd several states provide free product advertising through overseas export atalogs or other promotional devices. A few states are now exploring various xport-financing aids. The recent NGA study speculates that this interest in tate export incentives may expand in the future,[10] and indeed there is increasng evidence of such a development.

The primary objectives of state trade-promotion programs are to introuce new firms to the export market and to expand the overseas sales of comanies already exporting, essentially matching up instate firms with overseas uyers for their products. To this end the states employ trade missions, trade hows, overseas offices, catalogs and advertising, computerized information systems, how-to export seminars and virtually any other nonfinancial device used at the national level or elsewhere. Through coordination and referral with national-government agencies, the states can also link their clients up with other services, including such aids as the Export-Import Bank or now, the new Foreign Commercial Service.

While state programs are usually designed to handle a broad range of companies and products, in reality they are targeted more at medium- to smaller-sized companies, especially new-to-export firms that lack the experi-

ence and resources of major U.S. multinational corporations. In a survey response concerning their export-promotion programs, state agencies reported that nearly two-thirds of their export services are used by small businesses, over 30 percent by medium-sized firms and only 5 percent by large companies. The same essential distribution was maintained when services were apportioned by the length of a firm's experience in export markets, although a few states, most notably Alaska, seemingly focused on larger, experienced firms. Probably as a result of this relative inexperience in their usual clients, state export-promotion agencies also appear to target well-established markets abroad (Europe, Asia, and Latin America over Africa, West Asia, or Eastern Europe).[11]

These major export markets are also the logical site for overseas state offices—one of the most evident structural symbols of direct state involvement in the international marketplace. Trade missions abroad, often led by the governor or other top officials, have long been a useful device to open doors and facilitate trade contacts for local companies with potential foreign buyers. A permanent state presence abroad, however, is more novel.

The specific country location of state offices has tended to undergo periodic changes as experience is gained or shifts occur in functional objectives between export marketing and investment attraction. Change also occurs in the use of foreign-consultant representatives versus a full office structure, or the chosen configuration of individual state, regional, or port-authority sponsorship. A fully accurate picture of office locations would therefore require frequent updating, as would other elements of a state's promotional activity. A view of recent comparative growth was offered, however, by the NGA survey report released in 1981.

While about twenty states maintained overseas offices at the time of the 1977 Council of State Governments' study, the NGA data in table 5-2 shows that by October 1980 thirty-three states were represented by sixty-six offices, including some organized on a regional basis or through port authorities. While established European and Japanese markets were the initial locales for these offices, seventeen countries are now reported to host state representatives, including Mexico, Brazil, Panama, Colombia, Australia, Hong Kong, and Singapore.

Developments since the NGA survey have witnessed the opening of additional state offices in several countries, including Mexico and Canada, as well as a new venture in Korea. At the same time there has been a decrease in regionally funded representation efforts, partly due to a loss of financial support and partly to competitive allocation difficulties. Financing has been a particularly uncertain aspect of these state programs since the existence of an overseas office costing several hundred thousand dollars annually to operate can face funding difficulties in budget-conscious state legislatures.

For example, an office in Brussels, Belgium, operated by the Pennsylvania Commerce Department's Bureau of International Commerce (PENBIC) was

Table 5-2
State Offices Abroad

	Belgium	Denmark	Fed. Rep. of Germany	France	Great Britain	Greece	Netherlands	Switzerland	Brazil	Colombia	Mexico	Panama	Australia	Hong Kong	Japan	Singapore	Canada
Alabama					X			X									
Alaska		X	X														
Arkansas	X																
Connecticut			X														
Delaware	•									•				•	•		
Florida			X												X		
Georgia	X		•			•									X•		
Idaho															••		
Illinois	X								X					X			
Indiana							X			X							
Iowa			X														
Kentucky	X																
Louisiana	X		X	X								X	X	X	X		
Maryland	X				X									X	X		
Massachusetts	X														X		
Michigan	X														X		
Missouri			X													X	
Montana			••												••		
Nebraska			••												••		
New Jersey	•				•			•		•					•		
New York					X										X		
North Carolina			X												X		
North Dakota			••												••		
Ohio	X														X		
Oregon															••		
Pennsylvania			•••												•••		
South Carolina	X														X		
South Dakota			••												••		
Texas											X						
Vermont																	X
Virginia	X								X						X		
Washington															X	X	
Wyoming			••												••		

Source: Adapted from *Export Development and Foreign Investment: The Role of the States and Its Linkage to Federal Action* (Washington, D.C.: National Governors' Association, 1981).

X = one or more state offices.

• = Regional Ports Authority offices.

•• = Regional Planning Commission offices.

••• = Private state group offices.

closed in 1977 after the Pennsylvania General Assembly passed a general-appropriations act prohibiting the expenditure of money for offices outside the state. Two years later the Pennsylvania Secretary of Commerce was back

before the General Assembly's Appropriations Committees arguing for a state office in Europe to boost the state's economy and create more jobs.[12] The NGA report shows the state as operating through private offices abroad at the time of its survey, but by 1981 Pennsylvania offices were being established in multiple European locations, Japan, and later in Mexico.

Other states have been more successful in sustaining support for their foreign operations. The Illinois Department of Business and Economic Development operates three foreign offices (Brussels, Belgium; Hong Kong; and Sao Paulo, Brazil) to help Illinois manufacturers sell their goods overseas. This activity received bipartisan support from four governors and the state legislature[13] largely because the department has paid close attention to illustrating the practical benefits of such offices. A report, "On Selling Illinois South of the Border," noted that since the Sao Paulo office was established in May 1976, some 1,000 Illinois businesses had received assistance while firms participating in the department's trade shows had nearly $20 million in estimated first-year sales.[14]

Other overseas-office programs claim similar cost-benefit successes. The director of Ohio's International Trade Division estimated that one dollar of expenditures generated approximately $260 in export sales for the state's companies. New York state's representative in Tokyo reported about $10 million worth of export business attributable to the office's operation there.[15]

Michigan's Office of Economic Expansion founded an International Division in 1972, which now maintains offices in Tokyo and Brussels. These offices offer the Exporter's Travel Assistance Program (EX-TAP), which helps arrange appointments, make reservations and, at times, accompany visiting state businessmen on their calls to potential foreign distributors.[16] Donald Hufford, President of Hufford Industries, Inc., a $2-million company located in Charlevoix, Michigan, was reportedly one of the beneficiaries of such state assistance. He told of answering a state export advertisement in a local newspaper. The state office set up a trip for him to Europe, provided translaters and screened possible distributors. Hufford Industries began exporting to Britain, West Germany, the Netherlands, and France and projects that one-half of its market may lie overseas.[17]

As is evident from table 5-3, an overseas office is only one part of state export-promotion programs (and may actually be more useful for investment promotion, as will be discussed). For example, a number of states have developed computerized hookups that allow them access to general trade leads or even the capability to conduct searches tailored to the needs of specific state firms. New Jersey's International Trade Office, which utilizes a computerized information-matching system, also publishes an international trade directory listing all New Jersey firms engaging in international trade and sponsors workshops for small businesses seeking to break into the export market. The trade-promotion program in Illinois includes state subsidized

Table 5-3
State International Business Programs and Activities

	Trade Missions	Trade Shows	Marketing Assistance	Market Development	Export Education	Investment Information	Investment Missions	Advertising	International Tourism	Port Development	Total Number of Programs or Activities
Alabama	X		X	X	X	X	X	X		X	8
Alaska	X	X	X	X	X		X	X		X	8
Arizona	X	X	X	X	X	X			X		7
Arkansas	X	X	X	X	X	X	X	X		X	9
California	X	X	X	X	X	X	X	X			8
Colorado		X	X	X	X	X		X			6
Connecticut	X	X	X	X	X	X	X				7
Delaware	X	X	X	X	X	X	X	X	X	X	10
Florida	X	X	X	X	X	X	X	X	X		9
Georgia	X	X	X	X	X	X	X	X	X	X	10
Hawaii	X	X	X	X	X	X	X	X	X		9
Idaho	X	X	X	X	X			X			6
Illinois	X	X	X	X	X	X	X	X	X	X	10
Indiana	X	X	X	X	X	X	X	X	X	X	10
Iowa	X	X	X	X	X	X	X	X			8
Kansas	X	X	X	X	X	X	X	X			8
Kentucky	X	X	X	X	X	X	X	X	X	X	10
Louisiana	X	X	X		X			X			5
Maine	X	X	X	X	X	X	X	X	X	X	10
Maryland	X	X	X	X	X	X	X	X	X	X	10
Massachusetts	X	X	X	X	X	X	X		X	X	9
Michigan	X	X	X	X	X	X	X	X			8
Minnesota	X	X	X	X	X	X		X			7
Mississippi	X	X	X		X	X	X	X	X	X	9
Missouri	X	X	X	X	X	X	X	X	X	X	10
Montana	X	X	X	X	X	X	X	X	X	X	10
Nebraska	X	X	X	X	X	X			X		7
Nevada			X								1
New Hampshire			X	X	X	X	X				5
New Jersey	X	X	X	X	X	X	X	X	X		9
New Mexico	X	X	X	X	X	X				X	7
New York	X	X	X	X	X	X	X	X	X		9
North Carolina	X	X	X		X	X	X	X	X	X	9
North Dakota	X	X	X								3
Ohio	X	X	X	X	X	X	X	X	X	X	10
Oklahoma	X	X	X	X	X	X	X	X	X	X	10
Oregon	X	X	X	X	X	X		X			7
Pennsylvania	X	X	X	X	X	X	X	X	X	X	10
Rhode Island	X	X	X	X	X	X		X		X	8
South Carolina	X	X				X	X	X			5
South Dakota	X	X	X	X	X	X			X		7
Tennessee	X	X	X	X	X	X	X	X			8
Texas	X	X	X	X	X	X	X				7
Utah			X	X	X	X			X		5
Vermont	X	X	X		X	X	X				6
Virginia	X	X	X	X	X	X	X	X	X	X	10
Washington	X	X	X	X	X	X	X		X	X	9
West Virginia	X		X		X	X	X	X			6
Wisconsin	X	X	X	X	X	X					6
Wyoming	X	X									2
Totals	46	45	48	41	46	44	35	35	25	22	Mean = 7.74

Source: Export Development and Foreign Investment: The Role of the States and Its Linkage to Federal Action (Washington, D.C.: National Governors' Association, 1981).

trade fairs, trade missions, and catalog shows, with companies charged fees ranging from $400 to $1,500 per firm for these services that the state claimed increases the average company's export sales by $25,000.[18]

These examples are simply a few of the many active but diverse trade-promotion efforts being conducted by state governments and related instrumentalities. While legislated-funding authorizations have often been difficult to secure, the growing importance of international trade to the U.S. economy and the demonstrated success of some sister states in generating increased trade benefits have brought more and more states into active promotional programs.

The same basic promotional pattern has been followed in the area of foreign-investment programs. Just as the states started to gear up their trade activities in the early 1970s, the United States began to experience significant inflows of foreign direct investment, which added a new dimension to domestic economic-development activities. In a GAO survey, only ten states were found to have committed budgetary resources to attracting foreign investment before 1969. Twenty-one states began active promotional efforts between 1969–1975 as these reverse-investment flows picked up, while fourteen more began in the 1975–1978 period. By the time of the 1979 survey, only three states reported no active program to encourage foreign investment.[19]

Early state experience with investment promotion stemmed from overseas missions led by state governors. During 1977–1978 states reported sponsoring 113 missions abroad to promote foreign investment as well as participating in nearly thirty additional missions sponsored by the U.S. government and other organizations. Many overseas state offices discussed earlier were actually established largely for investment-promotion purposes to followup on the initial success of a governor's trip.

Even more than with trade flows, direct investment activities almost by definition require significant state-government involvement. Charters, siting,

ALASKA STATE LEGISLATURE
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January 17, 1984

MEMORANDUM

TO: Representative Joe Hayes
Attn: Jeff Day

FROM: Jonathan Sherwood
Legislative Analyst

RE: Alaska State Trade Office in Korea
Research Request 83-245

Jeff Day of your staff requested that our agency provide information on state foreign trade offices and on Alaska-Korea trade. It is our understanding that this information is to be used by a consultant, Michael Gay, in a study he is preparing on the feasibility of a State trade office in Korea. Specifically, we were asked to perform the following research:

- Outline the current structure of the State's Asian office including staffing, duties, and costs.
- Describe the history of Alaska-Korean trade efforts.
- Identify and report on activities of other states which have established offices in Korea and other Pacific Rim countries.

In the course of our research, we have contacted several individuals familiar with the history of Alaska-Korean trade or with the activities of other state's trade offices. In addition, we have obtained information from the Department of Commerce and Economic Development (DCED) pertaining to the operations of the State's Asian Office and the extent of Alaska's trade with Korea and other Asian nations.

Whenever possible we have obtained statistics and other quantitative data concerning the issues we were asked to address and included many of these materials as attachments to the memorandum. This has allowed us to spend more time collecting data while still providing the information to the consultant in a useful form--perhaps more useful given the problems inherent in using secondary and tertiary sources.

THE STATE OF ALASKA'S ASIAN OFFICE

The State's Asian Office, in Tokyo, is the major component of the Alaska Department of Commerce and Economic Development's Office of International Trade. In addition to the Asian Office, the Office of International Trade includes one Development Specialist position in Juneau. However, this position is not currently filled.

Staffing. The State's Asian Office is staffed by one State employee, a Far East Representative. This position is currently filled by W. D. Overstreet, former Mayor of Juneau. Mr. Overstreet reports to Deputy Commissioner Vince O'Reilly or Commissioner Lyon. Four Japanese employees also work for the Asian Office; they are hired on a contractual basis to avoid the complications of having foreign employees in the State personnel system. These employees, with their current annual salaries, are listed below:

1 Bilingual Executive Secretary	$20,500
1 Translator/Research Analyst	$20,000
1 Clerk-Typist/Receptionist	$18,000
1 Assistant/Translator	$14,500

Duties and Activities. According to the FY 85 executive budget documents, the purposes and functions of the Office of International Trade are to:

- provide the Alaska business community with pertinent intelligence on market prices and conditions, product utilization, etc.;
- locate and establish business contacts which are interested in Alaska products and investments;
- act as a catalyst to assist Alaska and foreign business persons to meet and conduct business;
- establish foreign government contacts which are important to Alaska, and introduce them to the State's economic trade and developmental policies; and
- establish a favorable image of Alaska in foreign countries.

According to the FY 84 Executive Budget, the office serves Alaska and foreign companies, State agencies, and Alaska and foreign tourists. Based on conversations with Vince O'Reilly, Deputy Commissioner of Commerce and Economic Development, and on DCED documents, it appears that the Asian Office serves all of these functions. Mr. O'Reilly, stated that the target area of the Asian office is currently Japan, Korea, Taiwan, and the People's Republic of China.

Mr. O'Reilly was not able to estimate the amount of time the Asian Office devotes to countries other than Japan; however, based on our discussion and the Far East Representative's reports, it appears that Mr. Overstreet intents to make a significant effort to expand contacts with Korea. For example, according to Mr. O'Reilly, the Representative is participating in the discussions between the State and Korea concerning liquified natural gas exports.

Based on the monthly reports from the Far East Representative to the Commissioner's office, it would appear that a significant amount of the Representative's time is spent meeting with Japanese business persons who are interested or involved in Alaska trade activities. The Far East Representative also meets with and assists members of the media who are interested in publishing information about Alaska.

One of the duties of the Far East Representative is to represent the State of Alaska and, to some extent, Alaska industry at trade shows, political functions, and business-related social functions. In addition, the Asian Office hosts receptions and luncheons for visiting Alaska businessmen and State officials. Vince O'Reilly explained that business relations in Japan traditionally involve more social activities than in the United States.

The Far East Representative also serves as the official representative of the Governor of Alaska at state functions. For example, Mr. Overstreet represented the Governor at the funeral of the Korean government officials assasinated this autumn.

Another responsibility of the Asian office is to provide assistance and support for trade delegations and visiting State officials. For example, when Governor Sheffield and his party travelled to Japan and Korea this last fall, the Asian Office was responsible for some of the arrangements; Mr. Overstreet and staff members also accompanied the Governor. According to Mr. O'Reilly, the Asian Office was also responsible for arranging a tour of the Far East for an Alaska logging industry group in the spring of 1983; the Office identified appropriate contacts and arranged meetings with Asian firms.

One of the activities of the Asian Office is the compilation and/or the dissemination of market information, both for Asian businesses interested in trade or investment in Alaska and to Alaska firms interested in marketing their products in the Orient. Two of the Japanese support staff translate information published in Japanese to English.

Productivity. One convenient method of determining the productivity of the Asian Office is to look at the extent to which it meets its

own performance objectives. The following performance measures were listed in the monthly reports submitted by the Far East Representative:

- the number of trade/marketing shows in which staff members participate;
- the number of conferences attended;
- the number of firms contacted or assisted;
- the number of Japanese organizations provided information;
- the number of pamphlets distributed;
- the number of Alaska firms provided information; and
- the number of government representatives assisted.

We have already provided the consultant with two of the Asian Office monthly reports which provides information on the extent to which each staff member performs these duties (see Attachment A). At his request, we will attempt to obtain additional reports from DCED.

Costs. The State Asian Office is included in the International Trade component of the DCED budget. This component also includes one development specialist position in Juneau and some travel funds used for DCED officials and others to participate in international trade events.[1]

The FY 85 Executive Budget request for the International Trade component is $543,500. According to the FY 85 budget documents (Attachment B), this represents a maintenance level budget for the new fiscal year.[2] Of the total amount, approximately $455,900 is for the Asian Office. Table 1 provides a breakdown of these costs. The remainder of the International Trade component budget goes to support the Juneau-based development specialist and to finance international trade promotion activity by State officials, legislators, and others.

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[1] While we have been able to separate most of the costs of the State Asian office, it should be noted that there are a few items, e.g. office supplies, for which approximations have been used. However, this should not result in a significant error in our calculations.

[2] According to Joan Brown, service level SL 1 (identical to SL 2) was included in the included in the Governor's budget. Budget levels for SL 1 are used in this memorandum and should be used when looking at Attachment B.

TABLE 1
Alaskan Asian Office Costs
(in $thousands)

Personal Services	
Salary	85.0
Employee Benefits	18.3
Travel	
Field and administrative	35.6
Contractual	
Communications	35.0
Printing and advertising	13.0
Space expense and fees	90.0
Repair and maintenance	2.0
Equipment rental	4.0
Professional fees	
Tokyo office staff	90.0
Contracts*	9.0
Other fees and expenses, risk management	60.0
Supplies and Materials†	
Household and institutional supplies	1.5
Structural materials and supplies	.5
Equipment parts and supplies	.5
Office and library supplies	11.5
TOTAL	455.9

* This item is for consulting contracts; the amount expended by the Asian Office varies from year to year. For our purposes, we have allocated one-half of the total amount to the Asian Office.

† Some supplies and materials may be charged to the Juneau Development Specialist position; however, we are unable to separate these expenses at this time.

Source: Department of Commerce and Economic Development, FY 85 budget documents, C series for International Trade Component, and conversations with Joan Brown, DCED. Table prepared by House Research Agency, 1984.

One should note that the allocation for space rent not only includes office space in Tokyo, but also an apartment for the Far Eastern Representative. According to Joan Brown, administrative assistant with the Department of Commerce and Economic Development, the cost of office rent is currently about $54,200 per year and the apartment costs about $32,000 per year. The $60,000 shown for other fees and expenses, and risk management includes $10,000 for membership fees, $8,000 for conference registration, and $37,300 for hospitality.

History. The Alaska State Asian Office was opened at the end of 1964 following the passage of the legislation which created and funded it for $25,000 (SLA 1964 Ch. 91 & 92). Originally, it was adminstratively located in the Office of the Governor; however it was transferred to the Department of Commerce and Economic Development in 1980.

Based on comments we received in the course of our interviews and on information included in previous consultants' studies of the Asian office, it appears that the Office has operated without strong direction or support from some of the past administrations. For further information on the past activities of the Asian Office we refer you to the Alaska Trade Offices Study published for the Alaska Legislature by Dupere and Associates in January of 1982 and to the Alaskan State Asian Office Study, performed by Agritrade International Inc.; these reports are included with the memorandum. Both contain information on past operations of the office as well as evaluations of the office's performance and support from State government in Alaska.

OTHER STATES' TRADE OFFICES

According to a 1980 survey, 33 states were represented in that year by trade offices in 66 foreign countries. This had increased from 20 states in 1977.[3] While some states may have added or closed foreign trade offices in the last three years, international trade staff for such national organizations as the National Association of State Development Agencies (NASDA), the National Conference of State Legislators (NCSL), and the Council of State Governments (CSG) indicated that the level of activity is about the same currently. NASDA is in the process of compiling an updated list of states' foreign trade offices, which should be available later this year.

In almost all cases, the foreign trade offices are associated with their state's economic development agency. In a few cases, the office represents the state's agriculture agency, and in some states, different agencies share an office. In some cases, rather than representing a state, an office will represent a port authority or some other regional entity. For the purposes of our discussion, we have not included any state offices which are limited to promoting tourism, although some state trade offices do serve this function in addition to other duties.

Foreign trade offices are most frequently staffed by personnel employed directly by state government, as is the case with Alaska. In many cases, these are regular employees of the parent agency, who are routinely rotated to their home state. However, some states contract with one or more foreign consultants to represent their state. In addition, several western states operate the Old West Commission, which has had joint trade offices in both Europe and Asia.

Foreign trade--and consequently the activities of state foreign offices--is often classified into two broad categories: (1) investment; and (2) trade. Investment, also called reverse investment or foreign investment, refers to business transactions in which foreign companies invest capital in the state, frequently by opening a manufacturing plant.

Trade, the second kind of activity, involves the exporting of goods to foreign markets. According to Marsha Clarke, with NASDA, state foreign trade office activity is fairly evenly divided between the promotion of these two functions, at least on the global scale. State

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[3] National Governors' Association, Export Development and Foreign Investment: Ther Role of States and Its Linkage to Federal Action, 1981, p. 22.

offices in developed countries like Japan may place a higher priority on encouraging investment; in developing nations, state offices may place a greater priority on expanding export markets, as these countries are less likely to have firms interested in developing operations in the U.S.

The trade offices of other states also collect trade intelligence for their state. However, according to Ms. Clarke, it is difficult to identify how much time is devoted to this activity, as it tends to be performed in conjunction with the office's promotional activities.

According to a 1982 study prepared for the Alaska Legislature by Dupere and Associates, once a state foreign office has made contact with a foreign firm interested in doing business with the U.S., the state's home office provides the U.S. business contact.

The Dupure report and other articles on foreign trade offices emphasize the importance of strong direction and support for state foreign offices from their parent agency. The home office must be able to identify the appropriate business contacts for foreign business interests who contact the state's foreign office, and to identify which in-state businesses expressing interest in exporting their products are serious candidates for foreign trade.

Ms. Clarke stated that the typical cost for a foreign trade office would be between $100,000 and $300,000. She noted that the upper limit generally provides for a large operation, but also cautioned that Tokyo was substantially more expensive than other locations. A 1982 survey indicated that the number of employees per office varied from 1 to 8, with 2 or 3 employees being the most common staffing pattern. The largest number of employees in the Japanes offices surveyed was 6.

Asian Offices. According to Marsha Clarke, her most recent information shows that 19 states now have foreign trade offices in Japan.[4] In addition, California, which does not have a state office there, has several port authorities, including Long Beach and Oakland, which operate offices in Japan. Most of these offices are regional in scope; however, some of the offices are intended to deal strictly with Japan. States which currently have offices in Japan are listed below:

Alabama	Indiana	Michigan	Pennsylvania
Alaska	Kentucky	Missouri	South Carolina
Florida	Louisiana	New York	Virginia
Georgia	Maryland	North Carolina	Washington
Illinois	Massachussetts	Ohio	

[4]This compares with 14 states in 1980.

In addition, Illinois has an office in Hong Kong and Missouri has an agriculture representative in Singapore. None of the individuals we contacted was aware of any state with an office in Korea.[5]

According to Ms. Clarke, state foreign trade offices in Japan usually place much more emphasis on encouraging foreign investment and little emphasis on increasing exports. Ms. Clarke explained that this is a result of Japan's long-standing trade restrictions on the importation of manufactured goods and agricultural products. Traditionally, these have made it very difficult for U.S. businesses to export goods to Japan. While some of these restrictions have been lifted in recent years, Ms. Clarke stated that the direction of states' trade office activities in Japan have not changed significantly. The Dupere study also found that most state offices in Japan devote more time to promoting Japanese investment in the U.S. than to promoting trade.

For additional information, we refer you to the Dupere study, which includes an examination of eight state offices in Tokyo and ten offices in Europe. The study provides a substantial amount of information on their activities and procedures. We also refer you to Attachment C, which provides several articles on state foreign trade offices sent to our agency from the Western Conference of the Council of State Governments.

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5 We received an excerpt of a recently published book on foreign trade office activity which refers to a possible office in Korea. The excerpt does not provide detail on the status of the office; it is not clear whether an office has been opened or was merely planned.

HISTORY OF ALASKA-KOREAN TRADE

There are very few documents available which specifically address the past and current trade activities between the Republic of Korea and the State of Alaska. Most of our information was obtained either through conversations with individuals familiar with Alaska-Korea trade activities, or from publications which addressed only a small portion of trade activities or included information on Korea incidental to other topics. As a result, the information presented in this section does not represent a comprehensive summary of Korea-Alaska trade activities.

In this section, we will present a general overview of Alaska-Korea trade, including an informal chronology of events. We then discuss the history and status of specific areas of trade, including examples and statistics whenever we have found them readily available.

Overview

Historically, direct trade between Alaska and Korea has been relatively sparse compared to trade activities between Alaska and Japan, or Alaska and the contiguous United States. According to the individuals we contacted, trade activities between the two countries have generally involved exporting Alaska natural resource products, particularly fish and timber, to Korea. In addition, some Korean firms have supplied industrial materials for large capital projects, and in a few cases, Korean firms have received contracts to construct all or portions of such projects. In recent years, Korean firms have also begun participating in joint ventures with Alaska businesses involved in natural resource extraction.

Presented below is a brief chronology of Alaska-Korea trade activities based primarily on our interviews with those knowledgeable about the history of Alaska-Korea trade. While it is not comprehensive, it should help to place the discussion in a clearer perspective.

Year	Event
1950s	--- Little direct trade between Alaska and Korea. Timber and fish products exported from Alaska to Korea through Japanese trading companies.
Late 1960s	--- Korean fishing fleet begins fishing in Alaska waters.
	--- Hyundai Corporation builds Parks Highway bridge at Hurricane Gulch.

Year	Event
Early 1970s	--- More wood products exported to Korea, still through Japanese trading companies.
	--- Sun Eel Corporation begins exploring the possibility of exporting coal from Alaska to Korea.
1975	--- Anchorage businessman, Loren Lounsbury, appointed honorary consul by Korean government.
Mid 1970s	--- Koreans begin participating in joint timber ventures with Alaska businesses.
Late 1970s	--- U.S.-Korean joint ventures in Alaska fisheries begin.
1980	--- Korean government establishes Consul-General post in Anchorage. First Consul-General appointed.
	--- Sun Eel exports test shipment of Usibelli steam coal to Korea.
1981	--- Sun Eel agrees to export 800,000 metric tons of coal annually through Seward for 15 years.
	--- Hyundai awarded contract to erect transmission towers on the Anchorage to Fairbanks electrical intertie. Also provides structural steel for the new Sohio building in Anchorage.
	--- Daewoo Corporation provides saltwater treatment facility to Atlantic Richfield Corporation on the North Slope.

In addition, we located some general statistics on the volume of Alaska-Korea trade in past years. Attachment D is a table, taken from the Alaska Statistical Review, 1980, which gives the value of Alaska imports and exports by nation for selected years between 1970 and 1979. The table shows that in 1970, Korea ranked fourth as a recipient of Alaska exports behind Japan, India, and Canada. In 1979, Korea again ranked fourth as a recipient of exports, this time behind Japan, India, and the People's Republic of China. Japan is clearly the dominant export market for Alaska, receiving over 80 percent of all Alaska exports. Korea does not appear to have been a significant source of imports to Alaska in the 1970s.

Attachment E provides information on Alaska's exports to East Asian markets for the years 1978 through 1982. This information was provided by the Alaska Department of Commerce and Economic Development. As the table shows, Korea had consistently ranked behind Japan and the People's Republic of China until 1982, when it surpassed China. However, it should be noted that in 1982, two reconditioned jet aircraft were exported to Korea from Alaska accounting for over half of the total figure. This is not a common export item for Alaska and, to some extent, distorts the export figures for 1982.

It should be noted that these statistics reflect only exports which are shipped directly to Korea from Alaska. Many of the individuals interviewed stated that some Alaska products are exported to Japan and are then sold to Korea by Japanese trading companies. Also, some Alaska products may be transported to the contiguous U.S. before being shipped to Korea. We have not located any statistics which indicate the extent to which this occurs.

In the sections that follow, we provide information on the history and current status of specific areas of trade, a summary of trade promotion activities, and a brief discussion of the potential for increased trade between Alaska and Korea. Much of the information is qualitative in nature, based on interviews and descriptive reports on Alaska commerce. Whenever possible, we have included existing summary data on the volume of specific items of trade.

Comprehensive information on the level of trade is available in the U.S. Department of Commerce reports for the Alaska customs district, which may be obtained from the U.S. Department of Commerce International Trade Office in Anchorage. In fact, the information in the two attachments discussed above was compiled using these reports. The reports go back to 1964 and provide export and import totals for the district as well as specific dollar and piece amounts for individual items. Unfortunately, these reports do not provide any summary data by general type of product, for example, forest products or seafood.

We have not attempted to compile any summary data using these reports, as we lack ready access to the reports in Juneau (the International Trade Office in Anchorage does not have duplicating equipment capable of making copies of the microfiche records for recent years). The task of obtaining copies and compiling summaries ourselves was not possible within the time constraints of this request. However, as previously noted, some of the information has already been summarized by other agencies and these are included in the attachments.

There are several indications that the potential for increased joint venture activities with Korea is great. Of the seventeen joint-ventures approved by the North Pacific Fisheries Management Council in December of 1983, eight involved Korean firms. In addition, some of the Native corporations we contacted reported that they were currently negotiating with Korean firms for joint ventures. Furthermore, foreign allotments of the Alaskan FCZ fisheries are now determined to some extent by that nation's level of joint-venture activity in the fishery. This increases the incentives to foreign processors to participate in joint ventures.

Timber

For the period 1977 through 1982, forest products were the most consistent and most valuable export from Alaska to Korea. The value of forest products exported to Korea in the first eleven months of 1982 was $9.7 million. However, for the same five-year period, 1977 to 1982, Korea generally ranked behind Japan and the People's Republic of China as a market for Alaska timber. Japan frequently imported twenty times the amount of Alaska forest products imported by Korea during this period.

The Alaska timber export market to Korea includes hemlock, used in the hidden interiors of homes, Sitka spruce, used in musical instruments, and red cedar, which has recently become a popular paneling material in Korea.

There have been some joint-timber ventures between Korean and U.S. firms in Alaska. According to Robert Breeze, Korean firms have been involved in joint timber ventures with some Native corporations. Robert Loescher, with the Sealaska Corporation, reported that his firm is undertaking a joint venture with the Korean Alaska Development Corporation (KADCO), a consortium of several Korean trading companies, including Hyundai Corporation and Samsung Corporation. Mr. Loescher also mentioned that his corporation has been exporting timber to Korea for the last several years. In 1983, Sealaska exported 25 million board feet of round logs to Korea.

A recent study of the markets for Alaska timber compiled for the U.S. Forest Service predicts that the Korean market for spruce will hold steady or increase slightly in the future. However, it also points out that the Korean market for hemlock is likely to decline as the Japanese market improves. This is because the Koreans are currently buying a higher grade of hemlock than they require, due to its low price compared to inferior quality woods from other sources. If Japan begins paying more for this hemlock, the Korean market will probably substitute other woods. The study does anticipate an increase in the demand for red cedar, and mentions that there may be some potential for selling Alaska cottonwood, white spruce, and possibly birch to Korean markets.

Attachment H contains the pertinent section of this Forest Service report, which includes tables with some Korean timber import information.

Minerals

Coal. While there has been Korean interest in Alaska coal since the early 1970s, actual exports did not begin until 1980, when the Sun Eel Shipping Co., Ltd. Corporation purchased a test shipment of steam coal from the Usibelli Coal Mines near Healy for trial in power generators in Korea. Following a successful trial, Sun Eel signed a ten-year contract to buy 7 million metric tons of coal. Last year, Sun Eel, along with Korea Electric Power Corporation agreed to export 800,000 metric tons of coal annually through the coal loading facility currently under construction at Seward. As Usibelli is the only working coal mine in Alaska, this will represent the only regular export of coal from the state.

There is also a coal development project currently underway involving Korea. This is the Bering River Coal field located 60 miles east of Cordova on land owned by Chugach Natives, Inc. This field is being developed by the Bering River Development Corporation, a joint venture between Chugach Native, Inc. and KADCO. Although the coal lies approximately 30 miles from tidewater, and there is no existing transportation or loading facility, the coal has a higher BTU value than the Usibelli coal. To date, no mining has occured, and it is uncertain if and when this field will actually begin exporting to Korea.

Petroleum. Petroleum exports do not appear to be significant part of the Alaska-Korea trade historically. Of course, export of crude oil, and the potential export of LNG for Alaska's North Slope is restricted by federal law. According to Robert Maynard, Assistant Attorney General, provisions in the Congressional authorization of the Trans-Alaska Pipeline make it almost impossible to export North Slope crude oil, and provisions in the Congressional authorization of the Northwest gasline project make it very difficult to export large amounts of LNG. This limits, to a large extent, the potential for trade in oil. However, in the first eleven months of 1982, Korea imported $16.6 million worth of urea from Alaska. No urea was exported in the four previous years. We have not obtained any figures for 1983.

It was the general consensus of the individuals I interviewed that Korean firms would be very interested in importing liquified natural gas (LNG) if a gasline was built and might also import oil if federal laws were changed. However, it was mentioned that Korea does have other sources of energy, and that it was not clear the extent to which unrefined Alaska petroleum products would be competitive. Alaska

petroleum does have relatively high extraction costs associated with it. Any decision regarding the export of Alaska petroleum to Korea would be based on the price of Alaska petroleum relative to the price of petroleum from other sources.

According to Robert Breeze, the Korean trading company, Samsung, is considering importing unleaded gasoline and reformate from Alaska to Korea. He also stated that another Korean firm, Sangyong, is considering exporting leaded gasoline and #2 fuel oil from Korea to western Alaska. In addition, Korea Shipbuilding and Engineering Corporation is exploring the possibility of importing residual fuel oil to Korea, to be purchased from Tesoro.

Other Minerals. Although there does not appear to be any Alaska-Korea trade in minerals other than coal and petroleum at this time, both Loren Lounsbury and Robert Breeze mentioned strategic minerals as another source of future trade with Korea. However, as several individuals mentioned, Alaska presently lacks the infrastructure to develop these mineral resources. Presumably, any development of Alaska-Korea trade in this area is dependent on future infrastructure development.

Agriculture

To date, there does not appear to be much agricultural trade between Alaska and Korea. There has been some shipment of beef and lifestock from Alaska to Korea; Loren Lounsbury cited an operation near Homer which is currently exporting beef. Robert Breeze stated that two Korean firms are currently attempting to lease University of Alaska lands in the Kenai area for cattle raising. Mr. Breeze stated that current plans call for the firms to export cattle as well as process cattle in Alaska.

Several of the people with whom we spoke mentioned the possibility of exporting barley to Korea. Japan and Korea are considered the primary markets for Alaska barley exports. However, the lack of a grain terminal at railhead appears to be a major impediment in the development of this market.

Finally, an article in Forbes (Attachment I) notes that without the Korean market for reindeer antlers, Nana Corporation's reindeer herd would cease to be an economically viable enterprise. In addition to the antlers, the herd also provides a source of fresh meat for local residents.

Korean Investment in Alaska

We have already discussed many of the areas in which Korea has invested in Alaska in our discussion of joint ventures in resource development. These include timber, fisheries, and coal. It should be noted, however, that joint ventures in fisheries do not usually entail foreign investment onshore. The foreign processor simply buys fish from a U.S. fishing vessel and processes the fish on board.

Mr. Breeze also mentioned that the Korea Shipbuilding and Engineering Corporation has proposed building a ship repair facility in Seward that might eventually include a small rolling mill and some ship building facilities as well.

While many of the individuals with whom we spoke stated that there was the potential for substantial Korean investment, particularly in the extraction of Alaska's natural resources, Korea's Consul General Hwang cautioned that Korean firms are reluctant to invest in the infrastructure necessary to develop some of these resources. He explained that other natural resource producers, such as Canada, are willing to build the necessary facilities to make their resources available to foreign firms at dockside. This reduces the total cost to Korean firms purchasing these products.

Imports

According to those we interviewed, Korean firms provide a significant amount of heavy industrial goods used in Alaska. We have not located any information which evaluates the relative size of Korean exports to Alaska in this field. However, our sources did provide several examples. The Korean firm, Daewoo, delivered a saltwater treatment plant to Atlantic Richfield Corporation on the North Slope last year valued at over $200 million. The Hyundai Corporation provided the structural steel for the new Sohio building in Anchorage. Hyundai also is erecting the transmission towers for a section of the Anchorage-Fairbanks power intertie. In addition, Hyundai build the bridge at Hurricane Gulch on the Parks Highway in the late 1960s. Robert Breeze also mentioned that cement and electrical transformers were also imported from Korea.

For consumer goods, the potential for import does not appear great. Consul-General Hwang stated that Alaska is generally considered too small of a market to make importing likely. Although many Korean products eventually are consumed in Alaska, these are usually distributed by compa.ies operating out of the contiguous U.S. A small Korean products import trade had existed in Anchorage for some years; however, this primarily serves the Korean community there and is not likely to increase significantly.

Trade Promotion Activities

In addition to actual trade activities, there are a number of activities related to the promotion or enhancement of Alaska-Korea trade which merit mention. For example, for the last several years, delegations of business persons and/or political officials have either gone to Korea, or come from Korea to visit Alaska. According to Robert Breeze, trade delegations have regularly travelled from Alaska to Korea or vice versa for the last few years. Governor Hammond and several State officials (including legislators), made a tour of the Far East to discuss trade in early 1979 (see Attachment H), and Governor Sheffield led a similar delegation last fall.

In 1975, the Korean government appointed Loren Lounsbury, a long-time Anchorage businessman, honorary consul for Korea in Alaska. In 1980, the Korean government established a regular consulate in Anchorage, staffed by a Consul-General.

The Alaska-Korea Business Council, an Alaska organization, was formed a few years ago to enhance trade and other relations between the two locales. A similar organization, the Korea-Alaska Economic Cooperation Committee, exists in Korea.

Several major Korean trading companies have opened offices in Anchorage or announced plans to open offices in Anchorage. These include Hyundai, Sun Eel, Daewoo, and Korea Shipbuilding and Engineering.

Potential for Future Trade

Virtually everyone with whom we spoke stated that there was the potential for greatly increased trade between Alaska and Korea. Export of Alaska's natural resources was cited as the most promising area of trade between the two. It should be noted, however, that the infrastructure necessary to develop many of these resources is not yet in place, and until it is, there are probably limited opportunities for increasing this trade. In addition, federal restrictions on the export of North Slope crude oil and LNG will have to be lifted before Korea can take full advantage of Alaska's petroleum resources.

Among the advantages cited for Alaska as a potential trading partner with Korea are:

- the proximity of Alaska to Korea;
- the quantity and diversity of Alaska's natural resources; and

- the political stability of the United States compared to other resource exporting countries.

The individuals with whom we spoke also cited several negative features which the Koreans see as drawbacks to Alaska as a trading partner, including:

- the lack of adequate infrastructure for resource development;
- the lack of sophistication and expertise of Alaska business firms;
- the lack of consistent, positive State government policy concerning resource development; and
- State and federal restrictions and permit requirements which add time and expense to resource development.

Robert Breeze, Loren Lounsbury, and Bill Bittner, attorney for Hyundai in Alaska, all stated that Korean trading companies are interested in becoming involved in Alaska's infrastructure development, both as a supplier of industrial materials, and as a contractor. Korean companies reportedly have a similar posture toward Alaska Power Authority hydroelectric power projects.

While it appears that Korean companies are neither used to or inclined to invest heavily in infrastructure development, they have begun investing in Alaska's resource development, as evidenced by the Bering River Development Corporation and joint ventures in the timber industry.

* * *

This concludes our research on Korean trade and foreign trade offices. As noted throughout this memorandum, we have supplied several attachments which should be useful to the consultant in preparing his report. We are, of course, willing to assist the consultant in obtaining further information to the degree that time permits. Should you have any questions, or if we can provide further information on any of the issues addressed in this memorandum, please do not hesitate to contact us.

JS

Attachments

cc w/attachments: Michael Gay

ATTACHMENT E

Alaska Exports to East Asian Markets

ALASKA EXPORTS: EAST ASIA AND PACIFIC
Totals and Major Products (000)

COUNTRY (PRODUCT)	1977	1978	1979	1980	1981	1982 (N
JAPAN	288,164.0	471,161.5	738,445.7	757,959.4	934,205.7	887,967
Seafood	47,623.7	203,479.6	396,895.2	297,494.2	406,279.6	332,491
Forest Products	141,096.1	135,410.5	236,306.5	273,337.1	206,214.7	205,081
Pet & Pet/Chem*	95,325.6	121,448.4	131,649.3	222,647.4	297,350.7	281,947
CHINA	7,196.2	18,711.4	32,352.5	67,795.1	43,841.7	58,665.
Urea	6,938.6	15,174.6	27,179.2	35,036.6	18,953.6	43,860.
Forest Products	0.0	3,393.2	1,303.6	32,173.3	24,412.5	9,562.
TAIWAN	8,573.6	8,090.6	12,096.4	14,600.6	16,916.0	4,374.
Urea	0.0	0.0	2.4	0.0	4,109.7	0.
Forest Products	7,349.2	5,614.2	9,479.0	9,201.5	7,036.6	3,658.
Seafood	0.0	0.0	0.0	9.6	0.0	0.
KOREA	8,302.5	8,653.5	23,528.6	36,121.0	19,807.4	95,185.
Urea	0.0	0.0	0.0	0.0	0.0	16,612.
Coal	0.0	0.0	0.0	0.0	635.7	0.
Forest Products	5,314.0	2,420.3	12,773.9	8,030.8	9,430.0	9,469.
Seafood	0.0	3,453.5	1 446.0	24,345.0	4,088.4	9,345.
THAILAND	3,821.3	4,306.8	3,468.4	5,539.4	4,099.8	9,331.
Urea	0.0	994.0	800.9	4,283.9	0.0	2,884.
Forest Products	4,219.3	2,662.8	2,568.9	1,069.7	2,347.6	5,995.
HONG KONG	309.1	1,303.9	2,963.3	1,859.3	5,611.5	917.
Pet & Pet/Chem	0.0	0.0	1.2	0.0	.7	0.
Forest Products	402.2	0.0	0.0	0.0	982.2	0.
Seafood	0.0	0.0	82.6	1.5	0.0	0.
INDONESIA	0.0	1,102.4	1,188.4	10,942.4	2,969.5	22,199.
Urea	0.0	0.0	0.0	0.0	0.0	15,552.
Forest Products	0.0	0.0	0.0	0.0	545.7	5,247.
PHILLIPINES	22.0	367.2	3,270.6	14,598.3	28,326.4	12,551.
Urea	0.0	0.0	2,217.9	14,442.4	26,362.6	12,256.
MALAYSIA	0.0	166.2	4,859.9	4,901.2	10,627.2	14,038.
Urea	0.0	0.0	2,219.0	3,579.6	6,408.4	11,898.
AUSTRALIA	1,173.4	6,965.9	18,318.6	3,069.0	9,096.0	33,576.
Urea	0.0	0.0	3,742.0	0.0	0.0	8,028.
NEW ZEALAND	0.0	2.0	27.1	0.0	0.0	1.
TOTAL EXPORTS	392,157.3	611,825.7	913,047.4	987,519.0	1,182,597.2	1,199,536.

*Pet & Pet/Chem exports [illegible]

[illegible] products included in these figures.

ALASKA EXPORTS: WORLDWIDE TOTALS

Major Products (000)

Product	1977	1978	1979	1980	1981	1982 (NOV
Forest Products	179,212.5	168,484.4	271,135.9	339,037.1	278,026.5	252,815.(
Seafood Products	52,106.3	205,707.1	356,047.6	327,205.3	427,142.8	349,391.(
Natural Gas	95,325.6	111,442.0	122,536.0	218,044.4	310,024.5	266,148.(
Urea	20,059.1	59,837.6	73,719.5	87,481.3	133,417.2	100,734.7
Ammonia	6,517.5	9,433.5	913.8	2,648.7	0.0	19,371.3
TOTAL	392,157.3	611,825.7	913,047.4	987,519.0	1,182,597.2	1,199,356.7

REPORT TO THE ALASKA LEGISLATURE
OF THE
LEGISLATIVE MISSION TO JAPAN AND KOREA
JANUARY 14-21, 1984

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REPRESENTATIVE JOHN COWDERY

JANUARY 24, 1984

REPORT OF LEGISLATIVE MISSION TO JAPAN AND KOREA

I. Executive Summary

This report describes the legislative mission of Senator Bettye Fahrenkamp, Representative Bob Bettisworth and Representative John Cowdery to Japan and Korea. The purpose of the mission was severalfold:

1) to return the visit of Japanese Diet members who visited Alaska in August 1983;

2) to join with Senator Murkowski in requesting Japan and Korea to formally request Alaska oil from the United States government;

3) to let Japan and Korea know of the Legislature's intent to seek a long term resource relationship, particularly energy resources, with those countries as provided in the respective communiques signed during President Reagan's November 1983 trip to those countries; and

4) to seek a summit meeting on energy among Japan, Korea, the Republic of China and the United States to form a financing plan for the construction of a gas pipeline and the marketing of the North Slope gas. The briefing material contained in Appendix A was submitted to officials of each government.

The Export Administration Act, which contains the prohibition on the export of Alaska oil, will be considered in mid-February 1984 by the United States Senate. If Japan's and Korea's formal requests for the oil are to do any good, they must be made soon. This legislative mission went at this time to these countries along with Senator Murkowski to show Alaska's solidarity in making this request and to stress the need for immediate action.

In Japan we found continued interest in purchasing Alaskan crude oil if the law can be changed to allow its export. We recommend that Alaska continue to establish relations with our friends in the Japanese Diet who prescribe energy policy for Japan. The interest of these Diet members will insure closer cooperation of the officials in the Ministry of International Trade and Industry (MITI).

On natural gas the Japanese continue to talk of an oversupply of gas extending into the 1990's. The Japanese look to private enterprise to perform any necessary marketing or financing studies. The MITI ministry appears to desire to operate solely within the United States-Japan Energy Working Group. This working group does not now favor an energy summit. Continued efforts with the Diet should be pursued to convince MITI to participate. Further, if Korea and Taiwan agree to a summit meeting, it would be difficult for Japan to refuse to attend.

The Koreans were very positive with respect to the oil and the gas. On oil, Energy Minister Choi stated that Korea wanted to purchase Alaskan oil and that it would point that fact out to the United States government. The Koreans favor the energy summit on gas and have taken preliminary steps with private industry in Korea to participate in the financing and marketing study. We recommend increased efforts with the Korean government to encourage this continued positive attitude.

While the legislative mission did not visit the Republic of China, Senator Murkowski reports from his meetings there during the week of January 9, 1984 that the Republic of China's government has the same attitude as the Korean government with respect to the oil and gas. Again, this attitude should be encouraged.

A word needs to be said about Alaska's Asian Office, which is located in Tokyo. It is the mission's impression that the Office is doing an excellent job. In the opinion of the mission, its effectiveness could be increased if offices were established in Seoul and Taiwan. We urge a review of this proposal by the Alaska Department of Commerce and Economic Development with a report by Commerce to the Legislature during this legislative session. Bill Overstreet, Director of the Alaskan Asian Office, was with the mission in Japan and Korea. His assistance throughout was most helpful and appreciated. The mission is firmly committed to the Asian Office.

It is the observation of the authors of this report that Asians and students of American history recognize that the United States is entering the "Century of the Pacific". Alaska, as a central point in the Pacific Rim geography, should be an integral part of the future trade pattern of the Pacific Rim region. Further, it is our observation that the United States will not be Alaska's primary market in the years and decades to come. We believe that the real market

for Alaskan resources is with and in Pacific Rim nations with which the United States of America has economic and strategic treaties (Japan, Korea, and Taiwan).

Asian countries have historically looked to Southeast Asia for trade and commerce. Those countries must be made aware of Alaska's other resources. This will take an effort by Alaskans. Moreover, Alaskans must be made aware of the potential.

It is our perception that IF Alaska is to maintain its high production in hydrocarbons and IF Alaskans continue to receive revenues it believes it needs, then the State leaders must plan for the future.

It is asserted by some economists and futurists that the center of world commerce has already shifted from the historic north Atlantic to the north Pacific Rim region. We believe this to be true and want our State to be aware of the potentials, opportunities and/or hazards.

II. Recommendations.

It is the opinion of the Alaska legislative mission that for Alaska to realize the promise of that portion of the Reagan/Nakasone communique of November 1983, that calls for Alaska to be the focal point of an energy relationship between the U. S. and Japan and other countries on the Pacific Rim, most notably Korea and the Republic of China (Taiwan), the State of Alaska must be an active party. Recognizing this, we recommend the following:

1. That in cooperation with the Alaska Congressional delegation and the Governor, the Alaska Legislature take an active role in seeking to market Alaska's energy resources in the Pacific Rim, recognizing that such an undertaking will require the expenditure of funds and will probably take some time;

2. That the Alaska Legislature establish a procedure for exchanging visits with members of the legislative bodies of Pacific Rim countries interested in Alaska's energy and other resources, with a view toward establishing with those legislators an understanding of Alaska's resources and the desirability of purchasing those resources. In particular, the Alaska Legislature should support Senator Murkowski's efforts to arrange an energy summit meeting between the United States, Japan, Korea and the Replublic of China (Taiwan) with representatives from Alaska in attendance.

3. That the Alaska Legislature assist the Governor and the Alaska Congressional delegation in seeking to lift the ban on the export of Alaska crude oil, including the expenditure of funds for Congressional lobbying and general education efforts, recognizing that this may take some time to achieve.

If Congress fails to lift the ban on the export of Alaska crude when the issue is debated in the Senate in February this year, all appropriate action should be undertaken by the State of Alaska, assisted by the Alaska Congressional delegation, to permit the export of a portion of the State's royalty crude oil. Such actions may include a request by the Governor for an export permit for State royalty crude oil as suggested by Senator Murkowski, or a lawsuit to establish the State's right to sell its own oil as suggested by Congressman Young.

4. That the Alaska Legislature support the efforts of private groups to arrange for marketing of Alaska's gas and financing of a gas pipeline, including marketing of the gas to the Pacific Rim countries. The Alaska Legislature should consider procedures which would require that any foreign companies which obtain contracts to help build the natural gasline, are from countries that agree to provide markets or financing for the gasline.

5. That the State of Alaska take all appropriate measures to assure that existing coal contracts take place on schedule and that additional opportunities for the sale of Alaska coal be found. In proposing this, the Alaska legislative mission recognizes that large scale coal contracts with the Pacific Rim cannot be expected to occur earlier than the mid 1990's. However, some assurance of sales at this time would be of great assistance to the Legislature in making proper decisions for construction of the infrastructure needed for coal development.

6. That the mission of Alaska's Asian Office be expanded to agressively market Alaska's resources on the Pacific Rim. In this regard we envision its mission for Alaska as similar to that which the Ministry of International Trade and Industry provides for Japan. To perform this function, Alaska's Tokyo office would have to be upgraded and offices established in Seoul and Taiwan. Given the interest in Alaska's resources we have seen in Japan and Korea, the money expended would be a wise investment. We recommend that the Alaska Department of Commerce and

Economic Development study this proposal and report back to the full Legislature before the end of this legislative session.

III. Discussion of Trip Details

The mission left Juneau for Anchorage on January 13th. That evening the mission attended a dinner hosted by Consul General Huang of Korea, to which Consul General Inamura of Japan was invited. Energy matters were generally discussed. The main purpose of the dinner, however, was to firm up the arrangement for the visit. The mission very much appreciated the information provided by the Consuls General.

The mission left Anchorage on January 14, 1984 and arrived in Tokyo on January 15, 1984, having lost a day crossing the international dateline. January 16, 1984 was a holiday in Japan, during which the mission adjusted to the time and was briefed by the Alaska Asian office.

On the evening of January 16, 1984 the mission had dinner at Bill Overstreet's home, which was attended by Senator Murkowski, for the purpose of rehearsing for the meetings. It was decided that after the introduction of the legislative mission by Senator Murkowski, Senator Fahrenkamp, as the mission's senior member, would make the following points:

1. The mission was returning the August 1983 visit of the Diet with the idea of continuing such exchanges in the future;

2. The mission felt it was in the interest of both Japan and Alaska to work to implement that portion of the November 1983 communique from the meeting of President Reagan and Prime Minister Nakasone which named Alaska as the focal point for an energy relationship between Japan and United States;

3. The mission recognized that realizing Alaska's position as the focal point of an energy relationship will take time and commitment, which Alaska for its part was willing to pursue;

4. The mission endorsed the efforts of the Congressional delegation to change that portion of the

Export Administration Act which precluded the export of Alaska oil and the effort to arrange for an energy summit meeting.

It was agreed that Senator Murkowski would speak to these subjects on behalf of the combined group.

The first meeting on January 17, 1984 was a briefing by Ambassador Mansfield. After Senator Murkowski had introduced the legislative mission, Ambassador Mansfield gave an in-depth and exceptionally knowledgeable review of both the oil and gas issues from both the U. S. and Japanese perspectives. He stated his unequivocal support for the export of Alaskan crude oil, Pacific Rim, and promised to be of assistance in any appropriate way. He detailed the numerous publications and occasions in which he had made known his views on this subject. He is clearly a friend of Alaska.

The combined mission met with MITI Vice Minister Komatsu on January 17, 1984. Vice Minister Komatsu is one of the two senior Japanese officials who sit on the U. S.-Japan Energy Working Group. After Senator Murkowski had made the introductions and Senator Fahrenkamp had made the above listed introductory remarks on behalf of the legislative mission, Senator Murkowski made the following points to the Vice Minister:

1) The purchase of Alaska's energy resources would provide Japan an opportunity to redress its balance of payment problem with the United States that opening its market to U. S. citrus and beef cannot do;

2) The U. S. Senate would soon take up the Export Administration Act, while Japan has informally indicated its desire to purchase 50,000 barrels per day (bbl/d); a formal request by the government of Japan for the oil would be very helpful in Senate debate;

3) The group felt that an energy summit among the U.S., Japan, Korea and Taiwan to discuss Alaska oil and gas would be a good means of implementing the Reagan-Nakasone comminique as it pertains to Alaska energy resources.

Mr. Komatsu replied that energy is an area where Alaska and Japan can cooperate. Japan told the U.S.-Japan Energy Working Group that it wanted the oil, and the Japan Refiners' Association said the same thing on its trip to Washington, D. C. Mr. Komatsu said that that request

constituted a "formal" request. Japan believes that lifting the crude oil ban is critical. However, it understands that lifting the export ban will be difficult in the short run; this must be a long-term effort.

Mr. Komatsu declared that the potential exists for Japan's purchase of LNG from Alaska in the 1990's. The development of this potential is up to private enterprise in each country.

Mr. Komatsu said that coal is also the responsibility of private industry, although there are many more difficulties connected with this resource than with LNG.

On January 17th the combined delegation met with Mr. Nagayama of the Japan Refiners' Association and his staff. After Senator Murkowski and Senator Fahrenkamp had made their prepared presentations, Senator Murkowski stated that the Export Administration Act and Senator Murkowski's amendment to allow the export of Alaska oil will be debated in February. The Senator described the proposed amendment and advised Mr. Nagayama that there is strong objection by the maritime unions to the export of Alaska oil. If this objection can be overcome there will be a market in the U. S. for replacement oil from Mexico and an opportunity for Japan to redress its balance of payments problems with the U. S. A formal request for the oil from Japan to the U. S. would help in the Senate debate.

Mr. Nagayama replied that he had made a request for the oil during his trip to Washington, D. C. on the issue. Furthermore, he felt that the Japanese side had requested the oil during the U. S.-Japan Energy Working Group discussions. Mr. Nagayama said he understood that it would be politically difficult to have the amendment pass.

Mr. Nagayama expressed concern about that portion of the Senator's proposed amendment that called for the oil to go to Japan on U. S. bottoms. He stated that he was concerned that this would make the price of the oil commercially unreasonable. A discussion then ensued which explained to Mr. Nagayama that the transportation price would be absorbed at some point in the distribution system and thus Japan would pay no more than the market price for the oil. Mr. Nagayama replied that even if the delivered price were the same the U. S. tanker proviso precluded Japanese oil companies from using their tankers which were surplus to the present demand. Dr. Thayer responded that

having the oil on American tankers provided security to the Japanese, because it would be an act of war to stop an American tanker. Mr. Nagayama acknowledged the point.

Mr. Nagayama then expressed concern that the proposed amendment called for the oil to be cut off in case of an emergency. Senator Murkowski explained that this was because Japan as an OECD nation would receive oil pursuant to the International Energy Act were there to be an emergency.

Mr. Nagayama stated that he agreed that importing Alaska crude oil would go a long way toward resolving Japan's imbalance of trade problems. He had spoken with people during his U. S. trip on the issue who had told him that changing the balance with Alaska oil was not a desirable way to do it. The reason he had been given was that this would possibly take the pressure off Japan to resolve other trade difficulties. He thus expressed concern that even if Japan purchased the oil, U. S. criticism of the trade imbalance would continue.

Nevertheless, Mr. Nagayama believed that Japan should buy limited quantities of oil to reduce the balance of payments problem. Furthermore, he felt it important to diversify Japan's source of supply and reduce its dependence on Middle East oil.

Senator Murkowski responded by saying that the efforts of the U. S. in Lebanon and the Middle East to secure peace were of ~~less~~ more benefit to Japan than the U. S. because the U. S. was more dependent than Japan on oil from that area. Mr. Nagayama reiterated the desirability of a diversified oil supply but said it would be inappropriate for him to comment on the Lebanon situation.

There was some confusion on the Japanese side regarding the 200,000 bbl/d amendment. Mr. Takahashi asked if this represented royalty oil only. Senator Murkowski replied that the 200,000 bbl/d representated oil from all sellers including the State. The Senator said that the 200,000 bbl/d was selected because it was the amount of oil which could be sold without causing a job loss among existing maritime workers as a result of oil export. He cited the Putnam, Hayes and Bartlett report prepared for Alaska Lumber and Pulp Co., Inc. (ALP) as the authority for this proposition. He said it was only a coincidence that this 200,000 bbl/d was the same amount as the total of the State's royalty oil. Mr. Ishiyama of ALP later informed members of the group that because of the political good will

involved with it, the Japanese are far more interested in State royalty oil than oil from the other producers. As Mr. Ishiyama understood it this had a lot to do with the fact that the Japan Refiners' Association had expressed interest only in 50,000 bbl/d of royalty oil.

Representative Bettisworth told Mr. Nagayama that Alaska looked upon the oil export issue as a long-term proposition. He said the Alaska Legislature expected to push hard to achieve oil export over whatever period it took to succeed. During this period he hoped that further visits between the Diet and the Alaska Legislature could be arranged.

The combined group then met with Mr. Murata, the Director General of the Economic Affairs Bureau of the Ministry of Foreign Affairs. After Senator Murkowski and Senator Fahrenkamp made their initial presentation Senator Murkowski explained the amendment he intended to introduce to the Export Administration Act to permit the export of a limited amount of Alaska crude oil. Senator Murkowski told Mr. Murata that it would enhance chances for the amendment's success if Japan would formally request the oil. The Senator pointed out that the State of Alaska was prepared to spend money to help get the amendment passed. The Senator said that passage of this amendment would help the Japanese avoid criticism due to the balance of payments problem. The Senator then outlined his proposal for an energy summit.

Mr. Murata responded that Japan would like to purchase Alaska crude oil in order to diversify its sources of supply and to help its balance of payments problem. He stated that Japan was reluctant to make a formal request for the oil because it could be interpreted to be interference with the internal affairs of the United States (i.e., the deliberations on the Export Administration Act). Accordingly, the problem has "chicken and egg" aspects: Japan says the U.S. should make the oil available before it takes action to purchase it; Senator Murkowski wants Japan to indicate a desire to purchase the oil first.

Senator Murkowski stated that it would be very embarrassing if the U.S. lifted the oil export ban only to find that Japan was not interested in purchasing any oil. He stated that it was difficult to understand the rationale for Japanese refusal to make a formal request for the oil when Taiwan had agreed to do so. It was anticipated that Korea would also do so. The Senator pointed out that the U.S. was securing Japan's oil supply as well as that of the United States by its actions in the release. Thus, it was

hard to understand why the Japanese invested in Sahkalin rather than Alaska. The Senator asserted that it would be much better if Japan invested in Alaska.

Mr. Murata asked what would happen if no amendment to the Export Administration Act allowing crude oil export was achieved in February. Senator Fahrenkamp responded that Alaska would try again. She stated that the State Legislature was prepared to spend money to obtain the amendment but recognized that it could take some time to have this happen.

On January 18, 1984 the combined group met with Minister Okonogi, the Minister of International Trade Industry. Senator Murkowski and Senator Fahrenkamp made initial remarks as outlined previously. Senator Murkowski then stated that purchasing crude oil from Alaska would help Japan reduce the balance of payments problem. The Senator declared that opening the beef, citrus food barriers to U.S. producers would not provide sufficient balance of payment offset. The Senator stated that the answer to the balance of payments problem was not for the U.S. to restrict import of Japanese products, but for the Japanese to buy more U.S. products. The Senator then described his proposal for an energy summit as outlined above. Mr. Okonogi replied that he will be in Washington, D.C. at the end of the month and these issues will be discussed. Mr. Okonogi said he preferred using the U.S.-Japan Energy Working Group in the energy summit proposal, but would consider the proposal.

Senator Murkowski pointed out that Vice President Bush has responsibility to follow through on the Reagan/Nakasone communique. He stated his intention to meet with the Vice-President concerning the energy summit.

The combined group then had lunch with three of the four Diet members who had visited Alaska in August, 1983: Namely Mr. Watanabe, Mr. Harada, and Mr. Yosano. Mr. Kato, a Diet member interested in energy, also attended. Mr. Uetake, a former Diet member, was present as was Mr. Matsune, Chairman of Alaska Kai. Mr. Nakayama, senior counselor to the Industrial Bank of Japan, and a long-time friend of Alaska, attended as did Ishiyama, the President of Alaska Lumber and Pulp Company. The discussion focused on the desirability of exchanging visits between Diet members and members of the Alaska Legislature. Senator Fahrenkamp expressed the view that Alaska was prepared, on its part, to take the actions necessary to implement that portion of the Reagan/Nakasone communique which calls for Alaska to be the focal point of an energy relationship between Japan and the

U.S. Minister Watanabe stated that this was a worthwhile goal which he would be unable to pursue because of his recent promotion to Minister of Health and Welfare. He stated that the other Diet members present were prepared to be helpful in the effort. In their various remarks the Diet members expressed an interest in the energy summit proposed by Senator Murkowski and promised to consider it.

Following lunch the Alaska legislative mission held a press conference with the Japanese press. Senator Fahrenkamp presented the points she had made in meetings with government officials. The press was extremely interested in the oil and gas issues and the interview had to be terminated to allow the mission to take the flight to Korea.

The combined group was met at Kimball International Airport on the evening of January 18, 1984 by former Korean Energy Minister S.K. Lee, a strong advocate of development of Alaska's energy resources. The group was joined by another long-time friend of Alaska, Mr. T. J. Kim at the Shilla Hotel.

The first meeting of the morning of January 19, 1984 was breakfast with the corporate leaders of Sun Il Corporation concerning its coal purchase contract with Usabelli Coal Company. The group was assured that the project was on schedule.

The combined group then received a briefing from Mr. Walter Lundy, economic counselor to Ambassador Walker. Mr. Lundy briefly outlined the dramatic expansion of the Korean economy in the last ten years. The Korean economy is growing at approximately ten percent per year. Much of this is due to the expanding domestic market in Korea. The Koreans are presently trying to enter the export market and participate in the hi-tech area. For the first time, Korea will have an unfavorable balance of payments problem with the United States in 1983 - approximately $1 billion. The Koreans are extremely worried about this.

Mr. Lundy felt that the Korean government would respond favorably to the proposal of formally requesting oil and to the idea of an energy summit. He warned that due to their recent prosperity the Koreans had been deluged with requests to purchase foreign goods. The Koreans have sufficient energy in the short run but need assured, long-term supplies over the long run. Mr. Lundy viewed the

creation of the five company consortium to participate in the marketing and financing study of the gas as very favorable.

Mr. Lundy advised that although there was no specific mention of Alaska, as there had been in the Reagan/Nakasone communique, the communique between President Reagan and President Chun in November, 1983 contained a paragraph in which the United States pledged to be an energy supplier to Korea and to help Korea obtain energy resources in case of emergency. Mr. Lundy suggested that in its discussion with the Korean government, the group point to this paragraph as the basis for its proposal that the Koreans make a formal request for oil and an energy summit meeting. Mr. Lundy stated that the embassy would provide all possible assistance in achieving these goals.

The combined group met next with Minister of Commerce and Industry Kum. After Senator Murkowski and Senator Fahrenkamp had made their opening statements Senator Murkowski urged that the Korean government make a formal request for crude oil from Alaska that there be a four nation energy summit meeting. Mr. Kum responded that while Korea was interested in purchasing energy resources from Alaska, the specifics of that discussion would have to await the group's meeting with Energy Minister Choi. Mr. Kum stated that Korea would buy the oil if the export ban were lifted and asked Senator Murkowski to explain the procedures for changing the law. Following Senator Murkowski's explanation, Senator Murkowski did give reasons why Alaska was looking to Pacific Rim as a market.

The combined group had lunch with National Fisheries Administrator Kang. After an exchange of introductions, Senator Murkowski applauded Korea's adherence to the 200-mile limit. He asked if the Korean government was interested in obtaining more joint ventures with Alaska fishermen as opposed to fishermen from elsewhere. The conversation centered on these two points.

In the afternoon the combined group met with Ambassador Walker. The Ambassador stated his support for the export of Alaska crude oil and for the energy summit meeting. He promised to do everything he could to assist in Korea's purchase of natural gas from Alaska. To that end he planned to host a dinner for Yukon Pacific officials in the five company consortium which had agreed to do the financing and marketing study on the gas during Governor Hickel's visit in February, 1984. Senator Fahrenkamp thanked the

Ambassador and explained that Alaska intended to aggressively market its resources on the Pacific Rim and to make any necessary changes in federal or state law toward that aim.

The combined group then met with Minister Choi, Minister of Energy and Resources. Senator Murkowski and Senator Fahrenkamp made opening remarks. Senator Murkowski asked that Korea make a formal request for Alaska oil and that there be an energy summit between the U.S., Korea, Japan and the Republic of China (Taiwan). Senator Fahrenkamp asked the Minister to assist in making certain that the coal contracts between Sun Il Company and Usabelli Coal Company occur on schedule.

Minister Choi stated that Korea wanted to diversify its sources of energy supply. Korea would buy Alaska crude oil if it were made available and would seriously consider making a formal request for it. He said that while there was no need for gas right now because of purchases from Indonesia, his ministry's upgraded projections show a need by 1989. Accordingly, his ministry would assist private enterprise of Korea to coordinate Korea's portion of the financing and marketing feasibility study. Minister Choi said that he is uncertain that the Sun Il/Usabelli contract would occur on schedule. The Minister said that he views favorably the proposed energy summit. He then asked Senator Murkowski to explain his proposed amendment to export crude oil and to describe the prospects for passage in the Senate.

Senator Murkowski gave a detailed account of the proposed amendment. He stated that changing the law would be a hard fought battle. Accordingly, he appreciated the Minister's consideration of the proposal that Korea make a formal request for the oil as this would be a great help.

The group then met with Mr. Lee, Chairman of the Board of Samsung Corporation. Senator Murkowski pointed out that the gasline construction would involve assistance from companies such as Samsung. The Chairman stated that Samsung Corporation had always looked for natural resources, particularly in the United States, and more specifically Alaska.

The combined group then met with the President of the Korean Electric Power Company, Mr. Park. After Senator Murkowski and Senator Fahrenkamp had made initial remarks, Senator Murkowski stated that he hoped that the Sun Il Usabelli coal contract would go forward as scheduled. He was assured by Mr. Park that it would. Senator Fahrenkamp

then brought up the issue of all of Alaska's resources focusing specifically on Alaska's energy resources. An informal discussion ensued regarding the opportunities for marketing those resources on the Pacific Rim.

At this point Senator and Mrs. Murkowski left the group to return to the United States. Following departure of Senator Murkowski the discussion continued and was led by Senator Fahrenkamp.

The legislative mission met for breakfast on January 20, 1984, to discuss the points it would make in its meetings during the day, all of which were with Korean companies interested in Alaska's energy resources and their construction projects in Alaska. It was decided that Senator Fahrenkamp, as senior member, would make the following points at each of the meetings:

1. That the Alaska Legislature intended to make a major effort to market Alaska's resources on the Pacific Rim.

2. That the mission has come to Japan and Korea at this time to demonstrate the Alaska Legislature's support of the congressional delegation's effort to lift the ban on the export of Alaska oil to the Pacific Rim.

3. That this issue will be debated in Congress in mid-February. The Alaska legislative mission believes that the ban on Alaska crude oil exported is inconsistent with Paragraph 12 of the communique between President Chun and President Reagan, which provided that the U.S. would be a reliable supplier of energy and help Korea obtain stable energy supplies.

4. That the legislative mission urges the Korean government to contact the U.S. government to formally request the Alaska oil. In particular the U.S. Defense Department should be contacted regarding Korea's desire for the oil.

5. That Alaska has extensive natural gas supplies. Senator Murkowski is trying to put together a four-country energy summit meeting to discuss financing and marketing of the gas.

6. That the Alaska legislative mission understands that former Governor Hickel will be in Korea in February to discuss the natural gas issue. Ambassador Walker told the mission yesterday that he will help coordinate that visit

with key industry leaders. The Alaska legislative mission supports this initiative.

7. That coal is one of Alaska's major resources. Contracts have been entered to sell Alaska coal to Korea. The legislative mission is delighted to learn that arrangements for coal delivery are still on schedule. The Alaska legislative delegation would like to see more coal sold in Korea.

8. That in April a delegation from the Alaska Loggers' Association will be in Korea to discuss Alaska's timber resources. The Alaska legislative mission urges the Korean business community to work with the Alaska timber industry to sell more of Alaska's timber in Korea.

The Alaska legislative mission met with Fisheries Minister Kang for lunch. The Alaska legislative mission applauds the efforts made by the Korean fishing industry to comply with the requirements of the 200-mile limit and requests that the Korean fishing industry enter into more joint ventures with Alaska fishermen.

The mission met first with Mr. Kim, President of Ssangyong Construction Company. Senator Fahrenkamp made the remarks outlined above. Mr. Kim expressed the hope that Korea would enter into a long-term energy relationship with the United States. He stated that his firm had purchased some Alaskan coal in connection with its cement plant operations, but the coal was wet and had to be mixed with other coals. Ssangyong is not now using Alaska coal.

Mr. Kim expressed his company's interest in any construction contracts which may arise from construction of the gas pipeline. Senator Fahrenkamp responded that it was her personal view that in awarding such contracts consideration would be given to companies of nations that participated in the financing and marketing of the gas and were themselves helpful in causing the project to happen.

The legislative mission then met with officials of the Doosan group. Senator Fahrenkamp made the points outlined above. Mr. Keh stated that Korea was interested in Alaska's resources. While Doosan was smaller than the big Korean trading companies, he was quite interested in those resources and also interested in participating in the construction of the natural gasline. Senator Fahrenkamp repeated the point about assistance causing the project to happen, previously made to Ssangyong officials.

The group met next with Mr. Cheon of Hyundai Construction Company. Hyundai is the largest of the Korean trading companies. Mr. Cheon stated that he had prior experience in construction projects in Alaska. He plans to be in Alaska in April. He expressed interest in construction of the gas pipeline. Senator Fahrenkamp repeated what she had told the other companies. Mr. Cheon wanted to know if the Hyundai built the project, could it be paid in natural gas. Representative Bettisworth stated that in his opinion, this was the only way the project would work. General discussion about Alaska's potential then followed.

The legislative mission then met with Mr. Roh, Vice Chairman of the Federation of Korean Industries (FKI), which is similar to the Keidenren. Mr. Roh stated that approximately 400 of the largest Korean companies are members of FKI. The FKI makes recommendations to the government after reaching an internal consensus.

Senator Fahrenkamp delivered her prepared remarks, whereupon there was a general discussion about the desirability of Korea purchasing Alaska's energy resources and other resources. Mr. Roh stated that the business community was anxious to expand its activities in Alaska.

Following the FKI meeting, the legislative mission was met with Mr. Lee, Vice-President of Daelim Construction Company. After Senator Fahrenkamp delivered her prepared remarks there again was a general discussion about construction activity in Alaska. Senator Fahrenkamp repeated her remark that any construction company that participated in the natural gas line would have to be from a country which participated in the financing and marketing study and itself was helpful in causing the project to happen.

In the evening the group attended a reception put on by Ambassador Walker for the Alaska legislative mission and a congressional mission which was then in Korea. During the course of this reception, members of the Alaska legislative mission had the opportunity to talk with members of the Korean National Assembly and with members of Congress regarding these energy issues. In particular, there was an opportunity to talk with Congressman Jack Hightower of Texas. Congressman Hightower stated that the congressional attitude against exporting Alaska oil was not strongly held, although he doubted it would pass the Congress at this time because of the power of maritime unions. The members of the National Assembly with whom conversations were conducted were very anxious that the oil export ban be lifted and that Korea participate in the purchase of Alaska's energy

resources. Members of the legislative mission also talked with Ambassador Walker and economic counselor Lundy and were promised all possible support from the Embassy in assisting the legislative mission in achieving its goal.

On Saturday, January 21, the Alaska legislative mission traveled to Pamunjon. The purpose of the trip was primarily to view the demilitarized zone and, secondarily, to experience first hand, Korean life which has been dramatically affected by its relationship with North Korea.

IV. Conclusion.

In conclusion, we believe that the objectives of the mission we set out to achieve were accomplished. However, much more work needs to be done. In this regard, we would urge that the recommendations made in Section II of this report be adopted.

ATTACHMENT I

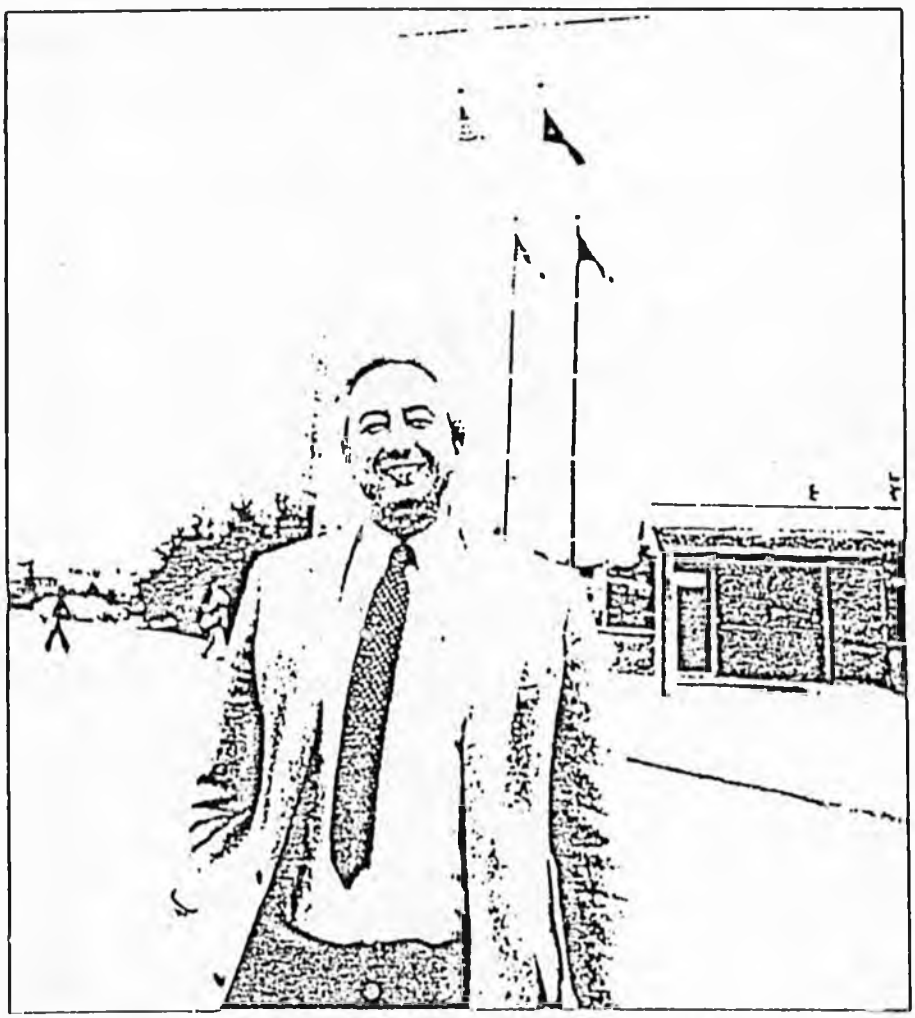
Forbes, November 7, 1983--"Northwest Passage"

Asia covets Alaskan fish, timber, coal and, especially, oil, and the state's little-known Native corporations are finding new trading partners.

Northwest passage

By Allan Dodds Frank

WHEN THE residential housing market slumps in Tokyo, it hurts Alaska Natives in Juneau and Sitka. When South Koreans get depressed, aphrodisiac prices there decline and Eskimos in Kotzebue lose profits. What's going on is that the Natives of Alaska, the Eskimos, Indians and Aleuts, are establishing business empires increasingly tied to the fortunes of the Pacific Rim. Japan and South Korea provide major markets for timber, fish, minerals and, yes, even reindeer horn, which old-fashioned apothecaries in Seoul finely grind into much-savored sex potions.



Cook Inlet Region, Inc. President Roy Huhndorf at headquarters in Anchorage
Alaskan coal to Japan?

Being in the export business is just one offshoot of the 1971 settlement, enacted by Congress, of the land claims of Alaska's 80,000 Eskimos, Indians and Aleuts. The Natives were granted 44 million acres, a land area equal to 2% of the entire U.S. To help them enter the capitalist mainstream, $962.5 million was thrown into the pot (FORBES, *OCT. 24*) to establish 203 village and 12 giant regional corporations. These are to administer the land and begin profitmaking ventures. Each Native received 100 shares in a regional corporation. To prevent takeovers by outsiders, Congress prohibited any stock sale until 1991.

"Until I became a Native American businessman, I always thought a strong American dollar was a good thing," says Roger Lang, a Tsimshian Indian who fishes commercially for salmon and halibut when not attending to his duties as a director of Sealaska Corp., a company with estimated timber assets in hemlock, spruce and cedar worth more than $200 million. He now knows a weak yen means weak sales. Lang adds that Canada, which he accuses of dumping logs, has hurt Sealaska timber sales to Japan, which last year were nearly 190 million board feet, mostly in round logs.

Overall the 12 Alaska Native corporations' profits have been improving *(see table, p. 222)*, but the big move forward will occur when world prices for oil, timber and fish improve. Until then the corporations will work on honing skills in scouting out new joint ventures. Several Native corporations have opened branches in Tokyo and Seoul, and more will follow. Alaska is midway between Tokyo and New York by air, and by water it's far easier to ship bulk commodities to the Pacific Rim than to the U.S. East Coast. Raw salmon is a big seller in the Orient, so several Native corporations, like Calista Corp. in southwest Alaska and Nana Regional Corp. in Kotzebue, have negotiated wholesale deals to sell fish caught by Natives to Japan.

For Nana, the South Korean market for reindeer horn is the margin that makes it possible to maintain a herd of 6,000 animals that also provides fresh meat for local Eskimos, all of whom are stockholders. The herd still loses money, which makes it a tax-loss carryforward on the hoof, but the slaughterhouse also is used in summer to process fish. Besides, Nana stockholders are constantly entertained by management's amusing efforts at rounding up the reindeer. Using tax-deductible toys—helicopters,

aircraft, three-wheeled vehicles and dog teams—they try to separate the reindeer from thundering herds of wild caribou. [They look alike and are compatible.] Nana also mines decorative quality jade that it sells to Taiwan for carving into clocks, ashtrays and little animals, even reindeer.

"In Japan they understand the Alaska market much better than anyone else," says Alex Raider, Calista Corp. president. Raider has enticed several major Japanese corporations, including Mitsui Engineering & Shipbuilding, Ltd. and Kawasho International Corp., into joint ventures to supply engineering expertise and steel for building offshore oil rigs in the Bering and Chukchi seas. It's not just the Asians who are doing business with the Native corporations. Remember, the dozen corporations control 44 million acres of the state and deal with the major U.S. oil companies, handling service and construction contracts. Natives and oilmen lobby together against environmentalists for sale of Alaska oil to Japan.

In the main, the Native corporations have staked their future on resource development, with nearly every corporation involved in joint ventures with oil companies.

Roger Izony, a Tsimshian Indian who is a Sealaska director
Learning that a strong dollar doesn't always help.

The most profitable Native corporation, Cook Inlet Region, Inc., is seeking a blend of Pacific Rim and domestic markets that other Native corporations are trying to duplicate. Cook Inlet President Roy Huhndorf says improvement of coal prices could make it economically feasible to ship to Japan from the corporation's massive Beluga coalfield near Anchorage, to be operated under lease by Placer Amex Inc. In the meantime, with proved oil and gas reserves, Cook Inlet "is going to stick to joint ventures with expert operators like Arco and Texaco," says Huhndorf.

The Native corporations always look for ventures that will employ shareholders, a notion that produces company ties akin to the Japanese cradle-to-grave employment approach. The Native leaders strive to create shareholder loyalty—William L. Hensley, president of Nana Development Corp., a Nana subsidiary, calls it "Sivuniigvik," spirit in Eskimo—to work against the temptation to sell out when 1991 comes around.

The Native corporations, however, have lost a friend with the resignation of James Watt, the Interior Secretary. Watt had pushed hard to unlock their lands for exploration and to get their land titles to them. He put federal lawyers to work on projects to make the Natives self-sufficient, even if it meant fighting The Sierra Club, which it has. As he told FORBES before his resignation, "The no-growth advocates who try to destroy the success of these corporations shouldn't be tolerated."

But then Watt believed in self-reliance for the Natives, not handouts. ■

On native ground

These 12 corporations, established by Congress, control most subsurface and surface rights to 44 million acres of Alaska and were given $962.5 million to set up businesses and manage the assets to make Alaskan Natives self-supporting. They can't sell their stock until 1991. Here's a situation report.

Corporation	Reporting year	Stockholders	Acreage (millions)	Settlement money	Equity	Long term debt	Current assets	Current liabilities	Earnings per share	Equity per share
				(in thousands)						
Ahtna Inc	1983	1,074	1.8	$15,085	$17,755	$ 877	$12,304	$1,354	$ 2.69	$17.34
Aleut Corp	1982	3,249	1.5	19,504	15,839	2,110	8,346	1,208	1.53	48.75
Arctic Slope Regional Corp	1982	3,738	5.2	22,535	20,002	16,299	15,684	14,938	(18.38)	50.84
Bering Straits Native Corp	1981-82	7,425	2.2	51,225	8,360	24,391	5,640	3,404	(5.01)	13.20
Bristol Bay Native Corp	1983	5,401	3.2	32,695	37,194	14,527	7,980	3,761	5.88	62.87
Calista Corp	1982	13,306	6.5	80,133	54,716	23,865	21,571	3,600	1.18	41.12
Chugach Natives Inc	1982	1,908	1.0	11,454	6,049	906	8,828	9,710	(4.62)	31.64
Cook Inlet Region Inc	1982	6,264	2.4	43,026	75,880	9,685	65,209	26,677	24.98	121.14
Doyon Ltd	1982	9,491	12.2	53,609	57,991	3,374	11,602	19,144	0.74	64.00
Koniag Inc (9 mos ending 3/31/82)		3,432	1.1	26,904	15,043	2,886	8,696	8,315	(3.33)	33.35
Nana Regional Corp Inc	1982	4,828	2.3	43,583	44,669	2,751	20,594	20,184	1.80	60.85
Sealaska Corp	1982	15,787	0.6	203,948	176,000	36,889	100,756	101,828	(17.72)	111.41

Source: Native corporations' annual reports

ATTACHMENT H

Markets for Alaska Timber--Pacific Rim Countries

Development Planning and Research Associates, Inc.,
200 Research Drive, Manhattan, Kansas 66502
with
The Tuolumne Corporation
and
International Investments Consultants, Inc.

MARKETS FOR ALASKAN TIMBER PRODUCTS PACIFIC RIM COUNTRIES

To

Forest Service, Region 10
U.S. Department of Agriculture

P-509
May 1983

B. The Market for Alaskan Timber Products in Korea

Korea is a country of few forest resources but a sizeable wood products industry that relies heavily on the export market. It exports large volumes of plywood worldwide and some lumber to Japan and the Middle East where Korean contractors are very active.

1. Market Structure for Alaskan Timber

Our investigation of the Korean market showed that only four firms import from southeast Alaska and one of these, a red cedar importer, was beyond the scope of the study. Each of the three applicable users is an integrated importer/processor importing hemlock and spruce directly from Alaska. The three importers used 75,500 m^3 of Alaska spruce and hemlock timber in 1981, most of which (83%) was western hemlock imported by one firm. Table 5 summarizes survey results of the three Alaskan timber importers. Alaskan timber represented 29 percent of their total timber volume, ranging from 25 percent to 75 percent. For all Korea, Alaskan timber represented only about one percent of the total timber usage in 1981.

2. End Use

The greatest single use of Alaskan timber is western hemlock in hidden interiors of houses. Western hemlock is also used in exposed house interiors and boxes and crates. Sitka spruce usually goes into the growing musical instruments industry, particularly Korean pianos.

3. Timber Quality and Desirable Characteristics

Most Korean concern about quality pertain to Sitka spruce which is used in the higher valued musical instruments industry. They are less concerned about the quality of western hemlock which they use primarily because of price consideration. The quality of hemlock logs is not good but acceptable at the low price Koreans pay (recently $200 per MBF, p.e.s.).

Table 5. Information summary on sawmills importing SE Alaskan timber, Korea 1/

Item	Survey results
Total annual volume:	
• Timber processed, all sources	260,667 m³
• SE Alaskan timber	75,500 m³
• SE Alaskan logs (n=1)	67,500 m³
• SE Alaskan cants (n=2)	8,000 m³
• SE Alaskan Sitka spruce (n=3)	13,000 m³
• SE Alaskan western hemlock - all logs	62,500 m³
Alaskan timber as % of total	1 mill - 27%, 2 mills - 75%
Recovery on logs	Sitka spruce - 65%, hemlock - 60%
Recovery on cants (n=2)	Sitka spruce - 70% and 75%
End Use	
o SE Alaskan western hemlock logs (n=1)	50%, House const. - hidden interiors 20%, House const. - exposed interiors 30%, boxes and crates
o SE Alaskan Sitka spruce scants	100%, Musical instruments

1/ A total of three integrated sawmills were surveyed and to the best of our knowledge they are the only Korean users of SE Alaskan Sitka Spruce and western hemlock. Each does its own importing of timber.

Koreans prefer the same qualities in Sitka spruce as the Japanese; high ring count, free of small knots and specific uniform grain angle. There have been problems attaining acceptable quality in most of these areas.

4. General Timber Situation in Korea

Demand

In 1981, total timber demand was 7.3 million m^3 (log equivalents), sawn from 11.6 million m^3 in 1978. Traditionally, most of Korea's demand for timber was for re-export. Recently domestic demand has become dominant mainly due to declines in the export market. In 1982, domestic demand is expected to account for 65 percent of the timber use and lower export demand will account for only 35 percent of the log use.

Most of the wood product exports is in the form of plywood, 2.5 million m^3 log equivalents in 1981 or 93 percent of exports. However, this is down sharply from a peak of 4.9 million m^3 in 1977.

The reduction in plywood exports is attributed to decreased supplies of suitable hardwood logs, more so than reduced plywood markets. Key hardwood exporting countries have significantly restricted log exports in recent years.

By 1990, Korean forestry officials expect annual timber demand to be 19 million m^3 annually. They expect the domestic demand to be 14.5 million m^3 and export demand to be 4.8 million m^3. We believe the export demand projection may decline faster than the government estimates. Domestic demand projections are reasonable if Korea can maintain its economic growth and increase housing starts which recently ranged from 200,000 to 250,000 per year.

Supply

In 1965 domestic timber accounted for 48 percent of the total supply. Imports became more and more important as the plywood and lumber re-export industry grew, and domestic sources supplied only 8 percent in 1978. Their proportional importance has increased sharply since 1978, however, up to 16 percent in 1981. This is largely because of reduced hardwood imports for the plywood re-export industry as discussed earlier. The actual volumes have been 800,000 to 900,000 cubic meters since the mid 1960's, topping 1 million m^3 in 1981.

Imported supplies reached a peak of 10.6 million m^3 in 1978, declining to 6.1 million m^3 in 1981. Most of this decline has been in the hardwood area and while the volume of imported softwoods is down some. Softwoods now represent a larger share of imports, 22 to 23 percent in 1978 to 1981 versus 8 percent in 1975.

5. Trends and Opportunities in the Korean Market

Due to a combination of increased demand for softwood and limited domestic resources, use of North American softwoods will presumably grow. Most of this will be in the form of logs but the share of processed timber is expected to grow.

If Alaska suppliers can be price competitive, they should expect increased exports to Korea. If current manufacturing practices hold, demand for Sitka spruce in musical instruments should increase. However, if spruce is replaced by other woods in piano keys, legs and frame, spruce demand could decline but such substitution does not appear likely.

While Korea can probably use more hemlock in the future, their actual hemlock imports will depend on what the Japanese do. If the Japan market strengthens, the Koreans will not likely compete with the Japanese for hemlock logs and cants. They will seek lower cost and lower quality substitutes. Thus, relative to Japan, the hemlock market in Korea does not look particularly good.

- Alaskan Sitka spruce is preferred over essentially all foreign spruces. Assuming prices are competitive no major threats to substitution exist and Alaskan volume should be a direct function of Japanese demand for spruce. At higher prices, substitutes do exist and will be used.

- The Japanese sawmills have had problems with quality control on Alaskan timber. We recommend Alaskan exporters start a program with key traders to identify specific problems and improve sorting and grading of timber for Japanese customers.

- The Japanese sawmillers are very interested in discussing their trading problems and establishing long-term trading relationships.

Korea is a much smaller importer than Japan but offers potential for growth in Alaskan timber imports. We offer the following specific conclusion and recommendations:

- Korea sawmillers and importers, compared to Japanese, are more price conscious and less quality conscious, particularly regarding hemlock.

- We recommend that Alaskan traders develop a sort specifically for the Koreans, like the K-sort used in the Pacific Northwest. This will complement the need to maintain higher quality and prices for the Japanese market. The lower quality material can be sorted out and sold to Korea at a fair price.

- Korean plywood mills are facing great difficulty securing Southeast Asian hardwood. They may be able to substitute some Alaskan species, e.g., cottonwood or the larger white spruce logs, to replace part of the hardwood needs and Alaska should investigate this potential.

Taiwan offers potential for Alaskan timber primarily by increasing volume in current use areas. Both spruce and hemlock markets are exploitable and current volumes could be increased in multiples. However, even if increased the volume scale will be low compared to Japan.

The People's Republic of China is a large potential market but the purchasing process is complex and not conducive to seller initiated marketing. We recommend the Alaskan traders establish a representative to work with the U.S. Chinese trade officials (The China National Native Produce and Animal By-Product Import and Export Corporation (Tuhsu)) to assure that Alaskan exporters are informed about Chinese buy orders and can respond accordingly.

V. THE POTENTIAL MARKETS FOR ALASKAN TIMBER PRODUCTS IN KOREA

A. Background

Korea is a country with few forest resources, but with a sizeable wood products export industry. The domestic forests were heavily cut in the later years of Japanese occupation for military construction purposes and before they could recover were again cut over for firewood during and just after the Korean War. They now consist largely of planted pines, growing slowly on rather poor sites, and planted poplars, plus limited old growth hardwoods, pines, and other conifers. The acreage is extensive but stocking is low, except in the poplar plantations. Total forest area is 6.6 million hectares, with an estimated 111 million cubic meters of growing stock, or 16.8 cubic meters per hectare.

Exports consist mostly of plywood produced from imported Southeast Asia hardwood logs. In recent years American softwood logs have provided the raw material for construction lumber exported to Japan and the Middle East, where Korean contractors are very active. As of 1981, Korea depended on imports for 83 percent of its timber requirements.

B. The Market Structure for Alaskan Timber in Korea

1. Importers, Sawmills and Channels of Distribution

To the best of our knowledge there are four firms that import from southeast Alaska, but only three fall strictly within the scope of this study. The fourth is a red cedar importer and falls outside the scope of this study. For the applicable cases, the market structure is the same. Each is an integrated importer/processor who imports directly from Alaska. One importer does sell a minor quantity to small independent sawmills.

The three importer/processors imported about 75,500 m³ of Alaskan timber in 1981 according to survey responses. Most of this, 83 percent, was K-sort hemlock logs imported by one firm (Table V-1). Sitka spruce imports totaled 13,000 m³ of which 8,000 m³ were cants. In 1980, one firm reported they had imported hemlock cants also, but lost money on the venture and have not repeated it.

The Alaskan timber represents about 29 percent of the total volume of the three processors and ranges from 27 percent to 75 percent. For the total Korean industry, Alaskan imports represented only about one percent of total timber usage in 1981.

2. End Use

As shown in Table V-1, the greatest share of the Alaskan timber, 31,250 m³ of western hemlock, went into hidden interiors of houses. The remainder of the western hemlock was used in exposed house interiors and boxes and crates. Sitka spruce, logs or cants, usually went into the growing musical instruments industry, particularly Korean pianos.

3. Preferences

Korean preferences for Sitka spruce require a high ring count, an even knot distribution and a specific uniform grain angle. They tend to be less concerned about quality characteristics in hemlock which is used in lower value or hidden end products.

In the case of the hemlock logs, they are generally satisfied and accept the trade-off in quality for the low price they pay (recently $200 per MBF, FAS). Alaskan logs are criticized, however, for a high percentage of center defects. While specifications do allow up to 40 percent deduction from gross for these defects, the usual deduction is less than 20 percent. Also, the overall recovery rate on logs is relatively high, 60 percent, considering the low grade of logs imported.

Table V-1. Information summary on sawmills importing SE Alaskan timber, Korea 1/

Item	Survey results
Total annual volume:	
• Timber processed, all sources	260,667 m³
• SE Alaskan timber	75,500 m³
• SE Alaskan logs (n=1)	67,500 m³
• SE Alaskan cants (n=2)	8,000 m³
• SE Alaskan Sitka spruce (n=3)	13,000 m³
• SE Alaskan western hemlock - all logs	62,500 m³
Alaskan timber as % of total	1 mill - 27%, 2 mills - 75%
Recovery on logs	Sitka spruce - 65%, hemlock - 60%
Recovery on cants (n=2)	Sitka spruce - 70% and 75%
End Use	
• SE Alaskan western hemlock logs (n=1)	50%, House const. - hidden interiors 20%, House const. - exposed interiors 30%, boxes and crates
• SE Alaskan Sitka spruce cants	100%, Musical instruments

1/ A total of three integrated sawmills were surveyed and to the best of our knowledge they are the only Korean users of SE Alaskan Sitka Spruce and western hemlock. Each does its own importing of timber.

Preferences or criticisms of the spruce timber were at least more vigorous, if not more serious. One importer notes that only 40 percent or so of the Sitka spruce is really suitable for sounding boards in pianos, its intended use. They complain about knots, unacceptably wide grain, wavy grain, pitch pockets or lines, excessive hardness and instability in drying. As a result of these defects, one processor has accumulated about 500 MBF of material that they cannot use--presumably it could be used for legs but the requirement for legs is not large enough to use defective material. In contrast, the other Sitka spruce importer did not have major complaints about quality.

C. The General Situation for Timber in Korea

Given the status of Alaskan timber imports in Korea, we now provide an overview of the aggregate timber market. Topics covered include demand and supply which will lead to a final section on opportunities for Alaskan timber in Korea.

1. Demand

The total demand for timber in Korea was 11.6 million cubic meters (log equivalent) in 1978, declining to 7.3 million in 1981. The Office of Forestry forecasted, about a year ago, that 1982's demand would be up to 8.3 million cubic meters. 1982 data were not available at the time of the visit, but it is apparent that there has been an appreciable increase over 1981. Table V-2 shows the demand from 1965 to date by category of domestic use, and by domestic vs. re-export requirements.

According to the Korean Office of Forestry, Korea's domestic needs were much less than those of the Korean re-export industry through the late 1960's and up to 1977. During those years the re-export sector took almost 60 percent of the total demand, reaching 66 percent in 1976. Still, its importance has declined recently, and is likely to decline even more in the future.

Table V-2. Korea's wood products demand

	1965	1970	1975	1978	1979	1981	1982
	----------1000 m³ log equivalents----------						
Domestic use							
Pit props	304	450	542	617	626	628	637
Pulpwood	41	206	188	313	233	497	737
Plywood	-	-	-	541	1,792	1,345	1,132
Other	403	1,057	2,159	4,875	3,965	2,115	2,911
Total	748	1,713	2,889	6,346	6,616	4,585	5,417
Export use							
Plywood	511	2,279	3,226	4,528	3,031	2,497	2,413
Other	1	17	350	737	1,293	183	460
Total	511	2,287	3,576	5,265	4,324	2,680	2,873
Total Demand	1,259	4,000	6,465	11,611	10,940	7,265	8,290

Note: 1982 figures are a forecast perpared at the end of 1981, apparently reasonably accurate.

Source: Assembled from data obtained from the Korean Office of Forestry.

a. Domestic requirements

The categories of domestic use into which the Office of Forestry groups its figures, and which are shown in Table V-2, are pitprops, pulpwood, plywood and general use (presumably lumber in its various applications and particle board). The plywood and general use categories cover housing and other construction, furniture and musical instruments, and boxes and crating material.

Since Korea is heavily export-oriented, an unknown but certainly quite large part of domestic use should perhaps be assigned to the re-export sector - e.g., furniture, musical instruments and the packing materials needed for all kinds of export items. These requirements would exist in most countries, but in Japan and the United States, for example, they are small compared to other domestic needs. In Korea, they probably inflate domestic demand to a significant degree.

Domestic use peaked in 1979, at 6.6 million cubic meters, declined to 4.6 million in 1981. Government stimulation of the housing industry was to increase domestic use to 5.4 million in 1982.

The current rate of housing starts is between 200,000 and 250,000 annually, and is expected to increase slightly. Data were not available on the number of multi-unit vs. single-family dwellings. However, in terms of wood use it is probably not as significant as in Japan because there are very few wood-frame buildings. Wood is used primarily in door and window frames, floors, ceilings and roofs to some extent, doors and some cabinetry, and in concrete forming.

The volume of wood used per housing unit is estimated to be 7.1 m^3. Housing, therefore, would be using 1.4 to 1.8 million cubic meters per year, plus whatever is used temporarily for concrete forming, perhaps another 0.2 or 0.3 million. Plywood and general use took 3.5 million cubic meters is 1981, so roughly another 0.5 million were required for other construction, furniture, crating, etc.

b. Re-export

Starting in the early 1960's, Korea became the world's most important in-transit processor/producer of hardwood plywood, using Southeast Asian logs. This activity peaked in 1977, with 4.9 million cubic meters of logs--half of Korea's total log requirements in that year. It has since dropped sharply, to 2.5 million in 1981.

Reduced plywood markets in North America, Europe, Japan, etc. are not the only factor in the decrease in Korea's plywood re-export trade. The declining availability of suitable logs is more significant and promises more future problems for the industry. Indonesia and the Philippines have severely restricted log exports, leaving only Papua New Guinea and the Malaysian states of Sabah and Sarawak as places from which logs may be exported on a reasonably open market basis As a result, Korea must compete with Taiwan, Singapore and Japan for these remaining log sources.

The Korean plywood industry has two options for dealing with this problem. They are:

- shift their operations to the resource country which many companies either have done or are planning to do. This, of course, removes their log requirements from Korea's total demand.

- Substitute other woods for Southeast Asian hardwoods, in core and cross-band veneer. The possibilities include Korean plantation poplar, cottonwood from North America, tight-knotted softwood logs from North America, or imported veneer of softwoods, aspen, etc.

Korea also exports lumber, moldings and other remanufactured wood products, although this is much less important than plywood export. The raw material for this includes North American softwoods, re-exported to Japan and to

Korean construction companies working in the Middle East. This sector took 1,293,000 cubic meters of logs in 1979, dropping to 183,000 in 1981 and supposedly increasing to 460,000 in 1982.

Export statistics cast doubt on the above figures, however. In 1981, Korea apparently exported 262,000 cubic meters of lumber, moldings, and other processed lumber of which 219,000 cubic meters were softwoods for Japan and the Middle East. Probably about 400,000 cubic meters of logs would have been needed to produce this volume, suggesting that lumber re-export is much more important than the 183,000 cubic meters shown in Table V-2.

c. Future demand

The Office of Forestry has prepared a forecast of timber demand and supply up to the year 2030. This was done in 1978 and their estimate for 1980, not surprisingly, missed significantly as the world-wide economic climate suddenly worsened. Their long-term forecasts are presumably more reliable, if their analysis of underlying domestic trends is soundly based. These forecasts are:

	Domestic use	Export use	Total
	million cubic meters		
1990	14.5	4.8	19.3
2000	19.5	3.0	22.5
2010	22.7	2.5	25.2
2020	24.6	2.0	26.6
2030	25.6	1.5	27.1

It would not be surprising if the export sector's demand declined faster than these figures suggest, particularly with respect to plywood. As domestic demand increases and as the plywood industry struggles with its raw materials problems, a larger decline in exports is possib

2. Supply of Timber

a. Domestic supplies

In 1965 domestic timber accounted for 48 percent of the total supply. Imports became more and more important as the plywood and lumber re-export industry grew, and domestic sources supplied only 8 percent in 1978. Their proportional importance has increased sharply since 1978, however, up to 16% in 1981. This is largely because of reduced imports for the plywood re-export industry as discussed earlier. The actual volumes have been 800,000 to 900,000 cubic meters since the mid 1960's, topping 1 million in 1981.

Data were not obtainable on the species composition of domestic production, but from our knowledge of Korea it estimated that well over half would be pine, about one-tenth plantation poplar, and the balance other conifers, oak, chestnut and miscellaneous other hardwoods (e.g., walnut, persimmon, Paulownia).

Domestic logs are mostly small and of rather low grade and poor form. Their end uses are:

- Conifers: construction, generally utilizing small cross-section and short lengths.
- Poplar: packing material, chopsticks, blockboard.
- Hardwoods: furniture, sliced veneer (particularly in narrow widths and short lengths for items such as plywood parquet), and specialty purposes such as golf club heads (persimmon), and Japanese-style solid or veneered furniture (Paulownia).

Table V-3 shows the sources of Korea's timber supply from 1965 to date.

Table V-3. Sources of Korea's timber supply

Source and species	1965	1970	1975	1978	1979	1981
	----------1000 m³ log equivalents----------					
Domestic supplies	503	845	896	996	952	1,130
Imports						
Tropical hardwood	718	2,863	5,116	8,197	7,886	4,792
Softwood						
North American	18	236	443	1,719	1,252	929
Chile & New Zealand	20	56	-	682	832	414
Total	38	292	448	2,401	2,084	1,343
Other	-	-	5	17	18	-
Total	756	3,155	5,569	10,615	9,988	6,135
Total supplies	1,259	4,000	6,465	11,611	10,940	7,265

Source: Assembled from data obtained from the Korean Office of Forestry.

b. Imports

Imports reached a peak of 10.6 million cubic meters in 1978, declining to 6.1 million in 1981. Industry sources consider an increase to 6.3 million, likely in 1982. Southeast Asia and the South Pacific are the principal sources, and from 1965 to 1977 this area supplied 85-95 percent of imports. Softwood imports increased sharply in 1978, and as of 1981 they reduced tropical hardwoods' share of the market to 72 percent.

Tropical hardwoods are used mostly for plywood, but also for other purposes such as lumber and remanufactured product exports, furniture, domestic moldings, window frames, and construction. Table V-4 compares the Office of Forestry data on domestic and export plywood raw material requirements, and on tropical hardwood imports, in order to get some idea of the hardwood volume that goes into these uses.

Softwood imports have so far come mainly from the United States. New Zealand and Chile are suppliers of Monterey pine, accounting for about 27 percent in 1981. Korea has also started to buy Siberian logs, either transshipped or redocumented in Japan. There has been some imports from Canada in the past few years, the volume is not available. We suspect that it is quite small.

With a few exceptions, Korean importers have but one criterion for softwoods--price. Color, grain characteristics, knot placement, ring count and log size mean little. Knot size is of some significance, however, since Korea, like other Asian countries, uses lumber in some very small cross-section, it does not seem to be a serious problem. Also, logs with smaller knots are selected for this type of end product. One product that can accept large knots, provided they are tight, is crating material for machinery exports, etc. Monterey pine, from New Zealand and Chile, is used for this, as it is in Japan.

Table V-4. Korean plywood requirements and tropical hardwood imports

Item	1978	1979	1981
	--------1000 m^3 log equivalents--------		
Plywood requirements			
Domestic	541	1,792	1,345
Export	4,528	3,031	2,497
Total	5,069	4,823	3,842
Tropical hardwood imports	8,197	7,886	4,792
Tropical hardwood used for lumber, moldings, etc. (domestic and export)	3,128	3,063	950

Source: Assembled from data obtained from the Korean Office of Forestry and the Korean Traders Association.

West Coast exporters prepare a class of logs for the Korean market, appropriately called "K Sort." Ideally this consists of small second-growth logs, in long lengths, so that the Korean mills can benefit from the very high Scribner MBF/cubic meter conversion factor. While the Japanese market accepts small logs (down to 6":), the Koreans also accept a considerable degree of roughness, i.e. more knots, sweep, crook bark seams, center rot and, catfaces. The Korean market will also accept larger logs with considerable center defect (say, up to 35-40 percent of the gross volume), provided it is scaled out and the poorer stowage on board ship is accounted for in the price.

U.S. lumber grading rules are not applicable to Korean usage, because with a wide variety of small sizes the Korean sawmillers can recover clear lumber where U.S. sawmillers could not. However it may be useful to describe Korea's lumber use in terms of these rules to provice an idea of what is needed from their softwood supplies. Some characteristics are:

- A moderate amount of improvement in recovery--upgrading from purchase basis by remanufacturing into small sizes. This end result, achievable directly in the sawmill, will not be very large because most of the logs imported are small second-growth, with tight knots.

- A moderate amount of utility grade lumber, used domestically, probably most of it as boxes or packing material.

- A moderate amount of Standard grade, used domestically or exported to Japan or the Middle East.

- Some Construction grade--probably most of which is exported to Japan.

- A little No. 1, Select Structural, Shop Grades, or Clears, probably used locally for miscellaneous special uses or exported to Japan.

Two exceptions to these remarks are:

- Sitka spruce for the musical instrument manufacturers, whose requirements are even more stringent than those of their Japanese counterparts. Korea does not have the same outlets as Japan for spruce which, while not meeting musical instrument specifications, is still of rather high grade, and

- Red cedar, which has come into fashion in Korea for wall panelling. In this case the Koreans are forced into taking lower grade sawlogs in order to get the larger logs that yield clear lumber for panelling; the lower grade logs then go into general uses, probably including crating.

D. Trends and Opportunities in the Korean Market

1. Future Timber and Lumber Supplies

The production forecasts developed by the Office of Forestry indicates an aggressive production level for domestic timber. Supplies are projected to increase to 13 million m^3 by 2030 or 42 percent of the projected demand in that year. By 1990, however, domestic supplies are expected to be at only the 3 million m^3 level, or 15 percent of demand. These forecasts rely heavily on poplar, which of course grows much faster than any native species. Poplar volume is expected to reach a plateau of 5 million cubic meters per year by 2010.

Imports are forecast to grow, with domestic demand, to 16.4 million cubic meters in 1990, but to decline to 14.1 million in 2030, as domestic supplies increase. The importance of North America as a supply source is likely to increase, as Korea's overall demand comes to consist more of domestic construction needs and less of (mostly plywood) re-export raw material.

Table V-5 shows the Office of Forestry's estimates of where supplies will come from between now and 2030, plus our own estimate of how much North America might provide. Our estimate is based on these assumptions:

- Korea's re-export industry will continue to have difficulties competing for South Seas hardwoods to supply the necessary component for the plywood component.

- The domestic plywood requirement will account for about one-third of total domestic demand. A part of the domestic demand will be filled by softwood plywood imports; some softwoods will be used for veneer in domestic plywood production.

- As a result of increasing difficulty in obtaining tropical hardwood logs, the volume of tropical hardwoods used for purposes other than plywood will decline. The combined domestic and export plywood demand will approximate the extent of tropical hardwood imports.

Up to now Korea has imported almost all its lumber requirements as logs, with relatively little material in cants, squares, lumber, particle board, etc. From our analysis of the market, we believe Korea will gradually import more and more finished of semi-finished wood products. It is difficult to quantify this, but the areas in which such imports are likely to show the most growth are:

- Korean specification construction lumber sawn in North American mills from K Sort logs--similar to those mills that now produce to Japanese specifications,

- hardwood lumber as by-products of Korean plywood operations in Indonesia, etc.,

- softwood veneer and plywood, and

Table V-5. Future sources of Korea's timber supply

	1988	1990	2000	2010	2020	2030
	----------million m^3 log equivalents----------					
Domestic supplies						
Native species	1.4	1.5	2.0	4.0	6.0	8.0
Poplar	0.9	1.5	4.4	5.0	5.0	5.0
Total	2.3	3.0	6.4	9.0	11.0	13.0
Imports						
North American	4.8	5.1	4.7	4.4	3.9	3.0
Other areas	10.9	11.3	11.4	11.8	11.7	11.1
Total	15.7	16.4	16.1	16.2	15.6	14.1
Total	18.0	19.4	22.5	25.2	26.6	27.1

Source: Assembled from data obtained from the Korean Office of Forestry.

- North American particle board.

2. Opportunities for Alaskan Timber Species

Within the general setting, it is also possible to gain some insight about opportunities for Sitka spruce, western hemlock and some other Alaskan products.

a. Sitka spruce

As mentioned, the Korean musical instrument industry uses about 5 million BF or (13,000 cu. m.) of spruce per year. This figure is likely to increase somewhat, according to the largest piano manufacturer. They report increasing demand for Korean-made pianos, and to satisfy this they are increasing their capacity. Within a couple of years the total demand will probably be about 7 million BF or (18,000 m^3).

Also as mentioned, the demand could theoretically be halved, or at least reduced, if spruce are supplied only in sounding board quality and basswood and other species are used for keys, legs, etc. In practice, basswood might not be as convenient to import as spruce, and so it seems rather likely that spruce will maintain its position.

Since even the highest grade log is bound to contain considerable non-music grade material, we think it is reasonable to say that cants, containing as much as possible of music grade cuttings, would be preferred if the end-users could get them. Some of the smaller companies are now making efforts in this direction.

b. Hemlock and lower grade spruce

Only a very small percentage of Southeast Alaska hemlock and spruce is really suitable for the Korean market - top grade spruce for musical instruments, and small, knotty and preferably sound logs of either species.

What lies in between is too good, in the sense that it possesses characteristics (tight grain and generous yield of clear lumber) that command a premium in Japan but are in most cases of no importance in Korea.

Korea's current log imports from Alaska are covering not only the small low quality, knotty logs but also the next layer of quality upwards - as previously described, logs that will yield a considerable amount of clear lumber but which have a lot of defect. This is probably due to two factors:

- the current low prices for all logs which brings more logs within the range that Korean importers are willing to pay, and

- the overall lower level of logging activity in the Pacific Northwest, which reduces the volume of K Sort logs available there.

When the Japanese market improves, or as the yen strengthens against the dollar, it is almost certain that some of the logs now being bought by Korea will be priced out of the Korean's reach, and either imported by Japan in the round or custom sawn into cants. When this happens exports to Japan from the Pacific Northwest will pick up, producing more K Sort logs as a kind of by-product; some of the Koreans' buying will presumably then shift back to that area.

One might suppose that the small percentage of "true K Sort" logs produced from National Forest land in Southeast Alaska could be sawn into cants that would then be suitable and reasonably priced for the Korean market. We do not think so, for these reasons:

- such logs are, at most, 16" in diameter, and the lower productivity with small logs makes the canting process inordinately expensive, and

- with larger logs, the cost of producing cants may be partly offset by a real freight saving, as defective material is sawn out. With small, knotty but reasonably sound logs this saving is not available.

In short, these logs should, perhaps, be available for export to Korean in the round.

c. Red cedar

Unless red cedar panelling is a passing fad, the projected growth of Korean domestic demand, based on housing and other building construction, will mean more demand for red cedar, and more opportunities to supply it to small scale importers or end users in the form of cants.

d. Other Alaskan possibilities

Moving north and west along the Gulf of Alaska coast, the percentage of logs that are suitable for Korea rises sharply. In places such as Seldovia, Port Chatham and Afognak and Kodiak Islands about half of the volume could be considered K Sort.

Possibilities for Korea's plywood industry exist in cottonwood, white spruce, and perhaps birch, as log or maybe even veneer imports.

In general, the Korean market prospects are good for high grade spruce logs or cants and for red cedar. The market size is small compared to Japan, however. The Korean market does not look particularly good for hemlock or low grade spruce, as Koreans will not compete price-wise with the Japanese for this timber. As described above, some other Alaskan timbers also have some market potential and deserve some attention.

HB

680

Orate #1

AOGA PROPOSED TESTIMONY ON HOUSE BILL NO. 680

HOUSE LABOR AND COMMERCE COMMITTEE

MARCH 7, 1984

Good morning. I'm ~~Dave Yesland~~, Senior Staff Environmental Engineer with Shell Western E & P. ~~I'm~~ representing the Alaska Oil and Gas Association ~~this morning~~ and I will comment on the proposed Committee Substitute for HB680.

~~Our Association supports the intent of CSHB680~~, which is to provide the legislation necessary to enable the State to be the sole administrator of a permitting program for underground injection wells related to oil and gas production activities, or Class II wells, as they are identified in the Federal program. I will ~~discuss the~~ reasons for our support.

Without State preemption of the Federal program there will be redundant State and Federal programs with nothing but duplicated record-keeping and administrative delay as a result.

We have had a concern that existing statutes might prevent the State from preempting the Federal program because confidentiality provisions and penalty imposition limits may not meet the Federal requirements. We believe this bill will eliminate that concern.

Our Association prefers that the permitting process for injection wells, related to oil and gas operations, be controlled by the

state. The regulation of oil and gas operations by the Alaska Oil and Gas Conservation Commission is an example of regulatory control based on well-established knowledge of the regulated activity.

Therefore, we believe the Alaska Oil and Gas Conservation Commission is the appropriate administrator of regulations that bear on the technical elements of oil and gas operations and it should be the sole administrator of Class II wells in the state.

Finally we have seen that the Federal program, as proposed, would reduce the production rate of secondary recovery projects (water floods) by requiring that current injection pressure be reduced. The EPA's basis for lower pressures is no more than a "rule-of-thumb" which they acknowledge may be changed on a case-by-case review. But, until that review is completed, pressure would have to be reduced to comply with the regulations. This reduction would not only reduce current production rates, but even if only temporary, would reduce the ultimate total production of the formation causing revenue losses to both the State and producer. It is therefore a matter of mutual urgency.

If the proposed Federal rules are promulgated in the absence of State intent and ability to assume the program there will be a loss with no measure of compensation.

We urge the State to assume primacy in the regulation of Class II injection wells and we believe this bill contains specific statutory language which will serve this purpose.

Thank you.

BILL SHEFFIELD
GOVERNOR

HB 680

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 1984

The Honorable Joe Hayes
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Alaska Oil and Gas Conservation Commission. This bill would give the state the authority to assume control and regulation of injection wells associated with oil and gas production, such as salt water disposal or enhanced recovery of natural gas or oil. The U.S. Environmental Protection Agency currently has that authority. A 1980 amendment to the Safe Drinking Water Act (42 U.S.C. sec. 300f -- j) added a new sec. 300h-4 that would allow a state to obtain primary enforcement responsibility from the federal government for those portions of its Underground Injection Control program related to the recovery and production of oil and gas. Instead of imposing the existing federal regulatory requirement, sec. 300h-4 would give a state that authority if the state could demonstrate that it had an effective program to prevent underground injection which endangers drinking water sources. This bill would give the state that authority.

Sincerely,

Bill Sheffield
Governor

QUESTIONS

HB#680--3/7/84

MEMO:

FROM:MERRILL

TO: JOHN

1.) HAVE THE FEDS BEEN DOING THIS ELSEWHERE? AND EVEN IF WE PASS THIS BILL GIVING THE STATE THE AUTHORITY SO THAT IT MAY APPLY FOR TRANSFER, DOES IT GUARANTEE THAT WE'LL GET IT?

2.) IF THE FEDS ARE MAKING THIS TRANSFER POSSIBLE, ARE THEY PROVIDING ANY PROGRAMS TO HELP THE STATE FUND IT?

A.) FOLLOW UP: IF THERE ARE GOING TO BE FEDERAL FUNDS AVAILABLE, ISN'T THE FISCAL NOTE RATHER HIGH?

SHELL WESTERN E&P INC.
A Subsidiary of Shell Oil Company

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(907) 276-2545

STATE OF ALASKA
ALASKA OIL & GAS
CONSERVATION COMMISSION

C.V. "CHAT" CHATTERTON
CHAIRMAN

OFFICE
3001 PORCUPINE DRIVE
ANCHORAGE, ALASKA 99501
(907) 279-1433

HOME
2308 BONIFACE PARKWAY
ANCHORAGE, ALASKA 99504
(907) 333-8161

HB# 680

Rules by request of the Governor
Relating to oil & gas recovery

ANALYSIS FOR LABOR & COMMERCE COMMITTEE
7 March, 1984

This bill will basically give the state authority, enabling it to apply to the EPA for transfer of authority to control and regulate injection wells associated with oil & natural gas production. The Governor in his message transmitting this bill to the House, stated:

"THIS BILL WOULD GIVE THE STATE THE AUTHORITY TO ASSUME CONTROL AND REGULATION OF INJECTION WELLS ASSOCIATED WITH OIL AND GAS PRODUCTION, SUCH AS SALT WATER DISPOSAL OR ENHANCED RECOVERY OF NATURAL GAS OR OIL. THE U.S. ENVIRONMENTAL PROTECTION AGENCY CURRENTLY HAS THAT AUTHORITY. A 1980 AMENDMENT TO THE SAFE DRINKING WATER ACT, ADDED A NEW SECTION 300h-4 THAT WOULD ALLOW A STATE TO OBTAIN PRIMARY ENFORCEMENT RESPONSIBILITY FROM THE FEDERAL GOVERNMENT FOR THOSE PORTIONS OF ITS UNDERGROUND INJECTION CONTROL PROGRAM RELATED TO THE RECOVERY AND PRODUCTION OF OIL AND GAS. INSTEAD OF IMPOSING THE EXISTING FEDERAL REGULATORY REQUIREMENT , SEC. 300h-4 WOULD GIVE A STATE THAT AUTHORITY IF THE STATE COULD DEMONSTRATE THAT IT HAD AN EFFECTIVE PROGRAM TO PREVENT UNDERGROUND INJECTION WHICH ENDANGERS DRINKING WATER SOURCES. THIS BILL WOULD GIVE THE STATE THAT AUTHORITY."

AOGA PROPOSED TESTIMONY ON HOUSE BILL NO. 680

HOUSE LABOR AND COMMERCE COMMITTEE

MARCH 7, 1984

Good morning. I'm Dave Yesland, Senior Staff Environmental Engineer with Shell Western E & P. I'm representing the Alaska Oil and Gas Association this morning and I will comment on the proposed Committee Substitute for HB680.

Our Association supports the intent of CSHB680, which is to provide the legislation necessary to enable the State to be the sole administrator of a permitting program for underground injection wells related to oil and gas production activities, or Class II wells, as they are identified in the Federal program. I will discuss the reasons for our support.

Without State preemption of the Federal program there will be redundant State and Federal programs with nothing but duplicated record-keeping and administrative delay as a result.

We have had a concern that existing statutes might prevent the State from preempting the Federal program because confidentiality provisions and penalty imposition limits may not meet the Federal requirements. We believe this bill will eliminate that concern.

Our Association prefers that the permitting process for injection wells, related to oil and gas operations, be controlled by the

state. The regulation of oil and gas operations by the Alaska Oil and Gas Conservation Commission is an example of regulatory control based on well-established knowledge of the regulated activity.

Therefore, we believe the Alaska Oil and Gas Conservation Commission is the appropriate administrator of regulations that bear on the technical elements of oil and gas operations and it should be the sole administrator of Class II wells in the state.

Finally we have seen that the Federal program, as proposed, would reduce the production rate of secondary recovery projects (water floods) by requiring that current injection pressure be reduced. The EPA's basis for lower pressures is no more than a "rule-of-thumb" which they acknowledge may be changed on a case-by-case review. But, until that review is completed, pressure would have to be reduced to comply with the regulations. This reduction would not only reduce current production rates, but even if only temporary, would reduce the ultimate total production of the formation causing revenue losses to both the State and producer. It is therefore a matter of mutual urgency.

If the proposed Federal rules are promulgated in the absence of State intent and ability to assume the program there will be a loss with no measure of compensation.

We urge the State to assume primacy in the regulation of Class II injection wells and we believe this bill contains specific statutory language which will serve this purpose.

Thank you.

PROPOSED AMENDMENT NO. 1

FOR

CS House Bill No. 680 L & C

Add to the Bill a new Section 4 as follows and renumber subsequent Sections accordingly:

* Sec. 4 AS 31.05.170 is amended by adding a new subsection to read:

(14) regular production means continuing production of oil or gas from a well into production facilities and means for transportation to market, but does not include short term testing, evaluation, or experimental pilot production activities which have been approved by permit or order of the commission.

ARCO Alaska, Inc.
Legal Division
Post Office Box 360
Anchorage, Alaska 99510
Telephone 907 265 6540

Stephen M. Williams
Senior Attorney

February 28, 1984

Barbara Herman, Esquire
Deputy Attorney General
Alaska Department of Law
Resolution Tower
Anchorage, AK 99510

RE: Petition for Rehearing, ARCO Alaska, Inc. to the Alaska Oil and Gas Conservation Commission

Dear Barbara,

Attached for your review is the Stipulation and Settlement in the above-entitled matter. This document includes the comments we reviewed on Monday, February 27, 1984. I have executed 2 original copies of the settlement on behalf of ARCO. After you and the members of the Commission have executed the settlement, please transmit a copy to me.

If you have any questions, please advise me. Thank you for your assistance in resolving this matter.

Very truly yours,

S. M. Williams

SMW/ksm

Attachment

Before the Alaska Oil and Gas
Conservation Commission

In the matter of)
ARCO Alaska, Inc.) Stipulation and Settlement
)

This Stipulation and Settlement is entered into by ARCO Alaska, Inc. (ARCO) and the State of Alaska Oil and Gas Conservation Commission (AOGCC);

WHEREAS ARCO is the owner of certain acreage located on the North Slope of Alaska, including Section 35 of ADL 25649, located within the boundaries of the Kuparuk River Unit; and

WHEREAS ARCO applied to the AOGCC for approval to conduct the West Sak Sands Pilot Project to determine the optimum techniques for development of the West Sak Reservoir, and gather data for use in pool rules hearings; and

WHEREAS the AOGCC approved the West Sak Sands Pilot Project by Conservation Order No. 191; and

WHEREAS, since that time, ARCO has conducted the West Sak Sands Pilot Project in accordance with Conservation Order No. 191; and

WHEREAS oil and gas test production has ensued from the West Sak Sands Pilot Project Area; and

WHEREAS ARCO has filed confidential reports setting forth the production levels on the West Sak Sands Pilot Project Area for the month of December 1983, and January 1984; and

WHEREAS there is a dispute between ARCO and the AOGCC on whether the test production must be reported on Form 10-405; and

WHEREAS the AOGCC, by Order dated January 25, 1984, ordered ARCO to file the December 1983 production data on Form 10-405; and

WHEREAS ARCO, on February 10, 1984, petitioned the AOGCC for rehearing and reconsideration in accordance with the provisions of AS 31.05.080; and

WHEREAS it is the desire of both the AOGCC and ARCO to settle these matters;

NOW THEREFORE, ARCO and the AOGCC agree to stipulate and settle these issues as follows:

1. Until the date the pilot production facility to be located at the West Sak Sands Pilot Project Area commences normal operations and processes, and treats production from West Sak Sands Pilot production wells, or July 1, 1984, whichever date is earlier, ARCO shall file a monthly report on or before the 20th day of the month, commencing with a report on March 20, 1984 showing the test production levels, injection levels, and other test production data and information gathered by ARCO for the previous month. Such report shall be in the form and provide the specific information included in the reports filed by ARCO for December 1983, and January 1984. These reports will be kept and maintained confidential by the AOGCC in accordance with AS 31.05.035(d). Such reports shall be in addition to the quarterly report

required by Conservation Order No. 191, Rule 11.

2. Upon commencement of normal operations of the West Sak pilot production facility or July 1, 1984, whichever is earlier, ARCO must file all previously filed production reports on Form 10-405, or appeal to the Superior Court within 20 days of July 1, 1984 pursuant to the provisions of AS 31.05.080(b).

3. The AOGCC agrees to not claim, contend, or bring any action against ARCO under AS 31.05.150 of the Alaska Oil and Gas Conservation Commission statutes, or contend that ARCO violated AOGCC regulations for failure to file Form 10-405 showing West Sak Pilot test production information so long as ARCO is in compliance with the provisions of this Stipulation and Settlement, Conservation Order No. 191, and the AOGCC Regulations.

4. Because a dispute exists between ARCO and the AOGCC, this settlement shall not be construed as setting precedent or predjudicing any claims, arguments, or contentions of either ARCO or the AOGCC with respect to any of the issues set forth in this stipulation. Both the AOGCC and ARCO agree not to use this settlement as evidence in any proceeding before any court of law or administrative body, except as necessary to enforce the provisions set forth in this stipulation and settlement.

5. The AOGCC order issued January 25, 1984 is hereby amended to conform to this Stipulation and Settlement.

Agreed to and approved this 29th day of February, 1984.

ARCO ALASKA, INC.

By _____
Stephen M. Williams, Attorney

ALASKA DEPARTMENT OF LAW

By _____
Barbara Herman

ALASKA ~~OIL~~ AND ~~GAS~~ CONSERVATION COMMISSION

By _____

By _____

By _____

PROPOSED AMENDMENT No. 2

FOR

CS House Bill No. 680 L & C

Add to the Bill a new Section 2 as follows and renumber subsequent sections accordingly:

* Sec. 2 AS 31.05.030 is amended by adding a new subsection to read:

(i) The commission shall have the authority to act as the jurisdictional agency over applications involving natural gas price determinations for all wells in Alaska not under federal jurisdiction, pursuant to the "Natural Gas Policy Act" of 1978, Public Law 95-621 and applicable regulations.

Subpart E—Identification of State and Federal Jurisdictional Agencies

[¶ 24,451]

Sec. 274.501 Jurisdictional agency.

(a) *Definition.* Except as provided in paragraph (b), "jurisdictional agency" means:

(1) with respect to a well the surface location of which is on the OCS, the Federal or State agency having regulatory jurisdiction with respect to the production of natural gas. The following agencies have notified the Commission of their authority in this regard.

(i) for OCS wells located in the Gulf Coast Region:

Area Oil & Gas Supervisor
Suite 336
3301 N. Causeway Blvd.
Metairie, LA 70010

(ii) for OCS wells located in the Atlantic Region:

Area Oil and Gas Supervisor
Atlantic OCS Operations
Suite 204
1725 K Street, N.W
Washington, DC 20244

(iii) for OCS wells located offshore Alaska:

Area Oil & Gas Supervisor
P.O. Box 259
Suite 109
800 A Street
Anchorage, AK 99510

(iv) for OCS wells located offshore California:

Area Oil & Gas Supervisor
160 Federal Building
1340 W. 6th Street
Los Angeles, CA 90017

(2) with respect to a well the surface location of which is on lands within the boundaries of a State (including Federal lands and offshore State lands), the Federal or State agency having regulatory jurisdiction with respect to the production of natural gas. The following agencies have notified the Commission of their authority in this regard:

State in which well is located	Jurisdictional agency for wells on Federal lands	Other lands
Alabama	Area Oil & Gas Supervisor, Suite 204, 1725 K. St., N.W., Washington, D.C. 20006.	Oil & Gas Supervisor, State Oil & Gas Board, Drawer O, University, AL 35486.
Alaska	Area Oil & Gas Supervisor, P.O. Box 259, Suite 109, 800 A Street, Anchorage, AK 99510.	Oil & Gas Conservation Commission, 3001 Porcupine Drive, Anchorage, AK 99501
Arizona	Area Oil & Gas Supervisor, P.O. Box 26124, 505 Marquette Ave., N.W., Albuquerque, NM 87125.	Oil & Gas Conservation Commission, Suite 420, 1645 W. Jefferson, Phoenix, AZ 85007.
Arkansas	Area Oil & Gas Supervisor, 6136 E. 32nd Place, Tulsa, OK 74135.	Oil & Gas Commission, A Division of the Arkansas Dept. of Commerce, 314 East Oak, El Dorado, AR 71730.
California	Area Oil & Gas Supervisor, 160 Federal Building, 1340 West 6th Street, Los Angeles, CA 90017	Department of Conservation, Division of Oil & Gas, 1416 Ninth St., Rm. 1316, Sacramento, CA 95814.
Colorado (except for the west ranges of the New Mexico Principal Meridian)	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Building & Post Office, Casper, WY 82602.	Oil & Gas Conservation Commission, 1313 Sherman Street, Rm. 721, Denver, CO 80203.
(or)		
Colorado (only the west ranges of the New Mexico Principal Meridian)	Area Oil & Gas Supervisor, P.O. Box 26124, 505 Marquette Ave., N.W. Albuquerque, NM 87125.	
Florida	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Administrator of Oil & Gas, Bureau of Geology, Department of Natural Resources, 903 W. Tennessee Street, Tallahassee, FL 32304.
Georgia	Area Oil & Gas Supervisor, Suite 204, 1725 K St., N.W., Washington, D.C. 20006.	Department of Natural Resources, Geologic & Water Resources Division, 19 Martin Luther King Drive, SW., Atlanta, GA 30334.
Idaho	Area Oil & Gas Supervisor, 160 Federal Building, 1340 West 6th Street, Los Angeles, CA 90017	Idaho Public Utilities Commission, Statehouse Mail, Boise ID 83720.
Illinois	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Department of Mines and Minerals, Oil & Gas Division, 704 Stratton Office Building, 400 S. Spring Street, Springfield, IL 62706.
Indiana	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Department of Natural Resources, Oil & Gas Division, 608 State Office Bldg., 100 N. Senate Avenue, Indianapolis, IN 46204.
Kansas	Area Oil & Gas Supervisor, 6136 East 32nd Place, Tulsa, OK 74135.	Corporation Commission, State Office Building, Topeka, KS 66612.
Kentucky	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006,	Department of Mines and Minerals, Oil & Gas Division, Box 680, Lexington, KY 40501.
Louisiana	Area Oil & Gas Supervisor, 6136 East 32nd Place, Tulsa, OK 74135.	Office of Conservation, Box 44275, Baton Rouge, LA 70804.
Maryland	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Energy and Coastal Zone Administration, Department of Natural Resources, Tawes State Office Bldg., Annapolis, MD 21404.
Michigan	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006	Department of Natural Resources, Box 30028, Lansing, MI 48909
Mississippi	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006	State Oil & Gas Board, Box 1332, Jackson, MS 39205.
Montana	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Bldg. & Post Office, Casper, WY 82602	Oil & Gas Conservation Division, Department of Natural Resources and Conservation, 2535 St. Johns Ave., Billings, MT 59102, or P.O. Box 217, Helena, MT 59601.

State in which well is located	Jurisdictional agency for wells on Federal lands	Other lands
Nebraska	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Bldg. & Post Office, Casper, WY 82602.	Oil & Gas Conservation Commission, Box 399, Sidney, NE 69162.
Nevada	Area Oil & Gas Supervisor, 160 Federal Building, 1340 West 6th Street, Los Angeles, CA 90017	Department of Conservation and Natural Resources, Division of Mineral Resources, Capitol Complex, 201 S. Fall Street, Carson City, NV 89710.
New Mexico	Area Oil & Gas Supervisor, P.O. Box 26124, Marquette Ave., N.W., Albuquerque, NM 87125.	Department of Energy and Minerals, Oil Conservation Division, Box 2088, Santa Fe, NM 87501.
New York	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Department of Environmental Conservation, Bureau of Mineral Resources, 50 Wolf Road, Albany, NY 12233.
North Carolina	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Department of Natural Resources and Community Development, 512 N. Salisbury Street, Raleigh, NC 27611.
North Dakota	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Bldg. & Post Office, Casper, WY 82602.	Geological Survey, University Station, Grand Forks, ND 58202.
Ohio	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Ohio Department of Natural Resources, 1032 Belcher Drive, Fountain Square, Columbus, OH 43224.
Oklahoma (except the Osage Reservation). (or)	Area Oil & Gas Supervisor, 6136 East 32nd Place, Tulsa, OK 74135.	Corporation Commission, Jim Thorpe Building, Oklahoma City, OK, 73105.
Oklahoma (Only the Osage Reservation)	Superintendent, Osage Indian Agency, Bureau of Indian Affairs, U.S. Department of the Interior, Pawhuska, OK 74056.	
Oregon	Area Oil & Gas Supervisor, 160 Federal Building, 1340 West 6th Street, Los Angeles, CA 90017	Department of Geology & Mineral Industries, 1069 State Office Bldg., Portland, OR 97201.
Pennsylvania	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Department of Environmental Resources, Division of Oil & Gas Regulation, 1205 Kossman Bldg., 100 Forbes Avenue, Pittsburgh, PA 15222.
South Carolina	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	South Carolina Public Service Commission, P.O. Drawer 11649, Columbia, SC 29211.
South Dakota	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Bldg. & Post Office, Casper, WY 82602.	Geological Survey, Science Center University Vermillion, SD 57069.
Tennessee	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	State Oil & Gas Board, G-5 State Office Bldg., Nashville, TN 37219.
Texas (East of the 100th Meridian) (or)	Area Oil & Gas Supervisor, 6136 East 32nd Place, Tulsa, OK 74135.	Railroad Commission, Drawer 12967, Austin, TX 78711.
Texas (West of the 100th Meridian).	Area Oil & Gas Supervisor, P.O. Box 26124 505 Marquette Ave., N.W., Albuquerque, NM 87125.	
Utah (except San Juan County) (or)	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Bldg. & Post Office, Casper, WY 82602.	Division of Oil, Gas and Mining, Utah Department of Natural Resources, 1588 West North Temple, Salt Lake City, UT 84116
Utah (only San Juan County)	Area Oil & Gas Supervisor, P.O. Box 26124 505 Marquette Ave., N.W., Albuquerque, NM 87125.	
Virginia	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Division of Mines and Quarries, P.O. Drawer V, Big Stone Gap, VA 24219.
Washington	Area Oil & Gas Supervisor, 160 Federal Building, 1340 West 6th Street, Los Angeles, CA 90017	Oil & Gas Supervisor, Department of Natural Resources, Olympia WA 98504.
West Virginia	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Oil & Gas Division, Department of Mines, State Capitol, Charleston, WV 25305.
Wyoming	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Bldg. & Post Office, Casper,	Oil & Gas Conservation Commission, Box 2640, Casper, WY 82602.

(b) *Waiver.* In the case of any determination to which a waiver under Subpart C of Part 274 is applicable, "jurisdictional agency" means the Commission.

(c) *Federal lands.* For purposes of this section, "Federal lands" means

(1) all lands leased under:

(i) the Mineral Lands Leasing Act, as amended, 30 U.S.C. § § 181 *et seq.;* and

(ii) the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § § 351 *et seq.;* and

(2) all Indian lands which are under the supervision of the United States Geological Survey (30 CFR Part 221); and

(3) all Indian lands which are under the supervision of the Osage Indian Agency, Bureau of Indian Affairs, U.S. Department of the Interior.

(d) *Divided-interest leases.* Unless an agreement under paragraph (f) of this section provides otherwise, where a well is located on a divided-interest lease involving Federal (or Indian) and private (or State) ownership:

(1) the Federal jurisdictional agency shall make the determination where the majority lease interest is Federal (or Indian);

(2) the State jurisdictional agency shall make the determination where the majority lease interest is private (or State); and

(3) the State jurisdictional agency shall make the determination where the lease is divided equally

(e) *Drilling units.* Unless an agreement under paragraph (f) of this section provides otherwise, where a drilling unit is drained by two or more wells, the Federal jurisdictional agency shall make the determination if the completion location of the well in question is located on a Federal (or Indian) lease, and the State jurisdictional agency shall make the determination if the completion location of the well in question is located on a private (or State) lease.

(f) *Agreements.* If the United States Geological Survey and any State jurisdictional agency enter into an agreement authorizing such State agency to make determinations under Subpart A of this part with respect to wells located on Federal lands, or authorizing the U.S. Geological Survey to make such determinations with respect to wells located on State lands, such agreement shall be filed with the Commission. Upon the filing of such an agreement the agency so authorized in the agreement shall be considered the jurisdictional agency with respect to wells on the designated lands to the extent provided in the agreement.

[0]: 44 F.R. 48664 (August 20, 1979)

[5] *Historical record.*—Section 274.501 originated in 43 F.R. 56448 (12/1/78), effective 12/1/78.

Subsection (a), appearing in 43 F.R. 56448 (12/1/79), effective 12/1/78, read as follows until its amendment in 44 F.R. 48664 (8/20/79), effective 8/1/79:

(a) *Definition.* Except as provided in paragraph (b), "jurisdictional agency" means:

(1) With respect to a well on the OCS, one of the following offices of the United States Geological Survey:

(i) for OCS wells located in the Gulf Coast Region:

Area Oil & Gas Supervisor
Suite 336
3301 N. Causeway Blvd
Metairie, LA 70010

(ii) for OCS wells located in the Atlantic Region:

Area Oil & Gas Supervisor
Atlantic OCS Operations
Suite 204
1725 K Street, N.W.
Washington, DC 20244

(iii) for OCS wells located offshore Alaska:

Area Oil & Gas Supervisor
P.O. Box 259
Suite 109
800 A Street
Anchorage, AK 99510

(iv) for OCS wells located offshore California:

Area Oil & Gas Supervisor
160 Federal Building
1340 West 6th Street
Los Angeles, CA 90017

(2) With respect to a well the surface location of which is on lands within the boundaries of a State (including Federal lands and offshore State lands), the agency specified in the following table:

[Note: the list of jurisdictional agencies, appearing in 43 F.R. 56448 (12/1/78), effective 12/1/78, is not reproduced.]

Subsection (c), appearing in 43 F.R. 56448 (12/1/78), effective 12/1/78, read as follows until its amendment in 44 F.R. 48664 (8/20/79), effective 8/1/79:

(c) *Federal lands.* For purposes of this section, "Federal lands" means

(1) all lands leased under:

(i) the Mineral Lands Leasing Act, as amended, 30 U.S.C. § § 181 *et seq.*, and

(ii) the Mineral Leasing Act for Aquired Lands, as amended, 30 U.S.C. § § 351 *et seq.*, and

(2) all Indian lands which are under the supervision of the United States Geological Survey (30 CFR Part 221).

Subsections (d) and (e) newly originated in 44 F.R. 48664 (8/20/79), effective 8/1/79.

Subsection (f) (formerly designated as subsection (d)), appearing in 43 F.R. 56448 (12/1/78), effective 12/1/78, read as follows until its amendment in 44 F.R. 48664 (8/20/79), effective 8/1/79:

(d) *Agreements.* If the United States Geological Survey and any state jurisdictional agency enter into an agreement authorizing such state agency to make determinations under Subpart A with respect to wells located on Federal lands, such agreement shall be filed with the Commission. If such an agreement is filed, then such state agency shall be considered the jurisdictional agency with respect to wells on Federal lands in such state to the extent provided in the agreement.

[Part 275 begins on page 14,541.]

(b) *Waiver.* In the case of any determination to which a waiver under Subpart C of Part 274 is applicable, "jurisdictional agency" means the Commission.

(c) *Federal lands.* For purposes of this section, "Federal lands" means

(1) all lands leased under:

(i) the Mineral Lands Leasing Act, as amended, 30 U.S.C. § § 181 *et seq.;* and

(ii) the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § § 351 *et seq.;* and

(2) all Indian lands which are under the supervision of the United States Geological Survey (30 CFR Part 221).

(d) *Agreements.* If the United States Geological Survey and any state jurisdictional agency enter into an agreement authorizing such state agency to make determinations under Subpart A with respect to wells located on Federal lands, such agreement shall be filed with the Commission. If such an agreement is filed, then such state agency shall be considered the jurisdictional agency with respect to wells on Federal lands in such state to the extent provided in the agreement.

[Part 275 begins on page 14,541.]

U.S. DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission
Washington, D.C. 20426

Form Approved
OMB No. 1902-0038
(Expires 12/31/84)

APPLICATION FOR DETERMINATION OF THE MAXIMUM LAWFUL PRICE UNDER THE NATURAL GAS POLICY ACT (NGPA)
(Sections 102, 103, 107 and 108)

GENERAL INSTRUCTIONS

Complete this form if you are applying for price classification under sections 102, 103, 107 or 108 of the NGPA.

Complete each anpropriate item on the reverse side of this page. The code numbers used in items 4 and 6 can be obtained from the Buver/Seller Code Book. If there is more than one purchaser or contract, identify the additional information in the space below. Also enter any additional remarks in the space below. The data reported on this form are not considered to be confidential and will not be treated as such.

Submit the completed application to the appropriate Jurisdictional Agency as listed in title 18 of the CFR, part 274.501. If there are any questions, call (202) 357-8585.

SPECIFIC INSTRUCTIONS

Use the codes in the table below for type of determination in item 2.

Section of NGPA (a)	Category Code (b)	Description (c)
102	1	New OCS lease
102	2	New onshore well (2.5 mile test)
102	3	New onshore well (1000 feet deeper test)
102	4	New onshore reservoir
102	5	New reservoir on old OCS lease
103	-	New onshore production well
107	0	Deep (more than 15,000 feet) high cost gas
107	1	Gas produced from geopressured brine
107	2	Gas produced from coal seams
107	3	Gas produced from Devonian shale
107	5	Production enhancement gas
107	6	New tight formation gas
107	7	Recompletion tight formation gas
108	0	Stripper well
108	1	Stripper well – seasonally affected
108	2	Stripper well – enhanced recovery
108	3	Stripper well – temporary pressure buildup
108	4	Stripper well – protest procedure

Enter the appropriate information regarding other Purchasers/Contracts.

Line No.	Contract Date (Mo, Da, Yr) (a)	Purchaser (b)	Buyer Code (c)
1			
2			
3			
4			
5			
6			

Remarks:

1/ A gas sales contract has not as yet been agreed upon and/or executed. It is anticipated, however, that it will contain pricing provisions that will permit ARCO to collect the maximum lawful price.

APPLICATION FOR DETERMINATION OF THE MAXIMUM LAWFUL PRICE UNDER THE NATURAL GAS POLICY ACT (NGPA)

1.0 API well number: (If not assigned, leave blank. 14 digits.)	50- 029 - 20585 -
2.0 Type of determination being sought. (Use the codes found on the front of this form.)	102 (Section of NGPA) 4 (Category Code)
3.0 Depth of the deepest completion location: (Only needed if sections 103 or 107 in 2.0 above.)	_____ feet
4.0 Name, address and code number of applicant. (35 letters per line maximum. If code number not available, leave blank.)	ARCO Alaska, Inc., a corporation duly organized under the laws of the State of Delaware (Name) 000969 (Seller Code) P. O. Box 2819 (22-108 DAB) (Street) Dallas, (City) Texas (State) 75221 (Zip Code)
5.0 Location of this well: (Complete (a) or (b).) (a) For onshore wells (35 letters maximum for field name.)	Kuparuk River Oil Pool (Field Name) North Slope Borough (County) Alaska (State)
(b) For OCS wells:	_____ (Area Name) _____ (Block Number) Date of Lease: Mo. Day Yr. _____ (OCS Lease Number)
(c) Name and identification number of this well: (35 letters and digits maximum.)	Kuparuk River Unit #1C-8
(d) If code 4 or 5 in 2.0 above, name of the reservoir: (35 letters maximum.)	
6.0 (a) Name and code number of the purchaser: (35 letters and digits maximum. If code number not available, leave blank.)	None Contract Pending (Name) _____ (Buyer Code)
(b) Date of the contract:	N/A (Mo. Day Yr.)
(c) Estimated total annual production from the well:	302.8 Million Cubic Feet

		(a) Base Price as of 2-1-84	(b) Tax Estimated	(c) All Other Prices (Indicate (+) or (-).)	(d) Total of (a), (b) and (c)
7.0 Contract price: (As of filing date. Complete to 3 decimal places.)	$/MMBTU	0.000	0.000	0.000	0.000 1/
8.0 Maximum lawful rate: (As of filing date. Complete to 3 decimal places.)	$/MMBTU	3.609	0.361	0.000	3.970

9.0 Person responsible for this application:	Dottie J. Martinson (Name) Director, Gas Regulations (Title) Dottie J. Martinson (Signature) February 16, 1984 (Date Application is Completed) (214) 880-3650 (Phone Number)
Agency Use Only Date Received by Juris. Agency	
Date Received by FERC	

FERC-121 (8-82)

PROPOSED AMENDMENT NO. 3

FOR

CS House Bill No. 680 L & C

Add to the Bill a new Section 3 as follows and renumber subsequent sections accordingly:

* Sec. 3 AS 31.05.030 is amended by adding a new subsection to read:

(j) The commission in accordance with I.R.C. Section 4993(d)(5)(A)(i) shall have the authority to act as the state jurisdictional agency over applications involving tertiary recovery projects on lands in Alaska not under federal jurisdiction, pursuant to requirements of I.R.C. of Section 4993(c)(2)(A), (B), and (C) of the "Crude Oil Windfall Profits Tax Act" of 1980 and applicable regulations.

JAY S. HAMMOND
GOVERNOR

Exhibit I-2

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

September 23, 1980

The Honorable W. Michael Blumenthal
Secretary of the Treasury
15th Street and Pennsylvania Avenue
Washington, D.C. 20220

Dear Mr. Secretary:

Pursuant to the requirements of Section 4993 (d)(5)(A) of the recently enacted Crude Oil Windfall Profits Tax Act of 1980, I have appointed the Alaska Oil and Gas Conservation Commission (AOGCC) as the jurisdictional agency over applications involving tertiary recovery projects on lands in Alaska not under federal jurisdiction. The AOGCC will review and take suitable action on any application for a tertiary recovery project within the stipulations of the Crude Oil Windfall Profits Tax Act of 1980, and applicable regulations.

This notification fulfills the responsibilities of the Governor of Alaska to provide a written submittal of agency designation in accordance with Section 4993 (d)(5)(A) of the Act.

Acknowledgement of receipt of this letter is requested.

Sincerely,

Jay S. Hammond
Governor

cc: Hoyle H. Hamilton, Chairman/Commissioner
Alaska Oil and Gas Conservation Commission

The Honorable William P. Clements, Governor of Texas
Interstate Oil Compact Commission

William W. Hopkins
Alaska Oil and Gas Association

The Honorable Robert E. LeResche, Commissioner
Department of Natural Resources

Amendments:	Sec. as amended effective:
P.L. 96-223, § 101(a)(1)	.....

P.L. 96-223, § 101(a)(1):

Added Code Sec. 4992 to read as above. For the effective date and transitional rules, see P.L. 96-223, § 101(i), following Code Sec. 4986.

[Sec. 4993]

SEC. 4993. INCREMENTAL TERTIARY OIL.

[Sec. 4993(a)]

(a) IN GENERAL.—For purposes of this chapter, the term "incremental tertiary oil" means the excess of—

(1) the amount of crude oil which is removed from a property during any month and which is produced on or after the project beginning date and during the period for which a qualified tertiary recovery project is in effect on the property, over

(2) the base level for such property for such month.

Source: New

[Sec. 4993(b)]

(b) DETERMINATION OF AMOUNT.—For purposes of this section—

(1) BASE LEVEL.—The base level for any property for any month is the average monthly amount (determined under rules similar to rules used in determining the base production control level under the June 1979 energy regulations) of crude oil removed from such property during the 6-month period ending March 31, 1979, reduced (but not below zero) by the sum of—

(A) 1 percent of such amount for each month which begins after 1978 and before the first month beginning after the project beginning date, and

(B) 2½ percent of such amount for each month which begins after the project beginning date (or after 1978 if the project beginning date is before 1979) and before the month for which the base level is being determined.

(2) MINIMUM AMOUNT IN CASE OF PROJECTS CERTIFIED BY DOE.—In the case of a project described in subsection (c)(1)(A), for the period during which the project is in effect, the amount of the incremental tertiary oil shall not be less than the incremental production determined under the June 1979 energy regulations.

(3) ALLOCATION RULES.—The determination of which barrels of crude oil removed during any month are incremental tertiary oil shall be made—

(A) first by allocating the amount of incremental tertiary oil between—

(i) oil which (but for this subsection) would be tier 1 oil, and

(ii) oil which (but for this subsection) would be tier 2 oil,

in proportion to the respective amounts of each such oil removed from the property during such month, and

(B) then by taking into account barrels of crude oil so removed in the order of their respective removal prices, beginning with the highest of such prices.

Source: New

[Sec. 4993(c)]

(c) QUALIFIED TERTIARY RECOVERY PROJECT.—For purposes of this section—

(1) IN GENERAL.—The term "qualified tertiary recovery project" means—

(A) a qualified tertiary enhanced recovery project with respect to which a certification as such has been approved and is in effect under the June 1979 energy regulations, or

(B) any project for enhancing recovery of crude oil which meets the requirements of paragraph (2).

(2) REQUIREMENTS.—A project meets the requirements of this paragraph if—

(A) the project involves the application (in accordance with sound engineering principles) of 1 or more tertiary recovery methods which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered,

(B) the project beginning date is after May 1979,

(C) the portion of the property to be affected by the project is adequately delineated,

(D) the operator submits (at such time and in such manner as the Secretary may by regulations prescribe) to the Secretary—

(i) a certification from a petroleum engineer that the project meets the requirements of subparagraphs (A), (B), and (C), or

(ii) a certification that a jurisdictional agency (within the meaning of subsection (d)(5)) has approved the project as meeting the requirements of subparagraphs (A), (B), and (C), and that such approval is still in effect, and

(E) the operator submits (at such time and such manner as the Secretary may by regulations prescribe) to the Secretary a certification from a petroleum engineer that the project continues to meet the requirements of subparagraphs (A), (B), and (C).

Source: New.

[Sec. 4993(d)]

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) TERTIARY RECOVERY METHOD.—The term "tertiary recovery method" means—

(A) any method which is described in subparagraphs (1) through (9) of section 212.78(c) of the June 1979 energy regulations, or

(B) any other method to provide tertiary enhanced recovery which is approved by the Secretary for purposes of this chapter.

(2) PROJECT BEGINNING DATE.—The term "project beginning date" means the later of—

(A) the date on which the injection of liquids, gases, or other matter begins, or

(B) the date on which—

(i) in the case of a project described in subsection (c)(1)(A), the project is certified as a qualified tertiary enhanced recovery project under the June 1979 energy regulations, or

(ii) in the case of a project described in subsection (c)(1)(B), a petroleum engineer certifies, or a jurisdictional agency approves, the project as meeting the requirements of subparagraphs (A), (B), and (C) of subsection (c)(2).

(3) PROJECT ONLY AFFECTS PORTION OF PROPERTY.—If a qualified tertiary recovery project can reasonably be expected to increase the ultimate recovery of crude oil from only a portion of a property, such portion shall be treated as a separate property.

(4) SIGNIFICANT EXPANSION TREATED AS SEPARATE PROJECT.—A significant expansion of any project shall be treated as a separate project.

(5) JURISDICTIONAL AGENCY.—The term "jurisdictional agency" means—

(A) in the case of an application involving a tertiary recovery project on lands not under Federal jurisdiction—

(i) the appropriate State agency in the State in which such lands are located which is designated by the Governor of such State in a written notification submitted to the Secretary as the agency which will approve projects under this subsection, or

(ii) if the Governor of such State does not submit such written notification within 180 days after the date of the enactment of the Crude Oil Windfall Profit Tax Act of 1980, the United States Geological Survey (until such time as the Governor submits such notification), or

(B) in the case of an application involving a tertiary recovery project on lands under Federal jurisdiction, the United States Geological Survey.

(6) BASIS OF REVIEW OF CERTAIN QUALIFIED TERTIARY RECOVERY PROJECTS.—In the case of any project which is approved under subsection (c)(2)(D)(ii) and for which a certification is submitted to the Secretary, the project shall be considered as meeting the requirements of subparagraphs (A), (B), and (C) of subsection (c)(2) unless the Secretary determines that—

(A) the approval of the jurisdictional agency was not supported by substantial evidence on the record upon which such approval was based, or

(B) additional evidence not contained in the record upon which such approval was based demonstrates that such project does not meet the requirements of subparagraph (A), (B), or (C) of subsection (c)(2).

If the Secretary makes a determination described in subparagraph (A) or (B) of the preceding sentence, the determination of whether the project meets the requirements of subparagraphs (A), (B), and (C) of subsection (c)(2) shall be made without regard to the preceding sentence.

(7) RULINGS RELATING TO CERTAIN QUALIFIED TERTIARY RECOVERY PROJECTS.—In the case of any tertiary recovery project for which a certification is submitted to the Secretary under subsection (c)(2)(D)(ii), a taxpayer may request a ruling from the Secretary with respect to whether such project is a qualified tertiary recovery project. The Secretary shall issue such ruling within 180 days of the date after he receives the request and such information as may be necessary to make a determination.

Source: New.

Amendments:	Sec. as amended effective:
P.L. 96-223 § 101(a)(1)	....

P.L. 96-223, § 101(a)(1):

Added Code Sec. 4993 to read as above. For the effective date and transitional rules, see P.L. 96-223, § 101(i) following Code Sec. 4986.

[Sec. 4994]

SEC. 4994. DEFINITIONS AND SPECIAL RULES RELATING TO EXEMPTIONS.

(a) QUALIFIED GOVERNMENTAL INTEREST.—For purposes of section 4991(b)—

(1) IN GENERAL.—The term "qualified governmental interest" means an economic interest in crude oil if—

(A) such interest is held by a State or political subdivision thereof or by an agency or instrumentality of a State or political subdivision thereof, and

(B) under the applicable State or local law, all of the net income received pursuant to such interest is dedicated to a public purpose.

(2) NET INCOME.—For purposes of this paragraph, the term "net income" means gross income reduced by production costs, and severance taxes of general application, allocable to the interest.

(3) AMOUNTS PLACED IN CERTAIN PERMANENT FUNDS TREATED AS DEDICATED TO PUBLIC PURPOSE.—The requirements of paragraph (1)(B) shall be treated as met with respect to any net income which, under the applicable State or local law, is placed in a permanent fund the earnings on which are dedicated to a public purpose.

Source: New.

[Caution: Code Sec. 4994(b), below, as amended by P.L. 97-34, is applicable to taxable periods beginning after December 31, 1980.—CCH.]

[Sec. 4994(b)]

(b) QUALIFIED CHARITABLE INTEREST.—For purposes of section 4991(b)—

(1) IN GENERAL.—The term "qualified charitable interest" means an economic interest in crude oil if—

(A) such interest is—

(i) held by an organization described in clause (ii), (iii), or (iv) of section 170(b)(1)(A) which is also described in section 170(c)(2),

(ii) held by an organization described in section 170(c)(2) which is organized and operated primarily for the residential placement, care, or treatment of delinquent, dependent, orphaned, neglected, or handicapped children, or

(iii) held—

(I) by an organization described in clause (i) of section 170(b)(1)(A) which is also described in section 170(c)(2), and

(ii) There has been a material change of circumstances since the time that the project or expansion was initiated; and

(iii) The project is certified under the criteria and pursuant to the procedures provided in paragraph (d). For purposes of determining eligibility for certification, an existing project shall be examined prospectively, on the basis of the circumstances existing at the time such certification is sought.

(c) *Definitions.* For purposes of this section—

A "qualified tertiary enhanced recovery project" is a project for the enhanced recovery of crude oil, to the extent that such project involves the application of one or more of the following techniques and is certified pursuant to paragraph (d) of this section as being uneconomic at the otherwise applicable ceiling prices:

(1) Miscible fluid displacement, *i. e.*, an oil displacement process in which gas or alcohol is injected into an oil reservoir, at pressure levels such that the injected gas or alcohol and reservoir oil are miscible. The process may include the concurrent, alternating, or subsequent injection of water. The injected gas may be natural gas, enriched natural gas, a liquefied petroleum gas slug driven by natural gas, carbon dioxide, nitrogen, or flue gas. Gas cycling, *i. e.*, gas injection into gas condensate reservoirs, is not a miscible fluid displacement technique nor a tertiary enhanced recovery technique within the meaning of this section.

(2) Steam drive injection, *i. e.*, the continuous injection of steam into one set of wells (injection wells) or other injection source to effect oil displacement toward and production from a second set of wells (production wells).

(3) Microemulsion, or micellar/emulsion, flooding, *i. e.*, an augmented waterflooding technique in which a surfactant system is injected in order to enhance oil displacement toward producing wells. A surfactant system normally includes a surfactant, hydrocarbon, cosurfactant, an electrolyte and water, and polymers for mobility control.

(4) In situ combustion, *i. e.*, combustion of oil in the reservoir, sustained by continuous air injection, to displace unburned oil toward producing wells.

(5) Polymer augmented waterflooding, *i. e.*, augmented waterflooding in which organic polymers are injected with the water to improve areal and vertical sweep efficiency.

(6) Cyclic steam injection, *i. e.*, the alternating injection of steam and production of oil with condensed steam from the same well or wells.

(7) Alkaline (or "caustic") flooding *i. e.*, an augmented waterflooding technique in which the water is made chemically basic as a result of the addition of alkali metals.

(8) Carbon dioxide augmented waterflooding, *i. e.*, injection of carbonated water, or water and carbon dioxide, to increase waterflood efficiency.

(9) Immiscible carbon dioxide displacement, *i. e.*, injection of carbon dioxide into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained.

(10) Specific variations of any of the above-listed general techniques, as determined in any particular case by the certifying authority.

"Certifying authority" means the Administrator, Economic Regulatory Administration, Department of Energy, or any officer of the Department of Energy to whom the Administrator has delegated such functions.

"Incremental crude oil" (resulting from the implementation of a qualified tertiary enhanced recovery project) means, in the case of a new project, the amount of crude oil which is or will be produced as a result of such a project and which is in excess of the amount of crude oil ("nonincremental crude oil") which could have been produced from the property or project area through continued maximum feasible production from methods of production employed on the property prior to the receipt of the certifications provided for in paragraph (d) of this section. As applied to expansion of existing tertiary enhanced recovery projects, the term means the amount of crude oil which is or will be produced as a result of the expanded project and which is in excess of the amount of crude oil ("nonincremental crude oil") which could have been produced from the property or project area through continued maximum feasible production from the methods of production employed on the property prior to the receipt of the certification provided for in paragraph (d) of this section. As applied to an existing project within the meaning of paragraph (b)(2) of this section, the term means the amount of crude oil which is or will be produced as a result of the continuation of the project or of the particular highcost phase of the project and which is in excess of the amount of crude oil ("nonincremental crude oil") which could have been produced from the property or project area through continued maximum feasible production from methods of production (other than the tertiary method, or that phase of such method, that would be discontinued in the

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.:
Title: Relating to the Alaska Oil and Gas Conservation Commission
Sponsor: Governor
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce and Economic Development
Program Category Affected: Protection
BRU, Program or Subprogram(s) Affected: Oil and Gas Conservation Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	0	25.0	26.1	27.6	29.0	30.7
200 TRAVEL	0	88.0	90.4	90.4	90.5	90.3
300 CONTRACTUAL	60.0	9.5	9.5	9.5	9.5	0
400 SUPPLIES	0	0	0.5	0.5	0.5	0.5
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	60.0	125.0	126.5	128.0	129.5	121.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	60.0	125.0	126.5	128.0	129.5	121.5
FEDERAL FUNDS						
OTHER						
TOTAL	60.0	125.0	126.5	128.0	129.5	121.5

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Chat Chatterton Phone: 279-1433
Division: Alaska Oil and Gas Conservation Comm. Date: 2/3/84

Approved by Commissioner: Richard A. Lyon Date: 2/11/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ALASKA OIL AND GAS CONSERVATION COMMISSION

ANALYSIS

INTRODUCTION: The fiscal impact results soley from subsection (h) Section 1 of the Bill.

Code 100 Are advised by Environmental Protection Agency (EPA) and by other states who have been delegated enforcement primacy by EPA that there is a substantial increase in the technical clerical workload. Accordingly request personal services funding for a Clerk Typist III.

Code 200 Field inspection requirements will nearly double the current level of trips to the field. Accordingly additional travel funding is required.

Code 300 a) Contractual cost to prepare an application package to EPA for obtaining primacy is estimated to cost $60,000 which will be expended in FY'84.

b) A word processing machine will be obtained for the additional Clerk Typist III on a four year rental/purchase agreement.

Code 400 Additional clerical supplies will be required for the new Clerk Typist III.

Code 500 A one-time expenditure for office equipment (desk, chair, etc.) will be necessary in FY'85.

the owner of the well gives written permission to release the reports and information at an earlier date. If the commissioner finds that the required reports and information contain significant information relating to the valuation of unleased land in the same vicinity, he shall keep the reports and information confidential for a reasonable time after the disposition of all affected unleased land, unless the owner of the well gives written permission to release the reports and information at an earlier date. Well location, depth, status and production data and production reports required by the commission to be filed subsequent to the 30-day filing period shall be considered public information and shall not be classified confidential. Production data, as used in this subsection, means volume, gravity and gas-oil ratio of all production of oil or gas after the well begins regular production.

(d) Engineering, geological, and other information not required by (a) of this section but voluntarily filed with the commission shall be kept confidential if the person filing the information so requests. (§ 2 ch 209 SLA 1970; am § 5 ch 158 SLA 1978; am §§ 3 — 6 ch 160 SLA 1978)

Effect of amendments. — The first 1978 amendment substituted "commission" for "department" throughout the section.

The second 1978 amendment in subsection (a), inserted "flow test information and" in paragraph (2), deleted "dipmeter surveys" following "experimental logs" in paragraph (2), and added paragraph (3). In subsection (c), the amendment substituted "required in (a) of this section" for "marked confidential" in the first sentence and added the present second sentence. The amendment also added subsection (d).

Sec. 31.05.040. Rules and regulations of commission. (a) The commission shall prescribe rules and regulations governing practice and procedure before it under this chapter.

(b) All orders issued by the commission shall be in writing, shall be entered in full and indexed in books kept by the commission for that purpose, and shall be public records open for inspection at all times during reasonable office hours. A copy of an order certified by the commission, under its seal, shall be received in evidence in all courts of the state with the same effect as the original. (§ 9 1, 5 ch 40 SLA 1955; am § 5 ch 158 SLA 1978)

Revisor's note. — Subsection (b) of this section and AS 31.05.050—31.05.080 are generally superseded by the Administrative Procedure Act (AS 44.62). However, the department has the power to hold hearings and make orders relating to "pooling," etc. (AS 31.05.100 and 31.05.110), which may or may not fall under the Administrative Procedure Act. If those hearings and orders do not fall under the Administrative Procedure Act, then the procedure in (b) of this section and in AS 31.05.050 — 31.05.080 would apply.

Effect of amendment. — The 1978 amendment substituted "commission" for "department" throughout the section.

Section 6, ch. 158, SLA 1978, provides: "After the effective date of this Act [January 1, 1979], all orders, regulations, and other rulings of the division of oil and gas shall remain in effect until expressly revoked or modified by the commission."

AOGA PROPOSED TESTIMONY ON HOUSE BILL NO. 680

HOUSE LABOR AND COMMERCE COMMITTEE

MARCH 7, 1984

Good morning. I'm Dave Yesland, Senior Staff Environmental Engineer with Shell Western E & P. I'm representing the Alaska Oil and Gas Association this morning and I will comment on the proposed Committee Substitute for HB680.

Our Association supports the intent of CSHB680, which is to provide the legislation necessary to enable the State to be the sole administrator of a permitting program for underground injection wells related to oil and gas production activities, or Class II wells, as they are identified in the Federal program. I will discuss the reasons for our support.

Without State preemption of the Federal program there will be redundant State and Federal programs with nothing but duplicated record-keeping and administrative delay as a result.

We have had a concern that existing statutes might prevent the State from preempting the Federal program because confidentiality provisions and penalty imposition limits may not meet the Federal requirements. We believe this bill will eliminate that concern.

Our Association prefers that the permitting process for injection wells, related to oil and gas operations, be controlled by the

state. The regulation of oil and gas operations by the Alaska Oil and Gas Conservation Commission is an example of regulatory control based on well-established knowledge of the regulated activity.

Therefore, we believe the Alaska Oil and Gas Conservation Commission is the appropriate administrator of regulations that bear on the technical elements of oil and gas operations and it should be the sole administrator of Class II wells in the state.

Finally we have seen that the Federal program, as proposed, would reduce the production rate of secondary recovery projects (water floods) by requiring that current injection pressure be reduced. The EPA's basis for lower pressures is no more than a "rule-of-thumb" which they acknowledge may be changed on a case-by-case review. But, until that review is completed, pressure would have to be reduced to comply with the regulations. This reduction would not only reduce current production rates, but even if only temporary, would reduce the ultimate total production of the formation causing revenue losses to both the State and producer. It is therefore a matter of mutual urgency.

If the proposed Federal rules are promulgated in the absence of State intent and ability to assume the program there will be a loss with no measure of compensation.

We urge the State to assume primacy in the regulation of Class II injection wells and we believe this bill contains specific statutory language which will serve this purpose.

Thank you.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.:
Title: Relating to the Alaska Oil and Gas Conservation Commission
Sponsor: Governor
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce and Economic Developmen
Program Category Affected: Protection
BRU, Program or Subprogram(s) Affected: Oil and Gas Conservation Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	0	25.0	26.1	27.6	29.0	30.7
200 TRAVEL	0	88.0	90.4	90.4	90.5	90.3
300 CONTRACTUAL	60.0	9.5	9.5	9.5	9.5	0
400 SUPPLIES	0	0.5	0.5	0.5	0.5	0.5
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	60.0	125.0	126.5	128.0	129.5	121.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	60.0	125.0	126.5	128.0	129.5	121.5
FEDERAL FUNDS						
OTHER						
TOTAL	60.0	125.0	126.5	128.0	129.5	121.5

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Chat Chatterton Phone: 279-1433
Division: Alaska Oil and Gas Conservation Comm. Date: 2/3/84

Approved by Commissioner: Richard A. Lyon Date: 2/11/84
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Legislative Finance
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Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HB

683

Alaska State Legislature

Representative Milo Fritz
District 5
P.O. Box 158
Anchor Point, Alaska 99556
(907) 235-8366

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4833

House of Representatives

MILO FRITZ

MEMORANDUM

TO: Representative John Cowdry
Labor & Commerce Chairman

FROM: Representative Milo Fritz
Finance Committee Member

DATE: March 13, 1984

SUBJ: HB 683

I would greatly appreciate your springing HB 683 out of your Committee. As I look at it, there is no threat to the Susitna Damn and with the population of the Kenai Peninsula growing in the neighborhood of between nine and ten percent every year, we will need the power from Bradley Lake within the next two years. Your consideration in getting HB 683 out of your Committee and on to the next Committee of referral will be very greatly appreciated. If there is anything about this matter that you would care to discuss with me I am at your service.

cc: D. Kent Wicke
Mr. Leo Rhode

Homer Electric Association, Inc.

CENTRAL OFFICE: P.O. BOX 429 • HOMER, ALASKA 99603-0429 • (907) 235-8167

March 7, 1984

The Hon. John J. Cowdery, Chairman
House Labor & Commerce Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneu, Alaska 99811

Dear Mr. Cowdery:

House Bill #683, presently in the Labor and Commerce Committee, would authorize Bradley Lake as a State project. It requests no funding. Bradley Lake must be authorized in order for the Alaska Power Authority to file for a FERC license. Filing for an FERC license should be done concurrently with development of a financing plan and power sales agreements.

Approval of HB #683 does not conflict with the four-dam pool, and Bradley Lake is not competition to Susitna. Power from Bradley Lake is needed for the winter of 1988/89. Without Bradley Lake natural gas generation facilities must be added. I believe all studies thus far show no negative impact of Bradley Lake on Susitna feasibility or financing.

We need your support! HB #683 should be passed out of its assigned Committees for full House consideration as soon as possible to keep the project on schedule. Funding will be requested only after a financing plan is developed. Funding is not requested in HB #683.

Thank you in advance for your consideration. Please let us know if we can answer any of your questions.

Sincerely yours,

HOMER ELECTRIC ASSOCIATION, INC.

B. Kent Wick
General Manager

BKW:em

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

March 29, 1984

To: Representative Bob Bettisworth
Vice Chairman, House Finance

From: Representative Joe Hayes
House Speaker

Per our recent telephone conversation, I am sending a copy of Governor Sheffield's letter dated March 29, 1984, proposing a formula to the solution of the 4-Dam Pool problem.

Would you please check out the disposition of various pieces of legislation relating to "the package". I believe most or all of them may be in House Finance. I would appreciate your suggestions for a resolution to the Governor's requirements.

Please feel free to discuss this with the Governor and his staff.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 29, 1984

The Honorable Joe Hayes
The Capitol
Juneau

Dear Joe,

From our discussion at lunch today, it is my understanding that you would consider an agreement to ensure that a solution to the 4-dam pool problem is brought to the House floor for a vote.

I propose the following formula as the solution, and due to the time constraints imposed on us by the four capital budgets now on my desk, the vote on all but one portion of the formula needs to be taken during your floor session this evening.

The package includes:
--Repeal of the Susitna Clause
--Approval of $49 million for the Rate Stabilization Fund
--Repeal of the prohibition against industrial rates
--Inclusion of Watana and Bradley Lake into a new, 6-dam pool
--$200 million appropriated to the Power Development Fund. I understand the time problem involved on this item, and I would agree that it could be handled later.

It would be my intention to publicly support this formula, and I also would reiterate my longstanding support for the Susitna Hydroelectric Project. The only qualifications to my support for Susitna is the same as always: that we first arrive at a positive finding of feasibility, a workable financing plan and pre-signed power sales agreements with the Railbelt utilities.

As we also discussed, the issue of the Major Projects Fund also should be subjected to a floor vote today. I strongly believe that only a "clean" constitutional amendment represents good public policy. I reiterate that if a vote is taken today, it should be on House Joint Resolution 57 as I introduced it.

I understand your personal opposition to some of these points. I appreciate your agreement to refrain from lobbying others in opposition, and your willingness to allow the members of your caucus to vote their own consciences. I also can assure you that positive action on these issues will greatly influence my budget decisions over the next few days.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

FEBRUARY 29, 1984

TO: JOHN
FROM: KEN
RE: HB 683 "APPROVING THE BRADLEY LAKE HYDROELECTRIC PROJECT"

HB 683 IS A BILL WHICH ASKS THE LEGISLATURE TO APPROVE THE BRADLEY LAKE HYDROELECTRIC PROJECT AS A PROJECT OF THE ENERGY PROGRAM FOR ALASKA. THIS LEGISLATION ALSO ASKS FOR APPROVAL OF THE COST OF BRADLEY LAKE, ESTIMATED TO BE 354 MILLION DOLLARS. THE BILL, HOWEVER, IS NOT AN APPROPRIATIONS BILL. FUNDING FOR BRADLEY LAKE PROJECT WOULD NOT BE ASSURED BY PASSAGE OF HB 683.

QUESTIONS:

1. HOW LONG WILL IT BE BEFORE THE A.P.A. COMPLETES ITS FINDINGS AND RECOMMENDATION REPORT AND SENDS IT ON TO O.M.B. ?

2. HOW LONG DO YOU EXPECT IT TO TAKE O.M.B. TO PRODUCE ITS REPORT ONCE THE A.P.A. HAS PASSED ON ITS FINDINGS ?

3. ISN'T THIS LEGISLATION A BIT UNTIMELY SINCE THE LEGISLATURE HAS NO ASSURANCE AT THIS POINT THAT THE A.P.A.'S AND O.M.B.'S FINAL REPORTS WILL SUPPORT THE FEASIBILITY STUDY ?

4. WHERE WILL THE INITIAL FUNDING FOR THE CONSTRUCTION OF BRADLEY LAKE COME FROM AND HOW WILL THE ENTIRE PROJECT BE FUNDED ?

5. IF THE STATE APPROPRIATES FUNDS FOR BRADLEY LAKE, ISN'T THAT USING FUNDS THAT COULD GO TOWARD CONSTRUCTION OF THE WATANA PHASE OF THE SUSITNA PROJECT ?

6. WILL THERE BE A NEED FOR THE STATE TO PROVIDE SUBSIDY TO STABILIZE POWER RATES DURING THE FIRST FEW YEARS BRADLEY LAKE IS IN OPERATION ?

7. WILL BRADLEY LAKE POWER BE AN ADDITIONAL SOURCE OF POWER TO CUSTOMERS ON THE KENAI PENINSULA OR WILL IT REPLACE THE CURRENT SOURCE OF POWER ?

8. WHAT PERCENTAGE OF THE POWER PRODUCED AT BRADLEY LAKE CAN BE SOLD WHEN THE PROJECT COMES ON LINE ?

9. IS THE A.P.A. CERTAIN THAT POWER PRODUCED AT BRADLEY LAKE COULD BE SOLD ?

10. ARE THERE NOW OR HAS THERE BEEN ANY POWER SALES NEGOTIATIONS WITH UTILITY COMPANIES FOR BRADLEY LAKE POWER ?

11. WITH WHAT UTILITY COMPANIES HAVE THOSE NEGOTIATIONS OR TALKS TAKEN PLACE ?

12. WHAT IS THE STATUS OF THE F.E.R.C. LICENSING PROCESS FOR BRADLEY LAKE ?

13. HOW LONG BEFORE CONSTRUCTION COULD ACTUALLY START ?

14. ARE THE COMMUNITIES TO BE SERVED BY BRADLEY LAKE SET UP TO HANDLE THE TRANSMISSION OF THAT POWER ?

15. THEN, ARE THERE CAPITAL PROJECTS ASSOCIATED WITH BRADLEY LAKE THAT ARE NOT INCLUDED IN THE 354 MILLION DOLLAR COST FIGURE ?

STATUS REPORT

Bradley Lake Hydroelectric Project February 27, 1984

The Bradley Lake Hydroelectric Power Project was authorized by the U.S. Congress as a Federal project in the Flood Control Act of 1962.

After lengthy study the project was found to be economically feasible by the U.S. Army, Corps of Engineers in 1978.

The Corps of Engineers started work in 1978 and published a General Design Memorandum in February 1982 and a final Environmental Impact Statement in August 1982.

The 1981 Alaska State Legislature, by joint resolution, requested that the United States Congress provide a system to permit the Corps to design and construct the project as a project of the Alaska Power Authority, provided that the financing for the project be solely the responsibility of the State of Alaska and the Power Authority. The Legislature also appropriated $15 million from the General Fund to the Power Development Fund for the Bradley Lake project.

The 1982 Alaska State Legislature in HB 9 stated that subject to the review of the feasibility study and plan of finance by the Division of Budget and Management in the Office of the Governor the Bradley Lake Hydroelectric Project is approved as a project of the Power Authority. The Letter of Intent accompanying HB 9 stated that it was the intent of the Legislature that the Power Authority proceed with the Bradley Lake Hydroelectric Project by expending the funds received and by securing, if necessary, additional financing. The Legislature also appropriated $3 million for the Bradley Lake project.

The Power Authority attempted to negotiate an agreement with the Corps concerning the Bradley Lake project. Due to lack of Federal legislation to allow the Corps to accept State funds, impact of Federal ownership on ability of the Power Authority to obtain bonding for the project, and lack of State control of cost overruns and power rates, the Power Authority Board of Directors in October 1982 voted to pursue design and construction of the project by the Power Authority and supported Federal deauthorization of the project.

The Bradley Lake project was deauthorized by the U.S. Congress in December 1982.

In March 1983, the Board of Directors approved the selection of the firm of Stone and Webster Engineering Company as design engineer for the project, and authorized an award of a contract for preliminary design and feasibility study to focus on the determination of the feasibility and optimum plan for development of Bradley Lake. The project's conceptual design has been modified from that planned by the Corps to lessen the environmental impact and the cost of the project.

103/080 D1

Results of the Feasibility Study were presented to the Power Authority Board of Directors in September 1983. The project is attractive economically, both with or without Susitna. A sensitivity analysis at zero percent load growth indicates that Bradley Lake's economic feasibility remains positive. Consequently, the Board authorized preparation of a Federal Energy Regulatory License Application. Preliminary cost of power determinations were made under various funding scenarios which indicate that the Bradley Lake power costs are competitive with the thermal alternatives. The project was sized at 90 megawatts, constructed so that it could be expanded to 135 Megawatts in the future if necessary. In 1983 dollars the project cost is $283 million. The 1985 bid price is $354 million, not including financing costs.

Meetings have been held with the various utilities who are potential power purchasers and Letters of Interest to purchase power have been received from a sufficient number of utilities to indicate that Bradley power is marketable.

Environmental aspects of the project have been discussed with the various Resource Agencies. The 60 day agency consultation period required by the Federal Energy Regulatory Commission (FERC) has been initiated and the draft license application has been forwarded to interested agencies. Minimum Bradley River instream flow requirements, which was a major concern of the Resource Agencies expressed in their review of the Corps' Final EIS, have been established and concurred with following Power Authority field study and analysis in 1983. A moose migration study is also underway to establish mitigation requirements for possible impacts on the moose population.

Current Status and Future Actions

1. The Finance Plan is in final preparation. The Plan considers information gained from the 4 Dam Pool negotiations and is based on Bradley Lake being in the Energy Program for Alaska. It should be finalized by March 18, 1984.

2. The Power Authority is currently working with the Office of Management and Budget on their review of the Feasibility Study and the Plan of Finance.

3. The submittal of the FERC license application will be considered by the Power Authority Board of Directors meeting during the week of mid March 1984.

4. Although funds have been appropriated for Bradley Lake, the project has not been specifically authorized by the Legislature at a specified construction cost nor has it been included in the Energy Program for Alaska. Design cannot be initiated until the project is authorized at a specified construction cost. HB 683 provides the required authorization and includes the project in the Energy Program for Alaska.

5. If the Legislature authorizes the project, design can commence if approved by the Power Authority Board of Directors. No design funds will be expended until power sales agreements with specified power rates have been signed by the participating utilities.

6. Sufficient funds have been appropriated to fund FERC license support and design activities in FY 85. Additional funds, dependent on the requirements of the Finance Plan, will be required in FY 86 and later years.

7. If design can be initiated by July 1, 1984, construction could commence in August 1985 with first power on line in late 1988. The construction start is dependent on receipt of the FERC license. FERC has indicated in writing that due to extensive Federal environmental work on the project, it may be possible to receive the license as early as 11 months after submittal.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

April 26, 1982

MEMORANDUM

TO: Representative Hugh Malone
Attn: Spike Dale

FROM: Jack Kreinheder and David Teal
Research Staff

RE: Bradley Lake Financing Analysis
Research Request 82-122

You requested that we convert the power cost figures in the Bradley Lake financing analysis prepared by Sterling Gallagher into 1982 dollars, so that the costs can be more accurately compared to current power costs. Tables 1 and 2, below, show annual project and energy costs, based on 100 percent bond financing, and on 50 percent State financing, respectively. These tables correspond to Tables III and VIII of Mr. Gallagher's analysis.

TABLE 1
BRADLEY LAKE COST ANALYSIS (1982 DOLLARS)
Financing: 100 Percent Tax Exempt 14% Bonds
(7% inflation, 3% real discount rate)

Year	Debt Service[1] ($000)	Operating Costs[2] ($000)	Total Annual Cost ($000)	Energy Sales (MWH)	Power Cost (Cents/KWH)
1989	$69,658	$1,063	$70,721	340,000	20.80
1994	42,845	917	43,762	340,000	12.87
1999	26,350	791	27,141	340,000	7.98
2004	16,206	683	16,889	340,000	4.97
2009	9,967	589	10,556	340,000	3.10
2014	6,130	508	6,638	340,000	1.95

[1] Debt service in nominal dollars would be $137.6 million per year.
[2] Operating costs are constant in real terms and are discounted at a real rate of 3 percent per year.

TABLE 2

BRADLEY LAKE COST ANALYSIS (1982 DOLLARS)
Financing: 50 Percent State Grant,
50 Percent Tax Exempt 14% Bonds
(7% inflation, 3% real discount rate)

Year	Debt Service ($000)	Operating Costs ($000)	Total Annual Cost ($000)	Energy Sales (MWH)	Power Cost (Cents/KWH)
1989	$31,799	$1,063	$32,862	340,000	9.67
1994	19,557	917	20,474	340,000	6.02
1999	12,028	791	12,819	340,000	3.77
2004	7,398	683	8,081	340,000	2.38
2009	4,550	589	5,139	340,000	1.51
2014	2,798	508	3,306	340,000	0.97

These cost figures are based on the Gallagher analysis, discounted at an inflation rate of 7 percent and a real discount rate of 3 percent. The resulting power costs are much lower than those cited in the Gallagher analysis, particularly in the more distant years. For example, Gallagher's figures for the cost of power under the 100 percent bond financing case range, in nominal dollars, from 41 cents/KWH in 1989 to 44 cents in 2014.

In 1982 dollars, these costs are equivalent to 21 cents/KWH in 1989 and 2 cents/KWH in 2014. Although the actual power cost in 2014, under Mr. Gallagher's assumptions, would be about 44 cents/KWH, this amount is comparable to only about 2 cents/KWH in terms of today's dollars.

We are presently working on the second part of your request, which was to apply the analysis used by Mr. Gallagher for Bradley Lake to the Susitna project, and to review the Bradley Lake analysis for accuracy and completeness. This work should be completed by tomorrow, April 27. If you have any questions in the meantime, please let us know.

JK/bf

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

April 29, 1982

MEMORANDUM

TO: Representative Hugh Malone

ATTN: Spike Dale

FROM: Jack Kreitzer and David Teal
Research Staff

RE: Bradley Lake Financing Analysis--Supplemental Information
Research Request Number 82-122

This memorandum is in response to your request for a comparison of the Bradley Lake and Susitna hydroelectric projects, based on Sterling Gallagher's recent Bradley Lake financing analysis. The memorandum contains 1) several tables which present energy costs of the two projects and 2) a review of Mr. Gallagher's Bradley Lake analysis for accuracy and completeness. The major finding is that application of Gallagher's analysis to both projects shows that the Bradley Lake project is capable of producing energy at lower cost than the combined Watana and Devil Canyon portions of the Susitna project.

The source of data on the Susitna project is the Susitna Hydroelectric Project Draft Feasibility Report prepared by ACRES for the Alaska Power Authority. That report gives annual operating costs of the Watana portion of the Susitna project as $10 million and lists project construction costs as $3,647 million. Construction and annual operating costs of the Devil Canyon project are $1,480 million and $5.2 million, respectively. All of these figures are in 1982 dollars.

Table 1 presents projected costs of the Watana and Devil Canyon projects in nominal dollars. A seven per cent annual interest rate was used to convert 1982 dollars to projected bonding requirements and operating costs in the year of project completion, and a 14 percent interest rate was used to compute interest costs during the construction periods. Both computations used the construction cost schedules presented in the draft feasibility report.

Table 1
PROJECTED COSTS OF THE WATANA AND DEVIL CANYON
HYDROELECTRIC PROJECTS
(in millions of nominal dollars)

	Watana (Completed 1993)	Devil Canyon (Completed 2002)
Total Construction Cost	$ 6,006	$ 4,503
Interest to Completion of Construction--Capitalized	4,555	2,800
Total Investment Cost	10,561	7,302
Financing Expense	327	226
Reserve Fund	1,804	1,247
TOTAL CAPITAL REQUIREMENT	$12,692	$ 8,775
Annual Debt Service	$ 1,804	$ 1,247
Coverage (20% of Debt Service)	361	249
Interest on Reserve (at 13%)	(234)	(162)
NET ANNUAL DEBT SERVICE	$ 1,930	$ 1,334
Operating Costs in First Year	$ 21	$ 20
TOTAL ANNUAL COST--FIRST YEAR	$ 1,951	$ 1,354

Source: House Research Agency 4/82

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The remainder of the tables in this memorandum are based on the information above and on average annual energy sales of 3,450,000 MWH and 3,340,000 MWH from the Watana and Devil Canyon projects, respectively.[1]

[1]ACRES anticipates that sale of power from the Devil Canyon project will be less than plant capacity during an initial operating period of about ten years. The resulting higher per unit power costs during that period are reflected in the tables in this memorandum.

Each of the tables is described below. In all cases, debt service is based on assumptions used in Gallagher's analysis of the Bradley Lake project. That is, the projects are supported by a tax exempt bond issue at 14 percent interest, a reserve fund equal to one year of debt service requirements, and coverage of 20 percent of annual debt service requirements. These figures are not identical to the financing details used by ACRES to determine the debt service requirements of the Susitna project. We have used Mr. Gallagher's approach on both the Bradley Lake and Susitna projects in order to minimize differences in the computation of total cost of the projects.

Although financing has been made equivalent, energy cost comparisons may not be accurate if some components of total cost have been omitted from one or more of the projects or if the methodology for estimating costs is not comparable. We have reviewed the construction cost estimates of the Bradley Lake project and find Mr. Gallagher's figures acceptable for comparison with the Susitna project.

Table 2 shows project and energy costs of the Watana project in nominal dollars and is comparable to Gallagher's Table III. Debt service is constant--payments are fixed at the time bonds are sold--and operating costs increase at seven percent per year, which is the assumed rate of inflation. As in Gallagher's analysis, energy costs increase throughout the evaluation period. Table 2 shows energy costs of 56.55 cents per kwh in 1994 and 58.46 cents per kwh in 2014.

Table 2
WATANA HYDROELECTRIC PROJECT COST ANALYSIS
(in millions of nominal dollars)

Year	Debt Service	Operating Costs	Total Annual Cost	Energy Sales (GWH)	Power Cost (cents/kwh)
1994	$1,929.85	$22.52	$1,952.37	3,450	56.59
1999	1,929.85	31.59	1,961.44	3,450	56.85
2004	1,929.85	44.30	1,974.15	3,450	57.22
2009	1,929.85	62.13	1,991.98	3,450	57.74
2014	1,929.85	87.15	2,017.00	3,450	58.46

Source: House Research Agency 4/82

Table 3 shows project and energy costs of the Watana project in 1982 dollars. The table corresponds to Table 1 in memorandum number 82-122 delivered to you on April 26.[2] Debt service is deflated at seven percent per year to reflect the declining real value of a fixed payment. Operating costs are constant because it is assumed that the increase in operating costs is exactly equal to the rate of inflation. Energy costs decline from 25.13 cents per kwh in 1994 to 6.71 cents per kwh in 2014.

Table 3
WATANA HYDROELECTRIC PROJECT COST ANALYSIS
(in millions of 1982 dollars)

Year	Debt Service	Operating Costs	Total Annual Cost	Energy Sales (GWH)	Power Cost (cents/kwh)
1994	$856.88	$10.00	$866.88	3,450	25.13
1999	610.94	10.00	620.94	3,450	18.00
2004	435.59	10.00	445.59	3,450	12.92
2009	310.57	10.00	320.57	3,450	9.29
2014	221.43	10.00	231.43	3,450	6.71

Source: House Research Agency 4/82

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Table 4 compares energy costs of the Bradley Lake, Watana, and Devil Canyon projects. Estimated costs are in nominal dollars. Table 5 makes the same comparison in 1982 dollars. In both tables, the "percentage difference" columns refer to change from the projected energy costs of the Bradley Lake project. In both tables, the energy costs listed for the Susitna project are weighted averages of the Watana and Devil Canyon projects. In 2004 and 2009, the figures for Devil

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[2] In Table 1 of our memorandum of April 26, the discount rate included a three percent rate for the time value of money. That factor has been omitted from the computations in this memorandum. This "real interest rate" does not affect the percentage changes shown in tables 4 and 5 of this memorandum.

Canyon are adjusted for operation at less than plant capacity. Note that power produced at Devil Canyon is expected to be about six percent cheaper than power from Bradley Lake once Devil Canyon is at full capacity but that the combined cost of energy from the Susitna project remains higher than energy produced at the Bradley Lake project.

Table 4
PROJECTED ENERGY COSTS OF THREE HYDROELECTRIC PROJECTS
(NOMINAL CENTS PER KWH)

Year	Bradley Lake	Watana	Percentage Difference	Devil Canyon	Percentage Difference	Combined Susitna	Percentage Difference
1994	41.32	56.59	37%	--	--	56.59	37%
1999	41.68	56.85	36	--	--	56.85	36
2004	42.16	57.22	36	61.20	45 %	58.78	39
2009	42.85	57.74	35	43.30	1	50.84	19
2014	43.81	58.46	34	41.31	(6)	50.02	14

Source: House Research Agency 4/82

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Table 5
PROJECTED ENERGY COSTS OF THREE HYDROELECTRIC PROJECTS
(1982 CENTS PER KWH)

Year	Bradley Lake	Watana	Percentage Difference	Devil Canyon	Percentage Difference	Combined Susitna	Percentage Difference
1994	18.35	25.13	37%	--	--	25.13	37%
1999	13.19	18.00	36	--	--	18.00	36
2004	9.52	12.92	36	13.81	45%	13.27	39
2009	6.90	9.29	35	6.97	1	8.18	19
2014	5.03	6.71	33	4.74	(6)	5.74	14

Source: House Research Agency 4/82

We were also asked to review the Bradley Lake analysis for accuracy and completeness. In Mr. Gallagher's Table III, the cost components are inaccurately summed. However, the energy cost computation is correct so there is no major flaw in the analysis. The construction cost estimates of both projects appear to include similar items, and the assumptions on financing appear reasonable.[3] Mr. Gallagher apparently used a project cost of $360 million and transmission costs of $70 million, compared to costs of $367 million and $47 million, respectively, cited in the Corps of Engineers' design memorandum. However, these cost differences do not have a major effect on projected energy costs. In short, we believe Mr. Gallagher's analysis was both complete and reasonably accurate.

* * *

We hope the information presented in this memorandum is helpful. If you would like additional information or would like to discuss the information presented here, please call.

[3]The "financing expense" included in Mr. Gallagher's analysis was not verified. We simply used the ratio of financing expense to total construction costs to determine a similar expense for the Susitna project.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 683
Title: Approving Bradley Lake hydro-electric project; and effec. date
Sponsor: Governor
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce and Economic Development
Program Category Affected: Development
BRU, Program or Subprogram(s) Affected: Alaska Power Authority

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: George Matz Phone: 465-2079
Division: Dept. of Commerce and Economic Development Date: 2/11/84

Approved by Commissioner: Richard A. Lyon Date: 2/11/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Legislative Digest

A Forecast and Review

February 25, 1984
No. 7/84

Bargaining In Billions: OFFICE COPY

BLACKMAIL FOR "SUSITNA FUND"

Repeal of the so-called Susitna "blackmail clause" may be linked to the Governor's Major Projects Fund, and a new proposal to channel a portion of those revenues to Susitna and Bradley Lake. The inclusion of Bradley Lake in the potential compromise may also be significant as a future alternative and compromise should Susitna falter. The problem with the Susitna "equity/blackmail" clause--attached to the authorization of the four-dam pool now in controversy--is that it presents a "catch-22" situation, especially for Susitna backers and Southcentral region lawmakers. The clause effects $280 million in state grants (a gift) already invested in the four dams, and would convert that equity to interest bearing debt/equity if $5 billion is not invested in Susitna by 1991.

The short term debt used to construct the four dams is now coming due, beginning in May. This means the state must either: (1) appropriate and pay cash for the remaining $200 million in short-term debt, (2) finance the remaining $200 million with longer term revenue bonds, or (3) go into default.

The state and the Alaska Power Authority have proposed financing the remaining debt with longer term revenue bonds, (option 2). However, this requires (for bond buyers) evidence of feasibility and ability to repay, which means power-use contracts with the communities to be served. However, the communities to be served would not sign those agreements unless guaranteed that their wholesale power rates would be at, or below, their present alternative diesel capacity. Hence, the Alaska Power Authority has proposed a rate stabilization package, requiring $35 million initially (as a bond reserve) and a total of $65 million. On this basis bond buyers appear to have assurances they need to buy the bonds. (continued page 5)

Projects Bills Moving Quickly

The six capital projects bills are now moving swiftly in the House and Senate. The swift pace of the bills means project lobbyists had best be alert concerning their projects. By the end of this week each House will probably have sent their three bills to the "other House." The bills will quickly find their way to the Finance Committees where they will "pause" for a time to get finishing touches. The bills are: HB-635, Development, HB-636, Transportation, HB-637, University of Alaska, SB-364, Erosion Control, SB-403, Education, and SB-420, Water and Sewer.
(continued page 4)

-- Inside --

Bargaining Over The "Blackmail Clause"

(Continued from page 1)

However, the Susitna "equity/blackmail" clause presents further problems if buyers are to be attracted. What the clause means to bond buyers is that they do not know whether their risk should be assessed against $200 millio. (present remaining debt), or $480 million, should the blackmail clause come into effect and grants be converted to debt. It is as if the bond buyer is being asked to take a second mortgage behind Susitna, which is an unlikely position for either buyers to take or bond houses to recommend. What is remarkable about the four-dam package is that the combined project is already salted with $280 million in grant dollars and apparently still fails feasibility tests without further subsidy.

How did we get to this position. Well, of course things were different back when the dams were authorized and original appropriations made. The state was wallowing in enough money that these latter costs might easily have simply been appropriated if need be. If things were to be done over again, with benefit of hindsight, certainly with a $280 million gift to the projects, the users (communities) would have been required to sign off on power use contracts before construction began and assume a share of the risk based on energy cost projections. They might have won big had the energy crisis continued, or lost. But that's the way most energy projects are financed.

Now the four-dam financing package is all tangled up with Susitna. The problem for Susitna backers and Southcentral lawmakers is that they may have to "give up" something they thought they had, something no politician likes to do. The Railbelt lawmakers would like to maintain what they feel are political guarantees on Susitna. If they give up the "blackmail clause" they will want some similar provision such as guarantees for Susitna in the Major Projects Fund. If they can't get pound for pound collateral for trading the "blackmail

(continued from previous column)
clause", then some kind of reduced collateral will have to do. Lastly, any politician wants to "save face".

The legislature could up and pay the $200 million due and maintain the "blackmail clause", but it would be politically difficult to squeese $200 million out of the current capital pie. Next, they could do what the APA and Sheffield Administration propose, and devise whatever they can as a collateral payment for repealing the clause. Lastly, the state could "default", a move that would leave a terrible fiscal mess and likely a negative impact on state and local bond ratings of all kinds. Default would most certainly kill any chances of financing Susitna, or similar large scale state related revenue bond projects, unless the state were to use its own cash dollars.

The situation is not a happy one for anyone. Even the four-dam pool communities find that the dams produce no "rate benefits" presently, or are likely to in the near future. Perhaps the only lament is that everything would have been wonderful if energy rates had soared as projected.

Eklutna Where Are You ???

With the major legislative capital bills now being kicked into their respective "other houses", the biggest missing piece from those bills is the Anchorage Eklutna water project. The giant $220 million project, designed to meet Anchorage water demands in the late 1980's, received $13.7 million in 1982 and $22.5 million last year. In November 1983, Anchorage voters also committed to the project with approval of $55 million in local bonds. Plans called for 25% of funds to be local and 75% to be state ($55 million vs. $165 million).

A push and pull over Eklutna could develop in the latter stages of capital bill funding within the legislature, or or negotiations between the executive and the legislature.

HB

684

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 1984

The Honorable Joe Hayes
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making a special appropriation to the Alaska Power Authority. This special appropriation is for rate stabilization for the utilities that will be purchasing power from the Lake Tyee, Swan Lake, Terror Lake, and Solomon Gulch hydroelectric facilities. The money will be used to reduce the wholesale power rate for these utilities during the early years of the operation of the hydroelectric facilities when hydroelectric costs will be significantly higher than their projected costs for diesel generation.

At the current stage of negotiations on the power sales agreements the rate stabilization fund is treated as a grant, and the special appropriation bill reflects this approach. However, the authority is still looking at the possibility of funding rate stabilization with a loan rather than a grant. If the loan approach is used, an amendment to this bill will be proposed to reflect the change.

Sincerely,

Bill Sheffield
Governor

LEGISLATIVE BRIEFING
LABOR AND COMMERCE COMMITTEES
PROPOSED RATE STABILIZATION FUND

A major issue involved with the establishment of the Energy Program for Alaska's Four Project Pool is the cost of power in the early years of operation. As is often the case with hydropower projects, the high fixed cost of bringing the projects on-line combined with relatively low utilization in the early years and lower than expected costs of operating diesel units has meant that the cost of power will exceed that of existing diesel generation. The Alaska Power Authority has, therefore, suggested a Rate Stabilization Plan that would provide an entry rate competitive with existing generation, protect the communities from rate shock, and allow the communities access to hydropower until the project's capacity is utilized enough to make it more desirable than diesel generation.

The power sales agreements proposed to the communities involved in the Four Project Pool recognize that the full power cost of the Power Authority's hydroelectric project will initially exceed that of the purchasing utilities' existing generation. This situation is likely to continue for several years until the increased usage of hydroelectric power brings its unit cost down and the unit cost of diesel generation, including the cost of additional generating capacity increases. The attached graph illustrates this relationship. It shows, in concept, the average unit revenue requirements with and without the hydroelectric projects. The average unit revenue requirement represents the total costs projected to be paid by the utility from sales revenue in each year divided by the forecasted sales of electricity. In the long run this approximates the average rate per unit of electricity sold to each type of customer including commercial, industrial, and residential.

The intent of the Rate Stabilization Fund is to offset the higher costs of the hydroelectric projects in these early years in amounts equivalent to the costs avoided by not operating diesel generation. The amount of the Fund is represented by the shaded area on the graph. The amount initially deposited in the Fund and the annual amounts withdrawn from the Fund to offset each utility's power costs from the Power Authority are established in advance and the power sales agreement will be conditional upon the establishment of the Fund. The calculations to determine the size of the Fund and the schedule of payments are detailed and complex. They rely on large amounts of data and numerous assumptions and involve analytical models that have been developed over the last several months with the purchasing utilities.

In general, the methodology involves projecting each utilities' costs with and without the hydroelectric projects and determining the difference. The costs without the projects include diesel fuel, operation and maintenance costs, major repairs and overhauls, and additions or replacements of generating capacity. By purchasing power from the Power Authority, the utilities can avoid some or all of the costs associated with these items. If the amount paid for power from the Power Authority is equal to the avoided cost of diesel, then the resulting costs to the ratepayers is no greater than it would otherwise have been. Once the avoided cost of diesel exceeds the fully allocated costs of Power Authority power, there is no further need for rate stabilization payments. The point at which this occurs is generally referred to as the "cross-over point." At the cross-over

point power costs tend to stabilize as the slight increases in the operating costs of the hydroelectric projects are off-set by increasing power sales.

The amount in the Rate Stabilization Fund needs to be carefully considered as well as the variables that will effect it. The amount is approximately $61.5 million consisting of $35 million in a State grant, $12 million from the bond proceeds, and about $14.5 million in interest earned on the $47 million invested during the approximately eight years that the Fund would be needed. These funds would be held by the Bond Trustee, not the communities, and each utility would take annual credits that would be necessary to stabilize their rates. Each utility would have a specific, maximum amount which could be drawn from the fund. While this amount could not be exceeded, the utility could elect not to take the entire annual amount and the remainder would be held in the Rate Stabilization account and reinvested. In this way, the utility could use the excess money to provide for future rate shock insurance.

Due to provision in House Bill 9 (HB 9), an amendment to the Energy Program for Alaska which established the pooled debt concept, there is the possibility of return on the State's investment to these four projects. Because of the "system increment" mechanism imposed by HB 9, when a new project is introduced to the Energy Program, the debt service on that project is pooled with the projects already in the system. The projects then continue to pay on the pooled debt at their established proportionate share. System increments, however pose problems for rate stability if a heavily debt financed project enters the system. As part of the proposed power sales agreements, the Power Authority is proposing a "cap" on the amount that rates can be raised due to a system increment. (See attached graph.) This will provide protection for the Four Project Pool utilities from future rate shock due new projects being brought into the system while at the same time it will return a portion of the State's investment in these four facilities.

684
S29

Alaska Power Authority
Commissioner: D Lyon
Executive Director: Lary Crawford

Board meeting, 22 February 1984

Power Sales agreements;

1. Copper Valley: close to an agreement. Jim Billingame, manager of utilitiesstates that he shows some concern of confronting his public with a cost not seen before. Presently Glennallen diesel generation is .06 PKH and proposed APA power will be .07 PKW. This constitutes a 40% increase to some. Valdez is an emphatic NO! Average monthly consumption in Glennallen is 340 KWH and translates to $90 per month, while Valdez is running an average monthly bill of 550 KWH or $151. per month. A 40% increase can be devastating.

2. Wrangell: Matt Cole (position unknown) will be taking power sales agreement to city council Thursday night (Feb 23rd) for consideration. He says discussion (informal) with council members appears good and contract may be forthcoming.

3. Kodiak: David Neese, Mgr of Muni-power. Municipality has agreed to purchase power from APA. Two suggestions: possible loans to consumers and the establishment of an advisory board.

4. Ketchikan: Rick -?--. mgr of utilities says it looks very good, contract in the making with questions as to wording of legal documents.

5. Petersburg: NO!

Management study (status report) presented by Roger McMannus of Mead consultants for FY 84, FY 85, FY 86.

Presently APA employes 69 persons

Executive Dept----------4
Planning ---------- 9
Projects ----------18
Operations ---------- 7
Finance-Administration ---31

APA is asking for an immediate increase of 16, 17 more FY 85, and an additional 9 for FY 86 to total 111 persons.

1984 Susitna contingency fund: 3.18 Million dollars
Drilling request (wantana dam) 1.9 million. if approved this will leave in the contingency fund 1.28 million.

Competitive bidding on Watana Dam drilling will be let 27 Feb 84 with awarding of contract sometime in mid April 84.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 26, 1983

MEMORANDUM

TO: Representative Ron Wendte

FROM: Jack Kreinheder
Research Staff

RE: Power Rates for Alaska Power Authority Projects
Research Request 83-182

Suzanne Mullen of your staff requested that we review and summarize the power rate analysis provided to you by the Alaska Power Authority. This analysis compared power rates for the four projects now completed or under construction -- Solomon Gulch, Swan Lake, Terror Lake, and Tyee Lake -- under the following cases or scenarios:

- a base case, with all four projects under the current rate structure established by HB 9, and minimum expected power sales.
- power sales for Swan Lake assumed to increase to 90 percent of project capacity, with remaining assumptions identical to the base case.
- a "stand alone" case, in which all four projects are separated and responsible for the payment of their own debt service. Under the current system, debt service is pooled for the four projects.
- a stand alone case identical to the one just described, except that all projects are assumed to be fully utilized (all power sold). Swan Lake was assumed to be 90 percent utilized.

General Comments

In general, the rate calculations provided by the Power Authority appear to be accurate for the cases specified. Some of the power sales figures in the base case do differ slightly from earlier estimates provided by the Power Authority, but the differences are not major. However, the rate tables which were provided to you do not match all of the cases described in the cover letter. For example, the cover letter states that the analysis includes a case for Terror Lake, Swan Lake and Solomon Gulch under the current HB 9 rate system (Tyee excluded), and a case

for Terror Lake and Solomon Gulch (Tyee and Swan Lake excluded). However, neither of these two cases were included in the tables I reviewed. The only similar case was one for Terror Lake, Solomon Gulch, and Tyee Lake, with Swan Lake excluded from the system.

If you specifically requested these two cases from the Power Authority, you may wish to inform the Authority staff that the correct rate analysis was not provided for these cases.

Comparison of Rate Scenarios

The attached graph and table provide a summary comparison of wholesale power rates in FY 1986 for the four scenarios described on the first page of this memo. Under the "current system" or base case scenario, the Tyee project would have the highest power rate, at 16.6 cents per kilowatt hour (KWH), with progressively lower rates for Swan Lake, Terror Lake, and Solomon Gulch.

Under the second scenario, increasing utilization of Swan Lake from 40 percent to 90 percent reduces the power rates for all projects except Solomon Gulch. The explanation for the higher Solomon Gulch rate is rather complex, but basically, Solomon Gulch would have to carry a larger portion of debt service because of the lower system average rate which would result from increased utilization of Swan Lake. Swan Lake rates would decrease the most, but Terror Lake and Tyee would also benefit because of the debt-sharing formula included in the HB 9 rate structure.

The third scenario is the stand alone case. The power rates for this scenario should be compared to the current system case, rather than the 90 percent Swan Lake usage case. Separation of the four power projects would have a large impact on rates, with large rate decreases for the Solomon Gulch and Swan Lake projects, and substantial rate increases for the Terror Lake and Tyee Lake projects. The primary reason for the differences in rates is the debt/equity ratio of the four projects. Solomon Gulch has no debt, while Swan Lake was 26 percent debt financed. On the other hand, Terror Lake ane Tyee were 58 percent and 36 percent debt financed, respectively. The higher level of debt for these two projects means that their power rates would increase if they were separated from the current APA system, unless some other action were taken to limit their rates, such as the Petersburg proposal for the Tyee project.

Finally, the fourth scenario shows the power rates for the four projects on a stand alone basis, with full utilization of the projects' capacities, except for Swan Lake, which is 90 percent utilized. The largest decrease in rates under this scenario is for the Tyee project,

because of the low (26 percent) level of utilization for this project in the early years of operation. Swan Lake rates would also decrease substantially. Power rates for Terror Lake would decrease by a lesser amount, because it is already expected to be 68 percent utilized in its first year of operation. Solomon Gulch is essentially fully utilized now, and so would not have any rate decrease under this scenario.

I hope this information is helpful. If you have any questions or would like additional research, please let us know.

JK

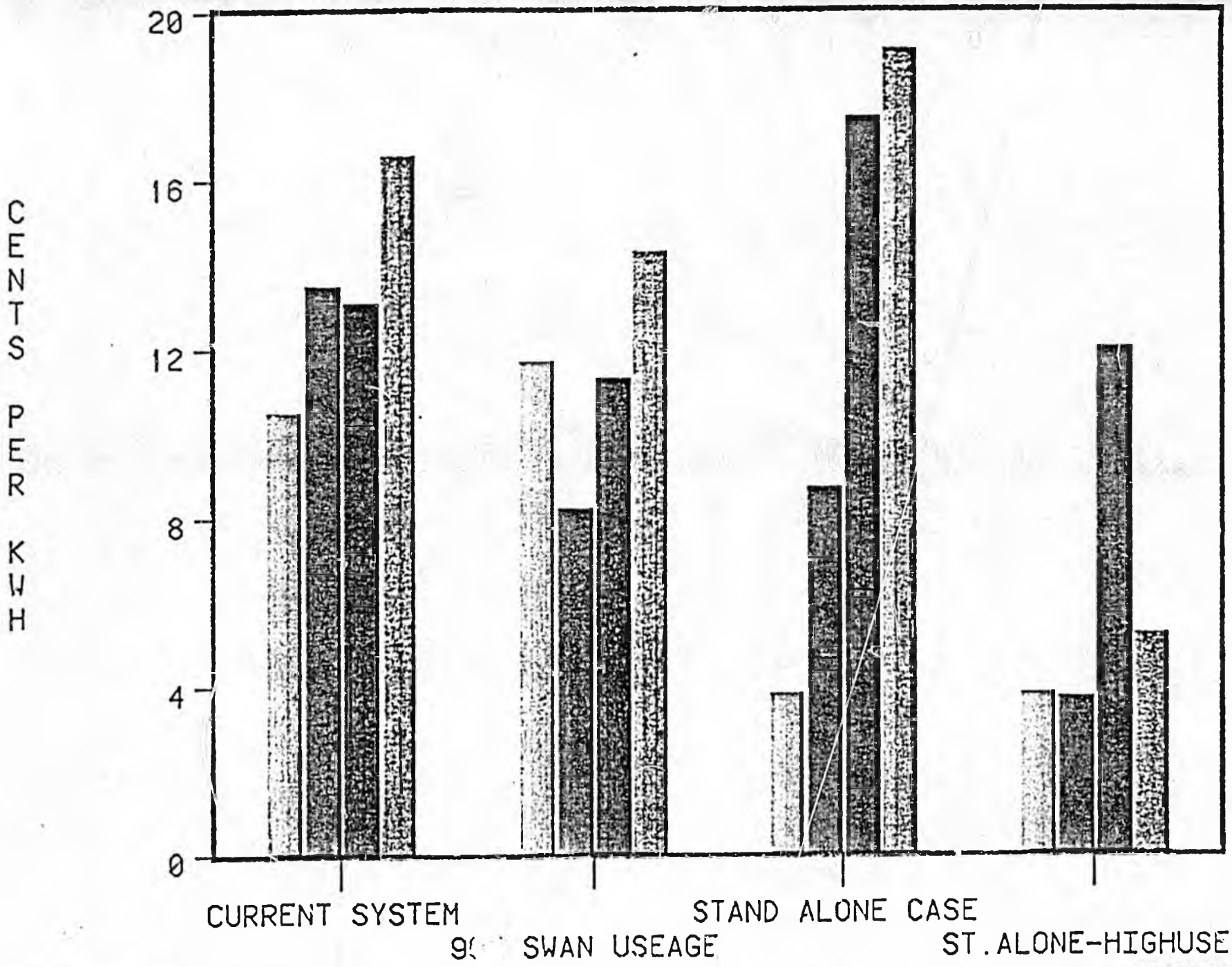
Attachments

COMPARISON OF ALASKA POWER AUTHORITY WHOLESALE RATES
FY 1986 -- Four Scenarios
(Cents Per Kilowatt Hour)

Project	Current System	90 Percent usage of Swan Lake	Stand Alone Case	Stand Alone Case High Usage
Solomon Gulch	10.5	11.7	3.8	3.8
Swan Lake	13.5	8.2	8.7	3.7
Terror Lake	13.1	11.3	17.5	12.0
Tyee Lake	16.6	14.3	19.1	5.2

Source: Alaska Power Authority, 5/83
House Research Agency 5/26/83

1986 - Four Scenarios



SOLOMON GULCH
SWAN LAKE

SCENARIO

TYEE LAKE

Prepared by: House Research Ag[illegible], 5/83
See text for further explanation.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 27, 1983

MEMORANDUM

TO: Representative Ron Wendte

FROM: Jack Kreinheder
Research Staff

RE: Power Rates for APA Projects
Research Request 83-182 (Additional Information)

Suzanne Mullen of your staff provided a set of additional rate projections made by the Alaska Power Authority and asked that we prepare a comparative graph and table similar to that which was included in my memo of May 26. The graph and table are attached, and a brief explanation of the rate comparison follows.

The first scenario shown in the graph and table is identical to the second scenario included in my previous memo, and is repeated here as a basis for comparison with the other cases. The power rates shown for this first scenario are based on the current four-project APA system in FY 1986, with Swan Lake power sales at 90 percent of project capacity.

The second scenario shows the effect on power rates of excluding the Tyee Lake project from the APA system, with the other three projects remaining in the system. The power rates for Tyee would increase from 14.3 cents to 19.1 cents in 1986 if it were separated from the system, unless additional power from the project could be sold or some other action was taken to reduce rates. The rates for the other three projects would all decline if Tyee were removed from the APA system, because they would not have to share the higher cost of Tyee power.

Swan Lake is excluded from the APA system under the third scenario, with Tyee, Solomon Gulch, and Terror Lake remaining in the system. The power rates for Swan Lake would decline by more than 50 percent, from 8.2 cents to 3.7 cents, if this separation occurred, and if 90 percent of the power from the project can be sold in 1986. The rates for Tyee and Terror Lake would increase substantially if Swan Lake were removed from the power system, because of the loss of Swan Lake's relatively low cost power to share the system debt service. Solomon Gulch would have a minor rate increase.

Under the fourth scenario, Tyee and Swan Lake are both removed from the APA system, leaving only Solomon Gulch and Terror Lake. Tyee and Swan would both have the same power rates as if they had independently been excluded from the system. Terror Lake rates would increase from 11.3 cents in the base case to 13.7 cents under this scenario, while Solomon Gulch rates would stay about the same.

Please contact me if you have any questions or would like additional information.

JK

Attachments as stated

COMPARISON OF POWER RATES FOR ALASKA POWER AUTHORITY PROJECTS

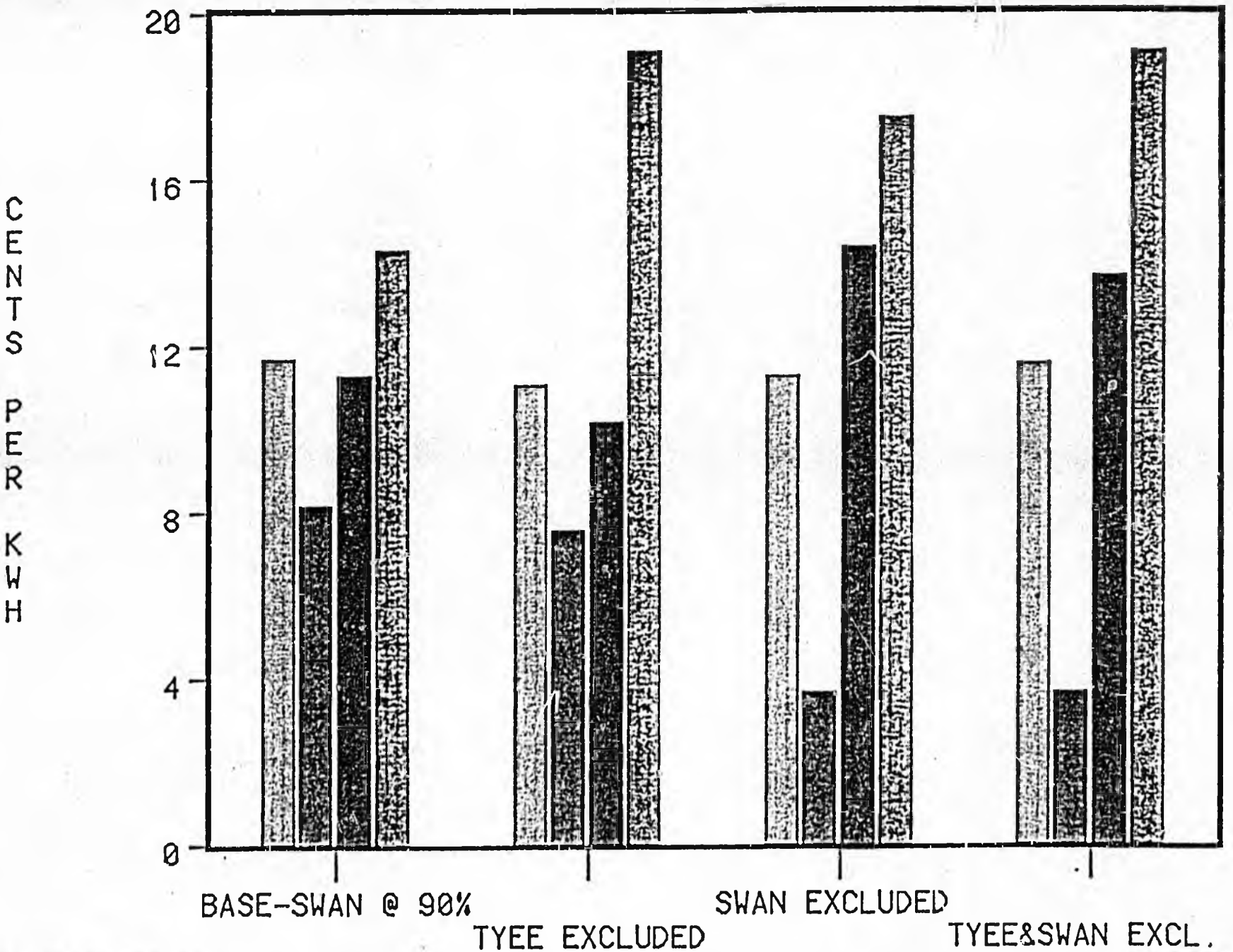
FY 1986 -- Four Scenarios
(Cents Per Kilowatt Hour)

Project	Base Case -- Assumes 90% Swan Lake Usage	Tyee Lake Exluded From APA System	Swan Lake Excluded From APA System	Tyee & Swan Excluded From APA System
Solomon Gulch	11.7	11.1	11.3	11.6
Swan Lake	8.2	7.6	3.7	3.7
Terror Lake	11.3	10.2	14.4	13.7
Tyee Lake	14.3	19.1	17.5	19.1

Source: Alaska Power Authority, 5/83
House Research Agency, 5/27/83

COMPARISON OF APA WHOLESALE POWER RATES

1986 - Four Scenarios (Version 2)



Scenario

Prepared by: House Research Agency, 5/27/83

See text for further explanation.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

April 12, 1983

MEMORANDUM

TO: Representative Ron Wendte

FROM: Jack Kreinheder
Research Staff

RE: Susitna "Blackmail Clause" [AS 44.83.398(b)(2)]
Research Request 83-145

Suzanne Mullen of your staff asked that we briefly explain the current effect of [AS 44.83.398(b)(2)], commonly referred to as the Susitna "blackmail clause," on the viability of the Susitna hydroelectric project and on other Alaska Power Authority projects.

As you know, the clause states that if $5 billion is not appropriated to the power development fund by July 1, 1986, the power rate for each project owned by the Power Authority will increase to a level sufficient to return to the State 10 percent of the State investment in the project each year. There has been some controversy over the definition of the term "State investment" as used in the clause, which has resulted in uncertainty over the power rates that would occur if the clause went into effect. In any case, the clause would result in a substantial increase in power rates, up to 100 percent or more for some projects. The higher rates under the clause would apply not only to current projects, but to Susitna and other future projects, as well.

The "blackmail clause" was enacted as part of SB 25 in 1981, and was intended to provide some assurance that Susitna or another large Railbelt power project would receive appropriations comparable to those made in 1980 and 1981 for power projects in other regions of the state. At that time, $5 billion was considered sufficient to pay for almost the full cost of Susitna and the other projects under development.

As a result of the sharp declines in State revenues over the last two years, the blackmail clause is now considered by the Power Authority and other experts to be an obstacle, rather than an aid, to development of Susitna and other projects. As you know, the Power Authority has introduced (through the Governor's Office) legislation to repeal the clause.

The basic problem is that falling State revenues have made it extremely unlikely, barring a complete reversal in oil price trends, that the State can afford to appropriate $5 billion for power projects by FY 86. Approximately $500 million has been appropriated for power projects to date, so that an additional $4.5 billion would have to be appropriated in the next three fiscal years to meet the requirements of the clause. The latest Department of Revenue figures (30th percentile) project about $8.8 billion in total general fund revenues from FY 84 to FY 86. At current levels, the operating budget alone would require about $5.8 billion over these three years, leaving only $3 billion for all loan and capital appropriations. Under more optimistic revenue forecasts, it would be more practical to appropriate the required $4.5 billion for power projects, but very little money would remain for other capital projects or loans.

Because it appears almost certain that the "blackmail clause" would take effect if it remains law,* the electric utilities in the Railbelt and other areas of the state have become concerned about the effect of the clause on them. The clause, as part of the Power Authority's rate statutes, must be included in every power sales contract negotiated by the Authority. Although the Authority has obtained power sales contracts for the Solomon Gulch, Terror Lake, and Swan Lake projects, the utilities involved are very concerned about the prospect that their rates for purchased power could double in three years.

The Power Authority's financial advisors also fear that the clause could affect the issuance of revenue bonds for existing and future power projects, because the bond markets could be concerned about the ability and willingness of utilities to pay the higher rates under the clause. The financial advisors have stressed the importance of having the Power Authority's first bond issues be as straightforward and risk-free as possible in order to establish a sound credit rating.

With respect to Susitna, both the Governor and the Federal Energy Regulatory Commission (FERC) have stated that construction cannot begin, nor will a FERC license be issued, until power sales agreements for Susitna power have been signed by Railbelt utilities. As mentioned earlier, the "blackmail clause" applies to future power projects, not just projects now under construction or in operation. One of the

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* There have been questions raised about the constitutionality of the clause, and it is possible that the clause would be struck down in court. The clause is currently the subject of a lawsuit by the Trustees for Alaska; however, the suit has been stayed pending legislative action on the measures to repeal the clause.

largest obstacles to the successful negotiation of the Susitna power sales agreements is that the power rates for Susitna depend heavily on the level of State funding for the project, which is uncertain at this time. The clause accentuates this problem by creating the prospect that Susitna power rates could be considerably higher than estimated by recent studies.

I hope this information is useful. If you have any questions or would like additional research, please let us know.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

April 15, 1983

MEMORANDUM

TO: Representative Jack McBride

FROM: Jack Kreinheder JK
Research Staff

RE: Swan Lake Hydroelectric Project
Research Request 83-89

In response to a request made by Rena Bukovich of your staff, this memorandum provides the following information on the Swan Lake hydro project near Ketchikan:

(1) the expected construction cost and completion date of the project;

(2) a comparison of the projected cost of power from the project and current power rates in Ketchikan; and

(3) the status of the power sales agreement between Ketchikan and the Alaska Power Authority.

PROJECT STATUS

The Swan Lake hydro project is expected to be completed and begin operation by January 1984. According to John Ferguson, the Swan Lake project manager for the Alaska Power Authority, the project was 84 percent complete as of March 31, 1983. The project will have an installed generating capacity of 22.5 megawatts and an annual firm energy production of about 70 million kilowatt hours per year.

The total completed cost of the project was estimated at $99.2 million as of February 1, 1983, including about $2 million in contingencies. At that time, $72.4 million had been spent by the Power Authority on the project. The financing for the project consists of $69 million in State appropriations and $35 million in short-term interim financing obtained by the Power Authority. The interim financing comes due in March 1984, and will have to be refinanced at that time, probably through the issuance of long-term revenue bonds.

CURRENT AND PROJECTED POWER RATES

As you know, concerns have developed in recent months about the high projected cost of power from the APA hydro projects now under construction, primarily in regard to the Tyee Lake project.* Initial rate projections done by the Power Authority early this year indicated that power rates from the Swan Lake project might also exceed the cost of diesel generation in the first years of project operation. However, current rate analyses conclude that the cost of power from Swan Lake will be competitive with diesel generation from the beginning of project operation, even without any additional State funding or other legislative action. In addition, there appears to be a good chance of marketing surplus power from the project to industrial users, thus reducing power rates substantially.

Current Diesel Generation Costs

Bob Arnold, General Manager of the Ketchikan electric utility, stated that the current cost of diesel power generation for the utility is about 13 cents per kilowatt hour. This cost is up from 12 cents per kilowatt hour (KWH) in 1982, despite the decline in world oil prices. Mr. Arnold said that there has been only a small drop in diesel fuel prices in Ketchikan (about five cents per gallon) and that this drop was offset by increased operation and maintenance costs for the diesel generating units.

Ketchikan also generates about 45 percent of its power requirements from three hydro plants. The average cost of power from these plants is only about 4 cents per KWH. These existing hydro facilities will continue to be operated after Swan Lake begins operation, unless increased utilization of the project makes it economic to shut the smaller plants down.

Swan Lake Power Rates

The current "base case" power rate for Swan Lake is expected to be about 12.5 cents per KWH in FY 86, according to Mike Yerkes, Director of Operations for the Power Authority. This base case rate forecast assumes no additional State appropriations to the energy program and no sale of surplus power from Swan Lake. FY 86 is the critical year for power rates, because that is when the Terror Lake project would begin operation. Under the rate structure established last year by

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* For a more detailed discussion of the Tyee Lake rate situation, see my memo of 2/11/83 to Representative Clocksin (Request No. 83-39).

HB 9, each power project has a separate rate, but the debt service is pooled for all of the projects under the energy program for Alaska. Therefore, the addition of new projects to the system can affect the rates for earlier projects such as Swan Lake.

The higher ratio of debt to equity for Terror Lake and the way in which debt is pooled among the four projects -- Swan, Tyee, Terror, and Solomon Gulch -- results in power rates for all of the projects peaking when Terror Lake is added to the system in FY 86.

As noted earlier, Swan Lake is expected to begin operation in January 1983. During the first few months of operation, until long-term debt is issued, the power rate will be set at a level to cover only operation and maintenance costs. This rate will probably be in the range of 4 to 5 cents per KWH. As of July 1, 1985, the power rate is projected to increase to about 9 cents per KWH, with a further increase in July 1986 to the 12.5 cents per KWH rate cited above. The rate is then expected to decline slowly to 11 cents in FY 90, 8.5 cents in 1995, and just over 6 cents in the year 2000. See attachment A for a chart of this rate trend.

It should be noted that these rate projections are somewhat arbitrary in that they do not account for the addition of other power projects such as Bradley Lake or Susitna. However, the future of these projects is still uncertain and their impact on power rates depends largely on the financing used to build them.

If these rate estimates are accurate, there should be no difficulty in marketing power from the Swan Lake project. The highest power rate would be in FY 86 at 12.5 cents per KWH, less than the 13 cents per KWH which it now costs Ketchikan to generate diesel power. If oil prices drop substantially or revenue bond interest rates are higher than expected by the Power Authority, a rate problem could develop for Swan Lake; however, this appears unlikely.

Sale of Surplus Power

About 40 percent of the generation capacity of the Swan Lake project would be used in the first years of project operation, based on current Ketchikan power demand and growth rates. Mr. Arnold has had discussions with the managers of industrial plants in Ketchikan who now generate their own power about the possibility of purchasing Swan Lake power. He believes it is likely that agreements to market surplus Swan Lake power can be negotiated and that the power output of the project can be fully utilized from its first year of operation.

Full utilization of Swan Lake's capacity would decrease the power rate from 12.5 cents to about 8 cents per KWH in FY 86. Under this arrangement, power sales to industrial users would be made on an interruptible basis, meaning that sales to industrial users would be reduced as the power demand of residential and commercial users increased in future years.

Full or increased utilization of the Swan Lake project would also reduce power rates for the other three projects under the energy program, because of the pooling of debt service among the projects. With higher utilization, Swan Lake would pay for a larger percentage of the debt service for all the projects. This effect is most important for the Tyee project because it has the highest power cost of the four projects. For Tyee, full utilization of Swan Lake would reduce the power rate from 16 cents per KWH to about 13.5 cents.

This lower rate would substantially improve the marketability of Tyee power, although a further decrease in rates through other means could still be necessary. It should be noted that increasing the utilization of Tyee itself would be the most effective means of lowering the power rate from that project. Consideration is being given to this option, but the market for surplus power in Petersburg and Wrangell appears weaker than in Ketchikan. One longer-term option would be to construct an intertie between the Tyee and Swan Lake projects, in order to make additional capacity available to Ketchikan when the power from Swan Lake is fully utilized. The Power Authority is currently conducting a study to evaluate this option, as well as other power sources for Ketchikan.

Attachment B illustrates the relationship between increased utilization of Swan Lake and power rates for the project. The figures also show that Swan Lake covers an increasing percentage of debt service for the energy program as utilization rises. This increasing share of debt borne by Swan Lake is what causes the decline in power rates for other projects.

The one drawback or limitation to the increased utilization of Swan Lake is that the contracts for the sale of surplus power will not be firm take-or-pay contracts. This means that if an industrial purchaser shuts down because of market conditions or a strike, for example, the purchaser will not have to pay for the power which is not used. As a result, the power rate paid by the Ketchikan utility would have to revert to a higher rate to cover the debt service and operating costs of the project.

This situation would not be as problematic for Ketchikan as for Petersburg and Wrangell, because the highest rate for Ketchikan would still be below the cost of diesel generation (according to current estimates).

However, for Petersburg and Wrangell, the increased power rate resulting from reduced utilization of Swan Lake could be higher than the cost of diesel generation for these communities. Therefore, Petersburg and Wrangell may be reluctant to sign power sales agreements based on a power rate that depends on full utilization of Swan Lake. It may be necessary to implement some type of "backup plan" based on State appropriations or loans to ensure that the power rates for these cities will not exceed an acceptable level.

The Power Authority Board of Directors will consider the power rate issue at their board meeting scheduled for Monday, April 18 in Juneau.

SWAN LAKE POWER SALES AGREEMENT

An agreement for the purchase of Swan Lake power was signed by the Power Authority and the City of Ketchikan in the spring of 1982. The agreement now needs to be revised to incorporate the substantial changes made by HB 9, which was enacted at the end of the 1982 legislative session. The original agreement specified that the contract was subject to statutory changes and would be changed to reflect any changes.

The Power Authority and the City of Ketchikan decided last fall to wait until the end of the current legislative session before revising the existing contract, rather than risk having to revise the contract a second time if changes to the Power Authority's statutes are made during this session. As the project will not begin operation until at least January 1984, this delay should not have any significant effect on the project.

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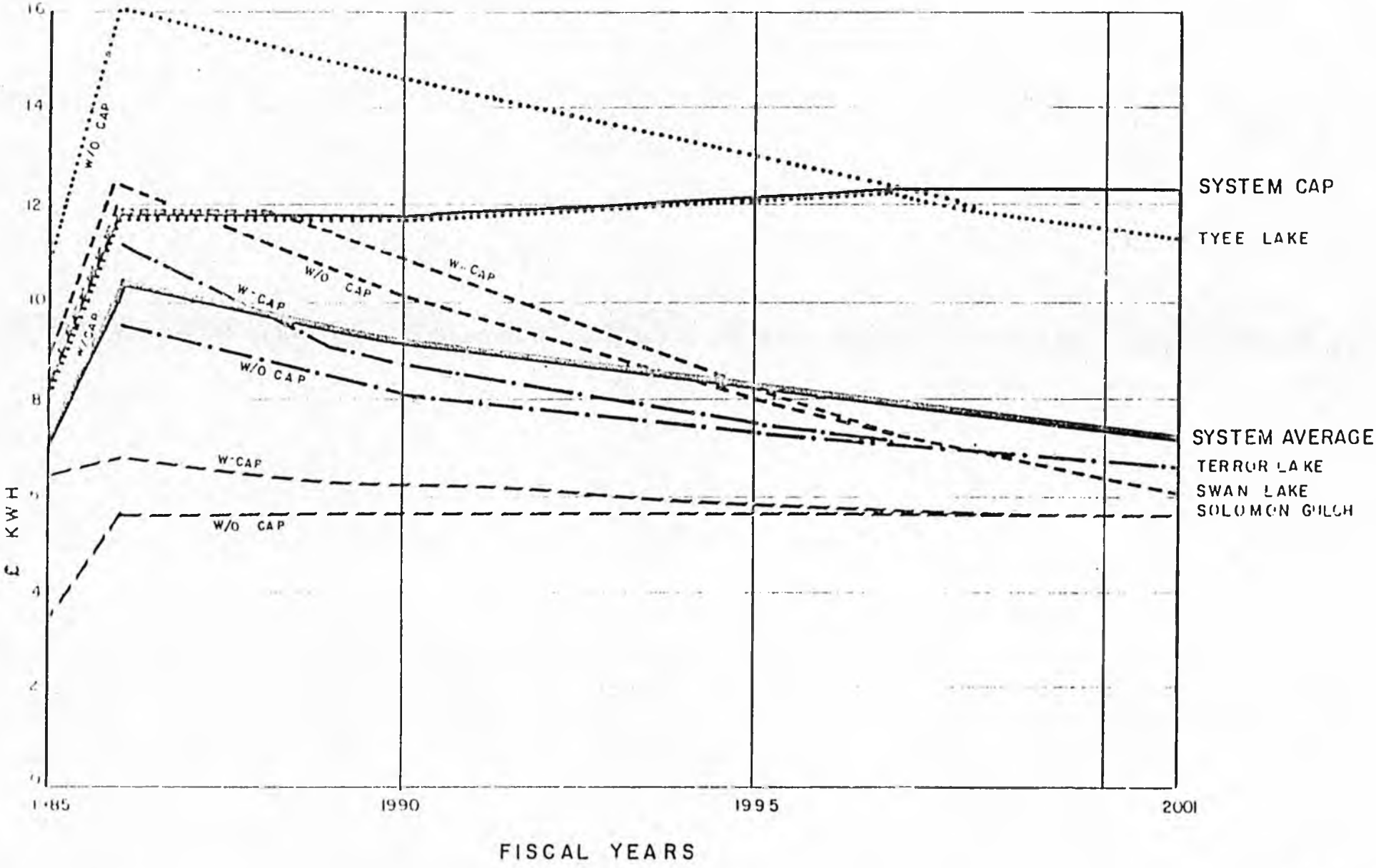
I hope you find this information useful. If you have any questions or would like additional research, please do not hesitate to call.

Attachments

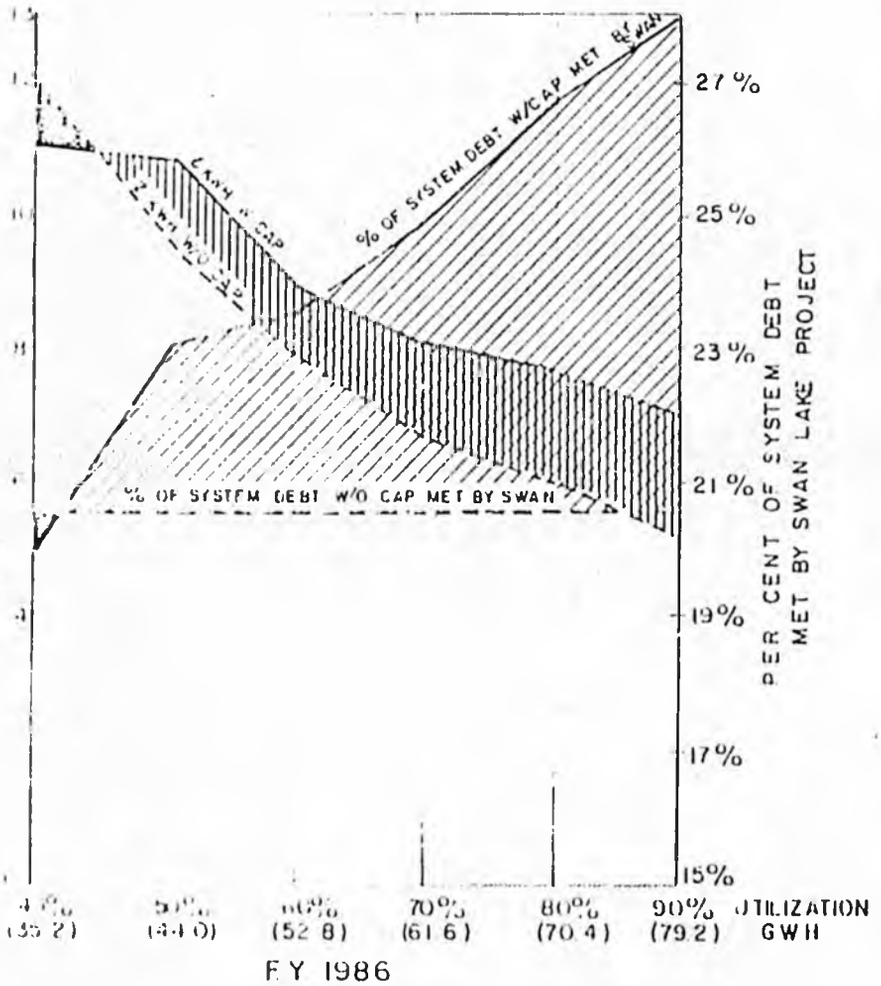
HOUSE BILL 9
BASE CASE POWER RATE STRUCTURE (1985-2001)

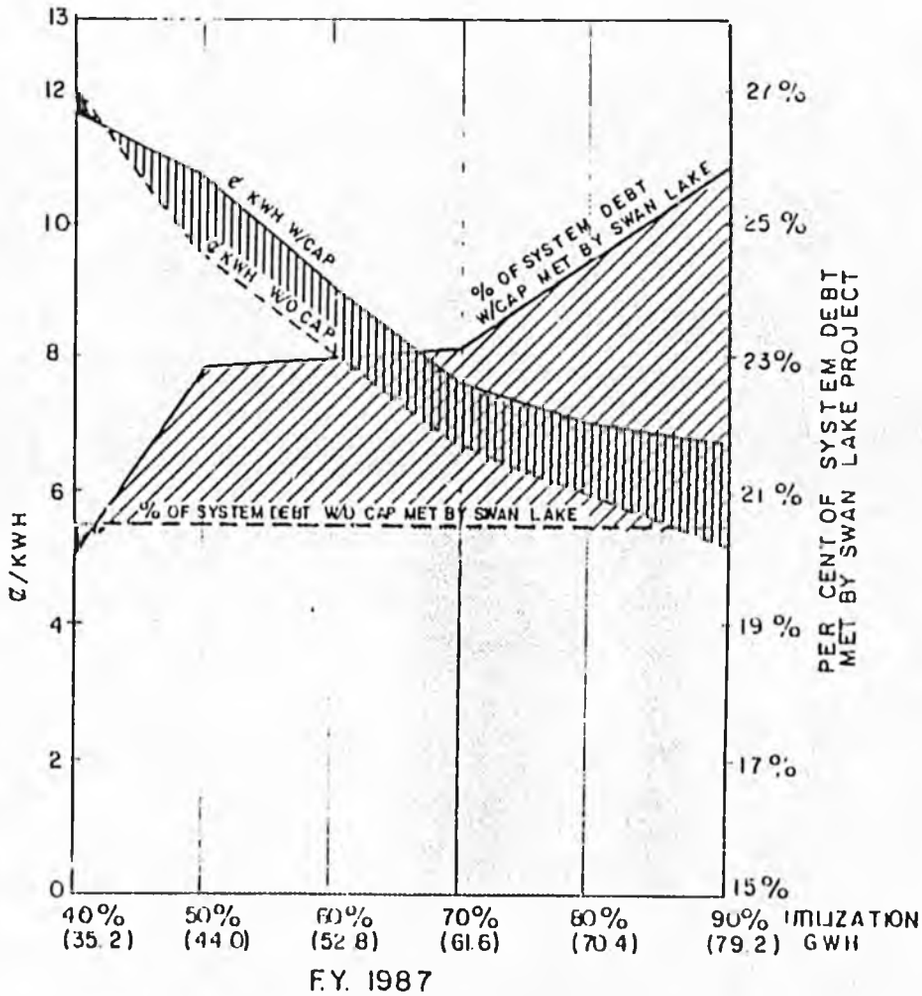


Attachment B

UTILIZATION ANALYSIS FOR THE SWAN LAKE PROJECT

F.Y. 1986, F.Y.1987





ANALYSIS:

- AS UTILIZATION OF SWAN LAKE INCREASES THE "WITHOUT CAP RATE" AND THE "WITH CAP RATE" DECREASES
- THE AMOUNT OF TOTAL SYSTEM DEBT COVERED BY SWAN LAKE BETWEEN F.Y.1986 AND F.Y 1987 DECREASE AT EACH LEVEL OF UTILIZED CAPACITY.

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Pouch Y, State Capitol
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(907) 465-3991

February 11, 1983

MEMORANDUM

TO: Representative Don Clocksin

FROM: Jack Kreinheder
Research Staff

RE: Lake Tyee Power Costs and Project History
Research Request 83-39

You requested that we summarize the current status of contract negotiations for the sale of power from the Lake Tyee hydro project. You asked that we address the expected cost of power from the project, current power costs in Petersburg and Wrangell, and alternatives for reducing Tyee power costs to marketable levels.

The attached letter from the Alaska Power Authority outlines the sequence of construction cost estimates for the Tyee project and the decisions made by the Power Authority Board concerning project construction.

It is important to emphasize that the power cost projections in this memorandum are preliminary and are currently being revised by the Power Authority to reflect detailed financing arrangements for the Tyee project. These revised cost estimates will probably be somewhat lower than the figures cited here.

SUMMARY OF FINDINGS

The basic power marketing problem for the Tyee project is that the wholesale cost of power from the project in its first years of operation is projected to be about 40 percent higher than current power generation costs for Petersburg and Wrangell. The Power Authority estimates that Tyee power will cost about 16.5 cents per kilowatt hour (KWH) in FY 1986. Recent press reports have cited claims by Petersburg officials that the retail cost of power from Tyee would be 100 percent higher than current levels. However, these claims are disputed by the Power Authority, as discussed later.

Power generation in Petersburg and Wrangell now costs about 12 cents per KWH and this cost is not likely to increase substantially over the next several years unless oil prices increase more than expected by most forecasters. These communities are understandably not willing

to sign contracts to purchase Tyee power at rates substantially higher than current generation costs.

If no action is taken by the legislature to reduce Tyee rates, it appears that power sales agreements could not be obtained and the Power Authority would not be able to sell the necessary revenue bonds to repay the interim financing for the project. Although I did not research the possible steps the Power Authority might take in this situation to avoid a default on the Tyee debt, the Authority would probably be in a precarious financial position.

There are several possible approaches to reducing power rates for the Tyee project, most of which require more State money:

(1) Make an additional lump sum appropriation to the hydro program to reduce the amount of debt financing required for Tyee and other projects. About $70-80 million may be required to reduce Tyee rates to the level of current power costs. If desired, this appropriation could be structured as a loan, to be repaid to the State after Tyee power becomes competitive with the cost of power from present generation facilities.

(2) Appropriate a smaller amount of about $20 million only to the Tyee project and enact temporary legislation which would reduce only the Tyee rates. (Under present law, an appropriation to any power project would reduce the power rates by an equal percentage for all projects.)

(3) Make annual appropriations of about $2-3 million to cover a portion of the debt service costs for the Tyee project, allowing power rates to be reduced until the project becomes competitive with diesel generation costs.

Administration Choice → (4) Amend the rate structure under present law to spread the higher cost of Tyee power among other power projects.

(5) Restructure the long-term debt for the Tyee project to reduce debt service costs in the early years of project operation (the viability of this approach is uncertain).

TYEE POWER COSTS

The following table shows projected wholesale power costs for the Tyee project from FY 85 to FY 90.

PROJECTED TYEE WHOLESALE POWER COSTS
(Cents per Kilowatt Hour)

Fiscal Year	1985	1986	1987	1988	1989	1990
Power Cost	12.8	16.5	16.7	16.8	17.0	17.2
Power Sales (Millions of KWH)	32.0	32.8	33.6	34.5	35.3	36.2

Source: Alaska Power Authority for FY 85-86, adjusted by House Research Agency for FY 87-90 for 4 percent annual increase in debt service cap, 3 percent average annual load growth for all APA projects, and 5 percent annual inflation in operation and maintenance costs. Debt service calculations based on 35-year revenue bonds at 11 percent interest, with a 1.1 coverage level.

Again, these projections are preliminary, and more accurate figures will be available within a week. These projected rates are probably on the high side because they do not account for the interest earned on debt reserve funds or the lower-than-expected cost of the interim financing for the project. The Power Authority's financial advisors are now working to incorporate these and other adjustments to arrive at more accurate rate projections. One uncertainty in these rates is that they assume the Wrangell sawmill will buy about 7 million KWH per year -- about 20 percent of total projected power sales from the project. The sawmill was shut down for over a month this winter and could be an uncertain buyer of Tyee power.

The Tyee project is scheduled to be completed in early 1984, and may be on line as soon as October 1983 if work continues at its current pace. When the project begins generating power, the initial rate will be set to cover only operation and maintenance costs (4-5 cents/KWH) until the start of the 1985 fiscal year, when the rate will increase to cover the costs of long-term financing for Tyee and the Swan Lake project. The power rate will increase again in FY 86 to reflect the cost of

revenue bonds issued for the Terror Lake project. After 1986, the Tyee power rate will probably increase by about two percent per year.*

PROJECT FINANCING

The completed cost of the Tyee project is now estimated at $115 to $125 million. Construction of the project has been financed by $82 million in appropriations from the legislature and $50 million in interim financing. This interim financing will have to be repaid in the spring of 1984 through the issuance of revenue bonds, additional State appropriations, or a combination of the two. The Swan Lake project also has $50 million in interim financing which will be repaid at about the same time. Terror Lake has $100 million in short-term debt which will be due in 1985.

HB 9 RATE STRUCTURE

The financing and power costs for Tyee are tied to those of other Power Authority hydro projects under legislation enacted in 1982 (CCSHB 9 -- Chapter 155). This statute requires each hydro project to pay its "proportionate share" of the total debt service costs for all projects, as determined under a formula in the statute. Basically, the statute means that if the construction cost of Tyee is 25 percent of the total cost of all projects in the system, Tyee must pay 25 percent of the total debt service costs for all projects. The wholesale power rate for each project is then determined by adding operation and maintenance expenses to debt service costs and dividing this sum by the expected power sales for each project.

The HB 9 rate structure replaced the "postage stamp" or single statewide rate formula which was enacted in 1981 by SB 25. The major purpose for the change in the rate structure was to increase the incentive for building cost-effective and properly sized projects, by linking power costs more directly with project construction costs.

When the conference committee on HB 9 reviewed rate projections for the four power projects, there was concern that the rates for the Tyee and Swan Lake projects would be excessive under the HB 9 rate structure. As a result, the committee included in the legislation a limit or cap on the debt service cost for each project. Under this cap, no project must pay more than the average debt service cost for all Power Authority

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* The rate calculation is complex, but the three main factors that affect the project rates after 1986 are: inflation in O&M costs, the rate of growth in power sales, and the 4 percent annual increase in the HB 9 debt service cap. The addition of the Bradley Lake project or other projects could also affect Tyee rates substantially.

projects, plus a certain percentage which increases each year (8 percent in FY 85, 12 percent in FY 86, and so on). Although this debt service limit reduces the power rate for Tyee substantially, it does not reduce the rate to a marketable level.

Because the debt service costs are pooled for all projects in the system, an appropriation to Tyee or any other project would reduce the power costs for all projects by an equal percentage.

PETERSBURG AND WRANGELL POWER COSTS

Current Costs

Exact power costs for Wrangell and Petersburg were not readily available at this writing. However, the busbar generation cost (equivalent to the wholesale power cost from Tyee) for both communities is approximately 12 cents per KWH. Wrangell generates all of its electricity from diesels, while Petersburg obtains about half its power from the Crystal Lake hydro project, which was built many years ago. The Petersburg utility apparently has a higher level of debt than the Wrangell utility, which offsets the lower cost of power from the hydro facility.

While most of the recent publicity concerning the Tyee project has focused on the city of Petersburg, the Power Authority staff maintains that Wrangell would face a larger rate increase if Tyee power were purchased at current projected rates than would Petersburg. According to Mike Yerkes, who is negotiating the Tyee contracts for the Power Authority, this is because Wrangell would convert entirely from diesel generation to Tyee power, while Petersburg would continue to generate about half its power from the low-cost Crystal Lake hydro project, which was built decades ago.

Future Costs

The rate of increase in future generation costs for Petersburg and Wrangell is one of the basic questions to consider in determining what approach the State might take to the Tyee situation. The cost of diesel fuel is the largest expense component for these utilities, averaging about 9-10 cents per KWH generated over the past year. As you know, the future of world oil prices is highly uncertain and the range of forecasts is considerable. However, the most recent Department of Revenue forecast projects a 28 percent cumulative decrease in the real price of oil through FY 87. In nominal terms, oil prices in FY 88 are forecast to be about the same as today.

If this projection is accurate, it may be the early to mid-1990s before diesel generation costs would increase to the level of Tyee

costs. However, an additional consideration is that Wrangell and Petersburg may have deferred expansion of their generation facilities in expectation of receiving Tyee power. Therefore, new generators might have to be added to meet increases in load growth during the 80s, which would increase power rates.

Retail Power Rates

Part of the publicity over the Tyee project centered on claims by Petersburg officials that they would have to add about 9 cents per KWH to the wholesale cost of power from Tyee for distribution and overhead costs, thus doubling the retail power costs from current levels. The Power Authority staff believe this figure is highly inflated and does not account for savings in diesel maintenance costs which would occur when Tyee comes on line. The staff is preparing documented estimates of what they feel are more realistic distribution and overhead costs.

Other Concerns

It is important to note that the cost of power from current projects is not the only concern of Petersburg, Wrangell, and other cities or utilities to be served by Power Authority projects. These groups are also concerned that under the current rate structure, their power rates could increase substantially as additional projects are added to the system. Whether this would occur depends on the level of State funding for the additional projects. If the ratio of State funding to bonded costs for new projects is lower than the average for current projects, the rates for current projects would rise.

The "Susitna Blackmail Clause" [AS 44.83.398(b)(2)] is an additional source of concern for municipalities and utilities, as the clause could dramatically increase power rates if not repealed. This clause would increase power rates by requiring a 10 percent annual return on investment to the State if $5 billion has not been appropriated for power projects by 1986.

POSSIBLE APPROACHES TO THE TYEE RATE PROBLEM

There are several possible approaches to the Tyee rate problem, as summarized earlier. The choice among them is complex and depends on basic policy issues relating to the power development program. Some of the more important factors to consider are discussed below.

Lump Sum Appropriation

This approach would be the most expensive; preliminary calculations indicate that $70-80 million would be necessary to lower the Tyee power rates to the cost of diesel generation.* Although the outstanding debt on the Tyee project is only $50 million, the pooling of debt service among all projects under the APA rate structure requires a larger appropriation to reduce Tyee rates sufficiently. A lump sum appropriation would also lower the power rates for Solomon Gulch, Swan Lake, and Terror Lake by an equal percentage (about 40 percent). This raises two questions.

First, is it necessary or desirable to reduce the power rates for other projects that already have reasonably priced power? Second, what effect would lowering the rates for all projects now on line or under construction have on future projects? Lowering the average power rate would reduce the debt/equity ratio for current projects and require a higher level of State appropriations for future projects unless power rates were to be increased for all projects.

Special Tyee Legislation

If special legislation were passed so that a one-time appropriation would be used to reduce only Tyee power rates, roughly $20 million would be required to provide the necessary rate reduction. However, this approach could be viewed as creating a precedent for "bailing out" high-cost projects which might result in similar problems for future projects.

Annual Appropriation

In lieu of a one-time appropriation, the legislature could make annual appropriations of about $2.4 million to cover the debt service shortfall that will result if power is sold at 12 cents rather than 16.5 cents per KWH. These appropriations would continue and eventually diminish

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* I have not included these calculations here for the sake of brevity, but can provide them if desired.

to zero as the cost of diesel generation increased to match the cost of Tyee power or the cost of Tyee power fell. Although it is uncertain how long these annual appropriations would be required, depending on fuel escalation rates and other factors, the total cost would probably be half or less the cost of a lump sum appropriation.

The Petersburg and Wrangell utilities would be eligible for rate relief under the power cost assistance program, but only for the portion of retail rates above 16 cents in FY 86. This floor increases by one cent each fiscal year. Also, cost assistance is available only for the first 600 KWH per month sold to each customer. Therefore, a separate appropriation specifically for Tyee debt service might be required each year in order to reduce power rates sufficiently.

Modification of Rate Structure

It would be technically possible to modify the statutory rate structure to reallocate at least part of the Tyee debt service to other lower cost projects, primarily Solomon Gulch and Terror Lake. The communities served by these projects would probably strongly oppose this change. In addition, the bond markets could view this juggling of the rate structure with some concern.

Restructure Project Debt

It may be possible to reduce the debt service costs for the first few years of operation of the Tyee project by borrowing additional funds with which to pay part of the interest on the bonds for several years. According to Sterling Gallager of John Nuveen and Associates, it is legally possible to have this type of arrangement for five years without violating federal arbitrage regulations. However, the financial viability of this approach is uncertain and would require additional research.

Another possibility would be to use a geometric financing approach, in which the debt service schedule would be shifted so that debt service costs would be lower in the early years and increase gradually as the project power sales increased. This approach has been used in a few utility bond issues, but it is uncommon and would also require more investigation to determine its viability for the Tyee situation.

IMPLICATIONS FOR OTHER POWER PROJECTS

A number of legislators and other observers have expressed concern about the possibility of the Tyee marketing problem occurring with Susitna or other hydro projects. This is a controversial issue with numerous points of view, but a few observations may be helpful in understanding the problem.

It is important to recognize the distinction between the economic feasibility of a hydroelectric project and the marketing feasibility of the same project. Although the economic feasibility of the Tyee project is an issue itself, the point is that even a clearly feasible hydro project will usually require some sort of grant or low-cost financing to lower power rates to marketable levels in its early years of operation. After a period of years, increasing power sales and higher fuel costs for the alternative generation source should result in a break-even point, after which the hydro power becomes less expensive. The initial subsidy to the project can then be repaid, if necessary.

In the case of the Tyee project, the continually increasing cost estimates for the project made it difficult to determine how much State money was required to achieve marketable power rates. The power-marketing problem for Tyee is also accentuated by the fact that Tyee has the largest excess generation capacity of the four projects now on line or under construction -- only about 25-30 percent of the project's capacity will be used in the first years of operation. This lower level of utilization means that a higher proportion of State funds is necessary to obtain reasonable power rates.

A major element of the Tyee problem appears to be that neither the legislature nor the Power Authority placed sufficient emphasis until recently on the marketing of power from the projects under construction. Part of the reason for this apparent oversight is that in 1980 and 1981, State revenues were increasing rapidly and it was expected that most of the project costs would be funded through direct appropriations or low-cost loans, rather than by revenue bonds. With this expectation, power marketing was not an issue because of the low power costs. The sharp decline in State revenues has resulted in more reliance on debt financing, causing higher power rates and the marketing problem demonstrated by the Tyee project.

With respect to the Power Authority, an additional problem was the lack of staff with experience in marketing and rate issues. It was only about 10 months ago that the Power Authority hired someone with rate setting and utility experience. Until then, the focus of the staff

was more on the feasibility, design, engineering and financing aspects of power development.

A final contributing factor to the Tyee situation was that the revisions to the Power Authority rate structure enacted in 1982 by HB 9 were not based on a full assesment of the effect of these rate revisions on the marketability of power from Tyee and the other projects.

The likelihood of the Tyee rate problem occurring with other power projects is difficult to assess. The Power Authority appears to have made good progress in dealing with the marketing issue. Several measures have been taken to avoid the recurrence of the Tyee cost escalation problem, and a number of recent bids for construction of the Terror Lake and Anchorage-Fairbanks projects have been substantially lower than engineering estimates.

In addition, the Authority has proposed changing its procedures to require power sales contracts to be signed before project construction begins, and this was done for the Terror Lake project. In the past it has been difficult to obtain contracts because it was uncertain how much funding would be provided by the legislature, and there is a natural incentive for communities to lobby the legislature for additional funds to reduce their power rates. It may also be difficult to obtain pre-construction power sales agreements for the Susitna project because of the long lead time of the project.

The chances of the Tyee power marketing problem occurring with future power projects would be reduced if the legislature made certain it had sound estimates of the maximum appropriation necessary for power marketing purposes before approving construction of a project, and committed itself to the appropriation of the necessary amount. Any changes in the rate structure should also be made only after detailed evaluation of the impact on project power rates and marketability.

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I hope this information is useful. If you have any questions or would like additional information, please don't hesitate to call.

JK

Attachment

ALASKA POWER AUTHORITY

334 WEST 5th AVENUE · ANCHORAGE, ALASKA 99501

Phone: (907) 277-7641
(907) 276-0001

February 9, 1983

Mr. Jack Kreinheder
House Research Agency
Pouch Y
Juneau, Alaska 99811

Subject: Tyee Hydroelectric Project-Summary of Estimated Total Costs

Dear Jack:

As per your request, following is a brief summary on the sequence of events on the Tyee hydropower project primarily relating to cost. The summary of Board actions was extracted from our corporate minutes. Most of the actions taken by the Board were based on advice from myself and my staff.

On December 19, 1979, the Alaska Power Authority submitted a revised application to the Federal Energy Regulatory Commission (FERC) for the construction of the Tyee Hydroelectric Project in the vicinity of Wrangell and Petersburg, Alaska. Our engineers, R.W. Retherford Associates/International Engineering Company (IECO) estimated the total cost of the project at that time at $49,590,000 (1980$'s). With an allowance for inflation and interest during construction the estimated total capital investment at that time came to $53,333,000.

In September 1980, IECO submitted a revised cost estimate of $50,976,000 (August 1980$'s).

Early in 1981, the Power Authority retained EBASCO Services, Inc., to prepare an independent cost estimate. EBASCO subsequently estimated the total project cost at $96,693,000 (May 1981$'s). Escalated to the midpoint of construction, this would represent a completed cost of approximately $110 million. After reviewing the EBASCO estimate, IECO conceded that its previous estimates were low and IECO raised its estimate to $81,069,000 (June 1981$'s). EBASCO refuted this revised estimate.

Procurement of long-lead-time turbines began in July 1981 in anticipation of a FERC license. The Board of Directors was realigned by Statute in the latter part of July 1981. The FERC issued a license on August 5, 1981 and the award of several additional procurement and one construction contract followed almost immediately thereafter.

IECO continued to make monthly reports on the status of the project, including estimated total project costs. It is important to note that by the end of March 1982, IECO had increased its project estimate to $97,072,000,

including engineering costs prior to construction. In the March report the overhead transmission line was estimated to cost $12,840,000 plus a $6,000,000 contingency. Less than two months later, during the bid opening for that contract, IECO provided an engineer's estimate of $23,280,887.00--an estimate that is 24 percent above any previous estimate, including contingency funds. The actual low bid was even higher at $24,901,466.

Starting with the IECO estimate from the March 1982, report, adjusting for the actual low bid on the transmission line, and adding the estimated cost for a proposed separate substation construction contract, the estimated total project cost was increased by IECO to $110,133,000 (May 1982). This did not include approximately $5 million for owner provided insurance. During the months that followed, the total project cost has decreased and increased, slightly, as adjustments have been made for actual bids on relatively small procurement contracts..

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I trust this information is of assistance to you. If there is any further information you need, please call on me.

Sincerely,

Eric P. Yould
Executive Director

CC:
C. Conway
Comm. D. Lyon

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 10, 1983

MEMORANDUM

TO: Representative Jack McBride

FROM: Jack Kreinheder
Research Staff

RE: History of Hydro Projects in Election District 1
Research Request 83-54

You requested that we summarize the development of hydro projects in Election District 1, focusing on the Swan Lake, Lake Grace and Tyee Lake sites. As you know, the Swan Lake and Tyee Lake projects are under construction by the Alaska Power Authority, while Lake Grace was considered as an alternative to the Swan Lake site.

Existing Hydro Projects in Ketchikan and Petersburg

The City of Ketchikan's electric utility generates about 45 percent of its annual power production from three existing hydro facilities at Ketchikan, Beaver Falls, and Lake Silvis. The generation capacity of these hydro units is 4,200, 5,000, and 2,100 kilowatts, respectively. The first generating unit at the Ketchikan site was installed in 1938, with another unit added in 1957. The first Beaver Falls unit was installed in 1946, with two more generators added in 1954. The Lake Silvis plant was installed in 1968.

Ketchikan's remaining power demand is met by diesel generators with a total capacity of about 18,300 kilowatts. These diesel units will be retired except for standby generation purposes when the Swan Lake project is completed.

Petersburg generates about 50 percent of its current power requirements from the Crystal Lake hydro project. This project was originally developed in 1929, with a major expansion in 1955. The current generation capacity of the Crystal Lake plant is about 2,000 kilowatts.

The City of Wrangell presently generates all of its electricity from diesel plants.

Lake Grace

Lake Grace is located about 15 miles east of Swan Lake on the west side of Behm Canal. The proposed hydro plant at Lake Grace would have been substantially larger than Swan Lake in terms of power output and cost. The Lake Grace project would provide 25,000 kilowatts (KW) of capacity and 102 million kilowatt hours (KWH) of average annual energy, in comparison to 18,000 KW of capacity and 85.4 million KWH of energy for the Swan Lake project.

You expressed an interest in how the decision was made by Ketchikan to proceed with development of the Swan Lake hydro site, rather than the Lake Grace site. The principal basis for this decision was an appraisal report prepared by R.W. Beck and Associates in June 1977 for Ketchikan Public Utilities. This report evaluated the technical and economic feasibility and compared the cost of power for hydro developments at Swan Lake, Lake Grace, and Mahoney Lake, which is a smaller site.

The R.W. Beck report found that although hydro development was feasible at each of the three sites, Swan Lake was the most economic hydro alternative which would eliminate Ketchikan's reliance on diesel fuel. The average 10-year cost of power for the Swan Lake project was estimated at 6.7 cents per KWH, compared to 7.8 cents per KWH for the Lake Grace alternative. The Mahoney Lake alternative was competitive with Swan Lake with a power cost of 6.7 cents per KWH, but the Mahoney Lake site would not generate enough power to replace all of Ketchikan's diesel generation. A summary comparison of the three projects is included in Appendix A, taken from the R.W. Beck report.

You also indicated an interest in whether the U.S. Borax mineral development at Quartz Hill was considered in the evaluation of alternative hydro projects for Ketchikan. It appears that the power requirements of the Borax development were not given significant consideration, for at least two reasons. When the Borax molybdenum discovery was first announced in 1977, Borax planned to meet its power needs by constructing its own hydro project at Wilson Lake (this plan was later dropped because of strong local opposition, due in large part to the high sport fishing value of Wilson Lake). In addition, the City of Ketchikan was primarily concerned with meeting the power needs of its residents, not of mining or other industries outside of the city.

R.W. Beck recommended that Lake Grace and Mahoney Lake be reevaluated as additional hydroelectric developments when the power output from Swan Lake nears full utilization. Lake Grace is now within the Misty Fjords National Monument, which may make future development of this site more difficult. The Lake Grace area was withdrawn under federal land classification at one time as a power project site, but is unclear whether this withdrawal was superceded by the National Monument designation.

Swan Lake

The Alaska Power Authority prepared the following brief history of the Swan Lake project, which is expected to begin producing power by January or February of 1984.

> The City of Ketchikan, having made the decision to discontinue its reliance on the use of diesel electric generation to meet rising energy demands, authorized the engineering firm of R.W. Beck in September of 1977 to investigate the feasibility of developing, as a major hydroelectric generating resource, the Swan Lake Project which is located approximately 22 miles northeast of Ketchikan near the northern end of Carroll Inlet in the central portion of Revillagigedo Island.
>
> In June of 1978, R.W. Beck issued a feasibility report indicating that a hydroelectric project which would demonstrate a benefit/cost ratio of 1.25 could be constructed at Swan Lake at a total investment cost of $80,924,000. Subsequently, the City of Ketchikan, Ketchikan Public Utilities (KPU) authorized R.W. Beck to proceed with preparation of final design of the project.
>
> The 1980 Legislature through joint resolution authorized the Alaska Power Authority to issue bonds up to the maximum amount of $120,000,000 for financing the construction of the Swan Lake Project.
>
> Construction was initiated by KPU in November of 1980. Funding for project design and initial construction was secured primarily through the proceeds of loans from the Power Authority's Power Project Revolving Loan Fund.
>
> On May 28, 1981, the Power Authority loaned KPU $35,000,000 for construction from funds which had been raised through the sale of General Obligation Bonds.
>
> On May 21, 1982, the Power Authority and KPU executed an acquisition agreement under which, in return for providing funds to complete project construction, the Power Authority will receive title to the project and as operation of the project [begins] will provide sufficient power for the City of Ketchikan's needs via a Power Sales Agreement.

The total construction cost for the Swan Lake project is now estimated at $93.5 million in nominal dollars. The target completion date is April 1984; however, the construction work is ahead of

schedule and the project may be completed as early as January 1984. Swan Lake will have an installed generation capacity of 22.5 megawatts and an annual firm energy production of about 70 million KWH. The project is expected to have about 50 percent utilization in its first years of operation; that is, about 35 million KWH of the 70 million KWH available will be used by Ketchikan Public Utilities. The year in which the full capacity of Swan Lake will be consumed depends largely on the rate of increase in future power demand, which is uncertain. However, current Power Authority projections show the project being fully utilized in about 2002.

Lake Tyee

I believe that you have seen a copy of my memo on the Tyee project to Representative Clocksin, dated February 11. Attached to that memo was a Tyee chronology prepared by the Power Authority which focused mainly on cost estimates. This chronology is also attached here as Appendix 2.

The Tyee project was originally proposed by the Thomas Bay Power Authority, a local Petersburg and Wrangell group. This group was first interested in the development of the Thomas Bay hydro site, but a reconnaissance study by the Corps of Engineers indicated that the smaller Tyee project was more feasible and cost-effective. Based on the Corps study, the Thomas Bay Power Authority dropped the Thomas Bay site in favor of the Tyee project. When the Alaska Power Authority became operational in 1978, an agreement was reached for the Authority to take over the development of the project and proceed with design and licensing work.

The Alaska Power Authority prepared the following brief history of the Tyee project.

> On December 19, 1979, the Alaska Power Authority submitted an application to the Federal Energy Regulatory Commission (FERC) for the construction of the Tyee Hydroelectric Project in the vicinity of Wrangell and Petersburg, Alaska. Our engineers, R.W. Retherford Associates/International Engineering Company (IECO), estimated the cost of the project at that time at $53,333,000, including an allowance for inflation at the rate of seven percent per year during the construction period. Procurement of long-lead-time turbines began in July 1981, in anticipation of a FERC license. FERC issued a license August 5, 1981, and the award of several additional procurement and one construction contract followed almost immediately thereafter.

The power-on-line date is scheduled for January 1984. The current estimate of the total project cost is $124 million. Available funds include $82 million in State grants and $50 million in interim financing.

The powerhouse is located in the Tongass National Forest, approximately 40 miles east-southeast of Wrangell, Alaska. The project is designed to develop the energy potential of Tyee Lake--a natural lake at Elevation 1396--convert it to electricity, and transmit the energy to the communities of Wrangell and Petersburg for distribution.

Tyee will have an initial generating capacity of 20 megawatts, expandable to 30 megawatts with the addition of a third generating unit. The project will be able to produce about 110 million KWH per year, of which about 34 million KWH (31 percent) is expected by the Power Authority to be sold to Petersburg and Wrangell in the first year of operation. Based on the Power Authority's estimate of 2.5 percent annual increase in power demand, the power output from the Tyee project will not be fully utilized until the year 2033.

I have also attached as Appendix C a memorandum by George Matz of the Office of Management and Budget which outlines the history of the Tyee project from the perspective of studies and approvals.

If you have any questions or would like more specific information on any of these hydroelectric projects, please do not hesitate to contact me. Also, I plan to complete a response to your research request on Swan Lake power rates (#83-89) by March 25. This analysis will compare projected power rates for the Swan Lake project with current power generation costs in Ketchikan and discuss alternatives for reducing Swan Lake rates, if necessary.

ALTERNATIVE HYDRO PROJECTS
SUMMARY OF CHARACTERISTICS

	Swan Lake Project	Lake Grace Project	Mahoney Lake Project
BASIN HYDROLOGY			
Drainage Area Above Dam, Sq. Mi.	36.5	29.2	2.05
Avg. Drainage Area Elevation	1,800	1,500	2,500
Avg. Annual Runoff at Dam Site, A.F. ...	335,000	279,000	33,500
Avg. Annual Runoff per Sq. Mi., cfsm ...	12.7	13.2	22.4
Max. Annual Runoff at Dam Site, A.F. ...	426,360	350,900	43,050
PROJECT POWER DATA			
Avg. Annual Energy Generated, GWh	88.0	105.2	49.7
Avg. Annual Energy at Load Center, GWh .	85.4	102.0	48.2
Annual Firm Energy Generated, GWh	68.0	93.3	29.5
Annual Firm Energy at Load Center, GWh .	66.0	90.5	28.6
Dependable Capacity at Load Center, kW .	18,000	25,000	9,000
RESERVOIR			
Normal Maximum Pool Elevation	330	500	1,956
Minimum Reservoir Elevation	269	458	1,776
Reservoir Area at Normal Maximum Pool ..	1,500	2,580	68
Active Storage Capacity, A.F.	86,000	150,600	7,150
DAM			
Type	Conc. Arch	Conc. Arch	None
Crest Elevation	344	509	-
Height Above Foundation, Feet	190	150	-

TABLE W-7

	Project SWAN LAKE	Project LAKE GRANE	Project MAHONEY LAKE
SPILLWAY			
Length, Ft.	100	200	90
Crest Elevation	330	500	1,956
POWER INTAKE	Single Level on Dam	Multi-Level on Abutment	Lake Tap and Valve Chamber
POWER CONDUIT			
Tunnel:			
Diameter, Ft.	10	9	-
Length, Ft.	2,250	3,400	-
Q Maximum, cfs	1,160	920	-
V Maximum, fps	14.8	14.5	-
Penstock (Steel):			
Diameter, Ft.	9	6.5	3
Length, Ft.	70	875	6,200
Q Maximum, cfs	1,160	920	86
V Maximum, fps	18.2	27.8	12.2
POWERHOUSE			
Turbines (Type)	2-Vertical Shaft Francis	2-Vertical Shaft Francis	2-Impulse
Speed, rpm	450	600	900
Net Design Head, Ft.	291	429	1,709
Rated Capacity, Best Gate, kW Total	22,680	26,700	10,600
Discharge at Avg. Head, cfs	1,014	855	78
Avg. Tailwater Elevation	8	27	88

(Continued)

	SWAN LAKE Project	Lake Grace Project	Mahoney Lake Project
TRANSMISSION LINE			
Voltage, kV	115	115	34.5
Length, Mi. (for New Line)	25	40	4
Type	Wood-Pole	Wood-Pole	Wood-Pole
ACCESS ROADS			
New Roads, Miles	1.0	3.6	7.0

ALASKA POWER AUTHORITY

334 WEST 5th AVENUE · ANCHORAGE, ALASKA 99501

Phone: (907) 277-7641
(907) 276-0001

February 9, 1983

Mr. Jack Kreinheder
House Research Agency
Pouch Y
Juneau, Alaska 99811

Subject: Tyee Hydroelectric Project-Summary of Estimated Total Costs

Dear Jack:

As per your request, following is a brief summary on the sequence of events on the Tyee hydropower project primarily relating to cost. The summary of Board actions was extracted from our corporate minutes. Most of the actions taken by the Board were based on advice from myself and my staff.

On December 19, 1979, the Alaska Power Authority submitted a revised application to the Federal Energy Regulatory Commission (FERC) for the construction of the Tyee Hydroelectric Project in the vicinity of Wrangell and Petersburg, Alaska. Our engineers, R.W. Retherford Associates/International Engineering Company (IECO) estimated the total cost of the project at that time at $39,590,000 (1980$'s). With an allowance for inflation and interest during construction the estimated total capital investment at that time came to $53,333,000.

In September 1980, IECO submitted a revised cost estimate of $50,976,000 (August 1980$'s).

Early in 1981, the Power Authority retained EBASCO Services, Inc., to prepare an independent cost estimate. EBASCO subsequently estimated the total project cost at $96,693,000 (May 1981$'s). Escalated to the midpoint of construction, this would represent a completed cost of approximately $110 million. After reviewing the EBASCO estimate, IECO conceded that its previous estimates were low and IECO raised its estimate to $81,069,000 (June 1981$'s). EBASCO refuted this revised estimate.

Procurement of long-lead-time turbines began in July 1981 in anticipation of a FERC license. The Board of Directors was realigned by Statute in the latter part of July 1981. The FERC issued a license on August 5, 1981 and the award of several additional procurement and one construction contract followed almost immediately thereafter.

IECO continued to make monthly reports on the status of the project, including estimated total project costs. It is important to note that by the end of March 1982, IECO had increased its project estimate to $97,072,000,

including engineering costs prior to construction. In the March report the overhead transmission line was estimated to cost $12,840,000 plus a $6,000,000 contingency. Less than two months later, during the bid opening for that contract, IECO provided an engineer's estimate of $23,280,887.00--an estimate that is 24 percent above any previous estimate, including contingency funds. The actual low bid was even higher at $24,901,466.

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Sincerely,

Eric P. Yould
Executive Director

CC:
C. Conway
Comm. D. Lyon

MEMORANDUM State of Alaska

TO Gordon Harrison
Associate Director
Office of Management and Budget
Division of Strategic Planning

DATE February 23, 1983

FILE NO

TELEPHONE NO 465-3573

FROM George Matz GM
Division of Strategic Planning
Office of Management and Budget

SUBJECT Tyee Lake Project

There has been controversy recently regarding the Tyee Lake Project. The City of Petersburg has stated that the cost of power from the project is too expensive and they may not want to sign a power sales contract under the terms initially proposed by the Alaska Power Authority (APA). This situation has lead to an examination of other questions including the projects economic feasibility and the process by which this is determined. The purpose of this memo is to provide an historical perspective on the question of economic feasibility. The information in this memo should supplement rather than duplicate information in a February 9, 1983 memo from Eric Yould to Jack Kreinheder and a February 11, 1983 memo from Jack Kreinheder to Representative Don Clocksin.

The feasibility study for the Tyee Lake Project was completed for the APA in December of 1979. The statute at this time (AS 44.56.180) required the Office of the Governor to evaluate APA feasibility studies. Since the APA was in its infancy and the Tyee Lake Project was its first project to have completed a feasibility study, no formal review was undertaken.

In 1980, the Legislature passed an omnibus energy bill (Ch 83, SLA 1980) which amended requirements for APA reconnaissance and feasibility studies. This bill also requires the Division of Budget and Management (now Office of Management and Budget) to review these studies for statutory compliance and provide a recommendation to the Governor and the Legislature for feasibility studies. However, certain projects, including the Tyee Lake Project, had been previously approved by the Legislature and were exempted from review by the Division of Budget and Management. House Joint Resolution No. 62, which had been approved by the Legislature earlier in the 1980 session, stated that the general design of the Tyee Lake Project was approved and that the APA could incur $70,000,000 in revenue bond indebtedness to finance the project.

In 1981, the Legislature once again made significant amendments to the APA statutes (Ch 118, SLA 1981). One of the more significant amendments established a Power Development Fund to be used primarily for financing construction of State owned power projects. Restrictions were placed on the use of this fund. One of these restrictions (AS 44.83.394) states that "the authority may not use money in the fund for a power project except in compliance with AS 44.83.177-44.83.187 and unless the authority determines that the project is economically feasible."

Ch 90, SLA 1981 (which was the appropriation bill which accompanied Ch 118, SLA 1981) made appropriations to begin construction on three power projects. These projects, and the amount of their respective appropriations are Tyee Lake Project - $48,000,000, Swan Lake Project - $53,000,000, and the Terror Lake Project $81,500,000. Additional appropriations in the form of a loan, had previously been made to each of these projects. These loans were converted to grants by another bill Ch 91, SLA 1981.

Although each of these projects had completed feasibility studies and received legislative approval, AS 44.83.394 required a final review of the economic feasibilty of each project before the APA could make expenditures from the Power Development Fund. The statutes are not specific as to how the economic feasibility should be determined. The APA assumed that the feasibility assessment should be treated as an updated supplement to previous feasibility studies rather than repeat the entire process.

Apparently, the APA's first attempt at complying with AS 44.83.394 was an August 13, 1981 memo from Robert Mohn, Director of Engineering to the Record (see Attachment A). The information in this memo was presented to the August 18, 1981 meeting of the APA Board of Directors to demonstrate that even with more recent and higher construction cost estimates, the Tyee Lake Project was economically feasible at the "most likely" load growth rates. Following this presentation, the Board was asked to approve the award of construction contracts which would obligate funds in the Power Development Fund. It should be noted that this was the first meeting of a newly appointed Board of Directors and not all of the Board members were familiar with statutory requirements for power projects.

Ron Lehr, a Board member and Director of Budget and Management at that time, questioned some of the points used in the presentation and requested backup information. This information was sent to Budget and Mangement where staff found the information inadequate to make a determination regarding the economic feasibility of the Tyee Lake Project. APA staff was informed of this and responded in a September 10, 1981 letter with copies of the calculations used for the August 13, 1981 memo.

Budget and Management staff reviewed these calculations, found some technical errors, and requested that corrections be made in the analysis. Apparently, the request led to a decision by the APA to provide a more complete and adequate explanation of the economic feasibility of the project. The product of this effort was a "Findings and Recommendations" report that was completed on December 2, 1981 and distributed to the Board at its December meeting. This report fully explained the assumptions that were being used and provided enough details to review the economic feasibility of the project.

Although a review by Budget and Management of the "Findings and Recommendations" report was not required by statute, a review was undertaken for the benefit of Ron Lehr who's interest was both as a Board member and State Budget Director. Ron Lehr distributed this review to the Board at its January, 1982 meeting.

The Budget and Management review (Attachment B) questioned several assumptions and calculations used in the "Findings and Recommendations" report. The conclusion of the review is that the Tyee Lake Project may not be economically feasible based on the "most likely" load forecast but should be economically feasible if the actual load should exceed the "most likely" load forecast. Some of the more significant points brought out in the review are given below.

1) If and When - The economic feasibility analysis of a power project, particularly projects having a long life such as hydro power, should not only determine "if" the project is feasible but "when" is the most economic time to begin construction. A timing exercise of this nature was not done for the Tyee Lake Project even though such an exercise is most applicable to projects which have initial overcapacity, such as the Tyee Lake Project.

2) Reserve Capacity - Neither this economic analysis or cost of power calculation considered the cost of reserve capacity.

3) Load Forecast - The base year for the load forecast was higher than actual data. Also, the load forecast assumed an increase in electric space heating even though fuel oil appears to be a less expensive alternative.

4) Alternative - A number of smaller and less remote hydroelectric alternatives were not given detailed consideration. U.S. Army Corps of Engineers data indicates that some of these projects could have lower power costs than the Tyee Lake Project. Also, since all of the projects were smaller, overcapacity would not be a significant problem.

The load forecast in the most significant and perhaps the most uncertain parameter which applies to the economic feasibility of the Tyee Lake Project. Since the load forecasts were made a few years ago, we now have the benefit of hindsight to assess the accuracy of the first few years of the forecast. This information is presented below based on the "most likely" forecast for the "Findings and Recommendations" report and the "expected" forecast for the Feasibility Study. The Feasibility Study used 1978 as the last year of actual data. Neither of these forecasts, as presented, subtract out approximately 11,700 MWh of annual generation from an existing hydroelectric facility near Petersburg.

Energy Sales (MWh) for Wrangell and Petersburg

Year	Actual	Findings and Recommendations Report	Feasibility Study
1978	29,981	---	29,981
1979	29,087	---	31,445
1980	29,788	30,535	32,990
1981	29,222	31,726	35,275
1982	30,989	32,963	37,710

In summary, commitments to the Tyee Lake Project have been slightly ahead of establishing a more rigorous process for assessing the economic feasibility of proposed APA projects. Specifically:

1) the feasibility study for the project was completed before an independent review process was firmly established by the Legislature;

2) the Legislature approved the project without benefit of an independent cost analysis as now required by statute; and

3) construction contracts had been awarded before the "Findings and Recommendations" report had been completed and before the provisions of AS 44.83.394 has been met.

Anchorage Daily News Thursday, February 23, 1984

Four towns may agree soon on dams, APA director says

By DEAN FOSDICK
The Associated Press

JUNEAU — The head of the Alaska Power Authority said Wednesday the utility is near agreement on long-term power contracts with four of five communities in the "Four Dam Pool," but Petersburg is uncomfortable with the deal and will let the voters decide in a special election, a spokesman says.

Larry Crawford, APA executive director, told board members that negotiations continued until nearly midnight Tuesday with representatives of Ketchikan, Wrangell, Petersburg, Kodiak and Valdez.

"I think at this point it's probably a little more dialogue with the communities," Crawford said. "I think we're getting closer with four of them."

He indicated, however, that an "all or none" provision that had been carried through the contract talks be modified so the state could act in the place of any community excluded from the agreement — a reference to Petersburg.

The APA has embarked on a $462.5 million hydro program involving four new dams to supply power to the five coastal Alaska cities. The projects, either finished or near-finished, were built with $282.83 million in state loans and the rest in interim financing.

The agency has been trying to get the cities to sign power contracts so the state can refinance about $179.67 million in short-term loans that begin coming due this year. The resulting long-term revenue bonds would be used for paying project costs not covered by grants.

But the cities have resisted, contending they'll not sign contracts until assured that hydro costs don't overly exceed what they now pay for diesel.

They also contend that the "Susitna Blackmail Clause," which was tacked on by the legislature, would increase consumer rates by as much as 50 percent.

The clause states that if $5 billion is not appropriated by 1991 to build two hydroelectric dams on the Susitna River to serve Southcentral Alaska, state grants to other projects would have to be repaid at a rate of 10 percent annually.

Jim Fillingame, manager of the Copper Valley Electric Association Inc. at Glennallen, said customers in the Valdez area served by the new Solomon Gulch Dam were promised two years ago they'd be getting "good, cheap electric power."

"It was no little job to sell the program to the people," Fillingame told APA directors. "Now, I've got to go back and tell these same people that good hydro power will cost several cents more per hour than what we can generate by diesel."

Proposed "entry costs" for that utility would mean about a 40 percent increase for large power users and a 22 percent rate hike for residential users, he said.

Wrangell representatives, meanwhile, said that city was about a week away from making a decision on the proposals.

David Neese, general manager for the Kodiak Electric Association, said that community was ready to agree to the deal.

Ketchikan Public Utility Manager Rick Newland said, "We're very close to agreement on the major issues. There are several yet to be resolved but the groundwork is there to reach resolution."

But Richard Underkofler, Petersburg city manager, told a reporter that city has problems with the entry rate and system increment issues.

"We're about $1.5 million away on their assumption of what the difference between what diesel and hydro costs would be," he said. "That's for the life of the program so it's really not that broad.

"But the system increment issue is philosophical," Underkofler said. "The power authority will have a license to increase our rates over the term of the agreement to pay for its endeavors elsewhere. It's our feeling we should be released from further debt service if we pay off our loans.

684
S89

Alaska Power Authority
Commissioner: D Lyon
Executive Director: Lary Crawford

Board meeting, 22 February 1984

Power Sales agreements;

1. Copper Valley: close to an agreement. Jim Billingame, manager of utilitiesstates that he shows some concern of confronting his public with a cost not seen before. Presently Glennallen diesel generation is .06 PKH and proposed APA power will be .07 PKW. This constitutes a 40% increase to some. Valdez is an emphatic NO! Average monthly consumption in Glennallen is 340 KWH and translates to $90 per month, while Valdez is running an average monthly bill of 550 KWH or $151. per month. A 40% increase can be devastating.

2. Wrangell: Matt Cole (position unknown) will be taking power sales agreement to city council Thursday night (Feb 23rd) for consideration. He says discussion (informal) with council members appears good and contract may be forthcoming.

3. Kodiak: David Neese, Mgr of Muni-power. Municipality has agreed to purchase power from APA. Two suggestions: possible loans to consumers and the establishment of an advisory board.

4. Ketchikan: Rick -?--. mgr of utilities says it looks very good, contract in the making with questions as to wording of legal documents.

5. Petersburg: NO!

Management study (status report) presented by Roger McMannus of Mead consultants for FY 84, FY 85, FY 86.

Presently APA employes 69 persons

Executive Dept----------4
Planning ---------- 9
Projects ----------18
Operations ---------- 7
Finance-Administration ---31

APA is asking for an immediate increase of 16, 17 more FY 85, and an additional 9 for FY 86 to total 111 persons.

1934 Susitna contingency fund: 3.18 Million dollars
Drilling request (wantana dam) 1.9 million. if approved this will leave in the contingency fund 1.28 million.

Competitive bidding on Watana Dam drilling will be let 27 Feb 84 with awarding of contract sometime in mid April 84.

HB

689

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 689
Title: Rural Electrification Loan Fund
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Power Authority
Program Category Affected: Development
BRU, Program or Subprogram(s) Affected: Alaska Power Authority

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No expected fiscal impact from this bill.

ANALYSIS: Attach a separate page for analysis

Prepared By: Heinz Noonan
Phone: (907) 276-0001
Division: Alaska Power Authority
Date:

Approved by Commissioner: Richard A. Lyon
Date: 3/27/84
Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

economic and environmental practicality of completing a proposed power project under AS 44.83.181;

(B) includes engineering and design work to meet the requirements for submission of a license application for a proposed new project to the Federal Energy Regulatory Commission;

(9) "small-scale power production facility" means a facility which, by design, is to produce less than 25 megawatts of power. (§ 1 ch 278 SLA 1976; am §§ 21, 22 ch 156 SLA 1978; am §§ 26, 27 ch 83 SLA 1980; am §§ 10, 11 ch 133 SLA 1982)

Effect of amendments. — The 1982 amendment substituted the present definition for "power project" or "project" in paragraph (4) for the definition set out in the main pamphlet and substituted "electrical and thermal energy needs" for "power needs" in paragraph (7).

Article 7. Susitna River Hydroelectric Project.

Sec. 44.83.325. Restrictions on contracting.

Editor's note. — Section 21, ch. 133, SLA 1982, provides: "Notwithstanding the provisions of AS 44.83.325, the Alaska Power Authority may enter into contracts under AS 44.83.300 — 44.83.360 for preliminary work without the approval required by AS 44.83.325. In this section, 'preliminary work' means the preparation of plans and studies and the preparation and submission of license applications, as well as other types of work, that must be completed before actual construction of the Susitna River hydroelectric project, described in AS 44.83.300, may begin. This section does not authorize the Alaska Power authority to enter into contracts for the actual construction of the Susitna River hydroelectric project or for the preparation of the site of the Susitna River hydroelectric project without the approval required by AS 44.83.325."

Article 8. Rural Electrification Revolving Loan Fund.

Section

Sec. 44.83.361. Rural electrification revolving loan fund.

(a) The rural electrification revolving loan fund is established in the Alaska Power Authority. The fund consists of

(1) appropriations made to the fund; and

(2) principal payments on loans made under this section.

(b) The authority may make loans from the rural electrification revolving loan fund to electric utilities certified by the Alaska Public Utilities Commission. A loan from the fund may be made only for the purpose of extending new electric service into an area of the state that an electric utility may serve under a certificate of public convenience and necessity issued by the Alaska Public Utilities Commission. A loan may be made from the fund to an electric utility if the utility invests the money necessary to provide one pole, one span of line, one transformer, and one service drop for each consumer for whom immediate service would be provided by the extension of electric service. However, a loan may not be made from the fund unless

(1) the loan is recommended by a loan advisory committee appointed under AS 44.83.363; and

(2) the extension of electric service would provide immediate service to at least three consumers.

(c) A loan from the rural electrification revolving loan fund shall bear an annual rate of interest of two percent of the unpaid balance of the loan. Interest received on a loan made under this section must be transferred monthly to the commissioner of revenue for deposit in the general fund.

(d) When a loan is made by the authority under this section, the electric utility receiving the loan

(1) shall, in addition to the rates that it is authorized to charge, charge the consumers served by the electric service extended with the loan proceeds an amount sufficient to pay the interest costs of the loan;

(2) shall pay to the authority annually an amount equal to

(A) interest of two percent on the unpaid balance of the loan; and

(B) payments on the unpaid balance of the principal of the loan for each new consumer served by the electric service extended with the loan proceeds; payments on the unpaid balance of the principal of the loan shall be made at a rate equal to the difference between the actual cost of making the service connection to the consumers and the minimum investment per consumer required of the utility before a loan is made under (b) of this section.

(e) The authority shall

(1) adopt regulations necessary to carry out the provisions of this section;

(2) administer the rural electrification revolving loan fund; and

(3) submit to the legislature within the first 10 days of each regular legislative session a report of actions taken by the authority under this section and an accounting of the rural electrification revolving loan fund.

(f) In this section,

(1) "consumer" means a person, as defined in AS 01.10.060(7), or a governmental agency, if the person or governmental agency requests and offers to pay for electrical service to a facility or part of a facility;

the authority shall consider a person who, or a governmental agency that, offers to pay for electrical service to several facilities to be a separate consumer for each facility, if each facility is physically separate from another facility, other than through electric service lines, and if the person or governmental agency requests and offers to pay for electrical service to each facility;

(2) "facility" means a structure capable of receiving and using electrical energy; and

(3) "governmental agency" includes, with respect to the state or federal government or a municipal government, a legislative body, board of regents, administrative body, board, commission, committee, subcommittee, authority, council, agency, public corporation, school board, department, division, bureau, or other subordinate unit, whether advisory or otherwise, of the state, federal, or municipal government. (§ 1 ch 118 SLA 1981; am §§ 10 — 13 ch 89 SLA 1983)

Effect of amendments. — The 1983 amendment, effective July 22, 1983, deleted "and interest" following "principal" in paragraph (a)(2), added the second sentence of subsection (c), substituted "extended with the loan proceeds" for "during the preceding year for which the loan was made" in paragraph (d)(2)(B), and added subsection (f).

Sec. 44.83.363. Loan advisory committee. When an application for a rural electrification loan is submitted to the authority under AS 44.83.361, the authority shall appoint a local advisory committee from persons residing in the area that the applicant utility is certified to serve. The loan advisory committee shall consider the loan application, and shall recommend whether the loan application is to be approved or disapproved. A favorable recommendation from the loan advisory committee shall be based on a determination that development in the area of the proposed extension of electric service is likely to provide for full repayment of the loan under AS 44.83.361(d) within 10 years. In making that determination the committee shall consider

(1) permanence of the premises to be served by the extension;

(2) land use patterns in the area;

(3) access for the line that would be installed with loan proceeds;

(4) availability of other utility service in the area; and

(5) the economic feasibility of the extension of electric service with the proceeds of the loan. (§ 1 ch 118 SLA 1981)

Article 9. Energy Program for Alaska.

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4821

House Special Committee on State Loans

To: Rep. John Cowdery, Chairman
House Labor & Commerce Committee

From: Rep. Rick Uehling, Chairman
House Special Committee on State Loans

Subject: HB 689

Date: March 5, 1984

HB 689, An Act relating to the rural electrification loan fund, is presently in your Committee.

During our Loans Committee hearings on HB 650, which contains an appropriation for the Alaska Power Authority - Rural Electrification Loan Fund, testimony was received about the Loan fund and the need to clarify the existing statues.

As Chairman of the House Loans Committee I would like to request that you schedule action on this measure because it will eliminate those discrepancies and make it possible to use the funds in the Rural Electrification Loan Fund. It is important that this be done before additional appropriations are made for projects such as the Craig-Klawock Intertie.

Thank you very much for your attention to this matter.

RAU/as

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4821

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Thank you very much for your attention to this matter.

RAU/as

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

March 16, 1984

Representative John Cowdery, Chairman
House Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Cowdery:

House Bill 689 is essential to clean up the statutory language authorizing the rural electrification revolving loan fund so that program can finally be made to work as intended.

This loan fund was created as a section of SB 25 in 1981 by including in that historic legislation the contents of a bill sponsored by then Representative Pappy Moss. As a result, there is almost no separate legislative history which would have given the power authority some guidance in administering the program. For anyone not intimately involved with line extensions of an electric utility, the present statutory language is quite confusing. The result of all this is that the rural electrification revolving loan fund has never worked as intended.

The purpose of this loan fund is to extend the backbone electric distribution system through developing rural areas. The target areas at present do not have enough population to meet the definitions of feasibility set out by the lending institutions such as the Rural Electrification Administration. However, the target areas are expected to develop rather quickly once utility service becomes available.

This is a narrow purpose program, and I would not envision that it would ever become very large in terms of the total funding it requires. The concept for this program was originally developed to meet specific problems around Fairbanks like the Goldstream area and in the Mat-Su Borough like the Caswell Lakes area. After three years, not one dime has gone to meet the very serious needs of those areas and other like them across the state.

Enclosed is a sectional analysis which briefly describes the contents of HB 689. The key feature of this program necessary to make it work is that the payback period has to be for an indeterminate period rather than for a set term of years. This is

an unusual feature of a loan program, but it is essential in this case. If the term of years is fixed, the utility is the one at risk that the anticipated development will in fact occur. REA will not permit its borrowers to accept loans for projects which do not meet the REA definition of feasibility. If these projects could meet the REA feasibility test, we would borrow from REA and would not need this program.

The concept of making the term of the loan indeterminate and having the payback schedule tied to the actual rate of development was contained in the original legislation. The power authority has never accepted that legislative policy, and they have in fact arbitually set a 20 year term by regulation. That is why this program has never worked.

We think HB 689 is a very good bill, and we ask you and your committee to support it. However, there is one amendment which is needed to prevent possible confusion in the future. As used in this program, the term "rural" simply means an area where the population density is low. I would propose that a new definition be included in section 5 of the bill to read:

> "rural area" means an area in which the number of consumers to be served by an electric distribution line in the year in which it is constructed does not exceed five per mile of line.

Sincerely,

David Hutchens

David Hutchens
Executive Director

House Bill No. 689

Sectional Analysis

Section 1 states the legislative intent that this program is to help finance pioneer electric distribution lines through developing rural areas.

Section 2 provides that loans may be made to public utilities to build distribution lines into rural areas not receiving electric service if (1) the loan is recommended by a loan advisory committee, (2) the line extension will serve at least three consumers in its first year and (3) the utility has a certificate from the APUC to serve that area.

Section 3 provides that the utility shall collect 2% interest on this loan from its consumers served by the line extension and shall pay that interest to the APA annually with its principal payment. The principal repayment formula is geared to the number of new consumers being served by this line extension rather than to a specific term of years. The cost of the line is divided into units consisting of its average cost per 350 feet (the approximate distance of a span of line). The utility repays one unit of the principal for each new consumer served by the line.

Section 4 vests the administrative authority with the APA and requires an annual report to the legislature.

Section 5 defines the terms used in this legislation.

Section 6 limits the amount of a loan to the amount necessary to build an overhead line, but a more expensive method of construction may be used if the additional cost is financed from some other source. The utility is required to invest from other sources one unit of cost (the average cost for 350 feet of line) for each consumer to be served in the first year.

Section 7 authorizes the executive director of the APA to appoint a loan advisory committee from residents of the assigned service area of the applicant utility. The committee has the responsibility to advise whether or not development of the area in question is likely to occur rapidly enough to provide full repayment of the loan within 20 years.

HB

703

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 21, 1984

The Honorable Joe Hayes
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to amend AS 43, the Revenue and Taxation Code, by repealing AS 43.20.031(d) and AS 43.70.030(b).

This bill repeals AS 43.20.031(d), which exempts banks and savings and loan associations from taxation under AS 43.20, the corporate income tax chapter. It also repeals AS 43.70.030(b), which taxes banks, trust companies, and savings and loan associations under AS 43.70, the Business License Act.

Currently, banks and savings and loan associations are specifically exempted from the corporate income tax under AS 43.20 because of federal restrictions which required states to tax national banks and savings and loan associations separately from other corporations. Those federal restrictions no longer exist. Therefore, we may now tax banks under AS 43.20 along with all other corporate taxpayers, and that is what this bill will accomplish.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: HB 703
Title: State taxation of national banks

Sponsor: Governor
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Department of Revenue
Program Category Affected: Collection and Management
BRU, Program of Subprogram(s) Affected: Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Maureen O'Brien Maureen O'Brien Phone: 465-2320
Division: Audit Division Date: March 20, 1984

Approved by Commissioner: Ron O'Keefe Date: 3/20/84
Agency: Revenue

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Currently banks are required to file returns and pay tax under a statute separate from all other corporations (AS 43.70). This results in significant administrative and legal problems. The Department of Revenue therefore recommends that banks be taxed under the same income tax statutes as other corporations (AS 43.20).

Although state and municipal interest is currently taxable under AS 43.70 and would not be subject to tax under AS 43.20, we estimate that requiring banks to file under AS 43.20 rather than AS 43.70 will result in no loss of revenue to the State. The Department's position is that under IRC sec. 265(2), which is adopted by reference in AS 43.20.021(a), no deduction is allowed for expenses and interest incurred or continued to purchase or carry obligations the interest on which is exempt from tax. This includes not only expenses and interest related to tax exempt state and municipal interest income, but also expenses and interest related to tax exempt U.S. interest income. Therefore, the total amount of nondeductible expenses under AS 43.20 will be close to the amount of nontaxable income.

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 21, 1984

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Alaska House of Representatives
Pouch V
Juneau, AK 99811

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STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

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Bill/Resolution No: HB 703
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Requestor:
Date of Request:

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300	CONTRACTUAL	-	-	-	-	-	-
400	SUPPLIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	-	-	-	-	-
	TOTAL OPERATING	-	-	-	-	-	-
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-	-	-	-	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	-	-	-	-	-	-

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Maureen O'Brien Maureen O'Brien Phone: 465-2320
Division: Audit Division Date: March 20, 1984

Approved by Commissioner: Phil Hoffman Date: 3/20/84
Agency: Revenue

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

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HB

704

*Sec. 1. AS 21 is amended by adding a new chapter to read:

CHAPTER 59.

AUTOMOBILE SERVICE CORPORATIONS

Sec. 21.59.010. SCOPE OF CHAPTER. (a) This chapter applies to every individual, person, firm, corporation, or organization of any kind hereafter engaging or purporting to engage in the provision of all or part of an automobile service corporation coverage as defined in AS 21.59.900, for its subscribers in exchange for periodic prepayments by the subscriber.

(b) This chapter does not apply to a person issued a certificate of authority under AS 21.09.

(c) No provision of this title may apply to an automobile service corporation unless contained or referred to in this chapter.

Sec. 21.59.020. INCORPORATION - CERTIFICATE OF AUTHORITY REQUIRED. (a) A person engaged in or purporting to engage in the provision of an automobile service corporation service shall be incorporated under the laws of Alaska as a nonprofit corporation and be currently authorized as an automobile service corporation under a certificate of authority issued by the director under this chapter.

(b) Before the articles of incorporation of the proposed corporation or amendments to existing articles of incorporation are filed with the commissioner of commerce, they shall be submitted to the director, and the commissioner of commerce shall not file the articles or amendments unless the director's approval is endorsed thereon. The director shall approve the articles or amendments unless he finds that they do not comply with law. If not approved, the director shall return the proposed articles of incorporation to the incorporators or amendments to the corporation, together with his written statement of particulars of the reasons for nonapproval.

Sec. 21.59.030 QUALIFICATIONS FOR CERTIFICATE OF AUTHORITY. The director may not issue or permit to exist a certificate of authority to be or act as an automobile service corporation to a corporation which does not fulfill the following qualifications:

(1) it must be incorporated as an automobile service corporation;

(2) it must intend to and actually conduct its business in good faith as a nonprofit corporation;

(3) if a newly formed corporation, it must possess sufficient available working funds to pay all reasonably anticipated cost of acquisition of new business and operating expenses, other than losses, for a period of not less than six months following the date of issuance of the certificate of authority;

(4) it must post with the director, a bond in the amount of $50,000, issued by a corporate surety authorized under AS 21 to act as surety and conditioned upon the organization's faithful fulfillment of its contracts; and,

(5) it must fulfill all other applicable requirements of this chapter.

Sec. 21.59.040 CERTIFICATE OF AUTHORITY. (a) Application for a certificate of authority to transact business as an automobile service corporation shall be made to the director, on forms as prepared and furnished by the director and requiring the information relative to the applicant, its directors, officers, and affairs as the director may

reasonably require consistent with this chapter.

(b) The application shall be accompanied by the following documents:

(1) one copy of the applicant's articles of incorporation and all amendments, certified by the commissioner of commerce;

(2) one copy of the applicant's bylaws, certified by its corporate secretary;

(3) one copy of each subscribers' contract proposed to be offered;

(4) a financial statement of the applicant as of the date not more than 30 days before the filing of the application, showing the amount of working funds available to the applicant, the source of the funds, any pertinent data related thereto, and accompanied by a copy of the agreement under which the funds were contributed to or provided for the applicant;

(5) the bond required in as 21.59.030(4); and,

(6) a copy of any other relevant document reasonably requested by the director.

Sec. 21.59.050. RESERVES. (a) Each automobile service corporation shall establish and maintain unimpaired reserves as follows:

(1) a reserve in an amount not less than all legal obligations of the corporation, other than claims originating under subscriber's contracts, due but unpaid;

(2) a reserve equal to not less than the amount necessary by reasonable estimate to pay all claims incurred under subscriber's contracts but currently unpaid, and including a reasonable additional amount to cover claims incurred but not reported to the corporation at the time of determination of the corporation's financial condition; and,

(3) a reserve equal to 50 per cent of all sums charged and received by the corporation during the calendar period covered by the financial statement, on account of indemnity benefits provided in subscriber's contracts for terms for which premium was last paid and unexpired at the date of the financial statement.

(b) The reserves required under (a) of this section constitute a liability of the corporation in a determination of its financial condition.

Sec. 21.59.060. RECORDS AND ACCOUNTS. (a) An automobile service corporation shall establish and maintain complete and accurate records and accounts covering its transactions and affairs, in accordance with common and accepted principles and practices of insurance accounting and record keeping as applied to the business of the corporation.

(b) The corporation shall establish a separate record of each claim received for benefits under a subscriber's contract, whether the claim is for service or for indemnity. The claim record shall contain information reasonably necessary for the determination of:

(1) the identity of the claimant;

(2) the nature of the claim;

(3) the probable amount to be paid by the corporation on account of the claim; and,

(4) the amounts actually paid by the corporation on account of the claim.

Sec. 21.59.070. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to automobile service corporations, to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and

for the purposes of the application the corporations shall be considered to be mutual insurers, as follows:

(1) AS 21.03
(2) AS 21.06
(3) AS 21.09.050
(4) AS 21.09.100-260
(5) AS 21.12
(6) AS 21.36
(7) AS 21.69
(8) AS 21.78
(9) AS 21.90.

Sec.21.59.900. DEFINITIONS. In this chapter

(1) "automobile service corporation" means a corporation providing all or part of one or more automobile service corporation services for subscribers in exchange for periodic prepayment in identifiable amount by or as to the subscribers;

(2) "services" means any professional service, technical service, replacement of goods which the corporation may become obligated to provide upon a contingent event or a certain event which may occur at an uncertain time and for which a specified single or periodic prepayment is charged or collected, including, but not limited to

(A) emergency road service;

(B) reimbursement of legal fees for representation on traffic offenses;

(C) providing bail bonds for traffic offenses;

(D) providing maps and trip planning services; and,

(E) arrangement of discounts, rebates or price reductions on travel related goods and services.

(3) "subscribers contracts" means the contract between the automobile service corporation and its subscriber under which all or a part of one or more services is to be rendered to or on behalf of the subscriber by an automobile service corporation or by a provider that has entered into a service agreement with the automobile service corporation.

*Sec. 1. AS 21 is amended by adding a new chapter to read:

CHAPTER 59.

AUTOMOBILE SERVICE CORPORATIONS

Sec. 21.59.010. SCOPE OF CHAPTER. (a) This chapter applies to every individual, person, firm, corporation, or organization of any kind hereafter engaging or purporting to engage in the provision of all or part of an automobile service corporation coverage as defined in AS 21.59.900, for its subscribers in exchange for periodic prepayments by the subscriber.

(b) This chapter does not apply to a person issued a certificate of authority under AS 21.09.

(c) No provision of this title may apply to an automobile service corporation unless contained or referred to in this chapter.

Sec. 21.59.020. INCORPORATION - CERTIFICATE OF AUTHORITY REQUIRED. (a) A person engaged in or purporting to engage in the provision of an automobile service corporation service shall be incorporated as a nonprofit corporation and be currently authorized as an automobile service corporation under a certificate of authority issued by the director under this chapter.

(b) If a proposed corporation is to formed under the laws of Alaska, the articles of incorporation of the proposed corporation or amendments to existing articles of incorporation are to be submitted to the director before they shall be filed with the commissioner of commerce, and the commissioner of commerce shall not file the articles or amendments unless the director's approval is endorsed thereon. The director shall approve the articles or amendments unless he finds that they do not comply with law. If not approved, the director shall return the proposed articles of incorporation to the incorporators or amendments to the corporation, together with his written statement of particulars of the reasons for nonapproval.

Sec. 21.59.030 QUALIFICATIONS FOR CERTIFICATE OF AUTHORITY. The director may not issue or permit to exist a certificate of authority to be or act as an automobile service corporation to a corporation which does not fulfill the following qualifications:

(1) if a newly formed corporation, it must possess sufficient available working funds to pay all reasonably anticipated cost of acquisition of new business and operating expenses, other than losses, for a period of not less than six months following the date of issuance of the certificate of authority;

(2) it must post with the director, a bond in the amount of $50,000, issued by a corporate surety authorized under AS 21 to act as surety and conditioned upon the organization's faithful fulfillment of its contracts; and,

(3) it must fulfill all other applicable requirements of this chapter.

Sec. 21.59.040 CERTIFICATE OF AUTHORITY. (a) Application for a certificate of authority to transact business as an automobile service corporation shall be made to the director, on forms as prepared and furnished by the director and requiring the information relative to the applicant, its directors, officers, and affairs as the director may reasonably require consistent with this chapter.

(b) The application shall be accompanied by the following documents:

(1) one copy of the applicant's articles of incorporation and all amendments, certified by the appropriate official of the state of incorporation;

(2) one copy of the applicant's bylaws, certified by its corporate secretary;

(3) one copy of each subscribers" contract proposed to be offered;

(4) an audited financial statement of the applicant for the most recent fiscal year; or, a financial statement of the applicant as of the date not more than 30 days before the filing of the application, showing the amount of working funds available to the applicant, the source of the funds, any pertinent data related thereto, and accompanied by a copy of the agreement under which the funds were contributed to or provided for the applicant;

(5) the bond required in as 21.59.030(2); and,

(6) a copy of any other relevant document reasonably requested by the director.

Sec. 21.59.060. RESERVES. (a) Each automobile service corporation shall establish and maintain unimpaired reserves as follows:

(1) a reserve in an amount not less than all legal obligations of the corporation, other than claims originating under subscriber's contracts, due but unpaid;

(2) a reserve equal to not less than the amount necessary by reasonable estimate to pay all claims incurred under subscriber's contracts but currently unpaid, and including a reasonable additional amount to cover claims incurred but not reported to the corporation at the time of determination of the corporation's financial condition; and,

(3) a reserve equal to 50 per cent of all sums charged and received by the corporation during the calendar period covered by the financial statement, on account of indemnity benefits provided in subscriber's contracts for terms for which premium was last paid and unexpired at the date of the financial statement.

(b) The reserves required under (a) of this section constitute a liability of the corporation in a determination of its financial condition.

(c) The requirements of (a) and (b) of this section do not apply if the automobile service corporation shall in lieu of the bond required in AS 21.59.030(2), file a bond under that section in the amount of $200,000.

Sec. 21.59.060. RECORDS AND ACCOUNTS. An automobile service corporation shall establish and maintain complete and accurate records and accounts covering its transactions and affairs, in accordance with generally accepted accounting principles as applied to the business of the corporation.

Sec. 21.59.070. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to automobile service corporations, to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shall be considered to be mutual insurers, as follows:

(1) AS 21.03
(2) AS 21.06
(3) AS 21.09.050
(4) AS 21.09.100-260
(5) AS 21.12

(6) AS 21.36
(7) AS 21.69
(8) AS 21.78
(9) AS 21.90.

Sec.21.59.900. DEFINITIONS. In this chapter

(1) "automobile service corporation" means a corporation providing all or part of one or more automobile service corporation services for subscribers in exchange for periodic prepayment in identifiable amount by or as to the subscribers;

(2) "automobile service corporation services" means any professional service, technical service, replacement of goods which the corporation may become obligated to provide upon a contingent event or a certain event which may occur at an uncertain time and for which a specified single or periodic prepayment is charged or collected, including, but not limited to

(A) emergency road service;

(B) reimbursement of legal fees for representation on traffic offenses; and,

(C) providing bail bonds for traffic offenses.

An automobile service corporation may provide other services or benefits which do not fall within the definition of an automobile service corporation services.

(3) "subscriber's contract" means the contract between the automobile service corporation and its subscriber under which all or a part of one or more services is to be rendered to or on behalf of the subscriber by an automobile service corporation or by a provider that has entered into a service agreement with the automobile service corporation.

*Sec. 1. AS 21 is amended by adding a new chapter to read:

CHAPTER 59.

AUTOMOBILE CLUBS

Sec. 21.59.010. SCOPE OF CHAPTER. (a) This chapter applies to every individual, person, firm, corporation, or organization of any kind hereafter engaging or purporting to engage in the provision of all or part of an automobile club service as defined in AS 21.59.900, for its subscribers in exchange for periodic prepayments by the subscriber.

(b) This chapter does not apply to a person issued a certificate of authority under AS 21.09.

(c) No provision of this title may apply to an automobile club unless contained or referred to in this chapter.

Sec. 21.59.020. INCORPORATION - CERTIFICATE OF AUTHORITY REQUIRED. (a) A person engaged in or purporting to engage in the provision of an automobile club service shall be incorporated as a nonprofit corporation and be currently authorized as an automobile club under a certificate of authority issued by the director under this chapter.

(b) If a proposed corporation is to formed under the laws of Alaska, the articles of incorporation of the proposed corporation or amendments to existing articles of incorporation are to be submitted to the director before they shall be filed with the commissioner of commerce, and the commissioner of commerce shall not file the articles or amendments unless the director's approval is endorsed thereon. The director shall approve the articles or amendments unless he finds that they do not comply with law. If not approved, the director shall return the proposed articles of incorporation to the incorporators or amendments to the corporation, together with his written statement of particulars of the reasons for nonapproval.

Sec. 21.59.030 QUALIFICATIONS FOR CERTIFICATE OF AUTHORITY. The director may not issue or permit to exist a certificate of authority to be or act as an automobile club to a corporation which does not fulfill the following qualifications:

(1) if a newly formed corporation, it must possess sufficient available working funds to pay all reasonably anticipated cost of acquisition of new business and operating expenses, other than losses, for a period of not less than six months following the date of issuance of the certificate of authority;

(2) it must post with the director, a bond in the amount of $50,000, issued by a corporate surety authorized under AS 21 to act as surety and conditioned upon the organization's faithful fulfillment of its contracts; and,

(3) it must fulfill all other applicable requirements of this chapter.

Sec. 21.59.040 CERTIFICATE OF AUTHORITY. (a) Application for a certificate of authority to transact business as an automobile club shall be made to the director, on forms as prepared and furnished by the director and requiring the information relative to the applicant, its directors, officers, and affairs as the director may reasonably require consistent with this chapter.

(b) The application shall be accompanied by the following documents:

(1) one copy of the applicant's articles of incorporation and all amendments, certified by the appropriate official of the state of

incorporation;

(2) one copy of the applicant's bylaws, certified by its corporate secretary;

(3) one copy of each subscribers' contract proposed to be offered;

(4) an audited financial statement of the applicant for the most recent fiscal year; or, a financial statement of the applicant as of the date not more than 30 days before the filing of the application, showing the amount of working funds available to the applicant, the source of the funds, any pertinent data related thereto, and accompanied by a copy of the agreement under which the funds were contributed to or provided for the applicant;

(5) the bond required in as 21.59.030(2); and,

(6) a copy of any other relevant document reasonably requested by the director.

Sec. 21.59.050. RESERVES. (a) Each automobile club shall establish and maintain unimpaired reserves as follows:

(1) a reserve in an amount not less than all legal obligations of the corporation, other than claims originating under subscriber's contracts, due but unpaid;

(2) a reserve equal to not less than the amount necessary by reasonable estimate to pay all claims incurred under subscriber's contracts but currently unpaid, and including a reasonable additional amount to cover claims incurred but not reported to the corporation at the time of determination of the corporation's financial condition; and,

(3) a reserve equal to 50 per cent of all sums charged and received by the corporation during the calendar period covered by the financial statement, on account of indemnity benefits provided in subscriber's contracts for terms for which premium was last paid and unexpired at the date of the financial statement.

(b) The reserves required under (a) of this section constitute a liability of the corporation in a determination of its financial condition.

(c) The requirements of (a) and (b) of this section do not apply if the automobile club shall in lieu of the bond required in AS 21.59.030(2), file a bond under that section in the amount of $250,000.

Sec. 21.59.060. RECORDS AND ACCOUNTS. An automobile service corporation shall establish and maintain complete and accurate records and accounts covering its transactions and affairs, in accordance with generally accepted accounting principles as applied to the business of the corporation.

Sec. 21.59.070. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to automobile club, to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shall be considered to be stock insurers, as follows:

(1) AS 21.03
(2) AS 21.06
(3) AS 21.09.050
(4) AS 21.09.100
(5) AS 21.09.120-210
(6) AS 21.12

(7) AS 21.36
(8) AS 21.69
(9) AS 21.78
(10) AS 21.90.

Sec.21.59.900. DEFINITIONS. In this chapter

(1) "automobile club" means a corporation providing all or part of one or more automobile club services for subscribers in exchange for periodic prepayment in identifiable amount by or as to the subscribers;

(2) "automobile club services" means any professional service, technical service, replacement of goods which the corporation may become obligated to provide upon a contingent event or a certain event which may occur at an uncertain time and for which a specified single or periodic prepayment is charged or collected, including, but not limited to

(A) emergency road service;

(B) reimbursement of legal fees for representation on traffic offenses; and,

(C) providing bail bonds for traffic offenses.

An automobile club may provide other services or benefits which do not fall within the definition of automobile club services.

(3) "subscriber's contract" means the contract between the automobile club and its subscriber under which all or a part of one or more services is to be rendered to or on behalf of the subscriber by an automobile club or by a provider that has entered into a service agreement with the automobile club.

SECTION BY SECTION ANALYSIS OF CSHB 704(L&C). 4/3/84.

This proposal is intended to permit auto clubs to form and operate in Alaska. Since auto clubs do provide very limited forms of insurance, they are currently required to form as an insurer under Title 21. This is effectively a barrier since those requirements are aimed at a different kind of entity. The division recognizes that the requirements for an auto club do not need to be as stringent as for a normal insurer and support the concept encompassed in HB 704. HB 704, however presented a dilemna that we have attempted to resolve with a suggested substitute. HB 704 provided the director with duties to do certain things, yet the statute giving him the authority to do those things is made not effective. While this may be a minor consideration, there are other things in the insurance code that should be made applicable, hence the redraft. We have used the statute allowing hospital or medical service corporations as a guide in structuring this substitute.

Sec. 21.59.010.
This section requires that an auto club is subject to the provisions of the new chapter. It excludes insurers with a certificate of authority issued under AS 21.09. It also provides that only provisions referred to or contained in AS 21.59 apply to an auto club.

Sec. 21.59.020.
This section requires that the auto club be a nonprofit corporation and hold a certificate of authority issued by the director. It also establishes some procedural requirements about order of filing certain documents if the auto club is a domestic.

Sec. 21.59.030.
This section establishes qualifications for a certificate of authority. The auto club must be financially sound and it must post a bond assuring that it will meet its contractual obligations.

Sec. 21.59.040.
This section lists the documents needed to obtain a certificate of authority. (4) provides an option of two ways to provide some evidence of financial soundness. The rest is almost boilerplate requirements for issuance of a certificate of authority.

Sec. 21.59.050.
Subsections (a) and (b) provide the reserves needed if the bond filed under Sec. 21.59.030(2) is for $50,000. Subsection (c) makes no special reserve requirements if the bond filed under Sec. 21.59.030(2) is for $250,000. Since the amounts for which the auto club will be at risk are very low for each subscriber, the bond is a good substitute.

Sec. 21.59.060.
This section requires that records be kept on a generally accepted accounting principles basis rather than that usual to an insurer, a statutory basis.

Sec. 21.59.070.
Since this is an exclusive statute, one to which provisions outside of the chapter do not apply, this section is needed to bring other appropriate sections of the insurance code to bear on auto clubs.

AS 21.03. This chapter deals with the scope of the insurance code.

AS 21.06. This chapter establishes the authority and powers of the director of insurance.

AS 21.09.050. This section bars misleading or duplication of insurer names.

AS 21.09.100. This section deals with management and affiliations of insurers.

AS 21.09 120-170. These sections deal with the certificate of authority. Issuance, refusal to issue, ownership, continuance, expiration, reinstatement, ammendment, revocation, suspension, and duration of suspension of a certificate of authority.

AS 21.09.180-190. These sections deal with service of process.

AS 21.09.200. This section deals with an annual statement.

AS 21.09.210. This section deals with taxation.

AS 21.12. This chapter defines the kinds of insurance.

AS 21.36. This chapter deals with unfair trade practices and frauds.

AS 21.69. This chapter deals with organization and corporate procedure for domestic corporations.

AS 21.78. This chapter deals with rehabilitation and liquidation of impaired or insolvent insurers.

AS 21.90. This chapter contains the general penalty section and general definitions for the insurance code.

Sec 21.59.900.
Definition section.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSHB 704(L&C)
Title: Automobile clubs

Sponsor: Labor & Commerce
Requestor: Labor & Commerce
Date of Request: 4/9/84

FISCAL DETAIL
Agency Affected: Commerce & Economic Dev.
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a ~~separate page~~ for analysis

Prepared By: Kenneth C. Moore, Director
Phone: 465-2515
Division: Insurance
Date: 4/9/84

Approved by Commissioner: Richard A. Lyon
Date: 4/9/84
Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

APRIL 4, 1984

TO: JOHN

FROM: KEN

RE: HB 704 "RELATING TO AUTOMOBILE CLUBS"

THE INTENT OF HB 704 IS TO AMEND ALASKA STATUTES TO PERMIT THE TRIPLE A AUTOMOBILE CLUB TO INCORPORATE IN ALASKA AS A NON-PROFIT CORPORATION. BECAUSE SEVERAL OF THE SERVICES OFFERED BY TRIPLE A WOULD FALL UNDER THE DEFINITION OF INSURANCE, THE DIVISION OF INSURANCE FELT A NUMBER OF CHANGES WERE NECESSARY TO PREVENT PROBLEMS IN THE STATUTES FOR BOTH THE DIVISION AND FOR TRIPLE A.

IT IS MY UNDERSTANDING THAT DURING THE PAST TWO REPRESENTATIVES OF TRIPLE A AND THE DIVISION OF INSURANCE HAVE WORKED TO DEVELOP A COMPROMISE PIECE OF LEGISLATION WHICH ACCOMMODATES TRIPLE A'S REQUEST FOR INCORPORATION AND SOLVES STATUTE PROBLEMS CITED BY THE DIVISION. A BRIEFING PAPER HAS BEEN SUPPLIED BY TRIPLE A'S REPRESENTATIVES WHICH DETAILS SOME OF THE STATUTORY PROBLEMS. THE RESULTING DRAFT LEGISLATION IS IN ALL MEMBERS PACKETS. A SECTIONAL ANALYSIS IS ATTACHED TO THE BACK.

QUESTIONS

1. WHY HAS THE TRIPLE A AUTO CLUB NOT SOUGHT TO ORGANIZE IN ALASKA BEFORE ?

2. WHY HAS THIS BILL BEEN EXPANDED SO MUCH FROM THE ORIGINAL VERSION ?

HB

705

REALTOR®

HB 705

ALASKA ASSOCIATION OF REALTORS®
1818 W. Northern Lights Blvd., Suite 104 • Anchorage, Alaska 99503
Telephone 907-272-8016

Attached is a summary of a problem area of vital concern to the real estate industry. The ALASKA ASSOCIATION OF REALTORS is suggesting content for a bill which will address the issue. We seek your consideration and support.

ALASKA ASSOCIATION OF REALTORS - Position Paper, RE: The Surety Fund

History

From its creation in 1964, as reflected in AS 08.88, the Real Estate Commission's primary purpose has been the protection of the public through the examining and licensing of real estate practitioners. Through 1975, the public's guarantee of monetary relief was a required bond in the amount of $1000/Salesman and $5000/broker.

Through the early '70's there were few claims against the bonds; however, the industry realized that the bonding level was not adequately protecting the public's interests. Following the example of twelve other states, (Footnote: 1974 NARELLO Report, page 25) the industry together with the Real Estate Commission actively lobbied for the 1974 legislation (Attachment A: 45.85.010-110 & 08.88.281, .071, & .401) to create a surety fund with a two-fold purpose:

1) to provide indemnification up to $10,000/transaction for judgments awarded by the courts to persons who suffered financial loss because of a licensee's actions that involved fraud, deceit, misrepresentation, or conversion of trust funds, and

2) to provide funding for real estate education of both the public and the licensees from funds collected in excess of the specified $250,000 minimum balance in the fund.

The 1974 legislation, which was patterned after the California model, required court action and a judgment against a licensee prior to any disbursement of Surety Fund dollars. However, Alaska's enacted version did not require an attempt to collect money from or attach the assets of the named licensee, nor did it provide for any review by the Commission prior to payment from the fund.

Thus from the 1976 license renewal cycle when the first fees were paid into the surety fund, judges were able to order payment directly from the fund to satisfy a judgment.

These conditions were in effect until 1980 when the statute was amended, initiated by the Legislative Audit Committee during the Sunset Review, to charge the Real Estate Commission with the responsibility to both hear cases and award payments, but without ensuring the full protection of due process and judicial precedent (Attachment B).

The use of hearing officers (as allowed by the Administrative Procedures Act) starting in January 1982 and the regulations adopted by the Commission in December 1982 (effective April 1983) have further attempted to work within the current statute (Attachment C).

Attachments: A) 1974 Surety Fund Statute

B) 1980 Amended Surety Fund Statute

C) 1982 Surety Fund Regulations

Current Situation

The real estate industry in Alaska consists of some 4000 licensees who support sensible legislation to regulate the industry and to protect the public against illegal real estate practices. This sense of professional responsibility has not changed throughout the 20-year historical summary period outlined above.

Currently there are no filing fees or costs if a claim is denied, nor is the claimant required to exhaust other remedies before receiving satisfaction from the Surety Fund. Thus, the "no-risk" and "no-costs incurred" status of claimants simply encourages claims. Further, the state entity, either contracted or appointed, is in the position of being both judge and jury.

It is the consensus of the industry that a concentrated effort must be made immediately to restore the integrity of the surety fund, both in concept and in actual administration.

Points to Achieve

1. Ensure the rights of all parties to due process through the court system with the determination of a claim's validity and resultant damage assessment in the courts.

2. Maintain the Surety Fund as a resource to be drawn upon only when funds are not collectable from the judgment debtor by any other means.

3. Charge the Real Estate Commission with the responsibility of timely license action on the licensee whose action has resulted in a draw from the Fund.

4. Direct the Real Estate Commission to provide quality education programs to licensees and the public as to licensees' responsibilities under the real estate statutes and regulations.

ALASKA ASSOCIATION OF REALTORS

RITA JO SHOULTZ
President

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: April 2, 1984

REQUEST
Bill/Resolution No.: HB 705
Title: An Act relating to the real estate surety fund
Sponsor: Labor, Commerce & Finance
Requestor: Legislature
Date of Request: March 28, 1984

FISCAL DETAIL
Agency Affected: Real Estate Commission
Program Category Affected: Consumer Protection
BRU, Program or Subprogram(s) Affected: Real Estate Commission/Dept. of Comm. & Econ. Dev.

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES			[67.0]	[70.0]	[75.0]	[75.0]
200 TRAVEL			[3.0]	[5.0]	[5.0]	[6.0]
300 CONTRACTUAL			[1.0]	[1.0]	[1.2]	[1.2]
400 SUPPLIES			[0.4]	[0.5]	[0.5]	[0.7]
500 EQUIPMENT			[1.0]	-0-	-0-	-0-
600 LAND & STRUCTURES			-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS			-0-	-0-	-0-	-0-
800 MISCELLANEOUS			-0-	-0-	-0-	-0-
TOTAL OPERATING			[72.4]	[76.5]	[81.7]	[82.9]
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			60.0			
FEDERAL FUNDS						
OTHER SURETY			12.4			
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

NOTE: 1. Fund payments reduced by 30,000 - 70,000 per year.

2. Current case load will be handled in FY '85 under existing law. Savings will result in FY '86.

ANALYSIS: Attach a separate page for analysis

Prepared By: James L. Magowan, Executive Director Phone: 563-2169
Division: Real Estate Commission Date:

Approved by Commissioner: Richard A. Lyon Date: 4/2/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HB

706

MEMO:

3 April, '84

TO: John
FROM: Merrill

RE: HB# 706

John, I have written a short analysis of this bill which is attached, Chat Chatterton will be standing by for a conference call this morning, so that he may testify and answer any questions. Industry will also have someone present. Larry Vavra of Union Oil has suggested an amendment changing the words "price determinations" to "well classifications", because this is actually what the commission does and the price is determined by the classification. Everyone has signed off on the change, but when I talked with Chatterton late Monday, he wanted a slightly different wording to conform with federal regs. I wasn't able to contact Vavra, but am sure it can be worked out during the committee meeting this morning.

QUESTIONS:

1.) As more and more gas wells are discovered in Alaska, is this process going to become burdensome to the commission budget wise?

2.) What would the effects of natural gas decontrol have on this process?

3.) Is there any real need to put this in the statutes if you have been operating without any problems since 1979?

a.) FOLLOW UP: If this is not put into the statutes, could the Governor at a future date transfer the authority to another agency?

4.) Is the decision of the Commission final, or does the applicant have any course of appeal, if there is a disagreement as to the classification of the well?

ANALYSIS

HB# 706 by Labor & Commerce
RE: The authority of the Oil & Gas Conservation Commission

This bill was introduced by the committee as a result of testimony at a March 7th hearing by the Labor & Commerce Committee on HB# 680, a bill relating to underground injection wells. At that hearing Mr. Chat Chatterton, Chairman of the Alaska Oil & Gas Commission, suggested several amendments to HB# 680. the Committee adopted one of the amendments to HB# 680, and recommended that a separate bill be introduced to take care of the other issues.

HB# 706 adds a new subsection to AS. 31.05.030 to make the Alaska Oil and Gas Conservation Commission the state jurisdictional agency over applications for natural gas price determinations, for wells that are outside federal jurisdiction.

Since the Oil & Gas Conservation Commission was established Jan. 1, 1979, by the Governor, it has been performing this function. What the Commission actually does is determine the category for the well, and the price of the gas is determined according to the well category. They have been doing this in compliance with federal law that requires the state Oil & Gas regulatory authority to become the jurisdictional agency. This bill simply adds this authority to state statute.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 706
Title: Relating to authority of Oil & Gas Conservation Commission
Sponsor: H/Labor/Commerce
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Economic Development
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Alaska Oil & Gas Conservation Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Chat Chatterton Phone: 279-1433
Division: Alaska Oil & Gas Conservation Commission Date:

Approved by Commissioner: Richard A. Lyon Date: 4/2/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ANALYSIS

HB# 706 by Labor & Commerce
RE: The authority of the Oil & Gas Conservation Commission

This bill was introduced by the committee as a result of testimony at a March 7th hearing by the Labor & Commerce Committee on HB# 680, a bill relating to underground injection wells. At that hearing Mr. Chat Chatterton, Chairman of the Alaska Oil & Gas Commission, suggested several amendments to HB# 680, the Committee adopted one of the amendments to HB# 680, and recommended that a separate bill be introduced to take care of the other issues.

HB# 706 adds a new subsection to AS. 31.05.030 to make the Alaska Oil and Gas Conservation Commission the state jurisdictional agency over applications for natural gas price determinations, for wells that are outside federal jurisdiction.

Since the Oil & Gas Conservation Commission was established Jan. 1, 1979, by the Governor, it has been performing this function. What the Commission actually does is determine the category for the well, and the price of the gas is determined according to the well category. They have been doing this in compliance with federal law that requires the state Oil & Gas regulatory authority to become the jurisdictional agency. This bill simply adds this authority to state statute.

PROPOSED AMENDMENT No. 2

FOR

CS House Bill No. 680 L & C

Add to the Bill a new Section 2 as follows and renumber subsequent sections accordingly:

* Sec. 2 AS 31.05.030 is amended by adding a new subsection to read:

(i) The commission shall have the authority to act as the jurisdictional agency over applications involving natural gas price determinations for all wells in Alaska not under federal jurisdiction, pursuant to the "Natural Gas Policy Act" of 1978, Public Law 95-621 and applicable regulations.

Subpart E—Identification of State and Federal Jurisdictional Agencies

[¶ 24,451]

Sec. 274.501 Jurisdictional agency.

(a) *Definition.* Except as provided in paragraph (b), "jurisdictional agency" means:

(1) with respect to a well the surface location of which is on the OCS, the Federal or State agency having regulatory jurisdiction with respect to the production of natural gas. The following agencies have notified the Commission of their authority in this regard.

(i) for OCS wells located in the Gulf Coast Region:

Area Oil & Gas Supervisor
Suite 336
3301 N. Causeway Blvd.
Metairie, LA 70010

(ii) for OCS wells located in the Atlantic Region:

Area Oil and Gas Supervisor
Atlantic OCS Operations
Suite 204
1725 K Street, N.W.
Washington, DC 20244

(iii) for OCS wells located offshore Alaska:

Area Oil & Gas Supervisor
P.O. Box 259
Suite 109
800 A Street
Anchorage, AK 99510

(iv) for OCS wells located offshore California:

Area Oil & Gas Supervisor
160 Federal Building
1340 W 6th Street
Los Angeles, CA 90017

(2) with respect to a well the surface location of which is on lands within the boundaries of a State (including Federal lands and offshore State lands), the Federal or State agency having regulatory jurisdiction with respect to the production of natural gas. The following agencies have notified the Commission of their authority in this regard:

State in which well is located	Jurisdictional agency for wells on	
	Federal lands	Other lands
Alabama	Area Oil & Gas Supervisor, Suite 204, 1725 K. St., N.W., Washington, D.C., 20006.	Oil & Gas Supervisor, State Oil & Gas Board, Drawer O, University, AL 35486.
Alaska	Area Oil & Gas Supervisor, P.O. Box 259, Suite 109, 800 A Street, Anchorage, AK 99510.	Oil & Gas Conservation Commission, 3001 Porcupine Drive, Anchorage, AK 99501.
Arizona	Area Oil & Gas Supervisor, P.O. Box 26124, 505 Marquette Ave., N.W., Albuquerque, NM 87125.	Oil & Gas Conservation Commission, Suite 420, 1645 W. Jefferson, Phoenix, AZ 85007.
Arkansas	Area Oil & Gas Supervisor, 6136 E. 32nd Place, Tulsa, OK 74135.	Oil & Gas Commission, A Division of the Arkansas Dept. of Commerce, 314 East Oak, El Dorado, AR 71730.
California	Area Oil & Gas Supervisor, 160 Federal Building, 1340 West 6th Street, Los Angeles, CA 90017.	Department of Conservation, Division of Oil & Gas, 1416 Ninth St., Rm. 1316, Sacramento, CA 95814.
Colorado (except for the west ranges of the New Mexico Principal Meridian). (c)	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Building & Post Office, Casper, WY 82602.	Oil & Gas Conservation Commission, 1313 Sherman Street, Rm. 721, Denver, CO 80203.
Colorado (only the west ranges of the New Mexico Principal Meridian)	Area Oil & Gas Supervisor, P.O. Box 26124, 505 Marquette Ave., N.W., Albuquerque, NM 87125.	
Florida	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Administrator of Oil & Gas, Bureau of Geology, Department of Natural Resources, 903 W. Tennessee Street, Tallahassee, FL 32304.
Georgia	Area Oil & Gas Supervisor, Suite 204, 1725 K St., N.W., Washington, D.C. 20006.	Department of Natural Resources, Geologic & Water Resources Division, 19 Martin Luther King Drive, SW., Atlanta, GA 30334.
Idaho	Area Oil & Gas Supervisor, 160 Federal Building, 1340 West 6th Street, Los Angeles, CA 90017.	Idaho Public Utilities Commission, Statehouse Mail, Boise ID 83720.
Illinois	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Department of Mines and Minerals, Oil & Gas Division, 704 Stratton Office Building, 400 S. Spring Street, Springfield, IL 62706.
Indiana	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Department of Natural Resources, Oil & Gas Division, 606 State Office Bldg., 100 N. Senate Avenue, Indianapolis, IN 46204.
Kansas	Area Oil & Gas Supervisor, 6136 East 32nd Place, Tulsa, OK 74135.	Corporation Commission, Suite Office Building, Topeka, KS 66612.
Kentucky	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Department of Mines and Minerals, Oil & Gas Division, Box 680, Lexington, KY 40501.
Louisiana	Area Oil & Gas Supervisor, 6136 East 32nd Place, Tulsa, OK 74135.	Office of Conservation, Box 44275, Baton Rouge, LA 70804.
Maryland	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Energy and Coastal Zone Administration, Department of Natural Resources, Tawes State Office Bldg., Annapolis, MD 21404.
Michigan	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Department of Natural Resources, Box 30028, Lansing, MI 48909.
Mississippi	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	State Oil & Gas Board, Box 1332, Jackson, MS 39205.
Montana	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Bldg. & Post Office, Casper, WY 82602.	Oil & Gas Conservation Division, Department of Natural Resources and Conservation, 2535 St. Johns Ave., Billings MT 59102, or P.O. Box 217, Helena, MT 59601.

State in which well is located	Jurisdictional agency for wells on Federal lands	Other lands
Nebraska	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Bldg. & Post Office, Casper, WY 82602.	Oil & Gas Conservation Commission, Box 393, Sidney, NE 69162.
Nevada	Area Oil & Gas Supervisor, 160 Federal Building, 1340 West 6th Street, Los Angeles, CA 90017	Department of Conservation and Natural Resources, Division of Mineral Resources, Capitol Complex, 201 S. Fall Street, Carson City, NV 89710.
New Mexico	Area Oil & Gas Supervisor, P.O. Box 26124, Marquette Ave., N.W., Albuquerque, NM 87125.	Department of Energy and Minerals, Oil Conservation Division, Box 2088, Santa Fe, NM 87501.
New York	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Department of Environmental Conservation, Bureau of Mineral Resources, 50 Wolf Road, Albany, NY 12233.
North Carolina	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Department of Natural Resources and Community Development, 512 N. Salisbury Street, Raleigh, NC 27611.
North Dakota	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Bldg. & Post Office, Casper, WY 82602.	Geological Survey, University Station, Grand Forks, ND 58202.
Ohio	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Ohio Department of Natural Resources, 1930 Belcher Drive, Fountain Square, Columbus, OH 43224.
Oklahoma (except the Osage Reservation).	Area Oil & Gas Supervisor, 6136 East 32nd Place, Tulsa, OK 74135.	Corporation Commission, [illegible] Building, Oklahoma City, OK, 73105.
(or)		
Oklahoma (Only the Osage Reservation)	Superintendent, Osage Indian Agency, Bureau of Indian Affairs, U.S. Department of the Interior, Pawhuska, OK 74056.	
Oregon	Area Oil & Gas Supervisor, 160 Federal Building, 1340 West 6th Street, Los Angeles, CA 90017	Department of Geology & Mineral Industries, 1069 State Office Bldg., Portland, OR 97201.
Pennsylvania	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Department of Environmental Resources, Division of Oil & Gas Regulation, 1205 Kossman Bldg., 100 Forbes Avenue, Pittsburgh, PA 15222.
South Carolina	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	South Carolina Public Service Commission, P.O. Drawer 11649, Columbia, SC 29211.
South Dakota	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Bldg. & Post Office, Casper, WY 82602.	Geological Survey, Science Center University, Vermillion, SD 57069.
Tennessee	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	State Oil & Gas Board, G-5 State Office Bldg., Nashville, TN 37219.
Texas (East of the 100th Meridian)	Area Oil & Gas Supervisor, 6136 East 32nd Place, Tulsa, OK 74135.	Railroad Commission, Drawer 12967, Austin, TX 78711.
(or)		
Texas (West of the 100th Meridian)	Area Oil & Gas Supervisor, P.O. Box 26124, 505 Marquette Ave., N.W., Albuquerque, NM 87125.	
Utah (except San Juan County)	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Bldg. & Post Office, Casper, WY 82602.	Division of Oil, Gas and Mining, Utah Department of Natural Resources, 1588 West North Temple, Salt Lake City, UT 84116.
(or)		
Utah (only San Juan County)	Area Oil & Gas Supervisor, P.O. Box 26124, 505 Marquette Ave., N.W., Albuquerque, NM 87125.	
Virginia	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Division of Mines and Quarries, P.O. Drawer V, Big Stone Gap, VA 24219.
Washington	Area Oil & Gas Supervisor, 160 Federal Building, 1340 West 6th Street, Los Angeles, CA 90017	Oil & Gas Supervisor, Department of Natural Resources, Olympia WA 98504.
West Virginia	Area Oil & Gas Supervisor, Suite 204, 1725 K Street, N.W., Washington, D.C. 20006.	Oil & Gas Division, Department of Mines, State Capitol, Charleston, WV 25305.
Wyoming	Area Oil & Gas Supervisor, P.O. Box 2859, 2002 Federal Bldg. & Post Office, Casper,	Oil & Gas Conservation Commission, Box 2640, Casper, WY 82602.

(b) *Waiver.* In the case of any determination to which a waiver under Subpart C of Part 274 is applicable, "jurisdictional agency" means the Commission.

(c) *Federal lands.* For purposes of this section, "Federal lands" means

(1) all lands leased under:

(i) the Mineral Lands Leasing Act, as amended, 30 U.S.C. § § 181 *et seq.;* and

(ii) the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § § 351 *et seq.;* and

(2) all Indian lands which are under the supervision of the United States Geological Survey (30 CFR Part 221); and

(3) all Indian lands which are under the supervision of the Osage Indian Agency, Bureau of Indian Affairs, U.S. Department of the Interior.

(d) *Divided-interest leases.* Unless an agreement under paragraph (f) of this section provides otherwise, where a well is located on a divided-interest lease involving Federal (or Indian) and private (or State) ownership:

(1) the Federal jurisdictional agency shall make the determination where the majority lease interest is Federal (or Indian);

(2) the State jurisdictional agency shall make the determination where the majority lease interest is private (or State); and

(3) the State jurisdictional agency shall make the determination where the lease is divided equally.

(e) *Drilling units.* Unless an agreement under paragraph (f) of this section provides otherwise, where a drilling unit is drained by two or more wells, the Federal jurisdictional agency shall make the determination if the completion location of the well in question is located on a Federal (or Indian) lease, and the State jurisdictional agency shall make the determination if the completion location of the well in question is located on a private (or State) lease.

(f) *Agreements.* If the United States Geological Survey and any State jurisdictional agency enter into an agreement authorizing such State agency to make determinations under Subpart A of this part with respect to wells located on Federal lands, or authorizing the U.S. Geological Survey to make such determinations with respect to wells located on State lands, such agreement shall be filed with the Commission. Upon the filing of such an agreement the agency so authorized in the agreement shall be considered the jurisdictional agency with respect to wells on the designated lands to the extent provided in the agreement.

.01 44 F.R. 48664 (August 20, 1979)

.05 *Historical record.*—Section 274.501 originated in 43 F.R. 56448 (12/1/78), effective 12/1/78.

Subsection (a), appearing in 43 F.R. 56448 (12/1/79), effective 12/1/78, read as follows until its amendment in 44 F.R. 48664 (8/20/79), effective 8/1/79:

(a) *Definition.* Except as provided in paragraph (b), "jurisdictional agency" means:

(1) With respect to a well on the OCS, one of the following offices of the United States Geological Survey:

(i) for OCS wells located in the Gulf Coast Region:

Area Oil & Gas Supervisor
Suite 336
3301 N. Causeway Blvd.
Metairie, LA 70010

(ii) for OCS wells located in the Atlantic Region:

Area Oil & Gas Supervisor
Atlantic OCS Operations
Suite 204
1725 K Street, N.W.
Washington, DC 20244

(iii) for OCS wells located offshore Alaska:

Area Oil & Gas Supervisor
P.O. Box 259
Suite 109
800 A Street
Anchorage, AK 99510

(iv) for OCS wells located offshore California:

Area Oil & Gas Supervisor
160 Federal Building
1340 West 6th Street
Los Angeles, CA 90017

(2) With respect to a well the surface location of which is on lands within the boundaries of a State (including Federal lands and offshore State lands), the agency specified in the following table:

[Note: the list of jurisdictional agencies, appearing in 43 F.R. 56448 (12/1/78), effective 12/1/78, is not reproduced.]

Subsection (c), appearing in 43 F.R. 56448 (12/1/78), effective 12/1/78, read as follows until its amendment in 44 F.R. 48664 (8/20/79), effective 8/1/79:

(c) *Federal lands.* For purposes of this section, "Federal lands" means

(1) all lands leased under,

(i) the Mineral Lands Leasing Act, as amended, 30 U.S.C. § § 181 *et seq.*, and

(ii) the Mineral Leasing Act for Aquired Lands, as amended, 30 U.S.C. § § 351 *et seq.*, and

(2) all Indian lands which are under the supervision of the United States Geological Survey (30 CFR Part 221).

Subsections (d) and (e) newly originated in 44 F.R. 48664 (8/20/79), effective 8/1/79.

Subsection (f) (formerly designated as subsection (d)), appearing in 43 F.R. 56448 (12/1/78), effective 12/1/78, read as follows until its amendment in 44 F.R. 48664 (8/20/79), effective 8/1/79:

(d) *Agreements.* If the United States Geological Survey and any state jurisdictional agency enter into an agreement authorizing such state agency to make determinations under Subpart A with respect to wells located on Federal lands, such agreement shall be filed with the Commission. If such an agreement is filed, then such state agency shall be considered the jurisdictional agency with respect to wells on Federal lands in such state to the extent provided in the agreement.

[Part 275 begins on page 14,541.]

(b) *Waiver.* In the case of any determination to which a waiver under Subpart C of Part 274 is applicable, "jurisdictional agency" means the Commission.

(c) *Federal lands.* For purposes of this section, "Federal lands" means

(1) all lands leased under:

(i) the Mineral Lands Leasing Act, as amended, 30 U.S.C. § § 181 *et seq.*; and

(ii) the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § § 351 *et seq.*; and

(2) all Indian lands which are under the supervision of the United States Geological Survey (30 CFR Part 221).

(d) *Agreements.* If the United States Geological Survey and any state jurisdictional agency enter into an agreement authorizing such state agency to make determinations under Subpart A with respect to wells located on Federal lands, such agreement shall be filed with the Commission. If such an agreement is filed, then such state agency shall be considered the jurisdictional agency with respect to wells on Federal lands in such state to the extent provided in the agreement.

[Part 275 begins on page 14,541.]

U.S. DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission
Washington, D.C. 20426

Form Approved
OMB No. 1902-0038
(Expires 12/31/84)

APPLICATION FOR DETERMINATION OF THE MAXIMUM LAWFUL PRICE UNDER THE NATURAL GAS POLICY ACT (NGPA)
(Sections 102, 103, 107 and 108)

GENERAL INSTRUCTIONS

Complete this form if you are applying for price classification under sections 102, 103, 107 or 108 of the NGPA.

Complete each appropriate item on the reverse side of this page. The code numbers used in items 4 and 6 can be obtained from the Buyer/Seller Code Book. If there is more than one purchaser or contract, identify the additional information in the space below. Also enter any additional remarks in the space below. The data reported on this form are not considered to be confidential and will not be treated as such.

Submit the completed application to the appropriate Jurisdictional Agency as listed in title 18 of the CFR, part 274.501. If there are any questions, call (202) 357-8585.

SPECIFIC INSTRUCTIONS

Use the codes in the table below for type of determination in item 2.

Section of NGPA (a)	Category Code (b)	Description (c)
102	1	New OCS lease
102	2	New onshore well (2.5 mile test)
102	3	New onshore well (1000 feet deeper test)
102	4	New onshore reservoir
102	5	New reservoir on old OCS lease
103	-	New onshore production well
107	0	Deep (more than 15,000 feet) high cost gas
107	1	Gas produced from geopressured brine
107	2	Gas produced from coal seams
107	3	Gas produced from Devonian shale
107	5	Production enhancement gas
107	6	New tight formation gas
107	7	Recompletion tight formation gas
108	0	Stripper well
108	1	Stripper well – seasonally affected
108	2	Stripper well – enhanced recovery
108	3	Stripper well – temporary pressure buildup
108	4	Stripper well – protest procedure

Enter the appropriate information regarding other Purchasers/Contracts.

Line No.	Contract Date (Mo, Da, Yr) (a)	Purchaser (b)	Buyer Code (c)
1			
2			
3			
4			
5			
6			

Remarks:

1/ A gas sales contract has not as yet been agreed upon and/or executed. It is anticipated, however, that it will contain pricing provisions that will permit ARCO to collect the maximum lawful price.

APPLICATION FOR DETERMINATION OF THE MAXIMUM LAWFUL PRICE UNDER THE NATURAL GAS POLICY ACT (NGPA)

1.0 API well number: (If not assigned, leave blank. 14 digits.)	50- 029 - 20585 -
2.0 Type of determination being sought: (Use the codes found on the front of this form.)	102 (Section of NGPA) 4 (Category Co.)
3.0 Depth of the deepest completion location: (Only needed if sections 103 or 107 in 2.0 above.)	_____ feet
4.0 Name, address and code number of applicant. (35 letters per line maximum. If code number not available, leave blank.)	ARCO Alaska, Inc., a corporation duly organized under the laws of the State of Delaware (Name) 000969 (Seller Code) P. O. Box 2819 (22-108 DAB) (Street) Dallas, (City) Texas (State) 75221 (Zip Code)
5.0 Location of this well: (Complete (a) or (b).) (a) For onshore wells (35 letters maximum for field name.)	Kuparuk River Oil Pool (Field Name) North Slope Borough (County) Alaska (State)
(b) For OCS wells:	_____ (Area Name) _____ (Block Number) Date of Lease: Mo. Day Yr. _____ (OCS Lease Number)
(c) Name and identification number of this well: (35 letters and digits maximum.)	Kuparuk River Unit #1C-8
(d) If code 4 or 5 in 2.0 above, name of the reservoir: (35 letters maximum.)	
6.0 (a) Name and code number of the purchaser: (35 letters and digits maximum. If code number not available, leave blank.)	None Contract Pending (Name) _____ (Buyer Code)
(b) Date of the contract:	N/A (Mo. Day Yr.)
(c) Estimated total annual production from the well:	302.8 Million Cubic Feet

		(a) Base Price as of 2-1-84	(b) Tax Estimated	(c) All Other Prices (Indicate (+) or (-).)	(d) Total of (a), (b) and (c)
7.0 Contract price: (As of filing date. Complete to 3 decimal places.)	$/MMBTU	0.000	0.000	0.000	0.000 1/
8.0 Maximum lawful rate: (As of filing date. Complete to 3 decimal places.)	$/MMBTU	3.609	0.361	0.000	3.970

9.0 Person responsible for this application:

Dottie J. Martinson (Name) Director, Gas Regulations (Title)

Dottie J. Martinson (Signature)

February 16, 1984 (Date Application is Completed)

(214) 880-3650 (Phone Number)

Agency Use Only
Date Received by Juris. Agency
Date Received by FERC

FERC-121 (8-82)

HB

7U

APRIL 4, 1984

TO: JOHN

FROM: KEN

RE: HB 711 "RELATING TO THE BOARD OF PUBLIC ACCOUNTANCY"

BY MANDATE OF ALASKA STATUTES 44.66.050 AND 08.03.010 THE HOUSE LABOR AND COMMERCE COMMITTEE MUST CONSIDER FOR SUNSET REVIEW, THE STATE BOARD OF PUBLIC ACCOUNTANCY. HB 711 WOULD EXTEND THAT BOARD THROUGH 1988.

IF THE COMMITTEE MEMBERS HAVE AND A CHANCE TO REVIEW THE PERFORMANCE REPORT OF THE BOARD OF PUBLIC ACCOUNTANCY, YOU WOULD HAVE NOTED UNDER THE RECOMMENDATIONS SECTION, THERE ARE NO RECOMMENDATIONS MADE BY THE REPORT WHICH INDICATE STATUTE CHANGES ARE NECESSARY. SINCE THE BOARD OF PUBLIC ACCOUNTANCY HAS BEEN GIVEN A CLEAN SLATE IN THE PERFORMANCE REPORT, IT IS MY INTENTION TO PASS HB 711 ON TO THE NEXT COMMITTEE OF REFERAL, WHICH WOULD BE RULES.

ackley
jensen
architects inc.

March 22, 1984

RE: Board of Registration for Architects, Engineers and Land Surveyors

Representative Cowdry, Chairman
Labor and Commerce Committee
Room 209 Behrends Building
Juneau, Alaska

Dear Representative Cowdry:

Thank you for the opportunity to comment on the Committee bill regarding the continuation of the Board of Registration for Architects, Engineers and Land Surveyors. I understand that your committee proposes to continue the board for another four years, to reduce the length of terms to four years, to leave the composition of the board unchanged, and to delete the requirements in CS SB 438 for registrants providing evidence of "continued competence" for renewal of registration.

As President of the board I concur with these positions and feel that the board will also concur. If I can be of further assistance please contact me or any other board member.

Sincerely,

Wayne Jensen

WJ:mec24(3)

p.o. box 310, juneau, alaska 99802 (907) 586-1070

HB

716

A PERFORMANCE REPORT ON THE BOARD OF PHARMACY

July 1, 1980 to February 28, 1983

Audit Control Number

08-1114-51-83-R

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vincent O'Reilly Terry Elder

Members of the Board of Pharmacy

Chairman	Eldon Ulmer
Secretary	Margaret Soden
Member	Susan Roberts
Member	Robert Snider
Member	James McCorcle
Member	Charles Rush
Member	Sidney Fry

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

May 17, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE
BOARD OF PHARMACY

July 1, 1980 to February 28, 1983

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

TABLE OF CONTENTS

PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Pharmacy for the past three fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Pharmacy should be reestablished. The law now specifies that the Board will terminate June 30, 1984, and have one year from that date to conclude its affairs.

SCOPE

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.

2. Interviews with the license examiners.

3. Tests of files and documents of licensees.

4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.

5. Discussions with Board members.

6. Minutes of Board meetings and Division correspondence files.

7. Attorney General Opinions applicable to professional boards.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The Board of Pharmacy is a regulatory board with seven members; two public members having no direct financial interest in the health care industry, and five professional members with three years practical experience and licensed in Alaska. Whenever possible, each judicial district should be represented by a Board member.

The Board regulates five types of licenses; pharmacists, retail pharmacies, wholesale pharmacies, hospital pharmacies and drug rooms. The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.

2. Establishing, amending, or eliminating regulations controlling pharmacy practices.

3. Revoking, annulling or suspending licenses in accordance with the Administrative Procedures Act when a person has violated pharmacy statutes or regulations.

Applicants for registration as a pharmacist are required to pass the National Association of the Boards of Pharmacy Licensing Examination (NABPLEX), and a jurisprudence exam covering Alaska pharmacy law and the Federal Controlled Substance Act.

Pharmacists licensed to practice in another state who apply for licensure in Alaska can be licensed by credentials, except for those applicants from California or Louisiana. These two states require applicants to pass a state exam, not the national exam. Consequently, these applicants must take the national exam when applying in Alaska.

The Board may also issue temporary or emergency permits. Temporary permits allow qualified applicants to practice until the Board can formally license them; emergency permits allow pharmacists licensed in another state to practice in Alaska in an emergency. Both permits are limited in their duration and application.

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REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Pharmacy should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Pharmacy should allow the Division of Occupational Licensing (OL) to perform its administrative duties as described in AS 08.01.050 to improve documentation and file management.

The Secretary of the Board receives license fees and applications, keeps applicant files, sends notification of exam results, and issues temporary permits. Each of these responsibilities has been assigned by the Legislature to the Department of Commerce and Economic Development, Division of Occupational Licensing. The above situation exists because the previous Secretary believed he could be more efficient in maintaining the files and processing the applications. We disagree.

The Division of Occupational Licensing is able to provide continuous, uninterrupted service while Board membership changes causing address changes and file transfers.

Additionally, the Secretary of the Board may not be equipped with the space or security needed to maintain confidentiality of files and to safeguard State assets. Furthermore, applicants become confused about where to send their documents.

Noncompliance with AS 08.01.050 is the major cause of the following problems:

A. In seven of ten files reviewed for proper permanent licensure, we were unable to assure ourselves the applicant had passed the jurisprudence exam.

B. In two of the files, we were unable to verify the applicants had satisfied the internship requirement. The Board reviewed these files and was unable to satisfy us that the requirements had been met. One file was missing documentation and the other file had documentation we considered insufficient in relation to that required of other applicants. Most applicants were required to have certified copies of hours worked from supervising pharmacists. In this case, documentation consisted of an internship permit issued by the Board with no evidence any hours had been worked.

C. Temporary permits are being issued by individual Board members without complete documentation on file in DOL. This procedure has resulted in inconsistent issuances of temporary permits. Furthermore, it allows for the possibility of unqualified individuals being licensed.

Prior to the February 1983 Board meeting, we reviewed each application for permanent licensure scheduled for Board consideration. Each applicant had already been issued a temporary permit. In five of eleven cases, there was insufficient documentation in the applicant's file to show that all requirements for temporary licensure had been met.

By the time of the February 1983 meeting, all necessary documentation to support issuance of temporary permits, except for a jurisprudence exam, had either been received by OL or brought to the meeting by the Secretary of the Board. With the additional documentation, we determined that no temporary permit had been issued to an unqualified applicant. However, the possibility exists for a person to be improperly licensed for a short time.

The Board should ensure all documentation is sent directly to OL. When the file is complete, a member of the Board can either issue the permit or direct OL to issue the permit. This procedure will ensure that all necessary documentation is on file at OL before issuance of temporary permits.

D. Alaska Statute 08.80.157 requires proof that an applicant for a retail or wholesale pharmacy license has the land, facilities and equipment necessary to carry on business. Also, that the applicant be free of any conviction of a federal or state drug offense and free of any addiction.

We reviewed seven pharmacy files and none of the files contained sufficient documentation to issue a license. We discussed our finding with the Board and determined it was not their policy to include this documentation. They knew who had the facilities and relied on a telephone call from the Drug Enforcement Administration to satisfy the conviction requirement.

We believe the Board should adopt a policy to document satisfaction of the licensing requirements. The procedures need not be elaborate, but should supply sufficient proof that the applicant complies with law.

We recommend the Board ensure that all files, applications, fees and exam results are sent directly to OL. Also, that temporary permits are only issued after all documentation has been received by OL.

Recommendation No. 2

The Board of Pharmacy should reevaluate its regulations governing continuing education.

The following requirements of continuing education should be reviewed.

A. Regulations require nonacademic programs to have an examination or another method of assuring satisfactory completion of the program before continuing education credit will be given. The Board allowed continuing education credit to be given to an individual when the nonacademic requirement had not been met. The reason given for allowing these credits was that the regulations were too stringent.

   If the Board believes its regulations to be arbitrary or unreasonable, those regulations should be changed before accepting nonregulation continuing education credits. Compliance with existing regulations will ensure that all licensees are treated equally and consistently until changes can be made.

B. The Board has described four instances when they will excuse a licensee from continued competency requirements. These causes are chronic illness, retirement, military service, or hardships as individually determined by the Board.

   In our opinion, it is more reasonable to require individuals who have been chronically ill, retired or in the military to demonstrate their continued competency, than those who have not interrupted their practice. We also understand that those persons who have been chronically ill should not be penalized for their illness.

   However, the Board has the ability, under the hardship clause, to determine each case individually. They should evaluate the changes in the profession and develop a plan for the individual that would allow him or her to practice while fulfilling the continuing education requirements. This would fulfill the Board's primary purpose to protect the public while not unduly penalizing the professional.

Recommendation No. 3

The Board of Pharmacy and the Division of Occupational Licensing should introduce legislation that will clarify certain statutory requirements.

Alaska Statute 08.01.050(19) places the responsibility for

performing investigations with the Division; Alaska Statute 08.01.070 assigns to the Board the requesting authority. However, AS 08.80.030(3) also gives the Board the authority to conduct investigations. This conflict has caused friction between the Division and the Board.

The Board is concerned that the Division is not informing them of complaints or investigations concerning pharmacy, while the Division is concerned that the Board not become involved in the investigation to such an extent as to prejudice the case. Also, the Board must remain impartial in case they become involved in any disciplinary action against the licensee.

Legislation is necessary to clarify the responsibilities of the Board and the Division so both will be confident they are properly performing their statutory duties.

Recommendation No. 4

The Office of the Governor should ensure that Board members are properly appointed.

In July of 1980, the Legislature limited the number of consecutive terms a Board member could serve to two and reduced the term from five years to four. The intent of AS 08.80.020 as amended, was to make service on the Board accessible to more individuals in the profession.

In discussions with Legislative Affairs' attorneys, it became clear that the intent of the Legislature was to include service prior to July, 1980, in determining the limitation. Three members of the Board of Pharmacy have served longer than is allowed when prior service is applied.

One member has served for sixteen years as of March 31, 1983, thirteen of those years prior to July, 1980. This same member was reappointed after the effective date of AS-08.80.020. At the end of his present term, he will have served nineteen years. Two other members will have served twelve and ten years at the end of their present terms on March 31, 1984 and March 31, 1985, respectively.

Additionally, three members of the Board appointed after the effective date of the legislation, have been appointed for five year terms instead of four.

We recommend the Office of the Governor ensure that Board members are appointed in accordance with statute.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

I. The extent to which the board, commission or program has operated in the public interest.

A. The Board has held public meetings three times a year.

B. The Board administers the pharmacy test yearly.

C. The Board has passed regulations concerning dangerous drugs, continuing education as proof of continued competency, false or misleading advertisement of drugs, and prepackaging of drugs in hospital drug rooms.

D. The Board was instrumental in passage of the Controlled Substance Act and the Marijuana Therapeutic Research Program.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The Board adopted continuing education regulations that may be too stringent. The Board is reconsidering these regulations (see Recommendation No. 2).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Board actively supported passage of the Controlled Substance Act; it became effective January 1, 1983.

B. The Board succeeded in having various obsolete or vague statutory requirements repealed which provided for smoother operation of the Board.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. Board meetings are announced to the public. Comments on regulation changes are solicited by announcement in public newspapers. The Board does not actively solicit comments on its effectiveness.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

A. The Board announces proposed regulation changes or additions in newspapers according to the Administrative Procedures Act.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board, or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

A. We found no problems in this area.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. We found no instances where the Board had licensed unqualified practitioners.

B. The Board has licensed 83 pharmacists in the last three years, all but eight were licensed by credentials.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

A. Applications for licensure as a pharmacist require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with factors enumerated in this subsection.

Please refer to the recommendation section of this report.

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APPENDIX A

BOARD OF PHARMACY
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ended June 30, 1982

(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	$42,763
Less: Expenditures (Note 3)	46,166
Excess of Expenditures Over Revenues	$ 3,403

Revenue Type	Amount	Collection Time
Examination Fee	$ 50	With application
Re-examination Fee	15	With application
Investigation Fee	25	With application
Pharmacist Fee	200	With license issuance
Pharmacist Renewal Fee	200	Every four years
Temporary License Fee	20	With permit issuance
Wholesale Drug Dealer Fee	200	With license issuance
Wholesale Drug Dealer Renewal Fee	200	Every four years
Retail Pharmacy Fee	200	With license renewal
Retail Pharmacy Renewal Fee	200	Every four years
Pharmacy Interim Fee	10	With license issuance
Emergency Permit Fee	10	With permit issuance
Hospital Pharmacy Fee	200	With license issuance
Hospital Pharmacy Renewal Fee	200	Every four years
Hospital Drug Room Fee	100	With license issuance
Hospital Drug Room Renewal Fee	100	Every four years
Nursing Home and Related Facility Fee	100	With license issuance
Nursing Home and Related Facility Renewal Fee	100	Every four years
License Amendments or Renewal Fee	10	When applicable

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and accordingly we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Years 1981 and 1982 in order to obtain a more accurate representation of revenues collected.

Note 3

Expenditures include those made by board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments (such as the Department of Law) assisting the boards and the Division.

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STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

June 28, 1983

Mr. Gerald Wilkerson, CPA
Legislative Auditor
Audit Division
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Re: Board of Pharmacy - Performance Report

Thank you for the opportunity to respond to the performance audit of the Board of Pharmancy and the Division of Occupational Licensing which is dated July 1, 1980 to February 28, 1983.

We concur with your evaluation that the Board of Pharmacy should continue to exist in interest of the public's health and safety. Your suggestions will be evaluated for implementation. Those determined to improve the efficiency and effectiveness of the division and the board will be strongly supported and recommended. We have reviewed each of your recommendations and will provide you with this agency's position if we do not agree.

RECOMMENDATION #1.

The board of Pharmacy should allow the Division of Occupational Licensing (DOL) to perform its administrative duties as described in AS 08.01.050 to improve documentation and file management.

We concur in this recommendation, and cooperative efforts have recently improved. As mandated by legislation, and in the interest of efficiency, DOL is committed to assisting the Board of Pharmacy in all areas.

RECOMMENDATION #2.

The Board of Pharmacy should reevaluate its regulations governing continuing education.

03-H2LH

This agency is continuing a review on requirement of continuing education by licensing agencies (boards). We do not agree that continued education ensures continued competency. As a licensing agency we determine that competency is the most important. Competency ensures the safety of the consumer. We also take the position that initial licensing is based on minimum qualifications; retesting on the entrance level may serve the purpose of ensuring continued competency. Continued education would, or should, be viewed as the professional association's responsibility to ensure knowledgeable professionals. This would also be in keeping with less government regulations and letting industry regulate itself.

RECOMMENDATION #3.

The Board of Pharmacy and the Division of Occupational Licensing should introduce legislation that will clarify certain statutory requirements.

We concur with this recommendation. This agency has been working with the Legislative Code Revision Committee in rewriting Title 8. This would have deleted the fragmentation throughout Title 8 and the various chapters. This effort was resisted by the board as an effort to diminish its authority. We will seek to have legislation submitted to clarify the issue of conflict within the statutes.

RECOMMENDATION #4.

The Office of the Governor should ensure that board members are properly appointed.

We would assure the auditors this has been addressed by the Governor's Office and by the Department of Law.

Again, thank you for the opportunity to respond to your report. Please feel free to contact this agency or the Division of Occupational Licensing if additional information or clarification is needed. Be assured, we determine your comments and findings to be fair and in the best interest of Alaskan consumers and professional pharmacist.

Sincerely,

Richard A. Lyon
Commissioner

RAL/cw#23DD1
628838

Ulmer

Rexall DRUG STORES & True Value HARDWARE STORES

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Lakes da Mall • Box 520
Homer, Alaska 99603 • (907) 235-8594

ALASKAN MERCHANTS SINCE 1954

23 March 1984

Honorable Joe L. Hayes
SPEAKER OF THE HOUSE
of Representatives
Pouch V
Juneau , Alaska 99811

Dear Joe,

Many thanks for your letter of March 17. It is gratifying to me to know that you , Representative Cowdery, and Senator Eliason are taking a hard look at what is happening regarding implementation of Alaska's Controlled Substance Act and particularly AS 17.30 of that Act.

The Board of Pharmacy was handed the ball by the Legislature,along with funding to hire an Executive Secretary and Investigator. Unfortunatly these titles were not included as specific wording in the law , although these positions were repeatedly mentioned when the legislation was being considered and passed.

Board requests for an Executive Secretary , have repeatedly been ignored by the Governor, the Commissioner of Commerce , and the Director of Occupational Licensing (DOL). I believe all of them have a misconception of the intent , the importance , and the timely implementation of the Law.

Federal statistics,on file with the Alaska Department of Law , show that controlled substance from the legitimate industry account for some 60 % of deaths of patients brought to hospital emergency rooms with drug related problems (nation wide). Statistics also show ,over 60% of drug related problems of patients being treated in hospital emergency rooms, come from drugs from the legitimate industry. These drugs are obtained by armed robbery, by after hour breakins, by prescriptions from unscrupulous practitioners, by forgery of precsriptions, or by sale by unscrupulous pharmacists.....but all from the legitimate industry.

The federal Drug Enforcement Administration(DEA) and state and local drug enforcement units have their hands full dealing with the "street traffic" illegitimate entrance of and use of controlled substances in all states . They rely on state laws, such as Alaska's AS 17.30 to deal with the legitimate industry. Most states effectively do this through their Boards of Pharmacy. No big buearacy is needed . Wyoming does it quietly, and cost effectively with one Executive Secretary and one Investigator, Under the direction of its Board of Pharmacy. Alaska would do well to emulate this program and the Board planned just that.

Ulmer

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ALASKAN MERCHANTS SINCE 1954

23 March 1984

Honorable Joe L. Hayes
page 2.

You and Representative Cowdery and Senator Eliason all have documented evidence of the valient effort by the Board of Pharmacy to carry out the intent of the Legislature. I will not repeat all of that here, but it is important for you to know that I did spend many long hours drafting both .....proposed regulations and job qualifications and a job description for the Executive Secretary. The later may be of value to you when you propose legislation to mandate creation of the position.

Again thanks for your letter, your interest, and your help in drafting and passing legislation that will clarify legislative intent. If I can be of assistance in this effort, please call me.

Since the Governor removed me from the Board, and refused to reappoint the member from Sitka and has indicated that he will not reappoint the present experienced Secretary of the Board, the Board will be down to one professional and one lay member with any real experience. The new inexperienced Board will desperately need the Executive Secretary.

Sincerely,

Eldon R. Ulmer, R.Ph

Copy: Representative John Cowdery
Senator Dick Eliason
Charles Rush, R.PH. Secretary Board of Pharmacy

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING

BILL SHEFFIELD, GOVERNOR

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

July 29, 1983

Eldon Ulmer, R.Ph.
Chairman
Board of Pharmacy
P.O. Box 101420
Anchorage, Alaska 99510

Dear Mr. Ulmer:

Re: Executive Officer Position

This correspondence is to advise you that efforts of Mr. Jim Lawson, personnel officer, Department of Commerce and Economic Development, were to no avail in changing the position of the investigator to an executive officer.

We should proceed immediately to fill the position as mandated by legislation.

Sincerely,

Harry D. Treager
Director

HDT/cw#2707
72983A
cc: Dick Long

DB-H8LH

William Sheffield,
[redacted], Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

5 March 1983

Eldon R. Ulmer , R.Ph.
President, Board of Pharmacy
P.O. Box 101420
Anchorage, Alaska 99510

Mr. Harry Treager
Director
Division of Occupational Licensing
Pouch "D"
Juneau , Alaska 99811

Dear Mr. Treager:

Please consider this letter and supportive information attached , as an official request for action by you , from the Board of Pharmacy .

When you met with the Board in Juneau on February 25, 1933, you requested that I write to you asking your help in obtaining changes in the "designation of personnel" portion of the budgeted line items for implementation of AS 17.30 and As 17.35 by the Board of Pharmacy.

You also asked for a job description for the Boards designation of "EXECUTIVE-SECRETARY-INSPECTOR " . In the five pages, attached, stating purpose , and including narrative , conclusion , and an addendum, I have attempted to do that . It is complex , to say the least, but I do believe it conveys the intent of the legislature and a means of implementing that intent.

Please expedite your request for the line item change so we may proceed at once. We are already two months into 1983 , and need to go at full speed in the next month or two .

Let me know as soon as you have hired the regulation specialist that you promised to hire and base in Anchorage. I have five pages of suggested regulations covering not only AS 17.30, but also AS 17.35 . I have a commitment from all four of the physicians to serve in the various categories on the Patient Qualification Review Committee and need the specialist to aid in getting my proposed applications for those positions . into printed form, so letters of appointment may be sent.

Sincerely,

Eldon R. Ulmer, R.Ph.

08-H8LH

William Sheffield,
[redacted] Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

5 March 1983

Eldon R. Ulmer , R.Ph.
President, Board of Pharmacy
P.O. Box 101420
Anchorage, Alaska 99510

Mr. Harry Treager
Director, Division of Occupational Licensing.....

Enclosure: Five pages of supportive material.

COPY TO: Honorable William Sheffield,
Governor, State of Alaska
Pouch "A" State Capitol Building
Juneau , Alaska 99811

Richard A.Lyon, Commissioner Commerce & Econ. Dev.
Pouch "D"
Juneau , Alaska 99811

Honorable Joe Hayes, Speaker of House of Representatives
Pouch "V"
Juneau , Alaska 99811

Honorable Jalmar Kerttula, President of the Senate
Pouch "V"
Juneau , Alaska 99811

Norman Gorsuch, Attorney General
Department of Law
Pouch "K"
Juneau , Alaska 99811

Dan Hickey, Chief Prosecutor,
Department of Law
Pouch "K"
Juneau , Alaska 99811

ALL MEMBERS OF ALASKA BOARD OF PHARMACY

Gerald Wilkerson, CPA
Legislative Auditor
Pouch "W"
Juneau, Alaska 99811

ALASKA STATE BOARD OF PHARMACY

IMPLEMENTATION

CONTROLLED SUBSTANCE STATUTE AS.17.30
AND
MARIJUANA THERAPEUTIC RESEARCH
PROGRAM STATUTE AS.17.35

The Legislature passed the CONTROLLED SUBSTANCE STATUTE AS 17.30 AND THE MARIJUANA THERAPEUTIC RESEARCH PROGRAM STATUTE AS 17.35 IN 1982 with an effective date of January 1, 1983.

Much of the responsibility for the implementation of these two statutes rests with the Board of Pharmacy . The legislation did not specifically address the funding for the implementation, nor the number or type of personnel that would be needed for implementation.

The Board of Pharmacy has been planning , since 1981 , for the responsibilities that many believed would be vested with the Board , but could make no definite plans until enactment was accomplished and an effective date established.

The Board is now faced with problems of selecting and funding personnel to insure a timely implementation of it's responsibliy.

N A R R A T I V E:

Under Sec 17.30.010 Regulations must be promulgated.

Under Sec 17.30.020 ,(a),(b),(c),(d),(e) & (f) Registration requirements must be met .

Under Sec 17.30.030 (a), (b), & (c) Registration must be accomplished.

Under Sec 17.35 Marijuana Therapeutic Research , a program must be established , physcians interviewed and appointed to the Patient Qualification Review Committee and regulations must be adopted to assure this program is administered at a state level that is compatible with Federal Statutes.

All of above can not be accomlished in three meetings of two days each presently budgeted for the Board.

Competent, qualified and experienced personnel must be hired, and fast , to accomplish the mandate of the legislature.

With this in mind the Board as early as June 1981 , started setting up a proposed budget and establishing goals and objectives , even though no law was on the books at that time.

At two of its three meetings in 1982 , after the enactment of the legislation , but still prior to the effective date, the Board again established goals and an accompaning proposed budget . This fact may be verified by the minutes of all of the above cited meetings and the attached goals and objectives to those minutes.

Throughout the meetings, evidence of the Board's intent can be clearly identified . Never did the Board waver from it's intent to hire a " Executive- Secretary " type person to come on board in a full time position . Various budget figures were submitted in the range of $ 85,000.00 for the period January 1, 1983 through June 30 , 1983 (a half year) to fit the fiscal budget time frame from effective date of January 1 , 1983.

N A R R A T I V E : (continued)

The Board does not enjoy budget-bypass priveledges and must submit a budget through the Division of Occupational Licensing . It is the Boards understanding that this budget is then submitted through the Division of Commerce and Economic Developemnt and on to the House and Senate Budget Committees .

The Board DID submit a budget , both for the fiscal year 1983 and again for the half-fiscal year 1983(January 1,1983 through June 30 , 1983. The 1983-84 Fiscal year budget was submitted to the Division of Occupational Licensing also, and it is presently in the process.

With each budget request , a breakdown was also submitted. In every request there is an audit trail established in the minutes of meetings and in letters. The Board always included expenses for a position that was labeled various ways , but either was called " Executive-Secretary" or a combined position of "Executive-Secretary-Investigator-Examiner.

The Board realized that a regulation specialist would be needed to promulgate all of the regulations mandated by statute and budgeted for that position also . The Board also ralized that , although it has always been assigned an inspector , by the DOL , that a full time inspector would aslo be needed , in addition to sharing the one used in the past . This would then amount to an investigator and a half (the half one being shared with other boards) and the full time one being used in the extensive investigatory work anticipated in the drug enforcement area .

Somewhere, in the translation from Board minutes and vocal requests, made by the Board to the Director of Occupational Licensing , MUCH WAS LOST. The Board recently was made aware that line item budget items were requested OR AT LEAST GRANTED in the budget , TIED to specific personnel. This personnel is defined, according to the DOL for two regulation specialists and two investigators . These people are in addition to the regular licensing examiner that is assigned to each board and usualy shared by at least one other board. The regulation specialists and the two investigators were to be the people that would aid the Board in emplenting its work.

This will just NOT WORK. The Board needs an Executive-Secretary type person , comparable to those in the employee of other states , such as Washington, Oregon, and Wyoming, where state pharmacy boards have full responsibility for their states controlled substance statutes. The Board has in mind at least three people , two of which would be excellent and who have indicated a desire to come to Alaska . These people have been employed for at least five years as executive-secretaries, and also have investigate exeperience , and have been involved in the administration of both controlled substance legislation and marijuana research programs . Just the type of person with just the type of experience needed in the initial

N A R R A T I V E :(continued)

stage of the program in Alaska . Unfortunately ,no such position is specifically listed in the job classification program of the state, directly identified with the Pharmacy Board . Similiar positions do exist with the Board of Nursing and others, but not Pharmacy.

The Board of Pharmacy does not need, in the initial organization , two investigators . The Board does desperately need an experienced executive-secretary type, on a day-by-day basis to get the programs initiated and then properly administrated .

The Director of the Division of Occupational Licensing has agreed to submit the Boards desires as to changing the budget line item identification from two regulation specialists and two investigators to the personnel that could do the job , as long as the Board stays within the budgeted dollars. The Board has been informed that it has , budgeted dollars covering the four people mentioned above, in the amount of $ 75,000.00 for the period January 1, 1983 through June 30 ,, 1983 . The Board has asked the director of DOL to make the following request:

-Investigator/ Executive-Secretary-Inspector	range of $45,000.00/yr
Estimated 30 % of salary for office etc	13,500.00/yr
One full time regulation specialist	33,000.00/yr
Estimated 30% of salary for office	9,900.00/yr
Licensing Examiner(or secretary type)	28,000.00/yr
Estimated 30 % for office etc.	8,400.00/yr
TOTAL FOR ONE YEAR	$ 137.800.00/yr

This would break down to $ 68,900.00 for the remainder of fiscal year 1983(half year Jan 1 through June 30 , 1983).and well under the $75,000.00 budgeted . The figures above may be slightly off , but should be fairly close and definitely on the conservative side considering the licensing examiner budgeted above for full time Pharamcy Board work , when she would probably be used part time with another board.

The Director of The Division of Occupational Licensing has , asked that the President of The Board Of Pharmacy write him a letter asking for his cooperation in requesting the change and in addition attempt to write a job experience qualification requirements and a job description for the position of Executive-Secretary-Investigator .

The letter has been written and will be sent to the Director along with this narrative and a conclusion statement. Copies of all material will also be sent to The Governor, The Commissioner of Commerce & Economic Developement, The Speaker of the House of Representatives, The President of the Alaska State Senate. all Board of Pharmacy Members, and Legislative Sunset Review Committee, and The Attorney General , and Dapartment of Law.

C O N C L U S I O N:

EXECUTIVE-SECRETARY-INVESTIGATOR FOR BOARD OF PHARMACY:

Qualifications:

1. Five years experience with another Board of Pharmacy, of which three years must be in the position of executive-secretary and the remainder in the position of investigator.

2. Experienced in administering controlled substance law of a state , under direction and supervision of a pharmacy board.

3. Experience in administering a marijuana therapeutic research program under the direction and supervision of a board of pharmacy.

4. Experience maintaining files and registration and licensing of pharmacists and controlled substance registratants at the direction and under the supervision of a board of pharmacy.

5. Be a registered pharmacist in a state recognized by the National Association of Boards of Pharmacy and be required to become registered as a pharmacist in the State of Alaska within six months of being hired as Executive-Secretary-Investigator by the State of Alaska.

JOB DESCRIPTION:

UNDER THE SUPERVISION AND AT THE DIRECTION OF THE BOARD OF PHARMACY AND UNDER THE MANDATES OF AS.08.01., CENTRALIZED licensing statute and AS 08.80 PHARMACY ACT.:

1. Assist Board in process of registration of all Drug enforcement registrants under the Federal Law under the AS 17.30 Alaska State Statute , including design of application form and license .

2. Maintain record of registration and licensure under AS 17.30 with such records properly maintained at the Division of Occupational Licensing .

3. INVESTIGATE violations of any state or federal law under the jurisdiction of the Board of Pharmacy and at the direction of the Board of Pharmacy and the Division of Occupational Licensing.

4. Aid Board in the administration of the Marijuana Therapeutic Research Program AS.17.35 , including maintaining records at the Division of Occupational Licensing , and aiding the Patient Qualification Review Committee in processing applicants under that program.

5. Cooperate with all state and federal law enforcement agencies at direction of Board of Pharmacy

C O N C L U S I O N : (continued)

6. Follow direction of DOL in maintaining records, issueing licenses , receiving fees, and any other job requirements assigned to licensing examiners , including:

   (a) Collecting fees & issueing receipts;
   (b) Maintaining records and files ;
   (c) Issueing & receiving application forms;
   (d) Notifying applicants of acceptance or rejection of applicants as determined by Board;
   (e) At direction of DOL & Board, notifying applicants for any licensure under AS 08.80 or AS 17.30 of examination dates or license renewal dates.
   (f) Arrange space for holding examinations
   (g) Notify applicants of results of examinations;
   (h) Issue licenses & certificates or temporary licenses or certificates as authorized by Board
   (i) Answer routine inquires ;
   (j) Maintain a current registry of all licenses issued under AS 08.80 & AS 17.30
   (k) Perform other services as requested by board consistant with requirements of AS 08.80 & AS -7.30 & As 17.35.

7. Perform the following job description duties as mandated by and established by investigative proceedures of DOL & Board.

   (a) (b) (c) etc.....to be inserted by DOL & consistant with job description duties of INVESTIGATORS .

NOTE: It is the intent of the Board of Pharmacy that the above person be employed, under state employment laws , by the Division of Occupational Licensing . , The Director would, in effect , be the person's boss , and would direct the duties and performance of the person, at the request and with direct input , from the Board of Pharmacy. The person would reside in the Anchorage area , working out of the Division of Occupational License office in Anchorage.

ADDENDUM:

The above job decription, narrative, and conclusion solves the problem temporarily., however the problem may ultimately have to be addressed by the legislature . The Board of Pharmacy in offering the solution , listed here, is attempting to carry out the wishes of the Legislature, so the important programs may be started at once and carried out to the best of the ability of all involved.

Ulmer

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ALASKAN MERCHANTS

S...ND PHARMACY FILE

John J. Cowdery
Chairman, Labor & Commerce Committee , House
Alaska State Legislature

Richard I. Eliason
Chairman , Labor & Commerce Committee, Senate
Alaska State Legislature

Pouch V (MS 3100)
Juneau , Alaska 99811

Dear Chairmen Cowdery and Eliason:

Your Committees will be considering legislation as to the Sunset of the Board of Pharmacy, and in the process (should the Board be continued passing legislation that would modify or change the laws that mandate how the Board will operate in the future.

The Legislature in 1982 passed the Controlled Substance Act . The portions of that act that deal with the legitimate industry are AS 17.30 and As 17.35. The Legislature placed the responsibility of administering these sections with the Board of Pharmacy. These sections , AS 17.30 and As 17.35 went into effect on January 1 , 1983.

You have copies of the Board's REPORT TO THE LEGISLATURE FY'83 . The report is voluminous and will not be repeated here,other than to state the fact that the Board has been frustrated by lack of support from the administration and from the Division of Occupational Licensing , in its dedicated effort to implement the intent of the Legislature.

The key to the successful implementation of the law lies in the request made by the Board involving the personnel being hired to aid the Board in doing the job.

The Board requested , within the budget, that an executive director be hired . The Board President wrote both a job description for this position and the qualifications for the job. Special exemption implementation was requested so this position could be added to the appropriate personnel section of the department of personnel.

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ALASKAN MERCHANTS

7 March 1984

No action was taken by either the Administration or the Division of Occupational Licensing . Result.....the implementation floundered. All of the legitimate industry that is allowed by Federal Law to be involved with controlled substances , and that is licensed by the Federal Drug Enforcement Agency (DEA) should have been licensed by the State of Alaska during calendar year 1983 . They were not . This inspite of a valient effort by the Board of Pharmacy. This situation must be changed, either by the special exemption route or by legislation establishing an executive secretary position for the Board of Pharmacy.

Federal studies ,obtained by the Department of Law, show that in excess of 60 % of drug related deaths that involve emergency rooms of hospitals are caused by drugs secured through the legitimate industry . These drugs were obtained by a number of ways and include armed robbery of drug stores, break ins after hours of drug stores or other places legitimately handeling controlled substances, unscrupulous writing of prescriptions by practitioners, forged prescriptions , dishonest pharmacists , physicians, nurses , warehousemen, or employees of establishments legally handling controlled substances.

The Board of Pharmacy has been promised copies of all controlled substance order forms that are processed from Alaska, IF AND WHEN the Board licenses the practitioners. This information will allow Alaska to determine where the controlled substances are going and at what volume. Practitioners using large quantities can then be cost effectively investigated and possible illegal transactions uncovered and stopped . The Federal DEA is not now doing this. They will cooperate with any state to aid the state BUT DEA FUNCTION IS LARGELY WITH THE ILLEGITIMATE DISTRIBUTION , AND SO CALLED STREET TRAFFIC AND AIRPORT TRAFFIC OF DRUGS. Each state is expected to police its own legitimate industry, and the DEA will supply any information that will aid the state , providing a licensing proceedure is established.

In closing , may I suggest that the legislature write the necessary legislation establishing an executive secretary to function under the direction of the Board of Pharmacy

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As a former Board of Pharmacy member of some seventeen years and as President of the Board for much of that time, I am concerned that AS 17.30 & AS 17.35 be implemented as rapidly and as cost effectively as possible.

The Administration has removed one experienced member from the Board,and has told the Board through his staff, that no members will be reappointed at the expiration of their terms ,whether partial or complete terms. The make up of the future Board , when the present Secretary is replaced in a few months , will be mostly new inexperienced people . No matter how dedicated these people may be, it will take time for them to be effective members. They will desperatly need an experienced and qualified executive secretary . Several very qualified and experienced people who have been functioning as executive secretaries of Boards of Pharmacy for some of the Western States, have indicated an interest to come to Alaska and accept such a position here. Their experience in all areas of controlled substance law administration covers some eight to ten years. Once the position is mandated by legislation one of these people should be brought on board at the earliest date.

Thank you for considering my remarks and suggestions, If I may be of further service or of any help . I will be glad to travel to Juneau at my own expense to offer testimony .

Sincerely,

Eldon R. Ulmer, R.Ph.

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ulmer

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7 March 1984

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ALASKAN MERCHANTS

2 March 1984

Honorable John J. Cowdery
Representative ....District 8
Alaska State Legislature
Pouch V (MS 3100)
Juneau , Alaska 99811

Dear John:

I am enclosing the REPORT TO THE LEGISLATURE for FY 83 by the Board of Pharmacy. Except for part 2 and 3 , I prepared the whole thing.

The report, along with the Addendums, will give you the story.

I am off the board , as I told you . Fired by the Governor on a trumped up excuse that I had been appointed illegally by Hammond. I am just as interested now ,as when Iwas on the board , in making sure the intent of the Legislature is carried out and that the Controlled Substance Act AS 17.30 and companion act AS 17.35 is implemented. The present administration has done almost nothing to help the Board of Pharmacy get this important piece of legislation in place and functioning.

I would like to testify on behalf of myself, as to the need to continue the Board of Pharmacy and to the urgency of an early implementation of As 17.30 and AS 17.35 , by the Board as was intended by the enactment of the legislation.

Please let me know when you plan hearings and where they will be held. The word I have now is that you will be addressing the Sunset of the Board on March 8 , 1984 , in Juneau. If this date and place is correct , please let me know time of day and place in Juneau, or where ever , that the hearings will be held.

Good talking to you in Anchorage last week end. Thanks for your help.

Sincerely,

Eldon R. Ulmer, R.Ph

ENCL: Report to Legislature

BOARD OF PHARMACY

Report to the Legislature FY ' 83.

Submitted August 11 , 1983

CONTENTS:

Addendum # 1 :	Ulmer letter to Treagger	5 March	1983
Addendum # 2 :	Governor's letter to Ulmer	28 March	1983
Addendum # 3 :	Lawson letter to Treager	13 April	1983
	(cover letter Treager to Ulmer)	15 June	1983
Addendum # 4 :	Treager letter to Ulmer	29 July	1983
* Addendum # 5 :	Notice of Proposed Regulation changes	13 July	1983

* This is a FY '84 action item , but shown here as these regulations were reviewed in FY ' 83 & passed at a FY '83 board meeting.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

Board of Pharmacy
POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

August 11 , 1983

Mr. Harry D. Treager
Director
Division of Occupational
Licensing
Department of Commerce and
Economic Development
Pouch D
Juneau , Alaska 99811

Dear Mr. Treager:

In compliance with AS 37 and AS 08 and on behalf of the Board of Pharmacy , I am submitting the enclosed Annual Report concerning the board's activities and accomplishments for Fiscal Year 1983.

In compliance with AS 37 and specifically with AS 08.80.040 (4) , and on behalf of the Board of Pharmacy , please submit this report to the Legislature.

Should there be any questions concerning this report, please feel free to contact me . Thank you.

Sincerely,

Eldon R. Ulmer

Eldon R. Ulmer, R.Ph.
President
Board of Pharmacy

Enclosure A six part report with the inclusion of five addendums.

8-HBLH

Part 2.

Narrative Statement prepared and submitted by Margaret Soden , R.Ph., Secretary of the Board for FY '83

FY '83 was a significant year for the Alaska Board of Pharmacy. Not only did we have our usual number of requests for information, applicants for licensure, and general Board business to conduct at each meeting, but the Alaska Controlled Substances Act became effective on January 1, 1983. The Act impacts our Board to a great extent in that we are the responsible administrator of Title 17, Chapter 30, Regulation of Manufacture, Distribution, Prescription and Dispensing of Controlled Substances and Title 17, Chapter 35, Marijuana Therapeutic Research Program.

Because Title 17 did not become effective until January 1, 1983, we could not actually begin working on our duties as outlined in the two Sections cited above. We did, however, do much preliminary work in ascertaining how best we could handle state registration of Federal Drug Enforcement Administration (DEA) registrants (estimated to be 1000-2000 in number), the procedure for obtaining therapeutic marijuana for the research program, seeking out physicians to serve on the Patient Qualification Review Committee established in Section 35, and a number of miscellaneous administrative details.

In April 1983 the Regulations Specialist budgeted to work with the Board was hired. At our June 1983 meeting she presented regulations for the state registration of all Alaskan DEA license holders and for the Marijuana Therapeutic Research Program's Patient Qualification Review Committee. With some changes, the regulations were approved and are now in the "notice and hearing' phase. We are hopeful they will be adopted before November or December so we can begin registration and officially appoint the four physicians who have agreed to serve on the Patient Qualification Review Committee.

In general business of the Board this year we:

1. Completed inspection of all pharmacies, drug room, hospital pharmacies and nursing home drug rooms with the exception of those in Seward, Glenallen and Seldovia. We also followed up on violations observed in prior inspections such as security in two retail pharmacies and general physical conditions in one Anchorage pharmacy.

2. Observed non-compliance with prescription advertising regulations in a Fairbanks pharmacy, corresponded with the outlet in question and the problem was resolved.

3. Rewrote several questions on our Jurisprudence exam to include the Controlled Substances Statute and Marijuana Program.

4. Approved a form for the reporting of Continuing Education that will be required of pharmacists with their June 1984 renewals.

5. Asked that updated statute books be sent to all licensees. This required two printings so is in progress.

6. Sought and had preliminary approval for the Board to participate in the National Association of Boards of Pharmacy (NABP) Foundation's newsletter program. This newsletter is published quarterly with two pages of Federal regulations news and two pages of state news. It is a very worthwhile and timely publication. The DOL felt it would be more cost effective to publish a newsletter locally so withdrew approval. However no state publication has been done since Fall 1981 with the exception of a very short several paragraph letter sent to licensees in early 1982. Although $1000 was budgeted for FY'83, no newsletter type communication from the DOL or Board of Pharmacy was sent to licensees.

7. Held a joint meeting with the Medical and Nursing Boards in February 1983 in which we discussed matters of common interest. One matter of particular concern was the emergency room dispensing of controlled substances on weekends, evenings or at other times when the pharmacist or pharmacist/consultant is not available. ~~This is a~~

This is a special problem throughout Alaska. DEA had a proposed rule change which would have allowed emergency controlled substances ~~to be allowed~~ in such situations, but nationally it met with a great deal of opposition. We were the "cry in the wilderness" in favor. DEA has now dropped the whole idea. The Alaska Board of Pharmacy cannot write regulations counter to Federal law so the problem will remain.

8. Reviewed several requests from individuals and groups for approval of Continuing Education programs not strictly meeting the requirements of our regulations.

9. Received a favorable opinion from Attorney General, Wilson Condon, covering our Board's desired policy regarding investigations handled by DOL.

10. Attempted to come to some understanding with the Alaska Dental Society and the Board of Dental Examiners relating to the practice by some dentists of writing prescriptions outside their area of expertise. Many pharmacists were refusing to fill prescriptions for non-dental related conditions and some tension was the result.

11. Acted on proposals or legislation of interest either as a Board or individually. Some of them were:

a. Alaska Code Revision-did not support as currently written.
b. HB 10 Imitation Controlled Substances-supported with qualification.
c. HB 225 Use of Drugs by Optometrists-did not support as written.
d. Proposed change in regulations regarding "keys to a pharmacy."
e. Repealed several CE regulations-a "housekeeping" measure.

12. Began preparing for Sunset Review in 1984. Carol Carroll, Legislative Audit, attended our February 1983 meeting and we discussed several activities and questions she had with regard to Pharmacy Board policy or procedure. We individually received and responded to "Interim Letter No. 1" from the Committee.

Our primary continuing concern is with the need to proceed with implementation of Title 17, Sections 30 and 35 with all due haste. Over seven months have passed and little concrete progress appears to have been made. We are particularily concerned with the staff budgeted to put Title 17, Sections 30 and 35 into effect. The Board was budgeted for two Regulations Specialists and two Investigators. We feel very strongly that two Regulations Specialists are not needed nor are two Investigators needed to do the work our portion of Title 17 requires. We have requested on several occasions that the one Regulations Specialist and one Investigator positions budgeted (but unfilled to this date) be somehow changed to encompass an "executive secretary/inspector" (various titles may be used) type person who would directly attend to the administrative duties we are now required to handle. Our licensing examiner cannot be expected to fulfill these functions along with her other duties. It is important that this position be filled by someone familiar with pharmacy nomenclature, pharmacy procedures, the administration of a Controlled Substances Act and Marijuana Program, and be able to handle and review the registration of 1000 to 2000 Alaska Controlled Substances licensees as a year long, on going process. This person could also serve as an inspector since that activity will increase with the implementation of Title 17. This

would also release the Pharmacy Board members from an inspection function which they do as personal time and funds allow. For a more complete discussion, see the attached letter and review of the Board's position written by Mr. Eldon Ulmer, Chairman.

The second major concern is for some sort of timely publication to be sent to all licensees. Since we are currently implementing a whole new section of regulations that very directly impact the practice of the pharmacy profession in this state, some means of communication is vital. The Board would prefer participation in the NABP program since it encompasses both Federal and state activities. Since many other states participate in the program, the cost of publication is shared. Timely communication to licensees is the key to our concern and in FY '83 there was none.. We are hopeful the $1000 we included in Budget FY '84 for a newsletter will be used to achieve this goal.

Part 3

BOARD OF PHARMACY
FISCAL YEAR 1983
STATISTICAL REPORT

EXPENDITURES

Travel & Per Diem.....$9,196.25
Contractual.....$1,600.11

RECEIPTS

Application & License Fees.....$8,128.00

LICENSES ISSUED

Pharmacists.....26

Retail Dealers.....4

Wholesale Dealers.....0

Hospital Pharmacies.....1

Hospital Drug Rooms.....0

Nursign Home Drug Rooms.....0

License Renewals.....1

EXAMINATIONS

June 28-29, 1983 NABPLEX EXAM, Anchorage, Alaska

Three Candidates - PASS: 3 FAIL: 0

BOARD MEETINGS

October 7-8, 1982 Fairbanks, AK

February 24-25, 1983 Juneau, AK

June 28-29, 1983 Anchorage, AK

Part 3.

Statistical Overview prepared and submitted by Licensing Examiner Barbara Branson for FY '83.

Part 4: Review of Prior Year Objectives

The Board of Pharmacy enumerated eight objectives for FY '83. Several of these have been discussed previously in the " Narrative Statement " but will be repeated here to comply with the requested format. The eight objectives were:

1. Inspect all pharmacies licensed under the Board of Pharmacy Jurisdiction. The board's activity as to inspections was limited due to lack of funds and time. The board realized that the implementation of its responsibilities under AS 30 and AS 35 would make it impossible to inspect all pharmacies. The board decided to follow up in problem areas that were revealed in the massive inspections conducted in FY '81 and FY '82. Almost all pharmacies had been inspected in those two years. This would delay the next statewide inspection of pharmacies until FY '84, rather then to spend funds that might jeopardize the boards fiscal ability to conduct the three board meetings programed for FY '83. The problem area follow up revealed that the installation of a sink in one pharmacy had been accomplished , that adequate security of those pharmacies(who closed their prescriptions departments when other areas of the store were open) had been accomplished, and that house keeping measures had been improved in those areas where adequate cleanliness had been found to be below approved standards.

2. Establish continuing eduaction method of reporting and auditing for licensure requirements for 1984. The board adopted the reporting and auditing system developed by Sid Fry , R.Ph., professional member of the board from Sitka. A form was approved , to be mailed with the license renewal statement. Pharmacists will be required to submit the completed form , showing they have completed the required number of continuing education hours, with the understanding that a spot check system of those hours will be conducted .

3. Meet the requirements of the Controlled Substance Act AS 30 and The Marijuana Therapeutic Research Program Statute AS 35 . These two statutes , although passed by the legislature in 1982, did not go into effect until January 1 ,1983. There were no funds available for half of FY '83 for the implementation of the statutes . This crammed all effort by the board into the six month period from January 1 , 1983 until June 30 , 1983. The board was aware of this and spent many hours individually , and collectively , prior to the first meeting of the board in February of 1983 , preparing proposed regulations so that a running start could be made at the February meeting. Pages of these proposals were prepared by the president of the board and brought to the February meeting. The board had requested that a representative from the Attorney General's office and a representative from the Special Prosecutor's Office be in attendance at the February meeting. This request was granted and these two professionals were very helpful in the area of regulations.

3. (continued)
The many pages of proposed regulations presented by the president of the board, were considered in depth by the board. It was agreed that this was a starting point , but that many more pages would be necessary before all subjects and requirements were met. Several facts were made available to the board at the February meeting , that here-to-fore were not known by the board. The board started as early as FY'81 (as substantiated by minutes of meetings in Fy 81 adn FY '82) planning for action under the then proposed controlled substance act that was being considered by the legislature The board realized (again substantiated by minutes of meetings of FY'81 and FY'82) that the board would need certain personnel , within the Division of Occupational Licensing (DOL) to effectively administer a controlled substance act , if the board was given the responsibility of administering the act. The board placed high priority on the hiring of an executive-secretary type person , on a full time basis, who would work within the jurisdiction of the DOL , but at the direction and guidance of the board. The board realized that it would need a full time regulation specialist and after the regulations had been adopted, and a licensing system had been extablished, possible the service of an investigative person. Some of these requests were provided for when the DOL submitted the board's budget to the budget process for FY'83. The most needed position request was completely ignored by the DOL when the line items were submitted to the legislature via the budget process. The position of executive-secretary had been left out and instead , the budgeted dollars for personnel that were allowed with enactment of the Controlled Substance Act and AS 35 , were submitted requesting two investigators. The board was frustrated by this action of the DOL, since the board had not been made aware of the line item requests made by the DOL. An investigator will be needed in FY 85 or FY'86. Investigators are not needed until the licensing process is established so there are licenses to investigate, if problems occur. The hiring of investigators will accomplish nothing in the early stages of implementation of AS 30 and AS 35. Dollars will be wasted . Investigators specifically hired(not under the intent of the legislature when enacting AS 30 and AS 35) will sit on their hands, or be used by the director of DOL in other areas outside the budget of the board of pharmacy and in violation of the intent of the legislation. The board knows that the Controlled Substance Acts of Washington, Oregon , and Wyoming were all put in place effectively , with the aid of an executive secretary type person. These three states have established programs and have been effectively operating them for from five to seven years. They do so with the help of a full time executive secretary type person . The board has knowledge that there are a number of people who have been working in the programs of those three states , both as executive secretaries and investigators , who are interested in coming to Alaska in a like position . The board does not know of any person presently with the DOL or available in Alaska who could qualify for this highly technical and specialized position.

3. (continued)
When the director of DOL advised the board that the budget line items could not be changed and that his plan was to hire the two investigators, the board was in shock. An immediate evaluation of what would happen under such a plan revealed the fact that the program would be in jeopardy and indeed probably completely delayed until the action by the director of the DOL could be changed or altered. The director then advised the board that the only remedy was to submit a request to the department of personnel that a "special exemption" status be enacted and that an executive-secretary position be created under the special exemption process. The other alternative is to seek legislative action . Since time is already a prime factor , a delay until legislative action can be taken in January or February of 1984 , would seriously delay placing the provisions of AS 30 and AS 35 on stream. The board requested that the director of DOL apply for a special exemption status and proceed full spead with the request . The director asked the president of the board to write him a letter , requesting that this action be taken . He also requested that the president of the board write a job description for the executive-secretary position and provide the qualifications for the job. The president of the board spent many hours drafting the qualifications and the job description and sent them with a cover letter to the director of DOL with copies to the Governor , the Legislative Audit Committe, and the Speaker of the House and President of the Senate as well as to the Attorney General and the Commissioner of Commerce & Economic Development. A copy of that letter and the qualification paper and job description are attached to this report as Addendum # 1 . A copy of the letter from the Governor, in reply to the receipt of all the material that went to the director of DOL, is attached to this report as Addendum # 2. The request, through the personnel officer of the DOL to the personnel office of the state, was garbled . This is evident from the letter of reply written to the request . The letter rejecting the request states that an exchange of the "positions" of investigators to the " positions' of executive type personnel was denied. The board did not ask that the two investigator positions be exchanged for two secretary type positions. It asked that the two positions of investigators be changed to ONE POSITION OF EXECUTIVE-SECRETARY. This exchange would result in one less persom being hired and would be cost effective due to the elimination of one position . Not only would the exchange benifit the board in implementaion of AS 30 and AS 35 , BUT DOLLARS WOULD BE SAVED. A copy of the memorandum of April 13 , 1983 to the director of DOL from the personnel officer of DOL , Jim Lawson , is attached as Addendum # 3. The board meeting in June of 1983 , again asked the director of DOL to appeal the decision of the personnel director, and to specifically state that only one person was being asked for instead of two . The director apparently did appeal and a copy of the letter of July 29, 1983 written by the director of DOL to the president of the board, advising of the failure of the appeal , is attached as Addendum # 4 .

3. (continued)
The board has spent much valuable time in FY'83 trying to convince the director of DOL, the Commissioner of Commerce & Economic Development, and the Governor that the board believes the intent of the legislature in the enactment of AS 30 and AS 35 was to get the job done. The board believes that the pressure by-pass special exemption method of securing the necessary qualified personnel in the DOL to aid the board in implementing AS 30 and AS 35 should and could be used, if it were presented properly . The progress of the board in implementing the statutes has been greatly impeded by the lack of the qualified personnel . The director of DOL finally hired a regulation specialist , who came on board in mid April 1983. This regulation specialist has been of great help and with the help of a regular regulation specialist in the Juneau office of DOL, prepared regulations that were patterned after those written by the president of the board. These proposed regulations were presented to the board at the June 1983 meeting . Changes were made and the proposed regulations were asked to be put in final form and promulgated as soon as possible. An outline copy of these regulations is attached as Addendum #5.
Irregardles to all the road blocks that have impeded implementation of AS 30 and AS 35, the following has been accomplished:

A. The baord president contacted , first by phone, and then where needed , by letter.....the following : Federal Drug Administration (FDA)
The National Institute of Drug Abuse(NIDA)
The Drug Enforcement Administration (DEA)
(State level, Regional level, National level.
The National Eye Institute (NEI)
The National Cancer Institute (NCI)

The FDA sent copies of the Group Guidlines for the use of Delta-9-Tetrahydrocannabinol (THC) NSC 134454 along with registration forms, order forms, and information on obtaining marijuana for use when implementing AS 35. The DEA sent a complete print out of all DEA reistrations in Alaska(some 1000) , when the board president wrote them and explained that the list was imperative to the program in Alaska. The board president further asked and received a letter from DEA allowing limited distribution of this list to pharmacies (as the only people other than the board and it's extentions) who have a need for this list . The NIDA , the federal agency authorized to issue THC , promised to co-operate with the board when regulations are implemented, so we have a source of THC (marijuana derivitive) for the research program.

B. The president of the board contacted many opthalmologists, radiologists' , psychiatrists and members of the Medical Board, in an effort to stimulate as much interest as possible with those professionals so they would apply for appointment to the Patient Qualification Review Committee (As 17 35). Copies of the law were handed out at a meeting of the psychiatry Association meeting,

3. (continued)
resulting in the application from a psychiatrist, a radiologist, a ophthalmologist and a response from a member (professional member) of the medical board. The president of the board ,with the help of the regulation specialist,designed an application form to be used by these professionals. The professionals filled the forms out and sent them to the president of the board, who presented them at the June meeting. All were approved for appointment and the prsident of the board (attested to by the secretary) mailed official letters of appointment to the four physicians. As soon as promulgations are finalized,this Patient Qualification Review Committee will meet and the program will be initiated.

C. The board is still persuing with vigor the attempt to bring an executive -secretary on board at DOL.

D. Controlled substance license forms are being designed with the help of the regulation specialist. The concept, if not the actual form, was approved at the June meeting. This form will speed up the licensure of those that are required to be licensed under AS 30, as soon as all regulations are promulgated , hopefully early FY '84.

E. The president of the board did write a qualification paper for an executive secretary and also a job description (see Addendum #1).

F. Regulations as evidenced by Addendum # 5 are being promulgated , after approval at June meeting of the board.

G. In summary , a great deal has been done and a great deal of it by individual action by dedicated board members. A great deal more could have been accomplished with the help of qualified personnel.

4. Promulgate regular regulations (other than those mandated by AS 30 & AS 35. . The board at a regular meeting voted on the need for regulations that would specifically allow the secretary of the board to keep " copies"of applications for registration and back up material copies to aid all board members in the issuing of temporary permits. A board member assumes a great responsibility when he/she issues one of these permits. The board member needs to be able to verify that all material submitted is factual and all necessary requirements are met. The personnel at DOL have demonstrated a lack of knowledge to look at documents and verify facts. A board member, assuming the responsibility for the qualifications of an applicant, when a temporay permit is issued, would be remiss indeed if all material is not checked by a professional member of the board. This person should be the secretary, who should have copies of all documents , so the proper information can be transmitted to the issuing board member. The board member is responsible , not a member of DOL staff, who might interpret information wrong and result in a license being issued without proper qualification. The director of DOL told the regulation specialis to put that regulation "on the back burner" and not do anything about it. Result.....no regulation, even though voted on

5. News letter in cooperation with the National Association of Boards of Pharmacy(NABP). The NABP in cooperation with most of the 50 states , prints a news letter and mails it to pharmacists within the states. The NABP, uses 50 % of the space in the news letter for national news, and the boards of pharmacy of participating states send in state news , thus supplying the other 50 % of the news letter The NABP puts this together and mails each state the news letter pertaining to their individual states. This usually is mailed from the NABP after approval of the participating state. The board in regular session unanimously approved participation in this program. The secretary was instructed to obtain all the details and if it could be done within the budget , to preceed with the letter. The director of DOL had a ten or fifteen minute telephone conversation with a member of the attorney general's office, and as a result nixed the letter. Result .....No news letter , although it is greatly needed to make regulons aware of ANP and PA licensure as well as regulation changes and board actions. Most states , if they have the financial means (board's budget prived funds) participate in this very worth while project. Alaska does not and the board wonders why , when it was passed in regular session and funds budgeted for it.

6. Department news letter.(DOL). The board was told that the DOL was planning a department news letter that could and would contain news items from all boards that are associated with DOL . The board (or boards) were to submit news items when this publication was to go to press. To the boards knowledge no such letter was published in FY '83 and if it was, no news was solicited from the pharmacy board.

7. Conduct three regular board meetings during FY '83. The board did conduct three meetings during FY'83 . The dates and location of these meetings was: October 7 & 8 , 1982 in Fairbanks: February 24 & 25, 1983 in Juneau: June 28 & 29 ,1983 in Anchorage. Most material covered in those meetings is reported in the "Narrative Report " , so will not be repeated here other than to note that the goal of holding three meetings was met.

8. Board response to sunset. The members of the board of pharmacy were made aware of the provisions of sunset legislation by the receipt of a letter written February24, 1983 , fromthe Legislative Audit Committee. The letter asked that the board respond to a questionnaire. The board did. The next communication from the Legislative Audit Committee was in the form of"Interim "Letter No. 1" that was written April 12, 1983 and addressed to each board member. Most board members answered this letter. Documents, letters, and facts were submitted by some board members. The board stands ready , willing , and able to testify , within the budget, or board members indivudual means, when so asked by the Legislative Audit Committee. The board welcomes the opportunity to present it's argument as to why the board should stay in existance.

Part 5 . New Goals and Objectives FY 84 :

1. Inspections:

Inspections of pharmacies was at a minimum during FY '83 due to the pressing demand on the board's time and funds. It is believed that a full scale state wide inspection of pharmacies will be initiated in FY '84. The two professional board members from South Eastern Alaska will team up to cover all of South Eastern. These board members will take advantage of super saver fares when possible and will schedule their inspection so the entire area is covered on one trip . Ideally the board likes to have a professional member team with a non-professional, but there is no non-professional in South Eastern Alaska. This mandates that two professionals conduct that portion of the state wide inspections. Central and North Western Alaska can be covered by having the non-professional member from Anchor Point travel to Fairbanks and team with the professional member there. The two can then inspect all of the Fairbanks area, fly on to Nome and other areas in Central and cover all pharmacies in those areas. The two professional members in the Anchorage area can team with the non-professional member in Anchorage and cover all of the Anchorage area as well as the Matanuska Valley , and areas along the highway . The non-professional member from Anchor Point will be met on the Kenai by one of the professional members from Anchorage to cover all of the Kenai Peninsula . One of the professional members from Anchorage will join with the non-professional from Anchorage and inspect Cordova, Valdez and Kodiak. This plan should effectively cover the state in FY '84, and within the budgeted amount of $ 5,000.00 (requested).

2. Continuing Education Requirements for Licensure in 1984 and the Future. All regulons will be coming up for re-licensure during 1984 . The board has adopted a program that will allow continuing education credits to be used to satisfy the requirements for competency under AS 08.80.240(8). The board has adopted regulation that will be in force during the registration and re-registration of regulons in 1984 and following years. The board will follow these regulations in 1984 and re-register all applicants who submit the required hours of continuing eduacation and pay the fee. A system for spot checking requirements is established and will be in effect utilizing personnel from the DOL and board members .

3. Establish,by Regulation , the Procedure for Administration of the Controlled Substance Act AS 17 35 and the Marijuana Therapeutic Research Program, AS 17 35 and Proceed to Administer the Acts: The Federal Controlled Substance Act of 1970 as ammended was put in place in 1970. From that time until January 1 , 1983 , Alaska did not have a workable state controlled substance act. All other 49 states did pass controlled substance acts . Alaska was the last. When the legislature was considering a controlled substance act in the many years between 1970 and 1983 , they always ran into problems and for one reason or another always aborted the efforts . The legitimate industry must have an Alaskan State Controlled Substance Act to exist in harmony with

3. (continued)
Federal Statutes. During 1982 a serious effort by the legislature resulted in the passage of an' Alaskan Controlled Substance Act AS 17.30 and a companion act The Marijuana Therapeutic Research Program ,AS .35. The board of pharmacy attended hearings with the legislative committees and contributed information and expert testimony. In doing so they worked, with the help of those in state government who desired the passage of the act, to write the legitimate industry portion of the act. This portion is known as AS 17 30. The legislature was in doubt as to what board or commission or department should administer the act. During the hearings the board of pharmacy demonstrated knowledge , both in writing the legitimate industry portion , and in an understanding of how it would relate and function with the Federal Act. The question was asked " Does the Board of Pharmacy have the ability and knowledge to administer AS 17 30 and AS 17 35 ?". The answer given by board members who testified was a resounding "YES " , but a qualified "YES". The board has knowledge as to how Washington, Oregon and Wyoming administer their controlled substance acts and the board knew that it could do the same .....given the proper tools and funds. One of the qualifications was that qualified personnel , be hired within the DOL , to assist the board. This qualified personnel should be in the form of an exective-secretary , who should be a pharmacist , and if not registered in the state , be required to become registered in the state. With this qualified and experienced help, the board would be able to properly and promptly put in place all the requirements of AS 17 30 & AS 17 35. The board believed that this would take place, and investigated the availability of qualified people ,and found at least three people who qualified. These people had many years (from 5 to 8 years) of experience with pharmacy boards fwom our neighboring states to the south. The board planned to bring one of these people on line at an early date. The board , as outlined in Section 4 of this report , ran into difficulties , not of their doing, but brought on by the erroneous submission of the request for two investigators, instead of the one executive-secretary that the board,in documented minutes,requested. It is the boards goal for FY ' 84, to have the executive-secretray position placed in the personnel division of the state, so this position may be filled. It can be done by special exception, and done rather rapidly , or it can be done by legislative action early in 1984 . It must be done to assure proper implementation of AS 17 30 & AS 17 35 and at the earliest date possible . The board has submitted FY '84 budget as part 6 of this report and has budgeted $ 35,000.00 for what remains of FY '84, and $ 52,000.00 in FY '85 and $ 56,000.00 in FY' 86 . These budget requests are reasonable and are necessary to get the job done. One person does the job in Washington , in Oregon and in Wyoming . Two investigator are not needed . The board has submitted a budget of $15,000.00 per year for each of the years FY'84, FY '85 and FY '86 , as a travel expense item for the executive-secretary. The executive-secretary , in future years, could take over

3 (continued)
much of the inspection of pharmacies , in conjunction with board members in the various geographic areas of the state. The executive-secretary could also do most of the investigation work , with the help of investigators now employed by the DOL, without hiring additional investigators. This is how the program works in the three states referred to previously in this report. It is effective and it is cost effective. The board has requested $ 35,000.00 for a regulation specialist for the FY '84 and reduced this to $ 33,000.00 in FY '85 and to zero in FY'86. Most of the regulations needed should be in place by the end of FY '85. The board has requested that no money be spent or put in the board's budget for investigators for FY 84. The licenses must be issued and in place prior to being able to investigate license violations . The board has requested $ 45,000.00 a year for investigator hire in FY 85 and again in FY' 86 , as by that time investigations will be in order and indeed needed. The board has requested $15,000.00 for licensing regulons in each year of FY'84, FY '85 and FY '86., and this amount of money represents the board's share of the expense for a licensing examniner that is shared by other boards. The board has submitted the amount of $ 1,000.00 per year for each of FY '84, FY '85 and FY '86 for the production of anews letter. It is one of the board goals that this be done in conjunction with the NABP news letter . The board has requested the sum of $18,000.00 to conduct three board meetings in FY '84 and the sum of $ 20,000.00 for FY '85 and the sum of $22,000.00 for FY '86 . The board has requested the sum of $ 5,000.00 to help defray the cost of board members being represented at hearings during sunset . In 1979 board members paid their own way to these hearings at a considerable out of pocket expense that should not be a responsibility of board members. Total budget requests for FY '84 is $158,400.00, for FY '85 it is $ 194,000.00 and for Fy '86 it is $163,000.00

4. Promulgate Regulations to Carry Out the Purpose of AS 80, That Have Not Been Previously Considered Due to Work Loads
The board is projecting an expense (budget request) of $3,000.00 for each year,FY '84, FY '85, and FY '86. This amount should cover actual costs ,not including salary for the regulation specials ,that is submitted elsewhere in budget request.

5. News Letter:
Although the board has been temporarily stopped by action of the director of DOL , from a cooperative effort with the NABP in the production of a news letter, the board has as a goal in FY '84 the establishment of the news letter. The board has asked the attorney general representative , who gave an unofficial negative response to the request the first time, to take an indepth look at the legal problems that are imagined ,to determine that they really do not exist. Most other states have this program with no problems. Alaska should also benefit from the cooperation of NABP in supplying a good news letter to all regulons.

6. The Board Plans Three Regularly Scheduled Meetings for FY' 84 and is Projecting a Like Amount for Each year FY'85 & FY'8
The board will continue to hold at least one meeting a year in Juneau and for FY '84 , has scheduled the fall 1983 meeting in Juneau on October 27 & 28 , 1983. There will probably also be a meeting in Juneau in February 1984 and the June meeting will be held (at an undecided location) and at the time the NABPLEX (national) examination is scheduled nation wide . The board may also hold telephone teleconferences ,in FY '84 , in an attempt to expedite implimentation of AS 30 & AS 35 and as a necessity due to limited funds and time. Projected costs are FY'83-'84 &'85 is $18,20, and $22,000.0

7. The Board Will Respond to Legislative audit Under "Sunset" Legislation to Justufy the Existance of the Board.
The board strongly feels that the board system is the best method of administering pharmacy laws and regulations, and to this end will present testimony to the legislative audit committee and the various committees of the legislature, when this is necessary . The pharmacy board was given a vote of confidence , when the Controlled Substance Act was implemented . The legislature felt at that time that the pharmacy board cound administer the Act in a knowledgable and cost effective way. The board in reacting to that confidence is attemtimg to do just that and to conduct the duties of the board in a responsive and effective manner. Costs are projected as $ 5,000.00 for FY'84 and no costs for FY '85 & FY' 86 as the two later years are non-sunset years.

Part 6. Budget Recommendations FY '84 With Estimates Budget Recommendations for FY '85 and FY'86:

ITEM	BUDGET FY '84	BUDGET FY'85	BUDGET FY '86'
1.Inspections	$5,000.00	$ 5,500.00	$ 6,000.00
2.Continuing Education	5,000.00	-0-	-0-
3.Controlled Substance Act. AS 30 & AS .35			
A. Executive Secretary	$35,000.00	$52,000.00	$56,000.00
B. Travel for Ex-Sect.	$15,000.00	$15,000.00	$15,000.00
C. Regulation Specialist	$35,000.00	$33,000.00	-0-
D. Investigator	-0-	$45,000.00	$45,000.00
E. Licensing Examiner (Shared expense)	$15,000.00	$15,000.00	$15,000.00
4. Registration Of Regulons	$ 3,000.00	$ 3,000.00	$ 3,000.00
5. News Letter	$ 1,000.00	$ 1,000.00	$ 1,000.00
6. Board Meetings (3 a year)	$18,000.00	$20,000.00	$22,000.00
7. Response to Sunset	$ 5,000.00	-0-	-0-
TOTALS	$158,400.00	$194,000.00	$163,000.00

ADDENDUM # 1

William Sheffield,
[redacted], Governor

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

5 March 1983

Eldon R. Ulmer , R.Ph.
President, Board of Pharmacy
P.O. Box 101420
Anchorage, Alaska 99510

Mr. Harry Treager
Director
Division of Occupational Licensing
Pouch "D"
Juneau , Alaska 99811

Dear Mr. Treager:

Please consider this letter and supportive information attached , as an official request for action by you , from the Board of Pharmacy .

When you met with the Board in Juneau on February 25, 1983, you requested that I write to you asking your help in obtaining changes in the "designation of personnel" portion of the budgeted line items for implementation of AS 17.30 and As 17.35 by the Board of Pharmacy.

You also asked for a job description for the Boards designation of "EXECUTIVE-SECRETARY-INSPECTOR " . In the five pages, attached, stating purpose , and including narrative , conclusion , and an addendum, I have attempted to do that . It is complex , to say the least, but I do believe it conveys the intent of the legislature and a means of implementing that intent.

Please expedite your request for the line item change so we may proceed at once. We are already two months into 1983 , and need to go at full speed in the next month or two .

Let me know as soon as you have hired the regulation specialist that you promised to hire and base in Anchorage. I have five pages of suggested regulations covering not only AS 17.30, but also AS 17.35 . I have a commitment from all four of the physicians to serve in the various categories on the Patient Qualification Review Committee and need the specialist to aid in getting my proposed applications for those positions into printed form, so letters of appointment may be sent.

Sincerely,

Eldon R. Ulmer, R.Ph.
President, Board of Pharmacy

08 HOLM

William Sheffield,
Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

5 March 1983

Eldon R. Ulmer , R.Ph.
President,Board of Pharmacy
P.O. Box 101420
Anchorage, Alaska 99510

Mr. Harry Treager
Director, Division of Occupational Licensing.....

Enclosure: Five pages of supportive material.

COPY TO: Honorable William Sheffield,
Governor, State of Alaska
Pouch "A" State Capitol Building
Juneau , Alaska 99811

Richard A.Lyon, Commissioner Commerce & Econ. Dev.
Pouch "D"
Juneau , Alaska 99811

Honorable Joe Hayes, Speaker of House of Representative
Pouch "V"
Juneau , Alaska 99811

Honorable Jalmar Kerttula, President of the Senate
Pouch "V"
Juneau , Alaska 99811

Norman Gorsuch, Attorney General
Department of Law
Pouch "K"
Juneau , Alaska 99811

Dan Hickey, Chief Prosecutor,
Department of Law
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ALL MEMBERS OF ALASKA BOARD OF PHARMACY

Gerald Wilkerson, CPA
Legislative Auditor
Pouch "W"
Juneau, Alaska 99811

8 NBLH

ALASKA STATE BOARD OF PHARMACY

IMPLEMENTATION

CONTROLLED SUBSTANCE STATUTE AS.17.30
AND
MARIJUANA THERAPEUTIC RESEARCH
PROGRAM STATUTE AS.17.35

The Legislature passed the CONTROLLED SUBSTANCE STATUTE AS 17.30 AND THE MARIJUANA THERAPEUTIC RESEARCH PROGRAM STATUTE AS 17.35 IN 1982 with an effective date of January 1, 1983.

Much of the responsibility for the implementation of these two statutes rests with the Board of Pharmacy . The legislation did not specifically address the funding for the implementation, nor the number or type of personnel that would be needed for implementation.

The Board of Pharmacy has been planning , since 1981 , for the responsibilities that many believed would be vested with the Board , but could make no definite plans until enactment was accomplished and an effective date established.

The Board is now faced with problems of selecting and funding personnel to insure a timely implementation of it's responsibliy.

N A R R A T I V E:

Under Sec 17.30.010 Regulations must be promulgated.

Under Sec 17.30.020 ,(a),(b),(c),(d),(e) & (f) Registration requirements must be met .

Under Sec 17.30.030 (a), (b), & (c) Registration must be accomplished.

Under Sec 17.35 Marijuana Therapeutic Research , a program must be established , physcians interviewed and appointed to the Patient Qualification Review Committee and regulations must be adopted to assure this program is administered at a state level that is compatible with Federal Statutes.

All of above can not be accomlished in three meetings of two days each presently budgeted for the Board.

Competent, qualified and experienced personnel must be hired, and fast , to accomplish the mandate of the legislature.

With this in mind the Board as early as June 1981 , started setting up a proposed budget and establishing goals and objectives , even though no law was on the books at that time.

At two of its three meetings in 1982 , after the enactment of the legislation , but still prior to the effective date, the Board again established goals and an accompaning proposed budget . This fact may be verified by the minutes of all of the above cited meetings and the attached goals and objectives to those minutes.

Throughout the meetings, evidence of the Board's intent can be clearly identified . Never did the Board waver from it's intent to hire a " Executive- Secretary " type person to come on board in a full time position . Various budget figures were submitted in the range of $ 85,000.00 for the period January 1, 1983 through June 30 , 1983 (a half year) to fit the fiscal budget time frame from effective date of January 1 , 1983.

The Board does not enjoy budget-bypass priveledges and must submit a budget through the Division of Occupational Licensing . It is the Boards understanding that this budget is then submitted through the Division of Commerce and Economic Developemnt and on to the House and Senate Budget Committees .

The Board DID submit a budget , both for the fiscal year 1983 and again for the half-fiscal year 1983(January 1,1983 through June 30 , 1983. The 1983-84 Fiscal year budget was submitted to the Division of Occupational Licensing also, and it is presently in the process.

With each budget request , a breakdown was also submitted. In every request there is an audit trail established in the minutes of meetings and in letters. The Board always included expenses for a position that was labeled various ways , but either was called " Executive-Secretary" or a combined position of "Executive-Secretary-Investigator-Examiner.

The Board realized that a regulation specialist would be needed to promulgate all of the regulations mandated by statute and budgeted for that position also . The Board also ralized that , although it nas always been assigned an inspector , by the DOL , that a full time inspector would aslo be needed , in addition to sharing the one used in the past . This would then amount to an investigator and a half(the half one being shared with other boards) and the full time one being used in the extensive investigatory work anticipated in the drug enforcement area .

Somewhere,in the translation from Board minutes and vocal requests, made by the Board to the Director of Occupational Licensing , MUCH WAS LOST. The Board recently was made aware that line item budget items were requested OR AT LEAST GRANTED in the budget , TIED to specific personnel. This personnel is defined, according to the DOL for two regulation specialists and two investigators . These people are in addition to the regular licensing examiner that is assigned to each board and usualy shared by at least one other board. The regulation specialists and the two investigators were to be the people that would aid the Board in emplenting its work.

This will just NOT WORK. The Board needs an Executive-Secretary type person , comparable to those in the employee of other states , such as Washington, Oregon, and Wyoming, where state pharmacy boards have full responsibility for their states controlled substance statutes. The Board has in mind at least three people , two of which would be excellent,and who have indicated a desire to come to Alaska . These people have been employed for at least five years as executive-secretaries, and also have investigate exeperience , and have been involved in the administration of both controlled substance legislation and marijuana research programs . Just the type of person with just the type of experience needed in the initial

N A R R A T I V E :(continued)

stage of the program in Alaska . Unfortunately ,no such position is specifically listed in the job classification program of the state, directly identified with the Pharmacy Board . Similiar positions do exist with the Board of Nursing and others, but not Pharmacy.

The Board of Pharmacy does not need, in the initial organization , two investigators . The Board does desperately need an experienced executive-secretary type, on a day-by-day basis to get the programs initiated and then properly administrated .

The Director of the Division of Occupational Licensing has agreed to submit the Boards desires as to changing the budget line item identification from two regulation specialists and two investigators to the personnel that could do the job , as long as the Board stays within the budgeted dollars. The Board has been informed that it has , budgeted dollars covering the four people mentioned above, in the amount of $ 75,000.00 for the period January 1, 1983 through June 30 , 1983 . The Board has asked the director of DOL to make the following request:

Investigator /c	
Executive-Secretary-Inspector range of	$45,000.00/y
Estimated 30 % of salary for office etc	13,500.00/y
One full time regulation specialist	33,000.00/y
Estimated 30% of salary for office	9,900.00/y
Licensing Examiner(or secretary type)	28,000.00/y
Estimated 30 % for office etc.	8,400.00/y
TOTAL FOR ONE YEAR $	137.800.00/y

This would break down to $ 68,900.00 for the remainder of fiscal year 1983(half year Jan 1 through June 30 , 1983) and well under the $75,000.00 budgeted . The figures above may be slightly off , but should be fairly close and definitely on the conservative side considering the licensing examiner budgeted above for full time Pharamcy Board work , when she would probably be used part time with another board.

The Director of The Division of Occupational Licensing has asked that the President of The Board Of Pharmacy write him a letter asking for his cooperation in requesting the change and in addition attempt to write a job experience qualification requirements and a job description for the position of Executive-Secretary-Investigator .

The letter has been written and will be sent to the Director along with this narrative and a conclusion statement. Copies of all material will also be sent to The Governor, The Commissioner of Commerce & Economic Developement, The Speaker of the House of Representatives, The President of the Alaska State Senate. all Board of Pharmacy Members, and Legislative Sunset Review Committee, and The Attorney General , and Dapartment of Law.

C O N C L U S I O N:

EXECUTIVE-SECRETARY-INVESTIGATOR FOR BOARD OF PHARMACY:

Qualifications:

1. Five years experience with another Board of Pharmacy, of which three years must be in the position of executive-secretary and the remainder in the position of investigator.

2. Experienced in administering controlled substance law of a state , under direction and supervision of a pharmacy board.

3. Experience in administering a marijuana therapeutic research program under the direction and supervision of a board of pharmacy.

4. Experience maintaining files and registration and licensing of pharmacists and controlled substance registratants at the direction and under the supervision of a board of pharmacy.

5. Be a registered pharmacist in a state recognized by the National Association of Boards of Pharmacy and be required to become registered as a pharmacist in the State of Alaska within six months of being hired as Executive-Secretary-Investigator by the State of Alaska.

JOB DESCRIPTION:

UNDER THE SUPERVISION AND AT THE DIRECTION OF THE BOARD OF PHARMACY AND UNDER THE MANDATES OF AS.08.01., CENTRALIZED licensing statute and AS 08.80 PHARMACY ACT.:

1. Assist Board in process of registration of all Drug enforcement registrants under the Federal Law under the AS 17.30 Alaska State Statute , including design of application form and license .

2. Maintain record of registration and licensure under AS 17.30 with such records properly maintained at the Division of Occupational Licensing .

3. INVESTIGATE violations of any state or federal law under the jurisdiction of the Board of Pharmacy and at the direction of the Board of Pharmacy and the Division of Occupational Licensing.

4. Aid Board in the administration of the Marijuana Therapeutic Research Program AS.17.35 , including maintaining records at the Division of Occupational Licensi g , and aiding the Patient Qualification Review Commi tee in processing applicants under that program.

5. Cooperate with all state and federal law enforcement agencies at direction of Board of P' rmacy .

6. Follow direction of DOL in maintaining records, issueing licenses , receiving fees, and any other job requirements assigned to licensing examiners , including:

   (a) Collecting fees & issueing receipts;
   (b) Maintaining records and files ;
   (c) Issueing & receiving application forms;
   (d) Notifying applicants of acceptance or rejection of applicants as determined by Board;
   (e) At direction of DOL & Board, notifying applicants for any licensure under AS 08.80 or AS 17.30 of examination dates or license renewal dates.
   (f) Arrange soace for holding examinations
   (g) Notify applicants of results of examinations;
   (h) Issue licenses & certificates or temporary licenses or certificates as authorized by Board
   (i) Answer routine inquires ;
   (j) Maintain a current registry of all licenses issued under AS 08.80 & AS 17.30
   (k) Perform other services as requested by board consistant with requirements of AS 08.80 & AS -7.30 & As 17.3[illegible].

7. Perform the following job description duties as mandated by and established by investigative proceedures of DOL & Board.

   (a) (b) (c, etc.....to be inserted by DOL & consistant with job description duties of INVESTIGATORS .

NOTE: It is the intent of the Board of Pharmacy that the above person be employed, under state employment laws , by the Division of Occupational Licensing . The Director would, in effect , be the person's boss , and would direct the duties and performance of the person, at the request and with direct input , from the Board of Pharmacy. The person would reside in the Anchorage area , working out of the Division of Occupational License office in Anchorage.

ADDENDUM:

The above job decription, narrative, and conclusion solves the problem temporarily., however the problem may ultimately have to be addressed by the legislature . The Board of Pharmacy in offering the solution , listed here, is attempting to carry out the wishes of the Legislature, so the important programs may be started at once and carried out to the best of the ability of all involved.

ADDENDUM # 2

BILL SHEFFIELD
GOVERNOR

ADDENDUM # 2.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 28, 1983

Mr. Eldon R. Ulmer, R.Ph.
President, Board of Pharmacy
P.O. Box 101420
Anchorage, AK 99510

Dear Mr. Ulmer:

Thank you for a copy of your recent correspondence to Mr. Harry Treager regarding your request in obtaining changes in the "designation of personnel" portion of the budgeted line items for implementation of AS 17.30 and AS 17.35 by the Board of Pharmacy. You may be assured that I will give serious consideration to your comments on this important issue.

I appreciate your personally informing me of your views, and I have copied the Department of Commerce & Economic Development for Commissioner Richard Lyon's review.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

ADDENDUM # 3

(two part)

DATE: June 15, 1983

TO: Board of Pharmacy

FROM: Harry D. Treager, Director
Division of Occupational Licensing

SUBJECT: Personnel Position

The attached memorandum was received from the personnel officer.

HDT/jarH4
61583a

Attachment

8-HBLH

MEMORANDUM State of Alaska

TO: Harry D. Treager, Director
Division of Occupational Licensing

DATE: April 13, 1983

FILE NO:

TELEPHONE NO:

FROM: Jim Lawson, Personnel Officer
Division of Administrative Services

SUBJECT: Requested Change of Authorized Position and Function

In response to your memo of April 7, 1983 requesting a change in title for two Investigator III positions to "Executive Officers."

These positions were budgeted for and authorized in the classified service subject to the rules of the classified personnel system. There is no classification for Executive Officer and I am, therefore, unable to effect the requested change.

JL/cw#23Q13

ADDENDUM # 4

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

July 29, 1983

Eldon Ulmer, R.Ph.
Chairman
Board of Pharmacy
P.O. Box 101420
Anchorage, Alaska 99510

Dear Mr. Ulmer:

Re: Executive Officer Position

This correspondence is to advise you that efforts of Mr. Jim Lawson, personnel officer, Department of Commerce and Economic Development, were to no avail in changing the position of the investigator to an executive officer.

We should proceed immediately to fill the position as mandated by legislation.

Sincerely,

Harry D. Treager
Director

HDT/cw#2707
72983A
cc: Dick Long

H8LH

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
BOARD OF PHARMACY

Notice is hereby given that the Department of Commerce and Economic Development, Board of Pharmacy, under authority vested by AS 08.80.030, AS 17.30.010, and AS 17.35.020, proposes to adopt regulations in Title 12 of the Alaska Administrative Code, Chapter 52, dealing with regulation of manufacture, distribution, prescription and dispensing controlled substances, marijuana therapeutic research program and definitions to implement AS 17.30.020, AS 17.30,030, AS 17.30.040 and AS 17.35.030 as follows:

Article 5, General Provisions is renumbered to Article 7, General Provisions, with Article 5 being assigned to the "Regulation of Manufacture, Distribution, Prescription and Dispensing of Controlled Substances," and Article 6 being assigned to the "Marijuana Therapeutic Research Program."

12 AAC 52 is amended by adding a new article to read:

ARTICLE 5
REGULATION OF MANUFACTURE, DISTRIBUTION, PRESCRIPTION
AND DISPENSING OF CONTROLLED SUBSTANCES

Section

400. Registration requirements
405. Registration
410. Application forms for registration
415. Fee for registration and renewal
420. Exemption from registration and fees
425. Separate registration for independent activities and locations
430. Certificate of registration
435. Termination of registration
440. Denial, revocation and suspension of registration

12 AAC 52.400 provides that every person who manufactures, distributes, or dispenses any controlled substance, or who proposes to do so, must obtain a certificate of registration for such activity with the Board of Pharmacy.

12 AAC 52.405 provides for the effective date and expiration dates of all certificates of registration.

12 AAC 52.410 provides for the application forms for registration and procedures for an applicant applying for registration.

12 AAC 52.415 provides for an annual fee of $10.00 for each certificate of registration issued.

12 AAC 52.420 provides for the exemption from registration and fees for any person exempted from registration under the Federal Controlled Substance Act of 1970, as amended.

12 AAC 52.425 provides that a separate registration shall be required for any person engaging in more than one group of independent activities and sets forth the categories of independent activities.

12 AAC 52.430 provides for the issuance of the Certificate of Registration by the board, the information contained on the certificate, and other requirements the board may impose on an applicant to determine if a certificate should be issued or denied.

12 AAC 52.435 provides for the termination of any registration in the event of the death of the registrant, or ceases legal existence or discontinues business or professional practice.

12 AAC 52.440 provides for the procedures for the denial, revocation or suspension of any registration and sets forth the procedures for the board, and the applicant or registrant, to follow in the event of any such action to ensure all parties' rights are protected.

12 AAC 52 is amended by adding a new article to read:

ARTICLE 6
MARIJUANA THERAPEUTIC RESEARCH PROGRAM

Section

600. Patien[illegible]alification Review Committee
610. Application for appointment
620. Term of appointment
630. Duties of committee

12 AAC 52.600 establishes a Patient Qualification Revie[illegible]ee of four members to oversee the marijuana therapeutic resear[illegible]m.

12 AAC 52.610 sets forth the application for appointmen[illegible] Patient Qualification Review Committee by the Board of Pharmacy.

12 AAC 52.620 provides for the term of appointment for each of the four members appointed and designating which appointee will be the chairman of the committee.

12 AAC 52.630 sets forth the duties of the committee in the management of the marijuana therapeutic research program.

12 AAC 52.900 DEFINITIONS (ARTICLE 7) is amended by adding new paragraphs to provide definitions for "compounder" and "committee."

Notice is also given that any person interested may present written statements or arguments, relevant to the action proposed by mailing or delivering them so they are received by 4:30 p.m., September 30, 1983 to:

Department of Commerce and Economic Development
Division of Occupational Licensing
Board of Pharmacy - Regulations
Century Plaza
142 East 3rd Avenue
Anchorage, Alaska 99501

Copies of the proposed regulations may be obtained by writing to the above address, or by telephoning (907) 276-7969.

This action is expected to require an increased appropriation to implement and maintain the registration requirements, as specified in 12 AAC 52.400-.440. It is anticipated that the additional funding required for one-half of Fiscal Year 1984 will amount to $17,500.00 to cover personal services, contractual, commodities and equipment (the equipment is a one-time cost). Fiscal Year 1985 is estimated to require $26,700.00 and Fiscal Year 1986 is estimated to require $27,900.00.

The action in regard to 12 AAC 52.600-.630 and 12 AAC 52.900(16) and (17) is not expected to require an increased appropriation.

The Department of Commerce and Economic Development, Board of Pharmacy, upon its own motion or at the instance of any interested persons, may thereafter adopt the proposals substantially as described above without further notice, or may decide to take no action on them.

Richard A. Lyon, Commissioner

DATE: July 13, 1983

Cramer ✓

A M E N D M E N T

By Uehling

TO: CSHB 716(L&C)

Page 2, line 1:

Delete ";" and insert "."

Page 2, line 2:

Delete all material

Page 2, line 10, following "chapter":

Insert "or AS 17.30"

Page 2, line 11:

Delete "this" and insert "either"

Page 2, line 12:

Delete "this" and insert "either"

Page 2, line 15:

Following "chapter" insert "or AS 17.30"

Delete "it" and insert "either chapter"

Page 2, line 16:

Delete "refer the matter to the department" and insert "investigate the matter in accordance with this chapter or AS 17.30"

Page 2, line 17:

Following "member" insert "and to the department"

Delete "referral" and insert "investigation"

Page 2, lines 18-21:

Delete all material

APRIL 18, 1984

TO: JOHN

FROM: KEN

RE: HB 716 RELATING TO THE BOARD OF PHARMACY

THE PRIMARY PURPOSE OF HB 716 IS TO ENSURE THE STATE BOARD OF PHARMACY IS EXTENDED FOR ANOTHER FOUR YEAR PERIOD. ALONG WITH THAT EXTENTION THE BOARD OF PHARMACY WOULD BE GIVEN NEW RESPONSIBILITIES AND EXPANDED POWERS. WITH THIS NEW AUTHORITY THE BOARD WOULD HIRE AN EXECUTIVE SECRETARY. THE PROPOSED JOB DESCRIPTION FOR THE EXECUTIVE SECRETARY HAS BEEN PROVIDED BY THE BOARD TO THE DIVISION OF OCCUPATIONAL LICENSING. THIS NEWLY CREATED POSITION WOULD GIVE THE BOARD THE STAFF NECESSARY TO CARRY OUT ITS RESPONSIBILITIES.

QUESTION:

1. IN OTHER STATES WHERE THE BOARD OF PHARMACY HAS STAFF SUCH AS AN EXECUTIVE SECRETARY, HOW HAS THE PROGRAM WORKED ?

2. HAS SUCH A PROGRAM BEEN MORE EFFICIENT THAN ONE LIKE WE HAVE HERE IN ALASKA ?

3. DO YOU FEEL THAT THE PHARMACY IS A VULNERABLE ENOUGH INDUSTRY TO NEED A CONSTANT WATCHDOG SUCH AS THE EXECUTIVE SECRETARY WOULD BE ?

4. HOW MUCH WOULD FISCAL NOTES CHANGE IF AN EXECUTIVE SECRETARY IS HIRED ?

5. WOULD THIS LESSEN THE WORK LOAD OF THE DIVISION OF OCCUPATIONAL LICENSING ?

6. DON'T YOU FEEL THAT SOMEONE WITH A PHARMACY BACK GROUND WOULD BE A BETTER WATCHDOG FOR THE INDUSTRY THAN AN INVESTIGATOR WHO HAS TO MONITOR SEVERAL INDUSTRIES ?

MARCH 14, 1983

THE BOARD OF PHARMACY IS MADE UP OF SEVEN MEMBERS, TWO OF WHICH MUST BE PUBLIC MEMBERS WITH NO DIRECT FINANCIAL INTEREST IN THE HEALTH CARE INDUSTRY. FIVE PROFESSIONAL MEMBERS WITH AT LEAST THREE YEARS EXPERIENCE FILL THE OTHER FIVE SEATS. THE BOARD REGULATES LICENSES, PHARMACISTS, ALL PHARMACIES AS WELL AS HOSPITAL DRUG ROOMS.

QUESTIONS:

1. DO YOU CONCUR WITH THE FINDINGS AND RECOMMENDATIONS MADE BY THE LEGISLATIVE AUDIT DIVISION FOR THE BOARD OF PHARMACY ?

2. HOW OFTEN DO YOU FEEL THE BOARD OF PHARMACY SHOULD BE REVIEWED BY THE LEGISLATURE ?

3. WHAT SUGGESTIONS DO YOU HAVE FOR IMPROVEMENT OF THE BOARD OF PHARMACY ? C & S Soc. #1

Cramer
4/11/84

Original sponsor: Labor and Commerce Committee

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 716 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Board of Pharmacy; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.03.010(c)(4) is amended to read:

(4) Board of Pharmacy (AS 08.80.010) -- June 30, 1988 [1984].

* Sec. 2. AS 08.80.030 is amended to read:

Sec. 08.80.030. POWERS OF THE BOARD. The board may

(1) elect a president and secretary from its membership and adopt rules for the conduct of its business;

(2) examine applicants for registration as pharmacists;

(3) investigate individually, collectively, or through its agent, for violations of this chapter, or of any other state or federal statute relating to the practice of pharmacy;

(4) adopt regulations [AND DO WHATEVER ELSE IS NECESSARY AND ADVISABLE] to carry out the purposes of this chapter;

(5) [PROMULGATE REGULATIONS TO CARRY OUT THE PURPOSES OF THIS CHAPTER;

(6) Repealed

(7)] register intern pharmacists and adopt regulations [PROMULGATE RULES] relating to their minimum experience requirements;

(6) adopt [(8) PROMULGATE] regulations to ensure adequate security for all dangerous drugs;

(7) [(9)] adopt requirements for licensing in addition to

the requirements set out in this chapter;

(8) hire an executive secretary.

* Sec. 3. AS 08.80 is amended by adding new sections to read:

Sec. 08.80.095. EXECUTIVE SECRETARY. The board may hire an executive secretary to assist in implementing this chapter. The executive secretary shall be a member of the partially exempt service under AS 39.25.120.

Sec. 08.80.097. INVESTIGATIONS. (a) The executive secretary may inspect pharmacies and investigate complaints to determine whether any person has violated this chapter or a regulation adopted under this chapter or to secure information useful in the administration of this chapter.

(b) If the executive secretary believes that a person may have engaged in or be about to engage in an act or practice in violation of this chapter or a regulation adopted under it, the executive secretary shall ~~refer the matter to the department and immediately send written notice to each board member of the referral.~~ Follow the procedures adopted in AS 17.30 & AS 08.80 which are applicable.

(c) The department shall begin to investigate each matter referred by the executive secretary within five working days after the referral and shall report the results of its investigation to the board.

* Sec. 4. AS 39.25.120(c) is amended to read:

(c) The following positions in the state service constitute the partially exempt service:

(1) deputy and assistant commissioners of the principal departments of the executive branch, including the assistant adjutant general of the Department of Military Affairs;

(2) the directors of the major divisions of the principal departments of the executive branch and the regional directors of the

Department of Transportation and Public Facilities;

(3) attorney members of the staff of the Department of Law and of the public defender agency;

(4) one private secretary for each head of a principal department in the executive branch;

(5) employees of councils, boards, or commissions established by statute in the Office of the Governor or the office of the lieutenant governor, unless a different classification is provided by statute;

(6) the executive director, deputy director, hearing officers, and administrative law judges of the Alaska Public Utilities Commission;

(7) the director, deputy director, staff legal counsel, and hearing officers of the Alaska Transportation Commission;

(8) not more than two special assistants to the commissioner of each of the principal departments of the executive branch, but the number may be increased if the partially exempt service is extended under AS 39.25.130 to include the additional special assistants;

(9) the principal executive officer of the following boards, councils, or commissions:

(A) Alaska Public Broadcasting Commission;

(B) Professional Teaching Practices Commission;

(C) Parole Board;

(D) Board of Nursing;

(E) Real Estate Commission;

(F) Alaska Royalty Oil and Gas Development Advisory Board;

(G) Alaska Historical Commission;

(H) Alaska State Council on the Arts;

(I) Alaska Police Standards Council;

(J) Council on Science and Technology;

(K) Older Alaskans Commission;

(L) Board of Pharmacy;

(10) Alaska Pioneers' Home managers;

(11) hearing examiners in the Department of Revenue;

(12) the comptroller in the division of treasury, Department of Revenue;

(13) investment officers in the Department of Revenue;

(14) airport managers in the Department of Transportation and Public Facilities employed at the Anchorage and Fairbanks International Airports;

(15) the deputy director of the division of tourism and the deputy director of the division of insurance in the Department of Commerce and Economic Development;

(16) the executive director and staff of the Alaska Public Offices Commission;

(17) the director, deputy director, personnel analysts II, labor relations analysts I, labor relations analysts II, senior negotiators, and research directors of the division of labor relations in the Department of Administration;

(18) the rehabilitation administrator of the Workers' Compensation Board.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.-10.070(c).

ALASKA STATE BOARD OF PHARMACY

IMPLEMENTATION

CONTROLLED SUBSTANCE STATUTE AS.17.30
AND
MARIJUANA THERAPEUTIC RESEARCH
PROGRAM STATUTE AS.17.35

The Legislature passed the CONTROLLED SUBSTANCE STATUTE AS 17.30 AND THE MARIJUANA THERAPEUTIC RESEARCH PROGRAM STATUTE AS 17.35 IN 1982 with an effective date of January 1, 1983.

Much of the responsibility for the implementation of these two statutes rests with the Board of Pharmacy . The legislation did not specifically address the funding for the implementation, nor the number or type of personnel that would be needed for implementation.

The Board of Pharmacy has been planning , since 1981 , for the responsibilities that many believed would be vested with the Board , but could make no definite plans until enactment was accomplished and an effective date established.

The Board is now faced with problems of selecting and funding personnel to insure a timely implementation of it's responsibliy.

N A R R A T I V E:

Under Sec 17.30.010 Regulations must be promulgated.

Under Sec 17.30.020 ,(a),(b),(c),(d),(e) & (f) Registration requirements must be met .

Under Sec 17.30.030 (a), (b), & (c) Registration must be accomplished.

Under Sec 17.35 Marijuana Therapeutic Research , a program must be established , physcians interviewed and appointed to the Patient Qualification Review Committee and regulations must be adopted to assure this program is administered at a state level that is compatible with Federal Statutes.

All of above can not be accomlished in three meetings of two days each presently budgeted for the Board.

Competent, qualified and experienced personnel must be hired, and fast , to accomplish the mandate of the legislature.

With this in mind the Board as early as June 1981 , started setting up a proposed budget and establishing goals and objectives , even though no law was on the books at that time.

At two of its three meetings in 1982 , after the enactment of the legislation , but still prior to the effective date, the Board again established goals and an accompaning proposed budget . This fact may be verified by the minutes of all of the above cited meetings and the attached goals and objectives to those minutes.

Throughout the meetings, evidence of the Board's intent can be clearly identified . Never did the Board waver from it's intent to hire a " Executive- Secretary " type person to come on board in a full time position . Various budget figures were submitted in the range of $ 85,000.00 for the period January 1, 1983 through June 30 , 1983 (a half year) to fit the fiscal budget time frame from effective date of January 1 , 1983.

N A R R A T I V E : (continued)

The Board does not enjoy budget-bypass priveledges and must submit a budget through the Division of Occupational Licensing . It is the Boards understanding that this budget is then submitted through the Division of Commerce and Economic Developemnt and on to the House and Senate Budget Committees .

The Board DID submit a budget , both for the fiscal year 1983 and again for the half-fiscal year 1983(January 1,1983 through June 30 , 1983. The 1983-84 Fiscal year budget was submitted to the Division of Occupational Licensing also, and it is presently in the process.

With each budget request , a breakdown was also submitted. In every request there is an audit trail established in the minutes of meetings and in letters. The Board always included expenses for a position that was labeled various ways , but either was called " Executive-Secretary" or a combined position of "Executive-Secretary-Investigator-Examiner.

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N A R R A T I V E :(continued)

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This would break down to $ 68,900.00 for the remainder of fiscal year 1983(half year Jan 1 through June 30 , 1983) and well under the $75,000.00 budgeted . The figures above may be slightly off , but should be fairly close and definitely on the conservative side considering the licensing examiner budgeted above for full time Pharamcy Board work , when she would probably be used part time with another board.

The Director of The Division of Occupational Licensing has asked that the President of The Board Of Pharmacy write him a letter asking for his cooperation in requesting the change and in addition attempt to write a job experience qualification requirements and a job description for the position of Executive-Secretary-Investigator .

The letter has been written and will be sent to the Director along with this narrative and a conclusion statement. Copies of all material will also be sent to The Governor, The Commissioner of Commerce & Economic Developement, The Speaker of the House of Representatives, The President of the Alaska State Senate. all Board of Pharmacy Members, and Legislative Sunset Review Committee, and The Attorney General , and Dapartment of Law.

C O N C L U S I O N:

EXECUTIVE-SECRETARY-INVESTIGATOR FOR BOARD OF PHARMACY:

Qualifications:

1. Five years experience with another Board of Pharmacy, of which three years must be in the position of executive-secretary and the remainder in the position of investigator.

2. Experienced in administering controlled substance law of a state , under direction and supervision of a pharmacy board.

3. Experience in administering a marijuana therapeutic research program under the direction and supervision of a board of pharmacy.

4. Experience maintaining files and registration and licensing of pharmacists and controlled substance registratants at the direction and under the supervision of a board of pharmacy.

5. Be a registered pharmacist in a state recognized by the National Association of Boards of Pharmacy and be required to become registered as a pharmacist in the State of Alaska within six months of being hired as Executive-Secretary-Investigator by the State of Alaska.

JOB DESCRIPTION:

UNDER THE SUPERVISION AND AT THE DIRECTION OF THE BOARD OF PHARMACY AND UNDER THE MANDATES OF AS.08.01., CENTRALIZED licensing statute and AS 08.80 PHARMACY ACT.:

1. Assist Board in process of registration of all Drug enforcement registrants under the Federal Law under the AS 17.30 Alaska State Statute , including design of application form and license .

2. Maintain record of registration and licensure under AS 17.30 with such records properly maintained at the Division of Occupational Licensing .

3. INVESTIGATE violations of any state or federal law under the jurisdiction of the Board of Pharmacy and at the direction of the Board of Pharmacy and the Division of Occupational Licensing.

4. Aid Board in the administration of the Marijuana Therapeutic Research Program AS.17.35 , including maintaining records at the Division of Occupational Licensing , and aiding the Patient Qualification Review Committee in processing applicants under that program.

5. Cooperate with all state and federal law enforcement agencies at direction of Board of Pharmacy .

C O N C L U S I O N : (continued)

6. Follow direction of DOL in maintaining records, issueing licenses , receiving fees, and any other job requirements assigned to licensing examiners , including:

   (a) Collecting fees & issueing receipts;
   (b) Maintaining records and files ;
   (c) Issueing & receiving application forms;
   (d) Notifying applicants of acceptance or rejection of applicants as determined by Board;
   (e) At direction of DOL & Board, notifying applicants for any licensure under AS 08.80 or AS 17.30 of examination dates or license renewal dates.
   (f) Arrange space for holding examinations
   (g) Notify applicants of results of examinations;
   (h) Issue licenses & certificates or temporary licenses or certificates as authorized by Board
   (i) Answer routine inquires ;
   (j) Maintain a current registry of all licenses issued under AS 08.80 & AS 17.30
   (k) Perform other services as requested by board consistant with requirements of AS 08.80 & AS -7.30 & As 17.35.

7. Perform the following job description duties as mandated by and established by investigative proceedures of DOL & Board.

   (a) (b)(c) etc.....to be inserted by DOL & consistant with job description duties of INVESTIGATORS .

NOTE: It is the intent of the Board of Pharmacy that the above person be employed,under state employment laws , by the Division of Occupational Licensing . The Director would, in effect , be the person's boss , and would direct the duties and performance of the person, at the request and with direct input , from the Board of Pharmacy. The person would reside in the Anchorage area , working out of the Division of Occupational License office in Anchorage.

ADDENDUM:

The above job decription, narrative, and conclusion solves the problem temporarily., however the problem may ultimately have to be addressed by the legislature . The Board of Pharmacy in offering the solution , listed here, is attempting to carry out the wishes of the Legislature, so the important programs may be started at once and carried out to the best of the ability of all involved.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 716
Title: An Act relating to the Board of Pharmacy; & providing for an effective date
Sponsor: Labor & Commerce Committee
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Economic Dev.
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Division of Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		46.5	49.8	53.3	57.0	61.0
200 TRAVEL		51.6	55.2	59.0	63.2	67.6
300 CONTRACTUAL		28.0	30.0	32.0	34.3	36.7
400 SUPPLIES		1.2	1.3	1.4	1.5	1.6
500 EQUIPMENT		4.2				
600 LAND & STRUCTURES		3.6	3.9	4.1	4.4	4.7
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		135.1	110.2	149.8	160.4	171.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		135.1	110.2	149.8	160.4	171.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: 4/17/84

Approved by Commissioner: Richard A. Lyon Date: 4/23/84
Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HB 216 FISCAL IMPACT

(NOTE: 7% inflation factor projected for FY '86 through FY '89 for operating costs)

100 PERSONAL SERVICES:

1 Executive Secretary, Range 18A PX, 12 months to be located in Anchorage	46,519.88

200 TRAVEL:

Executive Secretary	3 board meetings (2 days ea. @ $80 per day/ per diem = $160 x 3)	$480.00
	Transportation - 3 board mtgs @ $400 ea.	1,200.00

Note: There are 119 licensed pharmacies which require inspections. Assuming the Executive Secretary will be located in the Anchorage area, the following does not include the 41 pharmacies in the Anchorage area. These consist of 32 Retail, 2 Wholesale, 6 Hospital Pharmacies, and 1 Nursing Home Drug Room pharmacy.

Transportation for Inspections not in the Anchorage area, at $400 ea. x 78	31,200.00
Per Diem for Inspections not in the Anchorage area, at $80 per day x 3 days ea. x 78	18,720.00
	$51,600.00

300 CONTRACTUAL:

Postage, telephone, printing, publication and operating costs:	$2,000.00
(With the authority to investigate violations, the following will apply:)	
Legal fees: Estimated 2 investigations annually will result in disciplinary proceedings: Fees cover all costs including hearing officer fees, court costs, court recorder costs, appeals cost, witness fees, and all other related costs; (Estimated each hearing process cost is $10,000.00 x 2)	20,000.00
Executive Secretary leased vehicle, dry w/maintenance:	
Anchorage: 1 vehicle @ $410.00 per month x 12 months	4,920.00
Fuel: 1 leased vehicle @ est. $87.50 per month x 12 months	1,050.00
	$27,970.00

400 COMMODITIES:

Stationery, typewriter ribbons, pens, pencils, tablets, and other miscellaneous desk top supplies	1,200.00

500 EQUIPMENT: (one time costs only)

1 desk, double pedestal, 60" x 30" @ 568.22 ea.	568.22
1 chair, executive swivel, with arms @ $313.30	313.30
1 typewriter, IBM correcting Selectric with dual pitch, 15.5 inch paper capacity @ $1,369.36 ea.	1,369.36
1 typewriter table @ $135.65 ea.	135.65
1 chair, side without arms, contour style @ $114.60 ea.	114.60
1 recording machine, portable, Lanier @ $775.87 ea.	775.87
1 bookcase with 3 adjustable shelves @ $164.69 ea.	164.69
1 file cabinet, 5 drawer, legal w/lock @ $406.91 ea.	406.91
1 calculators, desk, printing and display, 12-digit, @ $364.66 ea.	364.66
	$4,213.26

600 LAND & STRUCTURES:

150 sq. ft. @ $2.00 per ft. per mo. x 12 mos.	$3,600.00

TOTAL OPERATING COSTS: $135,103.14

1.	POSITION TITLE Executive Secretary			RANGE/STEP 18A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PX	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT ALL	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	35.8	
6.	Benefits	5.8	
7.	Supplemental Benefits	2.2	
8.	Fixed Benefits	2.7	
9.	TOTAL PERSONAL SERVICES 01		46.5
10.	Travel 02		51.6
11.	Contractual 03		28.0
12.	Commodities 04		1.2
13.	Equipment 05		4.2
14.	Other		3.6
15.	TOTAL COST		135.1

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	135.1
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION

As requested by the House Labor & Commerce Committee in House Bill 716.

13 REQUEST FOR NEW POSITION

01-1136 87/821 - 13

AGENCY Department of Commerce and Economic Development

PROGRAM Public Protection

BRU Occupational Licensing

COMPONENT

Page of

Revised Date

FY 85

Bill No. House Bill 719

Date May 15, 1984

Title "An Act relating to the rights of contractors on public works projects."

Contact: Eileen Plate
465-2700

L AND H ENTERPRISES

Bob Bacolas
465-4870

This bill would protect a prime contractor on a public works project from being required to pay wage claims to a principal or owner/operator of a subcontractor whenever a dispute arises between the prime contractor and the subcontractor concerning the performance of work under the subcontract.

Under this bill, the Department of Labor would be required to undertake investigations of the subcontractor's performance, hold hearings, and issue determinations as to whether or not the subcontractor has "substantially failed to perform the subcontract." These types of contract performance disputes frequently involve complicated questions of law and facts which are normally by the courts, not by administrative agencies. The Department would have to make what is ultimately a legal determination as to performance under the subcontract, which would likely involve the Department in third party court litigation and would not be in the best interests of either the Department or the State of Alaska.

Moreover, as the attached fiscal note makes clear, the Department would be required to retain certain professional, consulting, and legal services in order to make the necessary determinations of contract performance.

While the Department is not opposed to the idea of withholding payment to owner/operators of subcontractors during litigation of contract performance disputes, we believe that there is a much less costly way of accomplishing this result. In cases where a contract dispute arises between a prime contractor and a subcontractor, the contracting agency administering the public works project would withhold accrued payments from the prime contract as provided in AS 36.05.070 and .090 but would not disburse any wage payments to owner/operators or persons with an ownership interest in that subcontractor until the contract performance dispute has been resolved. During the pendency of litigation, the contracting agency could be directed to hold those amounts in escrow and disburse only in accordance with an order of the court or by stipulation of the parties.

Specifically, the Department recommends that in Section 1 of House Bill 719, the added language on line 15 be deleted. In Section 2 of the bill, proposed AS 35.05.095 should read as follows:

> CONTRACTORS AND SUBCONTRACTORS. (a) A contractor may inform the Department of Labor that a contract dispute exists with respect to the performance of a subcontractor and that a court action has been filed concerning such dispute Within ten days of receiving such notification, the department shall verify this information and transmit it to the contracting agency administering the public works project.

POSITION PAPER/Department of Labor

(b) Upon receipt of notification from the Department of Labor that a court action has been filed with respect to the performance of a subcontractor on a public works project, the contracting agency shall withhold but may not disburse any accrued payments from the public construction contract to pay wages to any person having an ownership interest in the subcontractor until directed to do so by court order or by stipulation of the parties.

(c) The Department of Labor may not exercise any of its statutory remedies under AS 36.05.010-110 against a contractor because of that contractor's failure to make payment to any person having an ownership interest in a subcontractor until such time as the contract performance dispute between the contractor and subcontractor has been resolved by court order or by stipulation of the parties.

A fiscal note is attached.

APPROVED:

Robert W Sandan

for Jim Robison
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 719
Title: "An Act relating to rights of contractors. . . ."
Sponsor: House Labor & Commerce
Requestor: House Labor & Commerce
Date of Request: May 14, 1984

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety BRU; Wage & Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		12.8	13.4	14.0	14.8	15.7
200 TRAVEL						
300 CONTRACTUAL		76.3	81.5	86.0	91.8	96.0
400 SUPPLIES		.5	.5	.6	.6	.6
500 EQUIPMENT		2.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	92.1	94.9	100.6	106.4	112.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	92.1	94.9	100.6	106.4	112.3
FEDERAL FUNDS						
OTHER						
TOTAL	0	92.1	94.9	100.6	106.4	112.3

POSITIONS:

FULL-TIME						
PART-TIME		1	1	1	1	1
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Bob Bacolas by MH Robert J. Bacolas Phone: 465-4870
Division: Labor Standards & Safety Date:

Approved by Commissioner: Robert W. Landau for Jim Robison Date: 5/15/84
Agency: Labor

LEG:B:16
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

$61,200
$61,990.00

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE
BILL/RESOLUTION NO: HB 719
TITLE: "An Act relating to rights of contractors on public works projects."
AGENCY AFFECTED: Department of Labor
Page 2

Under this bill the Department of Labor would be required to conduct complex investigations, issue formal determinations, and hold hearings in certain instances upon the request of a prime contractor. A request may occur when a wage claim is filed against the prime contractor by a subcontractor when litigation is pending between the parties arising out of a dispute concerning quality of work, or specific performance under the sub-contract.

The Wage and Hour Administration routinely handles about 20 enforcement actions each year that involve owners/operators who perform on public works projects as laborers, mechanics, or field surveyors. This fiscal note assumes that fifty percent of these actions will involve disputes between the prime contractor and subcontractor. In order to meet the investigation requirements of this bill, the cost associated with staffing full-time professionals, who have the required expertise to evaluate performance, would be prohibitive. Therefore, such activity would be handled through professional service contracts on an as-needed basis. Under this plan, the following assumptions can be made.

1. Contract attorney to handle the legal needs of the program ($140 per hour).

2. Professional consultant fees associated with investigating, determining, and issuing reports ($250 per hour).

3. A part-time Clerk Typist III in the Wage and Hour Administration to provide the required clerical support for the Department's involvement in the program.

We approximate it will take 16 hours per complaint for a private consultant to investigate, make a determination, and issue a report; and 16 hours per complaint by a contract attorney for legal involvement.

Based on these assumptions, the following formulas were used to compute the Fiscal Year 1985 costs to operate the program.

Consultant Fees:	10 investigations x 16 hours x $250 per hour =	$ 40.0
Attorney Fees:	10 investigations x 16 hours x $140 per hour =	$ 22.4
Miscellaneous other routine contractual services would include reporting and recording services		$ 7.5

Costs associated with the Clerk Typist III are shown on the attached Form 13. Of these costs, only the equipment costs of $2.5 would be one-time items.

699

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE
BILL/RESOLUTION NO: HB 719
TITLE: "An Act relating to rights of contractors on public works projects."
AGENCY AFFECTED: Department of Labor
Page 3

In preparing these cost estimates, we have assumed an effective date on the bill of July 1, 1984. Also, an inflation rate of six percent is included for fiscal years 1986 - 1989.

LEG:B:16

1	Position Title				Range/Step	Barg. Unit	Form 12 Page/Line	GOV.	APPROV.	DISAPP.
	Clerk Typist III				8 A	GGU				
2	Type of Position	Staff Months	RP Number	PCN Number	BRU Priority	Location	Election District	LEG.		
	PPT	6	HB 719			Anchorage				

3	CONTINUATION LEVEL		ADDITION	X
4	Type of Expenditure		Amount	
	1	2	3	
	PERSONAL SERVICES			
5	Salary	9,318		
6	Benefits	1,556		
7	Supplemental Benefits	571		
8	Fixed Benefits	1,362		
9	TOTAL PERSONAL SERVICES	01	12,807	
10	Travel	02	0	
11	Contractual	03	6,418	
12	Commodities	04	500	
13	Equipment	05	2,500	
14	Other			
15	TOTAL COST		22,225	

	RECEIPT CODE	FUNDING SOURCE		
16		Federal Receipts	1002	
17		G.F. Match	1003	
18	100	General Funds	1004	22,225
19		I-A Receipts	1005	
20		Program Receipts	1028	
21		Other		

For M&B Use Only
4A Key Number __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position would provide clerical support to the investigations required by this bill.

The clerk would maintain files on the cases, answer phones, type correspondence, etc.

Contractual Services costs include telephone charges, $1,800 for rent, $1,118 for management services support, etc.

A one-time cost of $2,500 for equipment would include a desk, chair, calculator, file cabinet, etc.

13 REQUEST FOR NEW POSITION

AGENCY Department of Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage & Hour

FY 85

Page	of
1	1

Revised Date

LEG:B:17

DEPARTMENT OF LABOR
OFFICE OF THE COMMISSIONER

RECEIVED
MAY 2 1984
OFFICE OF THE COMMISSIONER

BRIEFING PAPER ON L & H ENTERPRISES

L & H ENTERPRISES IS THE PRIME CONTRACTOR ON THE ANCHORAGE SERVICE-HANSHEW SPORTS COMPLEX IN ANCHORAGE. GROUND UP CONSTRUCTION WAS UNDER SUBCONTRACT TO L & H ENTERPRISES FOR EXCAVATION AND INSTALLATION OF WATER AND SEWER LINES.

GROUND UP FAILED TO PAY WAGES FOR THE WORK PERFORMED ON THE PROJECT. AT LEAST FOUR PEOPLE PERFORMED WORK FOR GROUND UP ON THE PROJECT. THEY ARE:

GARY STERBA -LABORER- OWNER OF GROUND UP CONSTRUCTION

DENNIS THOMAS -LABORER & OPERATOR- REPUTED BY L & H TO BE CO-OWNER OF GROUND UP

ANDY STERBA -OPERATOR & LABORER- GARY STERBA'S BROTHER

ED GUTOWSKY-TRUCK DRIVER & LABORER

L & H HAS WITHHELD ALL PAYMENTS TO GROUND UP CONSTRUCTION FOR THIS PROJECT DUE TO A DISPUTE OVER THE QUALITY/QUANTITY OF WORK PERFORMED. IN FEBRUARY 1984, GROUND UP CONSTRUCTION FILED A CHAPTER 7 BANKRUPTCY. THE DEPARTMENT AUDITED AVAILABLE TIME RECORDS AND HAS REQUESTED THAT THE CONTRACTING AGENCY WITHHOLD $17,639.54 WHICH REPRESENTS THE WAGES DUE FOR LABOR PERFORMED ON THIS PROJECT BY THE FOUR MEN LISTED ABOVE. THE AMOUNT TO BE WITHHELD WAS DETERMINED FROM AN AUDIT OF CERTIFIED PAYROLL RECORDS SUBMITTED TO THE DEPARTMENT ON DECEMBER 20, 1983 AND AUTHENTICATED BY A SWORN STATEMENT FROM GARY STERBA, THE OWNER OF GROUND UP CONSTRUCTION. WITHHOLDING WAS REQUESTED IN ACCORDANCE WITH AS 36.05.070(c).

COUNSEL FOR L & H ENTERPRISES HAS OBJECTED TO: THE HOURS SUBMITTED BY GROUND UP; THE DEPARTMENT SEEKING COLLECTION OF WAGES FOR COMPANY OWNERS OR REPUTED OWNERS; THE DEPARTMENT SEEKING COLLECTION FROM THE CONTRACTING AGENCY.

THE DEPARTMENT IS FOLLOWING ESTABLISHED PROCEDURES IN PURSUING THIS MATTER. THE CONTRACTOR/EMPLOYER IS IN BANKRUPTCY AND THE DEPARTMENT HAS NO ALTERNATIVE IN TITLE

36.05 ENFORCEMENT ACTIONS BUT TO SEEK FINAL PAYMENT OF WAGE DISCREPANCIES FROM THE CONTRACTING AGENCY. THE FACT THAT SOME OF THE LABOR WAS PERFORMED BY AN OWNER OF THE COMPANY DOES NOT NEGATE OUR OBLIGATION TO INSURE THAT ALL LABOR IS COMPENSATED FOR AT PREVAILING RATES. THIS MIRRORS FEDERAL POLICY FOR DAVIS-BACON ENFORCEMENT. THE ISSUE AS TO ACTUAL HOURS WORKED HAS YET TO BE RESOLVED.

AN INFORMAL CONFERENCE WAS HELD IN ANCHORAGE ON APRIL 26. L & H AND GROUND UP CONSTRUCTION WERE REPRESENTED. NO RESOLUTION COULD BE REACHED SO THE MATTER WILL BE SET FOR HEARING TO DETERMINE THE NUMBER OF HOURS WORKED AND THE AMOUNT OF WAGES DUE TO BE PAID BY THE CONTRACTING AGENCY IN ACCORDANCE WITH AS 36.05.090(a).

MAY 16, 1984

TO: JOHN

FROM: KEN

RE: HB 719 RELATING RIGHTS OF CONTRACTORS

THE PURPOSE OF THIS BILL IS TO PROTECT PRIME CONTRACTORS ON PUBLIC WORKS JOBS FROM PAYING WAGE CLAIMS TO A SUBCONTRACTOR WHEN A DISPUTE ARISES OVER THE PERFORMANCE OF THE WORK BY THE SUBCONTRACTOR. IT IS PRESENTLY THE DEPARTMENT OF LABORS POLICY TO HAVE THE CONTRACTING AGENCY WITH HOLD AND SOMETIMES DISBURSE FUNDS EARMARKED FOR THE PRIME CONTRACTOR WHEN WAGE CLAIMS ARE MADE AGAINST THAT CONTRACTOR. THE MAIN INTENT OF THIS BILL IS TO PREVENT THE OWNER OF [illegible] OF A SUBCONTRACTING FIRM FROM COLLECTING ON A WA[illegible]LAIM UNTIL ALL LITIGATION OVER THE PERFORMANCE OF THAT SUBCONTRACTOR HAS BEEN RESOLVED.

Bill No. House Bill 719

Date May 15, 1984

Title "An Act relating to the rights of contractors on public works projects."

Contact: Eileen Plate
465-2700

Bob Bacolas
465-4870

This bill would protect a prime contractor on a public works project from being required to pay wage claims to a principal or owner/operator of a subcontractor whenever a dispute arises between the prime contractor and the subcontractor concerning the performance of work under the subcontract.

Under this bill, the Department of Labor would be required to undertake investigations of the subcontractor's performance, hold hearings, and issue determinations as to whether or not the subcontractor has "substantially failed to perform the subcontract." These types of contract performance disputes frequently involve complicated questions of law and facts which are normally by the courts, not by administrative agencies. The Department would have to make what is ultimately a legal determination as to performance under the subcontract, which would likely involve the Department in third party court litigation and would not be in the best interests of either the Department or the State of Alaska.

Moreover, as the attached fiscal note makes clear, the Department would be required to retain certain professional, consulting, and legal services in order to make the necessary determinations of contract performance.

While the Department is not opposed to the idea of withholding payment to owner/operators of subcontractors during litigation of contract performance disputes, we believe that there is a much less costly way of accomplishing this result. In cases where a contract dispute arises between a prime contractor and a subcontractor, the contracting agency administering the public works project would withhold accrued payments from the prime contract as provided in AS 36.05.070 and .090 but would not disburse any wage payments to owner/operators or persons with an ownership interest in that subcontractor until the contract performance dispute has been resolved. During the pendency of litigation, the contracting agency could be directed to hold those amounts in escrow and disburse only in accordance with an order of the court or by stipulation of the parties.

Specifically, the Department recommends that in Section 1 of House Bill 719, the added language on line 15 be deleted. In Section 2 of the bill, proposed AS 35.05.095 should read as follows:

> CONTRACTORS AND SUBCONTRACTORS. (a) A contractor may inform the Department of Labor that a contract dispute exists with respect to the performance of a subcontractor and that a court action has been filed concerning such dispute. Within ten days of receiving such notification, the department shall verify this information and transmit it to the contracting agency administering the public works project.

POSITION PAPER/Department of Labor

(b) Upon receipt of notification from the Department of Labor that a court action has been filed with respect to the performance of a subcontractor on a public works project, the contracting agency shall withhold but may not disburse any accrued payments from the public construction contract to pay wages to any person having an ownership interest in the subcontractor until directed to do so by court order or by stipulation of the parties.

(c) The Department of Labor may not exercise any of its statutory remedies under AS 36.05.010-110 against a contractor because of that contractor's failure to make payment to any person having an ownership interest in a subcontractor until such time as the contract performance dispute between the contractor and subcontractor has been resolved by court order or by stipulation of the parties.

A fiscal note is attached.

APPROVED:

Robert W Sandan

for Jim Robison
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 719
Title: "An Act relating to rights of contractors. . . ."
Sponsor: House Labor & Commerce
Requestor: House Labor & Commerce
Date of Request: May 14, 1984

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety BRU; Wage & Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		12.8	13.4	14.0	14.8	15.7
200 TRAVEL						
300 CONTRACTUAL		76.3	81.5	86.0	91.8	96.0
400 SUPPLIES		.5	.5	.6	.6	.6
500 EQUIPMENT		2.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	92.1	94.9	100.6	106.4	112.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	92.1	94.9	100.6	106.4	112.3
FEDERAL FUNDS						
OTHER						
TOTAL	0	92.1	94.9	100.6	106.4	112.3

POSITIONS:

FULL-TIME						
PART-TIME		1	1	1	1	1
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Rob Bacolas by mst
Robert J. Bacolas
Phone: 465-4870
Division: Labor Standards & Safety
Date:

Approved by Commissioner: Robert W Jordan for Jim Robison
Date: 5/15/84
Agency: Labor

LEG:B:16
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE
BILL/RESOLUTION NO: HB 719
TITLE: "An Act relating to rights of contractors on public works projects."
AGENCY AFFECTED: Department of Labor
Page 2

Under this bill the Department of Labor would be required to conduct complex investigations, issue formal determinations, and hold hearings in certain instances upon the request of a prime contractor. A request may occur when a wage claim is filed against the prime contractor by a subcontractor when litigation is pending between the parties arising out of a dispute concerning quality of work, or specific performance under the sub-contract.

The Wage and Hour Administration routinely handles about 20 enforcement actions each year that involve owners/operators who perform on public works projects as laborers, mechanics, or field surveyors. This fiscal note assumes that fifty percent of these actions will involve disputes between the prime contractor and subcontractor. In order to meet the investigation requirements of this bill, the cost associated with staffing full-time professionals, who have the required expertise to evaluate performance, would be prohibitive. Therefore, such activity would be handled through professional service contracts on an as-needed basis. Under this plan, the following assumptions can be made.

1. Contract attorney to handle the legal needs of the program ($140 per hour).

2. Professional consultant fees associated with investigating, determining, and issuing reports ($250 per hour).

3. A part-time Clerk Typist III in the Wage and Hour Administration to provide the required clerical support for the Department's involvement in the program.

We approximate it will take 16 hours per complaint for a private consultant to investigate, make a determination, and issue a report; and 16 hours per complaint by a contract attorney for legal involvement.

Based on these assumptions, the following formulas were used to compute the Fiscal Year 1985 costs to operate the program.

Consultant Fees:	10 investigations x 16 hours x $250 per hour =	$ 40.0
Attorney Fees:	10 investigations x 16 hours x $140 per hour =	$ 22.4
Miscellaneous other routine contractual services would include reporting and recording services		$ 7.5

Costs associated with the Clerk Typist III are shown on the attached Form 13. Of these costs, only the equipment costs of $2.5 would be one-time items.

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE
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Page 3

In preparing these cost estimates, we have assumed an effective date on the bill of July 1, 1984. Also, an inflation rate of six percent is included for fiscal years 1986 - 1989.

LEG:B:16

1	Position Title			Range/Step	Barg. Unit	Form 12 Page/Line	GOV.	APPROV.	DISAPP.
	Clerk Typist III			8 A	GGU				
2	Type of Position	Staff Months	RF Number	BRU Priority	Location	Election District	LEG.		
	PPT	6	HB 719		Anchorage				

3	CONTINUATION LEVEL		ADDITION	X
4	Type of Expenditure		Amount	
	1		2	3
	PERSONAL SERVICES			
5	Salary		9,318	
6	Benefits		1,556	
7	Supplemental Benefits		571	
8	Fixed Benefits		1,362	
9	TOTAL PERSONAL SERVICES	01		12,807
10	Travel	02		0
11	Contractual	03		6,418
12	Commodities	04		500
13	Equipment	05		2,500
14	Other			
15	TOTAL COST			22,225

	RECEIPT CODE	FUNDING SOURCE		
16		Federal Receipts	1002	
17		G.F. Match	1003	
18	100	General Funds	1004	22,225
19		I-A Receipts	1005	
20		Program Receipts	1028	
21		Other		

For M&B Use Only
4A Key Number __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position would provide clerical support to the investigations required by this bill.

The clerk would maintain files on the cases, answer phones, type correspondence, etc.

Contractual Services costs include telephone charges, $1,800 for rent, $1,118 for management services support, etc.

A one-time cost of $2,500 for equipment would include a desk, chair, calculator, file cabinet, etc.

13 REQUEST FOR NEW POSITION

AGENCY Department of Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage & Hour

FY 85

Page 1 of 1

Revised Date

LEG:B:17

DEPARTMENT OF LABOR
OFFICE OF THE COMMISSIONER

BRIEFING PAPER ON L & H ENTERPRISES

L & H ENTERPRISES IS THE PRIME CONTRACTOR ON THE ANCHORAGE SERVICE-HANSHEW SPORTS COMPLEX IN ANCHORAGE. GROUND UP CONSTRUCTION WAS UNDER SUBCONTRACT TO L & H ENTERPRISES FOR EXCAVATION AND INSTALLATION OF WATER AND SEWER LINES.

GROUND UP FAILED TO PAY WAGES FOR THE WORK PERFORMED ON THE PROJECT. AT LEAST FOUR PEOPLE PERFORMED WORK FOR GROUND UP ON THE PROJECT. THEY ARE:

GARY STERBA -LABORER- OWNER OF GROUND UP CONSTRUCTION

DENNIS THOMAS -LABORER & OPERATOR- REPUTED BY L & H TO BE CO-OWNER OF GROUND UP

ANDY STERBA -OPERATOR & LABORER- GARY STERBA'S BROTHER

ED GUTOWSKY-TRUCK DRIVER & LABORER

L & H HAS WITHHELD ALL PAYMENTS TO GROUND UP CONSTRUCTION FOR THIS PROJECT DUE TO A DISPUTE OVER THE QUALITY/QUANTITY OF WORK PERFORMED. IN FEBRUARY 1984, GROUND UP CONSTRUCTION FILED A CHAPTER 7 BANKRUPTCY. THE DEPARTMENT AUDITED AVAILABLE TIME RECORDS AND HAS REQUESTED THAT THE CONTRACTING AGENCY WITHHOLD $17,639.54 WHICH REPRESENTS THE WAGES DUE FOR LABOR PERFORMED ON THIS PROJECT BY THE FOUR MEN LISTED ABOVE. THE AMOUNT TO BE WITHHELD WAS DETERMINED FROM AN AUDIT OF CERTIFIED PAYROLL RECORDS SUBMITTED TO THE DEPARTMENT ON DECEMBER 20, 1982 AND AUTHENTICATED BY A SWORN STATEMENT FROM GARY STERBA, THE OWNER OF GROUND UP CONSTRUCTION. WITHHOLDING WAS REQUESTED IN ACCORDANCE WITH AS 36.05.070(c).

COUNSEL FOR L & H ENTERPRISES HAS OBJECTED TO: THE HOURS SUBMITTED BY GROUND UP; THE DEPARTMENT SEEKING COLLECTION OF WAGES FOR COMPANY OWNERS OR REPUTED OWNERS; THE DEPARTMENT SEEKING COLLECTION FROM THE CONTRACTING AGENCY.

THE DEPARTMENT IS FOLLOWING ESTABLISHED PROCEDURES IN PURSUING THIS MATTER. THE CONTRACTOR/EMPLOYER IS IN BANKRUPTCY AND THE DEPARTMENT HAS NO ALTERNATIVE IN TITLE

36.05 ENFORCEMENT ACTIONS BUT TO SEEK FINAL PAYMENT OF WAGE DISCREPANCIES FROM THE CONTRACTING AGENCY. THE FACT THAT SOME OF THE LABOR WAS PERFORMED BY AN OWNER OF THE COMPANY DOES NOT NEGATE OUR OBLIGATION TO INSURE THAT ALL LABOR IS COMPENSATED FOR AT PREVAILING RATES. THIS MIRRORS FEDERAL POLICY FOR DAVIS-BACON ENFORCEMENT. THE ISSUE AS TO ACTUAL HOURS WORKED HAS YET TO BE RESOLVED.

AN INFORMAL CONFERENCE WAS HELD IN ANCHORAGE ON APRIL 26. L & H AND GROUND UP CONSTRUCTION WERE REPRESENTED. NO RESOLUTION COULD BE REACHED SO THE MATTER WILL BE SET FOR HEARING TO DETERMINE THE NUMBER OF HOURS WORKED AND THE AMOUNT OF WAGES DUE TO BE PAID BY THE CONTRACTING AGENCY IN ACCORDANCE WITH AS 36.05.090(a).

ENTERPRISES INC.

March 28, 1984

Joe L. Hayes
Speaker of the House of Representatives
Pouch WO (Mail Stop 3100)
Juneau, AK 99811

Dear Speaker Hayes:

Enclosed is a copy of a request for investigation I have sent to Mr. Chenoweth, the State Ombudsman, pertaining to an investigation being performed by the Wage & Hour Administration, Labor Standards & Safety Division of the Department of Labor.

After you have had a chance to read the contents of my letter to Mr. Chenoweth, which sets forth the issues involved, perhaps it would be useful for you and other members of the legislature to address the impact of the interpretation that is being placed on the regulations and the enabling statute as to who the beneficiaries of the law are. Mr. Silverthorn, the investigator assigned, takes the position that the statute in question pertains to payment of wages to all personnel who provide work on a construction project for the State of Alaska or one of its political subdivisions, even if some of those people are the owners of the contractor who undertook to perform the services by contract. In the instant case, the subcontract between L & H Enterprises, Inc. and Ground Up Construction, a partnership owned by Gary Sterba and Dennis Thomas, was for $14,550. Due to the failure of Ground Up to properly perform the work, and the requirement that L & H had to make good that portion of the work, as part of its duties as general contractor, L & H had back charges for almost the full amount of the contract.

Nevertheless, Mr. Sterba and Mr. Thomas have made wage claims of approximately $11,000, in addition to wage claims by two other men they claim worked for them on the project amounting to a little over $6,000. Based on Mr. Silverthorn's "investigation," the school district has been ordered to withhold the full $17,639.54, including almost $11,000 for Sterba and Thomas, from

General Contractors/Design Build Services
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

authorized builder atlantic

L & H Enterprises, Inc., since Ground Up Construction did not pay any wages to any of the personnel involved in the project.

You will note from our report to Mr. Chenoweth the criticisms we have of the methods of investigation that are being employed by this division of the State of Alaska. However, even more distressing, and the subject that I would appreciate the legislature addressing itself to, is the impact of this kind of enforcement practice on contracting on public works projects in the State of Alaska.

If Mr. Silverthorn is right in his interpretation, anytime a subcontractor fails to perform on a public works projects, the owners of the subcontractor can essentially get back all or even more than what they expected to make from the project through wage claims, breach their contract and fail to perform, cause their upstream contractor to expend substantial sums of money to complete the work that subcontractor has undertaken to perform, and, in addition, have to pay out of its pocket so-called "wages" of the owners of the subcontractor that defaulted. If that in fact is the law of the State of Alaska, I suspect the state and its political subdivisions are going to find it increasingly difficult to obtain reasonable bids from contractors to perform their projects.

Your inquiry into this matter would be very much appreciated. If Mr. Silverthorn is incorrectly interpreting the law, perhaps he should be set straight. If he is correctly interpreting it, obviously the legislature needs to take some corrective action. Thank you for your assistance.

Very truly your,

Len Hannaman, President
L & H Enterprises, Inc.

cc: All Legislative Members
Governor William Sheffield
Encl.

ENTERPRISES INC.

March 28, 1984

Jack Chenoweth
Ombudsman
State of Alaska
Pouch WO (Mail Stop: 3000)
Juneau, AK 99811

Re: Department of Labor Wage & Hours v. L & H Enterprises

Dear Mr. Chenoweth:

Bruce Silverthorn, investigator for the Wage & Hour Administration, Labor Standards and Safety Division of the Department of Labor in Anchorage has initiated a proceeding which has resulted in the Anchorage School District withholding the sum of $17,639.54 from my company, L & H Enterprises, Inc., in connection with work we are performing on the Anchorage Service-Hanshew Sports Complex, PWA 1183-025.

Because of the process that Mr. Silverthorn is employing, and some of the rationale he is proceeding under, I hereby request that you investigate this matter. On or about November 18, 1982, L & H Enterprises, Inc., as general contractor, contracted with the Municipality of Anchorage School District for the turnkey construction of the Service-Hanshew Sports Complex. On May 24, 1983, L & H subcontracted with Ground Up Construction for certain excavation work, installation of water lines, backfilling, compacting, testing and inspection, for a total subcontract price of $14,550. The subcontract was signed by Dennis Thomas, reflecting that he was "co-owner" of Ground Up Construction. This subcontract was signed on June 3, 1983.

In the course of performance by Ground Up Construction, Ground Up damaged underground utility lines and existing concrete curbing, improperly compacted and filled in trenches, and otherwise failed properly to perform under its subcontract. As a result, L & H back charged Ground Up Construction the sum of $12,290.20 to correct and complete Ground Up's work.

General Contractors/Design Build Services
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

At the time that Mr. Silverthorn began investigating the matter, and notified L & H of his investigation, due to the size of the back charge, and the fact that L & H had not yet been paid by the municipality for a portion of the work covered by the Ground Up subcontract, L & H had not disbursed any payment to Ground Up under the subcontract.

In late November, Mr. Silverthorn was in touch with L & H to advise that he was conducting an investigation into a claim for unpaid wages being asserted by Mr. Thomas, Gary Sterba, the other owner of Ground Up Construction, Ed Grakovsky and Andy Sterba, a relative of Gary Sterba.

Although required by law to provide timely certified payrolls sworn under oath in connection with the project in question, Ground Up Construction failed to do so. However, at some point about the commencement of Mr. Silverthorn's investigation, Ground Up did submit a breakdown indicating when each of the four men in question worked on the project in question, the amount they were entitled to per hour and the amount of hours they put in, including overtime.

Mr. Silverthorn sent this document to L & H Enterprises, and requested that we evaluate it. Our superintendent on the project, Junior Russell, did compare the "payroll" documents submitted by Ground Up, and provided an affidavit dated December 16, 1983, a copy of which was sent to Mr. Silverthorn. In the affidavit, Mr. Russell points out that there were many glaring errors in the job log and time sheets submitted to the department by Ground Up. For example, those records claimed eight days of employment for a truck driver, when in fact a truck was only used on a maximum of four different days, for not more than one-half day each, for a total of two full days. Furthermore, the time sheets turned in by Ground Up in no way matched L & H's job log.

Mr. Russell also pointed out that Ground Up entered a separate contract with the school district to perform some repairs to a broken pipe, which was not part of the subcontract with L & H, and which might have accounted for a portion of the time claimed by Ground Up employees in connection with the Service-Hanshew project. Of course, that was not the responsibility of L & H.

Finally, he pointed out that Andy Sterba was never on the job, notwithstanding the indication of the time sheets provided by

Ground Up. Futhermore, he pointed out that Ed Grakowsky and Gary Sterba both were listed as operators of equipment on the same day, and were claiming eight hours a piece, or a combination of 16 hours as operators on the same piece of equipment on the same day. They only had one backhoe, and between them, during a straight time day, could not have gotten in more than an aggregate of eight hours.

These and other substantial discrepancies were promptly made known to Mr. Silverthorn.

Nevertheless, based upon the time sheets submitted by Ground Up Construction, on December 22, 1983, Jeane Morgan, Mr. Silverthorn's supervising investigator, sent a letter to the school district instructing the school district, pursuant to A.S. 36.05.070(c) to withhold $13,129 from L & H Enterprises' contract. Thereafter, in February 1984, Mr. Silverthorn received a new "certified payroll" provided by Gary Sterba of Ground Up Construction. Mr. Sterba apparently informed him that the first report was erroneous, but the second report, after considering Mr. Russell's affidavit, was more accurate. A copy of that was sent to L & H Enterprises. That so-called "certified payroll" was not certified, was not presented under oath, nor was it signed by Mr. Sterba or anyone else. It radically departed from the earlier "certified payroll" that Ground Up had submitted to the Department of Labor, and as a result of it, Ms. Morgan sent a new letter to the school district on January 31, 1984 instructing the school district to withhold an even larger sum, $17,639.54, from L & H's contract.

My attorney, Stephen S. DeLisio, on February 21, 1984, spoke with Mr. Silverthorn about the document we had now been provided as the latest "certified payroll" of Ground Up Construction. Mr. Silverthorn advised Mr. DeLisio that it was neither signed nor sworn to by Mr. Sterba or anyone else, since, by signing it, they would be representing that the wages had been paid, when the wages had not been paid. Apparently no wages whatever were paid to any of the four men in question, including the two owners, Gary Sterba and Dennis Thomas. Mr. DeLisio then requested Mr. Silverthorn to obtain an affidavit from someone at Ground Up Construction to the effect that the information contained in the most recent documents submitted by Ground Up was accurate. Mr. Silverthorn indicated that he should be able easily to do so.

However, a month elapsed after that conversation, before we were provided such affidavit or further documentation from Mr. Silverthorn or anyone else. It finally arrived March 22, 1984, and a copy is enclosed.

Mr. Silverthorn asked L & H to make an analysis of the second payroll document from Ground Up, but we advised him that Junior Russell, the superintendent who would have to do the analysis, was traveling in the Lower 48 States, and was not expected back until approximately May. We do not have contact with Mr. Russell during the winter months, when he is off duty, and, although we have made attempts to locate him, we have not yet done so. Accordingly we have not been able to further analyze Ground Up's most recent reconstruction of the time its personnel allegedly worked on the project except as previously done by Junior Russell. Of course, Mr. Russell's critique was then into account by Ground Up in reworking its analysis.

Although the regulations under which Mr. Silverthorn is operating entitle L & H Enterprises to a full hearing, and an opportunity to examine the evidence supporting the Wage & Hour's instructions to the school district to withhold funds from L & H, and although L & H has requested an opportunity for such a hearing, none has yet been made available, although the matter has been under investigation now for more than four months, and a substantial sum of money has been withheld from L & H by the school district for more than three months.

Furthermore, and even more incredibly, Mr. Silverthorn takes the position that the two owners of the company, Gary Sterba and Dennis Thomas, are entitled to be paid their wages by L & H Enterprises, due to the failure of Ground Up Construction to do so, just as any of the employees of that company might be entitled under the law. Of the $17,639.54 being withheld from L & H Enterprises by the school district, on instructions of the Department of Labor, $10,618.16 is withheld on behalf of Gary Sterba and Dennis Thomas.

Under this arrangement, although Mr. Thomas and Mr. Sterba, as owners of the Ground Up Construction Company proprietorship, breached their contract with L & H Enterprises, entitling L & H to back charge almost the full amount of the contract price originally negotiated between the parties, these men will be able to take a sum of money representing almost three-quarters of

their contract price in the form of wage claims from L & H Enterprises, if Mr. Silverthorn has his way. This notwithstanding Ground Up's breach of contract and the back charge that almost equals the full amount of the contract price, due to that breach. Mr. Silverthorn is operating on the premise that his Division's function is to recover wages for owners of subcontractors who perform work on the job themselves, notwithstanding their failure to perform the project correctly, timely or economically.

He also makes the rather unusual argument that, because Dennis Thomas now claims he was not an owner of Ground Up Construction for the purpose of this project, Thomas should not be treated as as owner, in any event, but just as another employee. This notwithstanding the fact that he has verified that Mr. Thomas signed the subcontract in question and identified himself on that contract, when he signed it, as well as otherwise during the course of the project to L & H Enterprises personnel, as a co-owner of Ground Up Construction.

I am deeply alarmed at the rather bizarre direction that this wage claim investigation has taken by Mr. Silverthorn and the Department of Labor. I do not feel that L & H has been dealt with fairly or reasonably in the matter. Mr. Silverthorn has compelled the school district to withhold very substantial sums of money from my company, based upon information which was suspect to say the least in the first instance and has been even more suspect when the first presentation was so substantially impeached by Mr. Russell's analysis, that a second presentation had to be made by Ground Up. Until March 20, 1984, none of these documents from Ground Up have ever been signed or submitted under oath, so that there could be recourse against the persons responsible for preparing them if one could eventually prove that the documents were false, and that the authors were misrepresenting the facts. Nonetheless, Mr. Silverthorn has proceeded on this documentation as if the information was Holy Writ.

Furthermore, Mr. Silverthorn's attempt to collect wages for owners of the company is grossly inappropriate. Our attorney has urged him to consult with the Attorney General's office in this regard, and although he says he has, he has never shown anything to our attorney that would indicate that such a consultation has been had or that the Department of Law was fully apprised of the

issues in question. If the Department of Labor is going to pursue a policy to pay wages to owners of subcontractors who failed to fulfill their contract obligations on public projects, the whole underpinning of the free enterprise system in Alaska will be jeopardized, particularly as they regard public works. How can any responsible contractor afford to involve himself with a public contract in Alaska, governed by these Alaska statutes, where he may be compelled to pay the bulk if not all of the contract price to a defaulting subcontractor through that subcontractor's personal wage claims?

As I understand the law that Mr. Silverthorn is attempting to enforce, it is aimed at seeing to it that wages of hired employees on public works' projects are paid by someone - if not by the employer, then by one of the upper tier contractors from the public funds on the project. However, Mr. Silverthorn attempts to carry the matter one step further and withhold funds from us of which approximately two-third are for the benefit of the owners of the defaulting contractor.

Furthermore, although our attorney has inquired of Mr. Silverthorn regarding his intent to prosecute Ground Up for its obvious violations of the law requiring it to file certified payrolls on a timely basis and to pay its employees as required by law, Mr. Silverthorn has indicated that his only purpose in the investigation is to extract funds with which to pay the four men involved, including the two owners. This seems to me a severe lapse on the part of the Department of Labor in pursuing and prosecuting obvious wrongdoers under the law. Essentially what the department is attempting to do is to shift to L & H Enterprises, Inc., a blameless general contractor, the financial burden of a defaulting subcontractor for payment not only of wages, but also loss profits, etc.

I would very much appreciate it if you would look into the matter, and advise me of your conclusions. I am enclosing herewith copies of documents that may be of help to you in your investigation, including the two sets of time records received from Ground Up Construction by the Department of Labor, a copy of Junior Russell's affidavit regarding the first set, Ms. Morgan's letters to the school district of December 22, 1983 and January 31, 1984, and my attorney's letters to Mr. Silverthorn dated December 22, 1983, February 6, 1984 and March 20, 1984.

Also enclosed is a copy of Mr. Silverthorn's letter to L & H Enterprises of January 31, 1984.

If we can provide you with any further information in regard to this matter, we will be happy to do so.

Very truly yours,

Len Hannaman, President
L & H Enterprises, Inc.

L&H
ENTERPRISES INC.

July 22, 1983

Ground Up Construction
7821 Sandy Place
Anchorage, AK 99507

Gentlemen,

This letter is to inform you that as of this date, L & H Enterprises has not received a copy of your certified payroll records for the Service Hanshew Sports Complex project.

Furthermore, our accounting office has checked with the Alaska Department of Labor and they too, have not received the required reports.

Unless this information is forwarded in its entirety to L & H Enterprises' accounting department by the completion of your scope of this project, we will be forced to withhold all payments for this work, pending to audit by the Department of Labor.

You immediate cooperation on this matter is necessary.

Sincerely,

L & H ENTERPRISES, INC.

Robert E. Kirkman
Project Manager

cc: Len Hannaman
Jim Stonebraker
JR Russell
Carol Skinner
Judy Zundel

REK/ys

I, Kevin Remsen, hand delivered the original document at 3:06 p.m. on July 22nd, 1983

(Gary)

General Contractors/Design Build Services
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

ENTERPRISES INC.

November 18, 1983

Ground Up Construction
707 N Bunn
Anchorage, AK 99508

Gentlemen:

In response to your recent phone calls, we at L & H Enterprises have enclosed a summary of all backcharges against your company herein.

Since our last meeting, there has been a significant increase in the charges due to corrective measures taken, to repair the problems created by your original work.

Your performance on this job was entirely inadequate, and caused us time and monetary losses far in excess of that documented herein. Furthermore the legal jeaporcy that you placed L & H Enterprises in with your non - OSHA approved trenching practices is unexcusable.

In addition we at L & H Enterprises have had a lien placed on your contract by Tope Equipment for a sum of $22,423.84 and any left over funds from your contract with us must be turned over to Tope Equipment immediately. Please note copy of lien enclosed.

Furthermore, our bookkeeper, Judy Zundel, has had a conversation with the Alaska Department of Labor regarding your claim against L & H Enterprises, Inc. for employee wages. She was told that your claim was invalid since the claimants were both co-owners of Ground Up Construction. That includes Mr. Denny Thomas who represented himself as a co-owner at the time he signed the contract.

In summation I will comment that in my entire construction career I have never had a subcontractor perform as badly, and with as little concern for the overall project as your firm so did.

Please direct any future communication in the form of typewritten letter to the attention of Mr. Len Hannaman.

Sincerely,

L & H ENTERPRISES, INC.

Robert E. Kirkman
Project Manager

Enclosure

REK/ys

ENTERPRISES INC.

November 15, 1983
SERVICE HANSHEW SPORTS COMPLEX PROJECT

BACKCHARGES - Ground Up Construction

8/29	Alagco	97113	$ 215.51
7/15	Kenai Supply	233064	148.60
	- JR Russell	9781	[82.34]
7/18	Central Plumbing	1377	103.75
6/30	Central Plumbing	1366	100.00
7/07	Central Plumbing	44144	1,895.10
7/07	Central Plumbing	150148	1,245.05
6/30	Kenai Supply	233056	329.86
6/28	Kenai Supply	232812	92.84
8/27	Alagco	97094	404.64
6/14	Central Plumbing	43614	164.05
9/19	Summit Paving	518	1,288.00
9/30	Shelton Electric	1148	3,336.50
9/07	Stephans Tool Rental	65301	30.00
8/26	Alagco	97079	65.57
		Total Invoice Charges	$9,337.13

LABOR

		Man Hours:
7/21	Christianson	2
7/22	Christianson	2
7/20	Christianson	2
7/19	Christianson	2
8/27	Christianson	6½ (Overtime)
6/30	Brown	1
8/29	Remsen	5

8/31	Remsen	2½
8/29	Christianson	5
8/31	Christianson	4
8/30	Christianson	4
		36 hours @ 37.50/hr = $ 1,350.00

Subtotal	10,687.13
15% Overhead	1,603.07
Total Due to L & H Enterprises	$12,290.20

L&H
ENTERPRISES INC.

November 8, 1983

Mr. Bruce Silverthorn
State of Alaska
Department of Labor
3301 Eagle
Anchorage, AK 99503

Re: Ground Up Construction
Service H[illegible]ishew Sports Complex

Gentlemen:

Attached you will find a copy of our subcontract with Ground-Up Construction, where you will see that Denny Thomas represented himself to us a Co-owner of his company.

Secondly, I have enclosed a memorandum from Bob Kirkman, our project manager for the job, showing some of the problems which were caused by Ground-Up Construction.

If you need further information, do not hesitate to contact me.

Sincerely,

L & H ENTERPRISES, INC.

264-2400

Jim Stonebraker
General Manager

Enclosure

JS/ys

INTER OFFICE MEMO

Date: September 30, 1983

To: Jim Stonebraker

From: Bob Kirkman

Re: Service Hanshew Sports Complex Ground Up Construction

I advise that all payments to Ground Up Construction be withheld pending back-charges incurred in the following areas:

1. Damage to underground utility lines
2. Damage to existing concrete curbing
3. Improper compaction and non-spec fill material in trenches
4. Charges for plumbing equipment and accessories purchased on L & H Enterprises account
5. Additional supervision, labor and management charges

The above mentioned items, along with any additional back charges, are currently being itemized for an accurate accounting.

In addition, serious consideration should be given to the project delays incurred through Ground Up's mismanagement of their scope of the work, and the resulting dollar impact suffered by L & H Enterprises therein.

Robert E. Kirkman
Project Manager

L & H
ENTERPRISES INC.

SUBCONTRACT

THIS SUBCONTRACT, made and entered into as of this 24 day of May, 1983, by and between

L & H Enterprises, Inc.

whose mail address is

P.O. Box 111593
Anchorage, AK 99511

hereinafter called "Contractor", and

Ground Up Construction

hereinafter called "Subcontractor", whose mail address is

630 Western Drive
Anchorage, AK 99501

WITNESSETH

WHEREAS, Contractor entered, or is about to enter into a contract, Numbered C-20397, and dated November 18, 1983, with

Municipality of Anchorage

hereinafter called "Owner", for the performance of certain work according to the terms and conditions of said contract and the general specifications and supplements to the specifications, addenda, general and special provisions and conditions, plans, drawings, bid schedule, maps and other documents made a part thereof, and all change orders or amendments thereto, all of which are herein collectively referred to as the "General Contract", said work under the General Contract being generally described as follows:

Turnkey construction of the Service Hanshew Sports Complex.

Atlantic

and,

WHEREAS, the parties are desirous of entering into a subcontract whereby Subcontractor shall undertake the performance of a part of the work to be done under the General Contract, on the terms and conditions herein stated;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises and conditions herein contained, do hereby agree, one with the other, as follow:

I WORK TO BE PERFORMED

The subcontractor agrees to furnish all materials, labor, tools, equipment, supervision, supplies, and other things, unless otherwise provided herein, necessary or required to perform, and to perform fully and completely, at the price or prices set out herein, all that portion of the work required to be done by Contractor under the General Contract described as follows:

Item No.	Estimated Quantity	Item Description	Unit Price	Total
1	As General Spec-	Cut asphalt, remove from job		
2	ifications and	Excavate		
3	prints for Ser-	Install 2" water line		
4	vice Hanshew	Install 4" water line		
5	Sports Complex	Backfill		
6		Compaction		
7		All testing as required		
8		All inspections as required		$14,300.00

9- TAP SEWER LINE ——— 250.00
10 Homes

It is understood and agreed that quantities shown above are quantities estimated to be required under the General Contract and that the actual quantities shall be in such amounts as may eventually be required and determined under the General Contract or under the General Conditions of this Subcontract.

II PAYMENTS

In consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of this Subcontract by Subcontractor, Contractor agrees to pay and Subcontractor agrees to receive and accept as full compensation for doing all work and furnishing all materials, supplies and equipment contemplated and embraced herein and for well and faithfully completing the work aforesaid and the whole thereof in the manner and according to the requirements of this Subcontract, the General Contract, the Owner and the Contractor, the sum of Fourteen thousand three hundred and no/100. ($14,300.00) subject to additions and deductions, if any, by reason of variance from estimated quantities, change orders, deletions or extra work orders pertaining to the Subcontract items.

III SPECIAL CONDITIONS

The Special Conditions, consisting of Paragraphs through attached hereto are a part of this Subcontract and by this reference are incorporated herein and made a part hereof as fully as though set forth herein.

IV GENERAL CONDITIONS

The General Conditions, consisting of Paragraphs 1 through 27, attached hereto are a part of this Subcontract and by this reference are incorporated in this Subcontract and made a part hereof as fully as though set forth herein.

V SUPPLEMENTS

The Supplements, consisting of Numbers _____, attached hereto are a part of this Subcontract and by this reference are incorporated in this Subcontract and made a part hereof as fully as though set forth herein.

IN WITNESS WHEREOF, the parties have executed this Subcontract the day and year first hereinabove written.

Subcontractor

By _____

Title _____

Date Executed 6-2-82

Contractor

By _____

Title _____

Date Executed _____

L & H Enterprises, Inc. , Contractor

Ground Up Construction , Subcontractor

dated May 24, 1983

Subcontractor scope of work includes:

Cut asphalt, remove from job
Excavate
Install 2" water line
Install 4" sewer line
All testing as required
Backfill
Compaction
All inspections as required

Subcontractors work excluded:

Vacating electrical and gas lines
Hookup to existing water, main

L + H v. Ground Up Const.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

3301 EAGLE STREET

December 22, 1983

RECEIVED — ANCHORAGE

DEC 29 1983

SCHAIBLE, STALEY, DeLISIO AND COOK, INC.

Anchorage School District
Pouch 6-614
Anchorage, AK 99502

Attention Lowell T. Freeman

Dear Mr. Freeman:

RE: ASD-SERVICE HENSHEW SPORTS COMPLEX

As we explained to you in our phone conversation of December 21, we are currently investigating Ground Up Construction for alleged violations of Title 36 of the Alaska Statutes. Ground Up Construction is a subcontractor with L & H Enterprises on this public works project.

Ground Up Construction has failed to pay its employees on this project in accordance with the law. As a part of our investigation we are attempting to determine the exact hours worked by these employees and the total wages due. Our best available information currently show three employees are owed a total of $13,129 in wages for work performed on the Service Henshew Sports Complex. These wages are broken down as follows:

Ed Gutosky			
112 hours s.t. @ $23.84 per hour	=	$2670.08	
61 hours o.t. @ $35.76 per hour	=	2181.36	
173 hours fringe benefit @ $5.45	=	942.85	
Total			$5794.29
Dennis Thomas			
133 hours s.t. @ $22.45 per hour	=	$2985.85	
43.5 hours o.t. @ $33.675 per hour	=	1464.86	
176.5 hours fringe benefit @ $5.45	=	961.93	
Total			$5412.64
Andy Sterba			
72 hours s.t. @ $26.69 per hour	=		$1921.68
Total wages due			$13,129.00

AS 36.05.070(c) states, in part:

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

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

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

(B) the rates of wages in fact received by laborers, mechanics, or field surveyors."

In accordance with the above, I am directing the Anchorage School District to withhold from this public construction contract the amount of thirteen thousand one hundred twenty-nine dollars ($13,129) pending the conclusion our investigation into this matter.

Any questions you may have regarding this may be directed to me or Bruce Silverthorn, the investigator on the case.

In closing, I would like to ask that you confirm to us in writing that these funds have been withheld. We feel it our responsibility to advise you that failure to comply with this demand for retention of funds may result in further action in accordance AS 36.05.030(b).

Very truly yours,

Jean Morgan

Jean Morgan
Supervising Investigator
Wage & Hour Administration
Labor Standards & Safety Division

certified # P483768426
cc: Ground Up Construction
cc: L & H Enterprises, Inc.
cc: Steve DeLisio

The Law Firm of
Schaible, Staley, DeLisio & Cook, Inc.

Anchorage Office
Stephen S. DeLisio
Alan Sherry
Joseph M. Moran
Michael C. Geraghty
Patricia L. Zobel
Walter J. Scandlo
Allan J. Olson

Fairbanks Office
Grace Berg Schaible
Howard Staley
Dennis E. Cook
Barbara L. Schuhmann
Robert B. Groseclose
Charles D. Silvey, Jr.

Of Counsel:
William V. Boggess

December 22, 1983

Mr. Bruce Silverthorn
Dept. of Labor
Division of Wage and Hours
3301 Eagle St., Suite 310
Anchorage, AK 99503

Re: Ground Up Construction Certified Payroll -
Service Hansnew Sports Complex

Dear Mr. Silverthorn:

This is to follow up on telephone conversations we have had concerning wage claims of the owners and employees of Ground Up Construction with regard to work performed on the Service Hanshew High School Sport Complex project. As I have advised you, I am counsel for L & H Enterprises, the contractor to whom Ground Up subcontracted for certain work in connection with that project.

By now you will have received the affidavit of Junior Russell which demonstrates, under oath, that a substantial amount of the information contained in the certified payrolls received from Ground Up Construction is at least erroneous, and at worst false. Accordingly, it becomes incumbent upon you, in the course of your investigation, to require all evidence from Ground Up and its employees to be received in a sworn form. Whether or not that is your usual procedure is irrelevant in this case. Here we have sworn testimony in hand reflecting that the information you are being provided by Ground Up is incorrect. Obviously, a search for the truth in making a determination by you is the bottom line.

In furtherance of the search for truth, I would strongly recommend that Sterba, Thomas and anyone else who provides information concerning these matters be informed, upon

FILE COPY

943 West 6th Avenue
(907) 279-9574

Post Office Box 102810
Cable Address - MERANCH

Anchorage, Alaska 99510-2810
Telex No. 25-257

giving sworn testimony, the penalties of perjury. With that sombering information, the chance of you receiving truthful information should be enhanced.

Based on Mr. Russell's affidavit, the information contained in Ground Up's payroll pertaining to this project is incorrect. Moreover, from the face of the document, the certified payroll was not filed timely pursuant to A.S. 36.05.040. A.S. 36.05.060 sets forth the penalty for violation of the Chapter, including violation of A.S. 36.05.040. In your "even handed" approach to such a matter, one would assume that appropriate criminal prosecution of a contractor would follow from false and untimely filing of certified payroll, as provided by law. However, when I discussed this possibility with you, you seemed to take the view that your department was not interested in prosecution violators of the statute in question.

The fact that the Ground Up payroll was prepared and submitted so long after the fact should raise some serious questions in your and everyone else's minds as to the legitimacy of what is happening here. Considering the close similarity between the amount being claimed as wages and the amount of the contract price that has not been paid to Ground Up by L & H, one should ask whether the procedure which was instituted by Mr. Thomas and is being pursued by Gary Sterba, the co-owners of Ground Up Construction, is merely a back door effort to obtain payment under the contract to which they are not otherwise entitled due to their breach of contract.

As I advised you by telephone on December 19, 1983, some of the time set forth in the certified payroll charged against L & H's contract was actually performed directly by Ground Up Construction under a separate contract directly with the School District. Accordingly, those services had nothing to do with the relationship between L & H and Ground Up Construction.

On the question of whether the owners of the company would be entitled to payment of wages through the process you are pursuing in your agency, and whether Dennis Thomas is or

should be considered for such purposes as an owner of Ground Up Construction in regard to the work in question are matters which we have discussed at length. I have strenuously urged you to seek the advice of a qualified attorney assigned to the Dept. of Labor from the Attorney General's office on these issues. Since you are not an attorney, you are in no position to make a legal evaluation of those issues, although you seem fully prepared to take that on yourself without legal advice. That is an issue that L & H intends to pursue legally to the full limits of the law, should an adverse ruling be made by your division. I am confident that a qualified, experienced attorney will come to the same conclusion that I have: that neither Gary Sterba nor Dennis Thomas are entitled to payment of any wages through Division of Wage and Hour procedures under the Act, for the reason that they are owners of the company.

On the face of the subcontract between L & H and Ground Up, Dennis Thomas signed his name as a co-owner. He made the same representation to L & H's representative in negotiating the contract. Gary Sterba made the same representation to L & H's representatives. Regardless of the fact that Sterba's name may appear to be the only one on the contractor's bond filed with the state or on the state business license, that does not mean that Dennis Thomas was not, at least for the purposes of this one project, a co-owner of Ground Up Construction. He was apparently added as a partner after the contractor's license and business license were obtained. Whether or not he and Sterba would have applied for an amended or new business license or contractor's bond, or even would be required to do so under the law, is wholly irrelevant. Moreover, even if it were to develop unequivocally that Dennis Thomas was in fact not a genuine owner of Ground Up at any time, by having signed the contract with L & H as an owner, he is estopped legally from denying that he was an owner of the company for purposes of enforcement of this contract. He is civilly liable to L & H for breach of contract under the law, just as co-owner Gary Sterba is.

You indicated that the normal enforcement policy of your division is to require payment of wages to owners. I am

curious to know how frequently the issue has come up. I would be surprised if it came up more than on a rare occasion. However, regardless of whether there is in fact a policy or if that is simply the way that some enforcement officer for Wage and Hour Division handled an individual situation in the past, there is no authority under the enabling legislation to permit such a result.

You have indicated that the regulations permit that approach, but I would remind you that the regulations can do no more than what the enabling statutes authorize. Any effort on the part of the regulations to go beyond the authority granted by the statutes is null and void as a matter of law. You also seem to think that the regulations and this so-called "policy" is justified under the provisions of the Act that require owners to include on certified payrolls their hours and rates of pay for doing the same sort of work as their employees. However, it is quite obvious from the statute that there is essentially one reason for doing this: to make sure that, for determining the appropriate average wage applicable to the given type of work for enforcement purposes, the division receives all data germane to making that calculation. The amount that owners pay themselves for doing the identical type work in question is obviously important data to that determination.

You indicated that there is a second use for this information: in reviewing contracts and public works, you are able to make certain that the contractor submits a valid competitive bid with sufficient funds to in fact pay wages to employees who are actually performing the work in question. If such review of contracts is a legitimate exercise of your division, still the purpose of requiring the owner to submit his hours and rates of pay on certified payroll is for data collection purposes. In short, nothing in the statute authorizes your division to enforce payment of wages to owners.

Finally, I am somewhat concerned about the approach that is being taken in this entire matter. Under the Act, the contractor who is in violation of the Act for nonpayment of wages is Dennis Thomas and Gary Sterba d/b/a Ground Up Construction. Quite apart from your investigation in determining validity of wage claims, etc., what effort is being made to compel Ground Up Construction to pay its

employees? Again, violation of the Act carries criminal penalties. Have Sterba and Thomas been informed of those penalties and is any prosecution under consideration should they fail to meet their obligations as employer under the Act with regard to payment of the employees?

From my conversations with you, it seems as if your primary thrust is to satisfy yourself, primarily based on unsworn information received from Sterba, Thomas and their employees, as to how much wages are involved, and then seek to force L & H, the general contractor on the project, or the school district to pay those wages. Obviously the entity responsible for payment of the wages is Ground Up Construction, and every effort available to the Division should be exhausted in seeking to compel Ground Up to pay its employees, before the Division even considers pursuing other sources of payment. I trust that is exactly what you will do, and that my uneasy feeling in this regard is unfounded.

As I had indicated before, if we can be of any further assistance in developing data or factual information that will assist you in getting at the truth in this matter, we will be happy to cooperate. However, my client has a right to be treated fairly under the law and according to due process of law, just as anyone else does. The Wage and Hour Division function should not be prostituted to become a method of subcontractors getting their money out of an upstream contractor, when the subcontractor has breached his contract and failed to fulfill his obligations to the upstream contractor. Such a process would constitute at best a gross abuse of the enabling legislation, as well as a major miscarriage of justice.

With best regards,

SCHAIBLE, STALEY, DeLISIO
& COOK, INC.

By: Stephen S. DeLisio
Stephen S. DeLisio

SSD/slb
cc: Len Hannaman

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR
WAGE & HOUR ADMINISTRATION
LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET
POUCH 7-021
ANCHORAGE, ALASKA 99510
PHONE: (907) 264-2435

January 31, 1984

L & H Enterprises, Inc.
P.O. Box 111593
Anchorage, Alaska 99511

Attention: Len Hannaman

Dear Mr. Hannaman:

RE: ANCHORAGE SERVICE-HANSHEW SPORTS COMPLEX
PWA 1183-025

Enclosed is a copy of our letter to the Anchorage School District requiring the withholding of funds on the project referenced above. The total to be withheld has been increased to $17,640.00. This new figure is based upon the following:

1. Ground Up Construction has submitted revised certified payrolls to our office, along with its payroll records.
2. The Attorney General's Office has informed us that wages earned by owner/operators must be paid at prevailing wage rates; specifically, 29 CFR 5.2(i) states,

   "Every person paid by a contractor or subcontractor in any manner for his labor in the construction prosecution; completion or repair of a public building or public work...is 'employed' and receiving 'wages' regardless of any contractual relationship alleged to exist."

Therefore, we have adjusted the amount of funds being retained.

As you will see from the payroll copies enclosed, the hours of work shown vary from the original payrolls submitted by Ground Up Construction. If you have any dispute with the hours shown, please submit any documentation or other evidence you may have that supports your contention(s) to me at the address shown above.

If you agree with the time shown, please inform our office of the action you wish to take to have these wages paid. Whatever the case, please respond to this letter by February 10, 1984.

If you have any questions, please feel free to contact me.

Yours,

Bruce Silverthorn
Investigator
Wage & Hour Administration
Labor Standards & Safety Division

Enclosure
cc: Steve Delisio
cc: Ground Up Construction
cc: Anchorage School District

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR
WAGE & HOUR ADMINISTRATION
LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET
POUCH 7-021
ANCHORAGE, ALASKA 99510
PHONE: (907) 264-2435

January 31, 1984

Anchorage School District
Pouch 6-614
Anchorage, Alaska 99502

Attention: Lowell T. Freeman

Dear Mr. Freeman:

RE: ASD-SERVICE HANSHAW SPORTS COMPLEX
PWA 1183-025

On December 22, 1983, we wrote to the Anchorage School District to explain that we were investigating the wages paid to the employees of Ground Up Construction. Ground Up Construction is a subcontractor of L & H Enterprises, Inc. on this project. Our letter directed you to withhold a total of $13,129.00.

Since that time, we have been provided with additional information on the total hours worked by the Ground Up Construction employees, as follows:

Gary Sterba

Laborer

157 s.t. hrs.	@ $ 18.82	=	$ 2,954.74
59 o.t. hrs.	@ 28.23	=	1,665.57
216 f.b. hrs.	@ 5.65	=	1,220.40
			$ 5,840.71

$ 5,840.71

Denny Thomas
(117 s.t. hours, 51 o.t. hours)

Laborer (80%)

93 1/2 s.t. hrs.	@ $ 18.82	=	$ 1,759.67
41 o.t. hrs.	@ 28.23	=	1,157.43
134 1/2 f.b. hrs.	@ 5.65	=	759.93
			$ 3,677.03

Operator (20%)

23 1/2 s.t. hrs.	@ $ 23.84	=	$ 560.24
10 o.t. hrs.	@ 35.76	=	357.60
33 1/2 f.b. hrs.	@ 5.45	=	182.58
			$ 1,100.42

$ 4,777.45

Ed Gutosky
(117 s.t. hours, 51 o.t. hours)

Operator (80%)			
93 1/2 s.t. hrs. @	$ 23.84 =	$ 2,229.04	
41 o.t. hrs. @	35.76 =	1,466.16	
134 1/2 f.b. hrs. @	5.45 =	733.03	
		$ 4,428.23	

Laborer (20%)			
23 1/2 s.t. hrs. @	$ 18.82 =	$ 442.27	
10 o.t. hrs. @	28.23 =	282.30	
33 1/2 f.b. hrs. @	5.65 =	189.28	
		$ 913.85	

$ 5,342.08

Andy Sterba
(64 s.t. hours)

Truckdriver (80%)			
51 s.t. hrs. @	$ 19.80 =	$ 1,009.80	
51 f.b. hrs. @	6.89 =	351.39	
		$ 1,361.19	

Laborer (20%)			
13 s.t. hrs. @	$ 18.82 =	$ 244.66	
13 f.b. hrs. @	5.65 =	73.45	
		$ 318.11	

$ 1,679.30

TOTAL WAGES EARNED = $ 17,639.54

In accordance with the provisions of Title 36 of the Alaska Statutes quoted in our previous letter, we are hereby directing the Anchorage School District to adjust the amount of funds withheld from the L & H Enterprises, Inc. contract to $17,640.00.

In closing, I would like to ask once again that you confirm to us in writing that you have complied with this demand for withholding. As mentioned in our first letter, failure to comply may result in further action by the Department of Labor in accordance with A.S. 36.05.030(b).

If you have any questions, please contact Bruce Silverthorn or myself, and we will assist you.

Very truly yours,

Jean Morgan

Jean Morgan
Supervising Investigator
Wage & Hour Administration
Labor Standards & Safety Division

cc: L & H Enterprises, Inc.
Steve Delisio
Ground Up Construction

The Law Firm of
Schaible, Staley, DeLisio & Cook, Inc.

Anchorage Office
Stephen S. DeLisio
Alan Sherry
Joseph M. Moran
Michael C. Geraghty
Patricia L. Zobel
Walter J. Szudlo
Allan J. Olson

Fairbanks Office
Grace Berg Schaible
Howard Staley
Dennis E. Cook
Barbara L. Schuhmann
Robert B. Groseclose
Charles D. Silvey, Jr.

Of Counsel:
William V. Boggess

February 6, 1984

Bruce Silverthorn, Investigator
Alaska Department of Labor
Wage & Hour Administration
Labor Standards & Safety Division
Pouch 7-021
Anchorage, AK 99510

Re: Anchorage Service-Hanshew Sports Complex
PWA 1183-025

Dear Mr. Silverthorn:

Your letter to L & H Enterprises of January 31, 1984, with regard to the above matter has been referred to me for response on behalf of L & H. I have ceased to be amazed at the lack of due process which your department appears to favor in these matters, at least as it as been demonstrated in this case.

To begin with, the thrust of your letter is directed at my client, the general contractor, not at the employer of the employees who have not been paid as required by the law you seek to enforce. What action is being taken with regard to Ground Up Construction and its co-owners, Gary Sterba and Dennis Thomas, in this regard? What do they propose to do about paying the wage claims of their employees, is the more appropriate question that should be asked at this time. Furthermore, what action does your department intend to take with regard to the statutes that set forth sanctions for failure of an employer to file timely certified payroll records and fail to properly pay prevailing wage rates to its employees?

Under any reasonable procedure, one would have every reason to expect that the administrative procedures available to your agency would be exhausted in dealing with the party who is directly responsible for the problem - the employer. Yet your letter does not even address that subject matter, but addresses the subject to L & H Enterprises as if L & H was the actual employer of the workmen in question.

FILE COPY

943 West 6th Avenue
(907) 279-9574

Post Office Box 102840
Cable Address - MERANCH

Anchorage, Alaska 99510-2840
Telex No. 25-257

As you very well know, we do dispute the hours shown by Ground Up Construction. For whatever reason, your letter completely fails to address the fact that, without any obligation to do so, we submitted to you a sworn affidavit of Junior Russell dated December 16, 1983, setting forth the basis for our challenging the payroll record of Ground Up Construction, as then known. We realize that you have received more recent information, but that more recent information has resulted in a substantial increase in the amount of hours allegedly worked, whereas Mr. Russell's affidavit demonstrated that the earlier smaller alleged payroll record was grossly excessive.

Furthermore, the form in which you have provided us the alleged hours worked is utterly useless in our being able to make a response with regard to disputing those hours. No attempt is made in your attached letter of January 31, 1984 to the school district, wherein the hours are set forth, to show on what days each increment of hours was put in. Obviously that is the only way that we would have to challenge the hours shown.

Third, whatever happened to the right to a hearing on a dispute of this type. From the tone of your letter, our entitlement to be heard is apparently going to limited to submission of documentation or other evidence that we have that supports our contentions. This is very disturbing inasmuch as your letter failed to note that we had already submitted a substantial sworn document which very extensively challenged the claims being asserted by Ground Up Construction and its employees.

In addition, we had previously advised you that a portion of the work provided by Ground Up Construction at Anchorage Service-Hanshew Sports Complex was performed directly to the account of the Anchorage School District, and not under the subcontract with L & H Enterprises. Nevertheless, neither your letter to L & H Enterprises or your letter to the school district, both of which are dated January 31, 1984, deal with this question. A hundred percent of what you are asking the school district to withhold is being asked to be withheld from L & H Enterprises contract. Obviously, no matter how the statute and regulations you are attempting to enforce are interpreted in the final analysis, there would be absolutely no right for anybody to have the school district withhold monies from L & H Enterprises for wages owed by Ground Up Construction to its employees for performing services to the direct account of the Anchorage School District.

Concerning your advise with regard to the entitlement of owner/ operators, as you well know, we intend to challenge that, if necessary, to the highest court. The interpretation is being made

of a regulation which does not expressly say what you say it says. In other words you are interpreting what the words mean. The regulation only has such scope, force and effect as the enabling statute gives it, and there is nothing under the statute that gives the Department of Labor the right to establish a regulation which would require an upstream contractor to pay a defaulting subcontractor owner/operator prevailing wage rates.

We hereby demand our rights as established by law to the benefit of the administrative procedures pertaining to such matters. Furthermore, we request an answer to the inquiries we have made above.

Should you see fit to provide us with a breakdown of the hours claimed by Ground Up's employees and owners, on a day-by-day basis so that we can evaluate them, we will be happy to make a further evaluation. However, we question whether such an analysis would be a waste of time, since you have obviously disregarded Mr. Russell's previous sworn analysis.

Very truly yours,

SCHAIBLE, STALEY, DeLISIO
& COOK, INC.

By: Stephen S. DeLisio
Stephen S. DeLisio

SSD/slb
cc: Len Hannaman

The Law Firm of
Schaible, Staley, DeLisio & Cook, Inc.

Anchorage Office
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Barbara L. Schuhmann
Robert B. Groseclose
Charles D. Silvey, Jr.

Of Counsel:
William V. Boggess

March 20, 1984

Bruce Silverthorn, Investigator
Alaska Department of Labor
Wage & Hour Administration
Labor Standards & Safety Division
Pouch 7-021
Anchorage, AK 99510

Re: Anchorage Service-Hanshew Sports Complex
PWA 1183-025

Dear Mr. Silverthorn:

You will recall on February 21, 1984 our telephone conversations regarding the fact that, even the most recent revised proported payroll records produced to you by Ground Up Constructions were not presented under oath. You stated that Mr. Sterba was unwilling to provide a "certified payroll", on the ground that he felt such certification constituted a representation that the payroll had been paid, when it had not.

Accordingly, I requested that you obtain from Ground Up Construction a sworn affidavit to the accuracy of the information contained in whatever payroll record Ground Up intends now to rely upon. You advise that that would be an easy thing to accomplish, and that you would do so and send me a copy of the affidavit immediately.

We are now approximately one full month since that discussion, and I have not received any such affidavit. Has Mr. Sterba declined to provide one? When may we expect to see some sworn support for this oft changed and perhaps in the future often changing payroll "record?"

I attempted to call your office on March 19, only to be advised that you were gone on personal leave until April 1. I trust you will respond to this promptly after your return.

Very truly yours,

SCHAIBLE, STALEY, DeLISIO & COOK, INC.

By: Stephen S. DeLisio
Stephen S. DeLisio

SSD/slb

cc: Len Hannaman

943 West 6th Avenue
(907) 279-9574

Post Office Box 102840
Cable Address - MERANCH

Anchorage, Alaska 99510-2840
Telex No. 25-257

Fairbanks Office: 330 Barnette Street Post Office Box 810 Fairbanks: Alaska 99707-0810 (907) 452-1855

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR
WAGE & HOUR ADMINISTRATION
LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET
POUCH 7-021
ANCHORAGE, ALASKA 99510
PHONE: (907) 264-2435

March 21, 1984

Schaible, Staley, Delisio & Cook, Inc.
PO Box 102840
Anchorage, AK 99510

Attention Stephen S. Delisio

RE: ASD-SERVICE HANSHEW SPORTS COMPLEX
PWA1183-025

Enclosed are the amended certified payrolls submitted by Gary Sterba, on behalf of Ground Up Construction, for work performed on the above referenced project. Mr. Sterba's certification is attached for your review.

Please compare these payrolls for consistancy with your own records and provide this office with any comments you might have by April 6, 1984.

If you have any questions, please don't hesitate to contact our office at 264-2435.

Yours,

Bruce H. Silverthorn
W/H Investigator
Wage & Hour Administration
Labor Standards & Safety Division

Enclosures

ALASKA DEPARTMENT OF LABOR
LABOR STANDARDS & SAFETY DIVISION
WAGE & HOUR ADMINISTRATION

CERTIFIED PAYROLL

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☒ Gary L. Sterba
Ground Up Construction

ADDRESS / 7920 Ladasa Pl

PHONE NO. 349-9985

PAYROLL NO. None

FOR WEEK ENDING 7 / 3 /83

CONTRACTOR'S LICENSE NO. A12273

PROJECT START DATE 6 /20 / 83

PROJECT AND LOCATION Service Hanshew H.S.

PROJECT OR CONTRACT NO. Sport Complex Water & Sewer Outside

Name, Mailing Address & Social Security Number of Employee	Permanent Domicile Address of Employee (No Post Office or Star Route Boxes)	Specific Work Classification	Benefits OT or ST	27	28	29	30	1	2	3	Total Hours Worked	Hourly Rate Paid	Gross Amount Earned	DEDUCTIONS FICA	Fed W/H Tax	E.S.D.	Union Dues	Other (Explain)	Total Deductions	Net Amount Paid	Check Number
Gary L Sterba 7920 Ladasa Pl Anch AK 99507 508-52-4251	SAME	Owner/Oper	OT	3	3	3	3	3	10		25	43.94									
			ST	8	8	8	8	8			40	29.29	2270.10								
			FB																		
Dennis Thomas 3948 Boniface #3 Anch AK 99504	SAME	Oper/Laborer	OT	3	3	3	3	3	10		25	36.71	1896.55								
			ST	8	8	8	8	8			40	24.47									
			FB																		
Edward Gutowsky P O Box 64 Dillard, OR 97432 157-14-5682	SAME	Operator	OT	3	3	3	3	3	10		25	43.94									
			ST	8	8	8	8	8			40	29.29	2270.10								
			FB																		
Andy Sterba 7920 Ladasa Pl Anch AK 99507 537-82-8048	SAME	Truck Driver Laborer	OT																		
			ST	8							8	26.69	213.52								
			FB																		
			OT																		
			ST																		
			FB																		
			OT																		
			ST																		
			FB																		
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			FB																		
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			ST																		
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ALASKA DEPARTMENT OF LABOR
LABOR STANDARDS & SAFETY DIVISION
WAGE & HOUR ADMINISTRATION

CERTIFIED PAYROLL

RECEIVED
DEC 1983
LEC

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☒ Gary L. Sterba
Ground Up Construction

ADDRESS
7920 Ladasa Pl

PHONE NO.
349-9985

PAYROLL NO.	FOR WEEK ENDING	CONTRACTOR'S LICENSE NO.	PROJECT START DATE	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
None	7 / 10 / 83	A12273	6 / 20 / 83	Service Hanshew H.S.	Sport Complex water & Sewer Outside

Name, Mailing Address & Social Security Number of Employee	Permanent Domicile Address of Employee (No Post Office or Star Route Boxes)	Specific Work Classification	Benefits OT or ST	Day and Date 11 12 13 14 15 16 17 Hours Worked Each Day	Total Hours Worked	Hourly Rate Paid	Gross Amount Earned	DEDUCTIONS FICA	Fed W/H Tax	E.S.D.	Union Dues	Other (Explain)	Total Deductions	Net Amount Paid	Check Number
Gary L Sterba 7920 Ladasa Pl Anch AK 99507 508-52-4251	SAME	Owner Oper	OT	5 3 3 3 2	16	43.94	1874.64								
			ST	8 8 8 8 8	40	29.29									
			FB												
Dennis Thomas 3948 Boniface #3 Anch AK 99504	SAME	Oper/Laborer	OT	5 3 3 3 2	16	36.71	1566.16								
			ST	8 8 8 8 8	40	24.47									
			FB												
Edward Gutowsky P O Box 64 Dillard, OR 97432 157-14-5682	SAME	Operator	OT	5 3 3 3 2	16	43.94	1874.64								
			ST	8 8 8 8 8	40	29.29									
			FB												
Andy Sterba 7920 Ladasa Pl Anch AK 99507 537-82-8048	SAME	Truck Driver Laborer	OT												
			ST	8	8	24.47	195.76								
			FB												
			OT												
			ST												
			FB												
			OT												
			ST												
			FB												
			OT												
			ST												
			FB												
			OT												
			ST												
			FB												

Municipality PROJECTS?

ALASKA DEPARTMENT OF LABOR
LABOR STANDARDS & SAFETY DIVISION
WAGE & HOUR ADMINISTRATION

CERTIFIED PAYROLL

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☒ Gary L Sterba
Ground Up Construction

ADDRESS 7920 Ladasa Pl

PHONE NO. 349-9985

PAYROLL NO.	FOR WEEK ENDING	CONTRACTOR'S LICENSE NO.	PROJECT START DATE	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
None	7 /24 /83	A12273	6 /20 /83	Service Hanshew H.S.	Sport Complex Water & Sewer Outside

Name Mailing Address & Social Security Number of Employee	Permanent Domicile Address of Employee (No Post Office or Star Route Boxes)	Specific Work Classification	Benefits OT or ST	Day and Date 18	19	20	21	22	23	24	Total Hours Worked	Hourly Rate Paid	Gross Amount Earned	DEDUCTIONS FICA	Fed W/H Tax	E.S.D.	Union Dues	Other (Ex-plain)	Total Deductions	Net Amount Paid	Check Number
Gary L Sterba 7920 Ladasa Pl Anch AK 99507 508-52-4251	SAME	Owner Oper	OT	2	3	2	2	3			12	43.94	1698.88								
			ST	8	8	8	8	8			40	29.29									
			FB																		
Dennis Thor s 3948 Boni ce #3 Anch AK 99504	SAME	Oper/Laborer	OT	2	3	2	2	3			12	36.71	1419.32								
			ST	8	8	8	8	8			40	24.47									
			FB																		
Edward Gutowsky P O Box 64 Dillard, OR 97432 157-14-5682	SAME	Operator	OT	2	3	2	2	3			12	43.94	1698.88								
			ST	8	8	8	8	8			40	29.29									
			FB																		
Andy Sterba 7920 Ladasa Pl Anch AK 99507 537-82-8048	SAME	Truck Driver	OT																		
			ST	8	8			8	8		32	26.69	854.08								
			FB																		
			OT																		
			ST																		
			FB																		
			OT																		
			ST																		
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Form 07-6959 (Rev. 5-83)

ALASKA DEPARTMENT OF LABOR
LABOR STANDARDS & SAFETY DIVISION
WAGE & HOUR ADMINISTRATION

CERTIFIED PAYROLL

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☒ Ground Up Const - Gary Sterba | ADDRESS 17021 Sandy Place | PHONE NO. 344-5114

PAYROLL NO.	FOR WEEK ENDING	CONTRACTOR'S LICENSE NO.	PROJECT START DATE	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
None	7/24/83	A 12873	6/20/83	Service Hardshow U.S.	Sport Complex - Water + Sewer Outside

Name, Mailing Address & Social Security Number of Employee	Permanent Domicile Address of Employee (No Post Office or Star Route Boxes)	Specific Work Classification	Day and Date: Hours Worked Each Day (18 19 20 21 22 23 24)	Total Hours Worked	Hourly Rate Paid	Gross Amount Earned	DEDUCTIONS: FICA	Fed W/H Tax	E.S.D.	Union Dues	Other (Explain)	Total Deductions	Net Amount Paid	Check Number
1 Sterba Sandy Pl h AK 99507 -55- (USE)	Same	Operator Laber	OT ST 8 8 8 10 10 10 FB	54	29.29	1581.66								Not paid
Dis Thomas 6 Eskimo Dr 3 h AK 99504	Same	Laborer	OT ST 8 8 8 10 10 10 FB	54	24.47	1321.38								Not paid
Grakowsky	Refer to Dennis Thomas, Oregon	Operator	OT ST — — — — 8 8 FB	16	29.29	468.64								Not paid
y Sterba 0 Ladosa Pl h AK 99507	Same 537-82-3048	Truck Driver Operator	OT ST 8 8 — — 8 8 FB	32	26.69	854.08								Not paid
			OT ST FB											
			OT ST FB											
			OT ST FB											
			OT ST FB											

ALASKA DEPARTMENT OF LABOR
LABOR STANDARDS & SAFETY DIVISION
WAGE & HOUR ADMINISTRATION

CERTIFIED PAYROLL

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☒ GARY Sterba dba Round Up Const -

ADDRESS 17821 Sandy Place

PHONE NO. 344-5114

PAYROLL NO.	FOR WEEK ENDING	CONTRACTOR'S LICENSE NO.	PROJECT START DATE	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
None	7/3/83	A12273	6/20/83	Service Hanshew H.S.	Sport Complex - Water & Sewer outside

Name, Mailing Address & Social Security Number of Employee	Permanent Domicile Address of Employee (No Post Office or Star Route Boxes)	Specific Work Classification	Benefit Code	Day and Date: 27 28 29 30 1 2 3 — Hours Worked Each Day	Total Hours Worked	Hourly Rate Paid	Gross Amount Earned	DEDUCTIONS: FICA	Fed W/H Tax	E S D	Union Dues	Other (Explain)	Total Deductions	Net Amount Paid	Check Number
Sterba Sandy Pl AK 99507 [illegible]-4151	Same	Operator Laborer	OT												
			ST	16 10 10 8 8 3	60	29.29	1757.40								Not paid
			FB												
is Thomas Lemitar=3 AK 99504	Same	Laborer	OT												
			ST	11 10 10 8 8	47	24.47	1150.09								Not paid
			FB												
Grakowsky	Refer to Dennis Thomas, Oregon	Operator	OT												
			ST	11 10 10 8 8	47	2929	137643								Not paid
			FB												
Sterba Ladasa Pl AK 99507	Same 537-82-8048	Truck Driver	OT												
			ST	8	8	26.69	213.52								Not paid
			FB												
			OT												
			ST												
			FB												
			OT												
			ST												
			FB												
			OT												
			ST												
			FB												
			OT												
			ST												
			FB												

ALASKA DEPARTMENT OF LABOR
LABOR STANDARDS & SAFETY DIVISION
WAGE & HOUR ADMINISTRATION

CERTIFIED PAYROLL

P.O. Box 111593
Anch. 99511

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☒ Round Up Const — GARY STERBA

ADDRESS 17821 Sandy Place

PHONE NO. 344-5114

PAYROLL NO.	FOR WEEK ENDING	CONTRACTOR'S LICENSE NO.	PROJECT START DATE	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
None	6/26/83	A 12273	6/20/83	Service Hanshew H.S.	Sport Complex - Water + Sewer Trunk

Name, Mailing Address & Social Security Number of Employee	Permanent Domicile Address of Employee (No Post Office or Star Route Boxes)	Specific Work Classification	Benefits OT or S.T.	Day and Date 20 21 22 23 24 25 26 — Hours Worked Each Day	Total Hours Worked	Hourly Rate Paid	Gross Amount Earned	DEDUCTIONS: FICA	Fed W/H Tax	E.S.D.	Union Dues	Other (Explain)	Total Deductions	Net Amount Paid	Check Number
STERBA 1 Sandy Pl AK 99507 52-4251	SAME	OPERATOR OWNER BACKHOE	OT												Married 3 d
			ST	12 12 8 8 8 8 8	64	19.29	# 1874.56								Not paid
			FB												
is Thomas Boniface #3 h AK 99504	SAME	LABORER	OT												Married 3 dep
			ST	5	5	24.47	# 122.35								Not paid
			FB												
BARKOWSKY	Refer to Dennis Thomas, Oregon	OPERATOR Backhoe	OT												Married 2 dep
			ST	8 8 8	24	29.29	# 702.96								Not paid
			FB												
STERBA LADISA Alice AK 99507	SAME 537-82-8048	TRUCK DRIVER 10yd Dump	OT												Married 2 dep
			ST	8 8 8	24	26.69	# 640.56								Not paid
			FB												
			OT												
			ST												
			FB												
			OT												
			ST												
			FB												
			OT												
			ST												
			FB												
			OT												
			ST												
			FB												

Form 07-6058 (Rev. 5/83)

MEMORANDUM

TO: File

FROM: SSD

DATE: 12/19/83

Re: L & H Enterprises v. Ground Up Construction

On this date I spoke at length with Bruce Silverthorn regarding the status of the matter. He is expecting to meet with Gary Sterba on the morning of December 20, 1983. He indicated that he had not told Sterba that he would be ordering the School District to pay the wages. He will, however, be instructing the School District to withhold a sufficient sum to cover wages that he thinks from his preliminary inquiry may be due.

I informed him of the affidavit prepared by Junior Russell from the L & H job logs, and agreed to deliver a copy of the affidavits to him as soon as possible. I sent it with Sharon on the afternoon of 12/19/83. I also read from it the conflicting information from the certified payroll records.

He indicates that a couple of the employees have even filed conflicting claims indicating that there is more owing them than is shown on the certified payroll submitted by Sterba.

Once again he reiterated his belief that owners were entitled to payment under the Act as well as regular employees. I pointed out to him that, before he made a major mistake in enforcement, he should inquire for an opinion of the assistant attorney general that advises the Department of Labor. He also indicated that his research had shown that Gary Sterba was the only owner shown on the contractor's bond and business license. I pointed out to him that was irrelevant, for purposes of this job, since Denny Thomas had held himself out and signed the contract as a co-owner. Hence Thomas should also be dealt with as an owner with regard to this claim. I further urged him to obtain an opinion on this from the attorney general's office.

Silverthorn admitted that he was not attorney, but was simply following enforcement practices that are apparently well established in the department. They have apparently routinely been enforcing payment of wages to owners, as well as to employees, where the situation has arisen.

I also insisted that he take any further information from Sterba, Thomas or the employees under oath, since we wanted the sanction of perjury over their heads if they lied. He sounded as if he really did not intend to do that since his only purpose was to determine whether wages were due, and not to make a case for anybody. I pointed out to him that, obviously, his function was to get to the truth and the best way to get to the truth was to take testimony under oath

particularly where there were major conflicts. I pointed out that, if he required all of the evidence to come in under oath, he was much more likely to get to the real truth earlier.

I also pointed out that some of this work had been done by Ground Up directly for the account of the School District, and that we were being charged as if it was done for us. He indicated that he would check with Hanscomb Herry to find out about this aspect.

cc: Len Hannaman

State of Alaska)
) ss.
Third Judicial District)

To Whom it May Concern:

I am no longer an employee of L & H Enterprises, Inc. Therefore, not having the employee to company loyalty I have also had a past acquaintance and friendship with Ground-Up Construction, as well as a working relationship with them. I believe I am a neutral party in this matter of L & H Enterprises, Inc. vs. Ground-Up Construction.

I remember the contract very well, as I negtoiated it with Denny Thomas per instructions from Gary Sterba. Denny Thomas informed me that he was co-owner. I did not question if that meant, all past work, all future work or just this particular job.

On August 3, 1983 and August 4, 1983, Denny Thomas called Bob Kirkman (L & H Office per phone record,) to get L & H Enterprises' record of days worked on this job by Ground-Up personnel. These I supplied after our office notified Ground-Up to send copies of Certified Payroll. I have noted several discrepancies from our job log and time sheets turned in by Gary Sterba.

The record shows 2 loads of pipe hauled in, 2 loads of asphalt and broken concrete hauled off. The last load going with trailer and backhoe, therefore, the work was not in excess of four each ½ days for the truck driver, or a total of 2 full days. Note: Total job they show the time for truck driver as 8 days. There was not any fill or bedding hauled to the job. This man was not on the job 8 days.

A copy of the Certified Payroll time sheets turned in by Ground-Up Construction no way matches the job log. Time sheets for the week ended July 3, 1983 and for the day of June 27 show Gary Sterba working 16 hours. The job log shows him arriving on the job at 10:00am. As he indicated working 16 hours, this would mean he would not have gotten off until 2:00am the next morning. Also his certified payroll show his men working the same day, only got 11 hours. Something is amiss in their records. On July 11, 1983 the log book shows Ground-Up (Gary Sterba and Denny Thomas) arriving on the job at 3:00pm then showing on the time sheet only Gary Sterba working 12 hours. No one else from Ground-Up was working. On July 14, 1983 shown by log book, Gary Sterba left the job at 11:30am yet claimed 8 hours.

We have to assume the time sheet of week ending June 26, 1983 is really week ending July 17, 1983. Week ending June 26, 1983 is a week before their job even started. It looks as if after L & H Enterprises, Inc. gave dates of work on job, that Ground-Up went back 6 weeks and guessed on hours worked, and not very accurately I might add.

On July 17, 1983, Ground-Up Construction worked on contract between Anchorage School District and Ground-Up, a separate contract to that of ours, yet Sterba is claiming 8 hours of time to the L & H job. On July 15, 1983 they were working on the afore mentioned contract and charged L & H Enterprises 12 man hours. This is confirmed by our job log. Perhaps Certified

Payroll on the other contract with the School District will show this discrepancy. Maybe an oversight on their part. It is impossible from the Ground-Up time sheets to match our job log.

Andy Sterba was never an operator on this job yet time sheets show him as such. It is real confusing as to what they are trying to do. It looks as if they are guessing on their hours rather than being accurate.

I have no argument on hours for Denny Thomas. Though accurate hours on him were not properly kept, as he would leave the job during work hours and did so on many occasions and would also show up late. He was looking and bidding other work and charging hours to L & H job as it appears and was told to me.

The most accurate hours would be on Ed Growkoski. However, both Ed Growkoski and Gary Sterba are listed as operators on the same days. It is very hard in an 8 hour day to get in 16 hours of operators time on one piece of equipment. They only had one backhoe.

As a former employee of L & H Enterprises, Inc. I am under no obligation, connection, or ties with L & H Enterprises, Inc. at this time.

If I may be of further assistance please be advised that I will be gald to help. Log books, time sheets and personal knowledge of the above is true to the best of my knowledge.

Best Regards,
JR Russel

Subscribed and sowrn to before me
this 16 day of December, 1983.

(Seal)

Notary Public in and for
State of Alaska
My commission expires; My Commission Expires

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau AK 99811
(907)465-3720

Official Business

April 24, 1984

Mr. Len Hannaman
President, L & H Enterprises, Inc.
P.O. Box 111593
Anchorage, Alaska 99511

Dear Mr. Hannaman:

Thank you for the letter and information regarding the investigation you have requested of a recent Wage and Hour Administration probe. I appreciate the amount of time and effort you spent compiling this information.

Investigations of this nature often prove to be difficult and time consuming. However, errors are often made during this process. Therefore, I am forwarding your letter and information to Representative John Cowdery, Chairman of the House Labor and Commerce Committee, for further review. This committee is best equipped to conduct such an investigation and determine whether new legislation would be required to rectify the situation.

Thanks again for your input. If I can be of additional assistance, please feel free to contact me at my Juneau office.

Very truly yours,

Joe L. Hayes
SPEAKER OF THE HOUSE

JLH:smh

L & H
ENTERPRISES INC.

March 28, 1984

Joe L. Hayes
Speaker of the House of Representatives
Pouch WO (Mail Stop 3100)
Juneau, AK 99811

Dear Speaker Hayes:

Enclosed is a copy of a request for investigation I have sent to Mr. Chenoweth, the State Ombudsman, pertaining to an investigation being performed by the Wage & Hour Administration, Labor Standards & Safety Division of the Department of Labor.

After you have had a chance to read the contents of my letter to Mr. Chenoweth, which sets forth the issues involved, perhaps it would be useful for you and other members of the legislature to address the impact of the interpretation that is being placed on the regulations and the enabling statute as to who the beneficiaries of the law are. Mr. Silverthorn, the investigator assigned, takes the position that the statute in question pertains to payment of wages to all personnel who provide work on a construction project for the State of Alaska or one of its political subdivisions, even if some of those people are the owners of the contractor who undertook to perform the services by contract. In the instant case, the subcontract between L & H Enterprises, Inc. and Ground Up Construction, a partnership owned by Gary Sterba and Dennis Thomas, was for $14,550. Due to the failure of Ground Up to properly perform the work, and the requirement that L & H had to make good that portion of the work, as part of its duties as general contractor, L & H had back charges for almost the full amount of the contract.

Nevertheless, Mr. Sterba and Mr. Thomas have made wage claims of approximately $11,000, in addition to wage claims by two other men they claim worked for them on the project amounting to a little over $6,000. Based on Mr. Silverthorn's "investigation," the school district has been ordered to withhold the full $17,639.54, including almost $11,000 for Sterba and Thomas, from

L & H Enterprises, Inc., since Ground Up Construction did not pay any wages to any of the personnel involved in the project.

You will note from our report to Mr. Chenoweth the criticisms we have of the methods of investigation that are being employed by this division of the State of Alaska. However, even more distressing, and the subject that I would appreciate the legislature addressing itself to, is the impact of this kind of enforcement practice on contracting on public works projects in the State of Alaska.

If Mr. Silverthorn is right in his interpretation, anytime a subcontractor fails to perform on a public works projects, the owners of the subcontractor can essentially get back all or even more than what they expected to make from the project through wage claims, breach their contract and fail to perform, cause their upstream contractor to expend substantial sums of money to complete the work that subcontractor has undertaken to perform, and, in addition, have to pay out of its pocket so-called "wages" of the owners of the subcontractor that defaulted. If that in fact is the law of the State of Alaska, I suspect the state and its political subdivisions are going to find it increasingly difficult to obtain reasonable bids from contractors to perform their projects.

Your inquiry into this matter would be very much appreciated. If Mr. Silverthorn is incorrectly interpreting the law, perhaps he should be set straight. If he is correctly interpreting it, obviously the legislature needs to take some corrective action. Thank you for your assistance.

Very truly your,

Len O. Hannaman

Len Hannaman, President
L & H Enterprises, Inc.

cc: All Legislative Members
Governor William Sheffield
Encl.

ENTERPRISES INC.

March 28, 1984

Jack Chenoweth
Ombudsman
State of Alaska
Pouch WO (Mail Stop: 3000)
Juneau, AK 99811

Re: Department of Labor Wage & Hours v. L & H Enterprises

Dear Mr. Chenoweth:

Bruce Silverthorn, investigator for the Wage & Hour Administration, Labor Standards and Safety Division of the Department of Labor in Anchorage has initiated a proceeding which has resulted in the Anchorage School District withholding the sum of $17,639.54 from my company, L & H Enterprises, Inc., in connection with work we are performing on the Anchorage Service-Hanshew Sports Complex, PWA 1183-025.

Because of the process that Mr. Silverthorn is employing, and some of the rationale he is proceeding under, I hereby request that you investigate this matter. On or about November 18, 1982, L & H Enterprises, Inc., as general contractor, contracted with the Municipality of Anchorage School District for the turnkey construction of the Service-Hanshew Sports Complex. On May 24, 1983, L & H subcontracted with Ground Up Construction for certain excavation work, installation of water lines, backfilling, compacting, testing and inspection, for a total subcontract price of $14,550. The subcontract was signed by Dennis Thomas, reflecting that he was "co-owner" of Ground Up Construction. This subcontrac was signed on June 3, 1983.

In the course of performance by Ground Up Construction, Ground Up damaged underground utility lines and existing concrete curbing, improperly compacted and filled in trenches, and otherwise failed properly to perform under its subcontract. As a result, L & H back charged Ground Up Construction the sum of $12,290.20 to correct and complete Ground Up's work.

At the time that Mr. Silverthorn began investigating the matter, and notified L & H of his investigation, due to the size of the back charge, and the fact that L & H had not yet been paid by the municipality for a portion of the work covered by the Ground Up subcontract, L & H had not disbursed any payment to Ground Up under the subcontract.

In late November, Mr. Silverthorn was in touch with L & H to advise that he was conducting an investigation into a claim for unpaid wages being asserted by Mr. Thomas, Gary Sterba, the other owner of Ground Up Construction, Ed Grakowsky and Andy Sterba, a relative of Gary Sterba.

Although required by law to provide timely certified payrolls sworn under oath in connection with the project in question, Ground Up Construction failed to do so. However, at some point about the commencement of Mr. Silverthorn's investigation, Ground Up did submit a breakdown indicating when each of the four men in question worked on the project in question, the amount they were entitled to per hour and the amount of hours they put in, including overtime.

Mr. Silverthorn sent this document to L & H Enterprises, and requested that we evaluate it. Our superintendent on the project, Junior Russell, did compare the "payroll" documents submitted by Ground Up, and provided an affidavit dated December 16, 1983, a copy of which was sent to Mr. Silverthorn. In the affidavit, Mr. Russell points out that there were many glaring errors in the job log and time sheets submitted to the department by Ground Up. For example, those records claimed eight days of employment for a truck driver, when in fact a truck was only used on a maximum of four different days, for not more than one-half day each, for a total of two full days. Furthermore, the time sheets turned in by Ground Up in no way matched L & H's job log.

Mr. Russell also pointed out that Ground Up entered a separate contract with the school district to perform some repairs to a broken pipe, which was not part of the subcontract with L & H, and which might have accounted for a portion of the time claimed by Ground Up employees in connection with the Service-Hanshew project. Of course, that was not the responsibility of L & H.

Finally, he pointed out that Andy Sterba was never on the job, notwithstanding the indication of the time sheets provided by

Ground Up. Futhermore, he pointed out that Ed Grakowsky and Gary Sterba both were listed as operators of equipment on the same day, and were claiming eight hours a piece, or a combination of 16 hours as operators on the same piece of equipment on the same day. They only had one backhoe, and between them, during a straight time day, could not have gotten in more than an aggregate of eight hours.

These and other substantial discrepancies were promptly made known to Mr. Silverthorn.

Nevertheless, based upon the time sheets submitted by Ground Up Construction, on December 22, 1983, Jeane Morgan, Mr. Silverthorn's supervising investigator, sent a letter to the school district instructing the school district, pursuant to A.S. 36.05.070(c) to withhold $13,129 from L & H Enterprises' contract. Thereafter, in February 1984, Mr. Silverthorn received a new "certified payroll" provided by Gary Sterba of Ground Up Construction. Mr. Sterba apparently informed him that the first report was erroneous, but the second report, after considering Mr. Russell's affidavit, was more accurate. A copy of that was sent to L & H Enterprises. That so-called "certified payroll" was not certified, was not presented under oath, nor was it signed by Mr. Sterba or anyone else. It radically departed from the earlier "certified payroll" that Ground Up had submitted to the Department of Labor, and as a result of it, Ms. Morgan sent a new letter to the school district on January 31, 1984 instructing the school district to withhold an even larger sum, $17,639.54, from L & H's contract.

My attorney, Stephen S. DeLisio, on February 21, 1984, spoke with Mr. Silverthorn about the document we had now been provided as the latest "certified payroll" of Ground Up Construction. Mr. Silverthorn advised Mr. DeLisio that it was neither signed nor sworn to by Mr. Sterba or anyone else, since, by signing it, they would be representing that the wages had been paid, when the wages had not been paid. Apparently no wages whatever were paid to any of the four men in question, including the two owners, Gary Sterba and Dennis Thomas. Mr. DeLisio then requested Mr. Silverthorn to obtain an affidavit from someone at Ground Up Construction to the effect that the information contained in the most recent documents submitted by Ground Up was accurate. Mr. Silverthorn indicated that he should be able easily to do so.

However, a month elapsed after that conversation, before we were provided such affidavit or further documentation from Mr. Silverthorn or anyone else. It finally arrived March 22, 1984, and a copy is enclosed.

Mr. Silverthorn asked L & H to make an analysis of the second payroll document from Ground Up, but we advised him that Junior Russell, the superintendent who would have to do the analysis, was traveling in the Lower 48 States, and was not expected back until approximately May. We do not have contact with Mr. Russell during the winter months, when he is off duty, and, although we have made attempts to locate him, we have not yet done so. Accordingly we have not been able to further analyze Ground Up's most recent reconstruction of the time its personnel allegedly worked on the project except as previously done by Junior Russell. Of course, Mr. Russell's critique was then into account by Ground Up in reworking its analysis.

Although the regulations under which Mr. Silverthorn is operating entitle L & H Enterprises to a full hearing, and an opportunity to examine the evidence supporting the Wage & Hour's instructions to the school district to withhold funds from L & H, and although L & H has requested an opportunity for such a hearing, none has yet been made available, although the matter has been under investigation now for more than four months, and a substantial sum of money has been withheld from L & H by the school district for more than three months.

Furthermore, and even more incredibly, Mr. Silverthorn takes the position that the two owners of the company, Gary Sterba and Dennis Thomas, are entitled to be paid their wages by L & H Enterprises, due to the failure of Ground Up Construction to do so, just as any of the employees of that company might be entitled under the law. Of the $17,639.54 being withheld from L & H Enterprises by the school district, on instructions of the Department of Labor, $10,618.16 is withheld on behalf of Gary Sterba and Dennis Thomas.

Under this arrangement, although Mr. Thomas and Mr. Sterba, as owners of the Ground Up Construction Company proprietorship, breached their contract with L & H Enterprises, entitling L & H to back charge almost the full amount of the contract price originally negotiated between the parties, these men will be able to take a sum of money representing almost three-quarters of

their contract price in the form of wage claims from L & H Enterprises, if Mr. Silverthorn has his way. This notwithstanding Ground Up's breach of contract and the back charge that almost equals the full amount of the contract price, due to that breach. Mr. Silverthorn is operating on the premise that his Division's function is to recover wages for owners of subcontractors who perform work on the job themselves, notwithstanding their failure to perform the project correctly, timely or economically.

He also makes the rather unusual argument that, because Dennis Thomas now claims he was not an owner of Ground Up Construction for the purpose of this project, Thomas should not be treated as as owner, in any event, but just as another employee. This notwithstanding the fact that he has verified that Mr. Thomas signed the subcontract in question and identified himself on that contract, when he signed it, as well as otherwise during the course of the project to L & H Enterprises personnel, as a co-owner of Ground Up Construction.

I am deeply alarmed at the rather bizarre direction that this wage claim investigation has taken by Mr. Silverthorn and the Department of Labor. I do not feel that L & H has been dealt with fairly or reasonably in the matter. Mr. Silverthorn has compelled the school district to withhold very substantial sums of money from my company, based upon information which was suspect to say the least in the first instance and has been even more suspect when the first presentation was so substantially impeached by Mr. Russell's analysis, that a second presentation had to be made by Ground Up. Until March 20, 1984, none of these documents from Ground Up have ever been signed or submitted under oath, so that there could be recourse against the persons responsible for preparing them if one could eventually prove that the documents were raise, and that the authors were misrepresenting the facts. Nonetheless, Mr. Silverthorn has proceeded on this documentation as if the information was Holy Writ.

Furthermore, Mr. Silverthorn's attempt to collect wages for owners of the company is grossly inappropriate. Our attorney has urged him to consult with the Attorney General's office in this regard, and although he says he has, he has never shown anything to our attorney that would indicate that such a consultation has been had or that the Department of Law was fully apprised of the

issues in question. If the Department of Labor is going to pursue a policy to pay wages to owners of subcontractors who failed to fulfill their contract obligations on public projects, the whole underpinning of the free enterprise system in Alaska will be jeopardized, particularly as they regard public works. How can any responsible contractor afford to involve himself with a public contract in Alaska, governed by these Alaska statutes, where he may be compelled to pay the bulk if not all of the contract price to a defaulting subcontractor through that subcontractor's personal wage claims?

As I understand the law that Mr. Silverthorn is attempting to enforce, it is aimed at seeing to it that wages of hired employees on public works' projects are paid by someone - if not by the employer, then by one of the upper tier contractors from the public funds on the project. However, Mr. Silverthorn attempts to carry the matter one step further and withhold funds from us of which approximately two-third are for the benefit of the owners of the defaulting contractor.

Furthermore, although our attorney has inquired of Mr. Silverthorn regarding his intent to prosecute Ground Up for its obvious violations of the law requiring it to file certified payrolls on a timely basis and to pay its employees as required by law, Mr. Silverthorn has indicated that his only purpose in the investigation is to extract funds with which to pay the owners involved, including the two owners. This seems to me a severe lapse on the part of the Department of Labor in pursuing and prosecuting obvious wrongdoers under the law. Essentially what the department is attempting to do is to shift to L & H Enterprises, Inc., a blameless general contractor, the financial burden of a defaulting subcontractor for payment not only of wages, but also loss profits, etc.

I would very much appreciate it if you would look into the matter, and advise me of your conclusions. I am enclosing herewith copies of documents that may be of help to you in your investigation, including the two sets of time records received from Ground Up Construction by the Department of Labor, a copy of Junior Russell's affidavit regarding the first set, Ms. Morgan's letters to the school district of December 22, 1983 and January 31, 1984, and my attorney's letters to Mr. Silverthorn dated December 22, 1983, February 6, 1984 and March 20, 1984.

Also enclosed is a copy of Mr. Silverthorn's letter to L & H Enterprises of January 31, 1984.

If we can provide you with any further information in regard to this matter, we will be happy to do so.

Very truly yours,

Len Hannaman, President
L & H Enterprises, Inc.

L&H
ENTERPRISES INC.

July 22, 1983

Ground Up Construction
7821 Sandy Place
Anchorage, AK 99507

Gentlemen,

This letter is to inform you that as of this date, L & H Enterprises has not received a copy of your certified payroll records for the Service Hanshew Sports Complex project.

Furthermore, our accounting office has checked with the Alaska Department of Labor and they too, have not received the required reports.

Unless this information is forwarded in its entirety to L & H Enterprises' accounting department by the completion of your scope of this project, we will be forced to withhold all payments for this work, pending to audit by the Department of Labor.

You immediate cooperation on this matter is necessary.

Sincerely,

L & H ENTERPRISES, INC.

Robert E. Kirkman
Project Manager

cc: Len Hannaman
Jim Stonebraker
JR Russell
Carol Skinner
Judy Zundel

REK/ys

I, Kevin Remsen, hand delivered the original document at 3:06 p.m. on July 22nd, 1983

(Gary)

X

General Contractors/Design Build Services
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

authorized builder atlantic

ENTERPRISES INC.

November 18, 1983

Ground Up Construction
707 N Bunn
Anchorage, AK 99508

Gentlemen:

In response to your recent phone calls, we at L & H Enterprises have enclosed a summary of all backcharges against your company herein.

Since our last meeting, there has been a significant increase in the charges due to corrective measures taken, to repair the problems created by your original work.

Your performance on this job was entirely inadequate, and caused us time and monetary losses far in excess of that documented herein. Furthermore the legal jeapordy that you placed L & H Enterprises in with your non - OSHA approved trenching practices is unexcusable.

In addition we at L & H Enterprises have had a lien placed on your contract by Tope Equipment for a sum of $22,423.84 and any left over funds from your contract with us must be turned over to Tope Equipment immediately. Please note copy of lien enclosed.

Furthermore, our bookkeeper, Judy Zundel, has had a conversation with the Alaska Department of Labor regarding your claim against L & H Enterprises, Inc. for employee wages. She was told that your claim was invalid since the claimants were both co-owners of Ground Up Construction. That includes Mr. Denny Thomas who represented himself as a co-owner at the time he signed the contract.

In summation I will comment that in my entire construction career I have never had a subcontractor perform as badly, and with as little concern for the overall project as your firm so did.

General Contractors/Design Build Services
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

authorized builder atlantic

Please direct any future communication in the form of type-written letter to the attention of Mr. Len Hannaman.

Sincerely,

L & H ENTERPRISES, INC.

Robert E. Kirkman
Project Manager

Enclosure

REK/ys

ENTERPRISES INC.

November 15, 1983
SERVICE HANSHEW SPORTS COMPLEX PROJECT

BACKCHARGES - Ground Up Construction

8/29	Alagco	97113	$ 215.51
7/15	Kenai Supply	233064	148.60
	- JR Russell	9781	[82.34]
7/18	Central Plumbing	1377	103.75
6/30	Central Plumbing	1266	100.00
7/07	Central Plumbing	44144	1,895.10
7/07	Central Plumbing	150148	1,245.05
6/30	Kenai Supply	233056	329.86
6/28	Kenai Supply	232812	92.84
8/27	Alagco	97094	404.64
6/14	Central Plumbing	43614	164.05
9/19	Summit Paving	513	1,288.00
9/30	Shelton Electric	1148	3,336.50
9/07	Stephans Tool Rental	65301	30.00
8/26	Alagco	97079	65.57
		Total Invoice Charges	$9,337.13

LABOR

		Man Hours:
7/21	Christianson	2
7/22	Christianson	2
7/20	Christianson	2
7/19	Christianson	2
8/27	Christianson	6½ (Overtime)
6/30	Brown	1
8/29	Remsen	5

8/31	Remsen	2½
8/29	Christianson	5
8/31	Christianson	4
8/30	Christianson	4
		36 hours @ 37.50/hr = $ 1,350.00

Subtotal	10,687.13
15% Overhead	1,603.07
Total Due to L & H Enterprises	$12,290.20

L&H
ENTERPRISES INC.

November 8, 1983

Mr. Bruce Silverthorn
State of Alaska
Department of Labor
3301 Eagle
Anchorage, AK 99502

Re: Ground Up Construction
Service Hanshew Sports Complex

Gentlemen:

Attached you will find a copy of our subcontract with Ground-Up Construction, where you will see that Denny Thomas represented himself to us a Co-owner of his company.

Secondly, I have enclosed a memorandum from Bob Kirkman, our project manager for the job, showing some of the problems which were caused by Ground-Up Construction.

If you need further information, do not hesitate to contact me.

Sincerely,

L & H ENTERPRISES, INC.

Jim Stonebraker
General Manager

264-2402

Enclosure

JS/ys

INTER OFFICE MEMO

Date: September 30, 1983

To: Jim Stonebraker

From: Bob Kirkman

Re: Service Hanshew Sports Complex Ground Up Construction

I advise that all payments to Ground Up Construction be withheld pending back-charges incurred in the following areas:

1. Damage to underground utility lines
2. Damage to existing concrete curbing
3. Improper compaction and non-spec fill material in trenches
4. Charges for plumbing equipment and accessories purchased on L & H Enterprises account
5. Additional supervision, labor and management charges

The above mentioned items, along with any additional back charges, are currently being itemized for an accurate accounting.

In addition, serious consideration should be given to the project delays incurred through Ground Up's mismanagement of their scope of the work, and the resulting dollar impact suffered by L & H Enterprises therein.

Robert E. Kirkman
Project Manager

L&H
ENTERPRISES INC.

SUBCONTRACT

THIS SUBCONTRACT, made and entered into as of this 24 day of May, 1983, by and between

L & H Enterprises, Inc.

whose mail address is

P.O. Box 111593
Anchorage, AK 99511

hereinafter called "Contractor", and

Ground Up Construction

hereinafter called "Subcontractor", whose mail address is

630 Western Drive
Anchorage, AK 99501

WITNESSETH

WHEREAS, Contractor entered, or is about to enter into a contract, Numbered C-20397, and dated Novembe 18, 1983, with

Municipalit of Anchorage

hereinafter called "Owner", for the performance of certain work according to the terms and conditions of said contract and the general specifications and supplements to the specifications, addenda, general and special provisions and conditions, plans, drawings, bid schedule, maps and other documents made a part thereof, and all change orders or amendments thereto, all of which are herein collectively referred to as the "General Contract", said work under the General Contract being generally described as follows:

Turnkey construction of the Service Hanshew Sports Complex.

atlantic

and,

WHEREAS, the parties are desirous of entering into a subcontract whereby Subcontractor shall undertake the performance of a part of the work to be done under the General Contract, on the terms and conditions herein stated;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises and conditions herein contained, do hereby agree, one with the other, as follow:

I WORK TO BE PERFORMED

The subcontractor agrees to furnish all materials, labor, tools, equipment, supervision, supplies, and other things, unless otherwise provided herein, necessary or required to perform, and to perform fully and completely, at the price or prices set out herein, all that portion of the work required to be done by Contractor under the General Contract described as follows:

Item No.	Estimated Quantity	Item Description	Unit Price	Total
1	As General Spec-	Cut asphalt, remove from job		
2	ifications and	Excavate		
3	prints for Ser-	Install 2" water line		
4	vice Hanshow	Install 4" water line		
5	Sports Complex	Backfill		
6		Compaction		
7		All testing as required		
8		All inspections as required		$14,300.00

9- TAP SEWER LINE ——— 250.00
10 Flume

It is understood and agreed that quantities shown above are quantities estimated to be required under the General Contract and that the actual quantities shall be in such amounts as may eventually be required and determined under the General Contract or under the General Conditions of this Subcontract.

II PAYMENTS

In consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of this Subcontract by Subcontractor, Contractor agrees to pay and Subcontractor agrees to receive and accept as full compensation for doing all work and furnishing all materials, supplies and equipment contemplated and embraced herein and for well and faithfully completing the work aforesaid and the whole thereof in the manner and according to the requirements of this Subcontract, the General Contract, the Owner and the Contractor, the sum of Fourteen thousand three hundred and no/100. ($14,300.00) subject to additions and deductions, if any, by reason of variance from estimated quantities, change orders, deletions or extra work orders pertaining to the Subcontract items.

III SPECIAL CONDITIONS

The Special Conditions, consisting of Paragraphs through attached hereto are a part of this Subcontract and by this reference are incorporated herein and made a part hereof as fully as though set forth herein.

IV GENERAL CONDITIONS

The General Conditions, consisting of Paragraphs 1 through 27, attached hereto are a part of this Subcontract and by this reference are incorporated in this Subcontract and made a part hereof as fully as though set forth herein.

V SUPPLEMENTS

The Supplements, consisting of Numbers _____, attached hereto are a part of this Subcontract and by this reference are incorporated in this Subcontract and made a part hereof as fully as though set forth herein.

IN WITNESS WHEREOF, the parties have executed this Subcontract the day and year first hereinabove written.

Subcontractor

By _____

Title _____

Date Executed 4-3-87

Contractor

By _____

Title _____

Date Executed

L & H Enterprises, Inc. , Contractor

Ground Up Construction , Subcontractor

dated May 24, 1983

Subcontractor scope of work includes:

Cut asphalt, remove from job
Excavate
Install 2" water line
Install 4" sewer line
All testing as required
Backfill
Compaction
All inspections as required

Subcontractors work excluded:

Vacating electrical and gas lines
Hookup to existing water, main

L + H E. Ground Up Const.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

3301 EAGLE STREET

December 22, 1983

RECEIVED — ANCHORAGE

DEC 29 1983

SCHAIBLE, STALEY, DeLISIO AND COOK, INC.

Anchorage School District
Pouch 6-614
Anchorage, AK 99502

Attention Lowell T. Freeman

Dear Mr. Freeman:

RE: ASD-SERVICE HENSHEW SPORTS COMPLEX

As we explained to you in our phone conversation of December 21, we are currently investigating Ground Up Construction for alleged violations of Title 36 of the Alaska Statutes. Ground Up Construction is a subcontractor with L & H Enterprises on this public works project.

Ground Up Construction has failed to pay its employees on this project in accordance with the law. As a part of our investigation we are attempting to determine the exact hours worked by these employees and the total wages due. Our best available information currently show three employees are owed a total of $13,129 in wages for work performed on the Service Henshew Sports Complex. These wages are broken down as follows:

Ed Gutosky			
112 hours s.t. @ $23.84 per hour	=	$2670.08	
61 hours o.t. @ $35.76 per hour	=	2181.36	
173 hours fringe benefit @ $5.45	=	942.85	
Total			$5794.29
Dennis Thomas			
133 hours s.t. @ $22.45 per hour	=	$2985.85	
43.5 hours o.t. @ $33.675 per hour	=	1464.86	
176.5 hours fringe benefit @ $5.45	=	961.93	
Total			$5412.64
Andy Sterba			
72 hours s.t. @ $26.69 per hour	=		$1921.68
Total wages due			$13,129.00

AS 36.05.070(c) states, in part:

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

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

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

(B) the rates of wages in fact received by laborers, mechanics, or field surveyors."

In accordance with the above, I am directing the Anchorage School District to withhold from this public construction contract the amount of thirteen thousand one hundred twenty-nine dollars ($13,129) pending the conclusion our investigation into this matter.

Any questions you may have regarding this may be directed to me or Bruce Silverthorn, the investigator on the case.

In closing, I would like to ask that you confirm to us in writing that these funds have been withheld. We feel it our responsibility to advise you that failure to comply with this demand for retention of funds may result in further action in accordance AS 36.05.030(b).

Very truly yours,

Jean Morgan

Jean Morgan
Supervising Investigator
Wage & Hour Administration
Labor Standards & Safety Division

certified # P483768426
cc: Ground Up Construction
cc: L & H Enterprises, Inc.
cc: Steve DeLisio

The Law Firm of
Schaible, Staley, DeLisio & Cook, Inc.

Anchorage Office
Stephen S. DeLisio
Alan Sherry
Joseph M. Moran
Michael G. Geraghty
Patricia L. Zobel
Walter J. Szmullo
Allan J. Olson

Fairbanks Office
Grace Berg Schaible
Howard Staley
Dennis E. Cook
Barbara L. Schuhmann
Robert B. Groseclose
Charles D. Silvey, Jr.

Of Counsel:
William V. Boggess

December 22, 1983

Mr. Bruce Silverthorn
Dept. of Labor
Division of Wage and Hours
3301 Eagle St., Suite 310
Anchorage, AK 99503

Re: Ground Up Construction Certified Payroll -
Service Hansnew Sports Complex

Dear Mr. Silverthorn:

This is to follow up on telephone conversations we have had concerning wage claims of the owners and employees of Ground Up Construction with regard to work performed on the Service Hanshew High School Sport Complex project. As I have advised you, I am counsel for L & H Enterprises, the contractor to whom Ground Up subcontracted for certain work in connection with that project.

By now you will have received the affidavit of Junior Russell which demonstrates, under oath, that a substantial amount of the information contained in the certified payrolls received from Ground Up Construction is at least erroneous, and at worst false. Accordingly, it becomes incumbent upon you, in the course of your investigation, to require all evidence from Ground Up and its employees to be received in a sworn form. Whether or not that is your usual procedure is irrelevant in this case. Here we have sworn testimony in hand reflecting that the information you are being provided by Ground Up is incorrect. Obviously, a search for the truth in making a determination by you is the bottom line.

In furtherance of the search for truth, I would strongly recommend that Sterba, Thomas and anyone else who provides information concerning these matters be informed, upon

giving sworn testimony, the penalties of perjury. With that sombering information, the chance of you receiving truthful information should be enhanced.

Based on Mr. Russell's affidavit, the information contained in Ground Up's payroll pertaining to this project is incorrect. Moreover, from the face of the document, the certified payroll was not filed timely pursuant to A.S. 36.05.040. A.S. 36.05.060 sets forth the penalty for violation of the Chapter, including violation of A.S. 36.05.040. In your "even handed" approach to such a matter, one would assume that appropriate criminal prosecution of a contractor would follow from false and untimely filing of certified payroll, as provided by law. However, when I discussed this possibility with you, you seemed to take the view that your department was not interested in prosecution violators of the statute in question.

The fact that the Groun Up payroll was prepared and submitted so long after the fact should raise some serious questions in your and everyone else's minds as to the legitimacy of what is happening here. Considering the close similarity between the amount being claimed as wages and the amount of the contract price that has not been paid to Ground Up by L & H, one should ask whether the procedure which was instituted by Mr. Thomas and is being pursued by Gary Sterba- the co-owners of Ground Up Construction, is merely a back door effort to obtain payment under the contract to which they are not otherwise entitled due to their breach of contract.

As I advised you by telephone on December 19, 1983, some of the time set forth in the certified payroll charged against L & H's contract was actually performed directly by Ground Up Construction under a separate contract directly with the School District. Accordingly, those services had nothing to do with the relationship between L & H and Ground Up Construction.

On the question of whether the owners of the company would be entitled to payment of wages through the process you are pursuing in your agency, and whether Dennis Thomas is or

should be considered for such purposes as an owner of Ground Up Construction in regard to the work in question are matters which we have discussed at length. I have strenuously urged you to seek the advice of a qualified attorney assigned to the Dept. of Labor from the Attorney General's office on these issues. Since you are not an attorney, you are in no position to make a legal evaluation of those issues, although you seem fully prepared to take that on yourself without legal advice. That is an issue that L & H intends to pursue legally to the full limits of the law, should an adverse ruling be made by your division. I am confident that a qualified, experienced attorney will come to the same conclusion that I have: that neither Gary Sterba nor Dennis Thomas are entitled to payment of any wages through Division of Wage and Hour procedures under the Act, for the reason that they are owners of the company.

On the face of the subcontract between L & H and Ground Up, Dennis Thomas signed his name as a co-owner. He made the same representation to L & H's representative in negotiating the contract. Gary Sterba made the same representation to L & H's representatives. Regardless of the fact that Sterba's name may appear to be the only one on the contractor's bond filed with the state or on the state business license, that does not mean that Dennis Thomas was not, at least for the purposes of this one project, a co-owner of Ground Up Construction. He was apparently added as a partner after the contractor's license and business license were obtained. Whether or not he and Sterba would have applied for an amended or new business license or contractor's bond, or even would be required to do so under the law, is wholly irrelevant. Moreover, even if it were to develop unequivocally that Dennis Thomas was in fact not a genuine owner of Ground Up at any time, by having signed the contract with L & H as an owner, he is estopped legally from denying that he was an owner of the company for purposes of enforcement of this contract. He is civilly liable to L & H for breach of contract under the law, just as co-owner Gary Sterba is.

You indicated that the normal enforcement policy of your division is to require payment of wages to owners. I am

curious to know how frequently the issue has come up. I would be surprised if it came up more than on a rare occasion. However, regardless of whether there is in fact a policy or if that is simply the way that some enforcement officer for Wage and Hour Division handled an individual situation in the past, there is no authority under the enabling legislation to permit such a result.

You have indicated that the regulations permit that approach, but I would remind you that the regulations can do no more than what the enabling statutes authorize. Any effort on the part of the regulations to go beyond the authority granted by the statutes is null and void as a matter of law. You also seem to think that the regulations and this so-called "policy" is justified under the provisions of the Act that require owners to include on certified payrolls their hours and rates of pay for doing the same sort of work as their employees. However, it is quite obvious from the statute that there is essentially one reason for doing this: to make sure that, for determining the appropriate average wage applicable to the given type of work for enforcement purposes, the Division receives all data germane to making that calculation. The amount that owners pay themselves for doing the [illegible]al type work in question is obviously important data [illegible]t determination.

You indicated that there is a second u[illegible]e this information: in reviewing contracts and public works, you are able to make certain that the contractor submits a valid competitive bid with sufficient funds to in fact pay wages to employees who are actually performing the work in question. If such review of contracts is a legitimate exercise of your division, still the purpose of requiring the owner to submit his hours and rates of pay on certified payroll is for data collection purposes. In short, nothing in the statute authorizes your division to enforce payment of wages to owners.

Finally, I am somewhat concerned about the approach that is being taken in this entire matter. Under the Act, the contractor who is in violation of the Act for nonpayment of wages is Dennis Thomas and Gary Sterba d/b/a Ground Up Construction. Quite apart from your investigation in determining validity of wage claims, etc., what effort is being made to compel Ground Up Construction to pay its

employees? Again, violation of the Act carries criminal penalties. Have Sterba and Thomas been informed of those penalties and is any prosecution under consideration should they fail to meet their obligations as employer under the Act with regard to payment of the employees?

From my conversations with you, it seems as if your primary thrust is to satisfy yourself, primarily based on unsworn information received from Sterba, Thomas and their employees, as to how much wages are involved, and then seek to force L & H, the general contractor on the project, or the school district to pay those wages. Obviously the entity responsible for payment of the wages is Ground Up Construction, and every effort available to the Division should be exhausted in seeking to compel Ground Up to pay its employees, before the Division even considers pursuing other sources of payment. I trust that is exactly what you will do, and that my uneasy feeling in this regard is unfounded.

As I had indicated before, if we can be of any further assistance in developing data or factual information that will assist you in getting at the truth in this matter, we will be happy to cooperate. However, my client has a right to be treated fairly under the law and according to due process of law, just as anyone else does. The Wage and Hour Division function should not be prostituted to become a method of subcontractors getting their money out of an upstream contractor, when the subcontractor has breached his contract and failed to fulfill his obligations to the upstream contractor. Such a process would constitute at best a gross abuse of the enabling legislation, as well as a major miscarriage of justice.

With best regards,

SCHAIBLE, STALEY, DeLISIO
& COOK, INC.

By: Stephen S. DeLisio
Stephen S. DeLisio

SSD/slb
cc: Len Hannaman

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR
WAGE & HOUR ADMINISTRATION
LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET
POUCH 7-021
ANCHORAGE, ALASKA 99510
PHONE: (907) 264-2435

January 31, 1984

L & H Enterprises, Inc.
P.O. Box 111593
Anchorage, Alaska 99511

Attention: Len Hannaman

Dear Mr. Hannaman:

RE: ANCHORAGE SERVICE-HANSHEW SPORTS COMPLEX
PWA 1183-025

Enclosed is a copy of our letter to the Anchorage School District requiring the withholding of funds on the project referenced above. The total to be withheld has been increased to $17,640.00. This new figure is based upon the following:

1. Ground Up Construction has submitted revised certified payrolls to our office, along with its payroll records.
2. The Attorney General's Office has informed us that wages earned by owner/operators must be paid at prevailing wage rates; specifically, 29 CFR 5.2(1) states,

> "Every person paid by a contractor or subcontractor in any manner for his labor in the construction prosecution; completion or repair of a public building or public work...is 'employed' and receiving 'wages' regardless of any contractual relationship alleged to exist."

Therefore, we have adjusted the amount of funds being retained.

As you will see from the payroll copies enclosed, the hours of work shown vary from the original payrolls submitted by Ground Up Construction. If you have any dispute with the hours shown, please submit any documentation or other evidence you may have that supports your contention(s) to me at the address shown above.

If you agree with the time shown, please inform our office of the action you wish to take to have these wages paid. Whatever the case, please respond to this letter by February 10, 1984.

If you have any questions, please feel free to contact me.

Yours,

Bruce Silverthorn
Investigator
Wage & Hour Administration
Labor Standards & Safety Division

Enclosure
cc: Steve Delisio
cc: Ground Up Construction
cc: Anchorage School District

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR
WAGE & HOUR ADMINISTRATION
LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET
POUCH 7-021
ANCHORAGE, ALASKA 99510
PHONE: (907) 264-2435

January 31, 1984

Anchorage School District
Pouch 6-614
Anchorage, Alaska 99502

Attention: Lowell T. Freeman

Dear Mr. Freeman:

RE: ASD-SERVICE HANSCOM SPORTS COMPLEX
PWA 1183-025

On December 22, 1983, we wrote to the Anchorage School District to explain that we were investigating the wages paid to the employees of Ground Up Construction. Ground Up Construction is a subcontractor of L & H Enterprises, Inc. on this project. Our letter directed you to withhold a total of $13,129.00.

Since that time, we have been provided with additional information on the total hours worked by the Ground Up Construction employees, as follows:

Gary Sterba

Laborer

157 s.t. hrs.	@ $ 18.82	=	$ 2,954.74
59 o.t. hrs.	@ 28.23	=	1,665.57
216 f.b. hrs.	@ 5.65	=	1,220.40
			$ 5,840.71

$ 5,840.71

Denny Thomas
(117 s.t. hours, 51 o.t. hours)

Laborer (80%)

93 1/2 s.t. hrs.	@ $ 18.82	=	$ 1,759.67
41 o.t. hrs.	@ 28.23	=	1,157.43
134 1/2 f.b. hrs.	@ 5.65	=	759.93
			$ 3,677.03

Operator (20%)

23 1/2 s.t. hrs.	@ $ 23.84	=	$ 560.24
10 o.t. hrs.	@ 35.76	=	357.60
33 1/2 f.b. hrs.	@ 5.45	=	182.58
			$ 1,100.42

$ 4,777.45

Ed Gutosky
(117 s.t. hours, 51 o.t. hours)

Operator (80%)			
93 1/2 s.t. hrs.	@ $ 23.84	= $	2,229.04
41 o.t. hrs.	@ 35.76	=	1,466.16
134 1/2 f.b. hrs.	@ 5.45	=	733.03
		$	4,428.23

Laborer (20%)			
23 1/2 s.t. hrs.	@ $ 13.82	= $	442.27
10 o.t. hrs.	@ 28.23	=	282.30
33 1/2 f.b. hrs.	@ 5.65	=	189.28
		$	913.85

$ 5,342.08

Andy Sterba
(64 s.t. hours)

Truckdriver (80%)			
51 s.t. hrs.	@ $ 19.80	= $	1,009.80
51 f.b. hrs.	@ 6.89	=	351.39
		$	1,361.19

Laborer (20%)			
13 s.t. hrs.	@ $ 18.82	= $	244.66
13 f.b. hrs.	@ 5.65	=	73.45
		$	318.11

$ 1,679.30

TOTAL WAGES EARNED = $ 17,639.54

In accordance with the provisions of Title 36 of the Alaska Statutes quoted in our previous letter, we are hereby directing the Anchorage School District to adjust the amount of funds withheld from the L & H Enterprises, Inc. contract to $17,640.00.

In closing, I would like to ask once again that you confirm to us in writing that you have complied with this demand for withholding. As mentioned in our first letter, failure to comply may result in further action by the Department of Labor in accordance with A.S. 36.05.030(b).

If you have any questions, please contact Bruce Silverthorn or myself, and we will assist you.

Very truly yours,

Jean Morgan

Jean Morgan
Supervising Investigator
Wage & Hour Administration
Labor Standards & Safety Division

cc: L & H Enterprises, Inc.
Steve Delisio
Ground Up Construction

The Law Firm of
Schaible, Staley, DeLisio & Cook, Inc.

Anchorage Office
Stephen S. DeLisio
Alan Sherry
Joseph M. Moran
Michael C. Geraghty
Patricia L. Zobel
Walter J. Sczudlo
Allan J. Olson

Fairbanks Office
Grace Berg Schaible
Howard Staley
Dennis E. Cook
Barbara L. Schuhmann
Robert B. Groseclose
Charles D. Silvey, Jr.

Of Counsel:
William V. Boggess

February 6, 1984

Bruce Silverthorn, Investigator
Alaska Department of Labor
Wage & Hour Administration
Labor Standards & Safety Division
Pouch 7-021
Anchorage, AK 99510

Re: Anchorage Service-Hanshew Sports Complex
PWA 1183-025

Dear Mr. Silverthorn:

Your letter to L & H Enterprises of January 31, 1984, with regard to the above matter has been referred to me for response on behalf of L & H. I have ceased to be amazed at the lack of due process which your department appears to favor in these matters, at least as it as been demonstrated in this case.

To begin with, the thrust of your letter is directed at my client, the general contractor, not at the employer of the employees who have not been paid as required by the law you seek to enforce. What action is being taken with regard to Ground Up Construction and its co-owners, Gary Sterba and Dennis Thomas, in this regard? What do they propose to do about paying the wage claims of their employees, is the more appropriate question that should be asked at this time. Furthermore, what action does your department intend to to take with regard to the statutes that set forth sanctions for failure of an employer to file timely certified payroll records and fail to properly pay prevailing wage rates to its employees?

Under any reasonable procedure, one would have every reason to expect that the administrative procedures available to your agency would be exhausted in dealing with the party who is directly responsible for the problem - the employer. Yet your letter does not even address that subject matter, but addresses the subject to L & H Enterprises as if L & H was the actual employer of the workmen in question.

As you very well know, we do dispute the hours shown by Ground Up Construction. For whatever reason, your letter completely fails to address the fact that, without any obligation to do so, we submitted to you a sworn affidavit of Junior Russell dated December 16, 1983, setting forth the basis for our challenging the payroll record of Ground Up Construction, as then known. We realize that you have received more recent information, but that more recent information has resulted in a substantial increase in the amount of hours allegedly worked, whereas Mr. Russell's affidavit demonstrated that the earlier smaller alleged payroll record was grossly excessive.

Furthermore, the form in which you have provided us the alleged hours worked is utterly useless in our being able to make a response with regard to disputing those hours. No attempt is made in your attached letter of January 31, 1984 to the school district, wherein the hours are set forth, to show on what days each increment of hours was put in. Obviously that is the only way that we would have to challenge the hours shown.

Third, whatever happened to the right to a hearing on a dispute of this type. From the tone of your letter, our entitlement to be heard is apparently going to limited to submission of documentation or other evidence that we have that supports our contentions. This is very disturbing inasmuch as your letter failed to note that we had already submitted a substantial sworn document which very extensively challenged the claims being asserted by Ground Up Construction and its employees.

In addition, we had previously advised you that a portion of the work provided by Ground Up Construction at Anchorage Service-Hanshew Sports Complex was performed directly to the account of the Anchorage School District, and not under the subcontract with L & H Enterprises. Nevertheless, neither your letter to L & H Enterprises or your letter to the school district, both of which are dated January 31, 1984, deal with this question. A hundred percent of what you are asking the school district to withhold is being asked to be withheld from L & H Enterprises contract. Obviously, no matter how the statute and regulations you are attempting to enforce are interpreted in the final analysis, there would be absolutely no right for anybody to have the school district withhold monies from L & H Enterprises for wages owed by Ground Up Construction to its employees for performing services to the direct account of the Anchorage School District.

Concerning your advise with regard to the entitlement of owner/ operators, as you well know, we intend to challenge that, if necessary, to the highest court. The interpretation is being made

of a regulation which does not expressly say what you say it says. In other words you are interpreting what the words mean. The regulation only has such scope, force and effect as the enabling statute gives it, and there is nothing under the statute that gives the Department of Labor the right to establish a regulation which would require an upstream contractor to pay a defaulting subcontractor owner/operator prevailing wage rates.

We hereby demand our rights as established by law to the benefit of the administrative procedures pertaining to such matters. Furthermore, we request an answer to the inquiries we have made above.

Should you see fit to provide us with a breakdown of the hours claimed by Ground Up's employees and owners, on a day-by-day basis so that we can evaluate them, we will be happy to make a further evaluation. However, we question whether such an analysis would be a waste of time, since you have obviously disregarded Mr. Russell's previous sworn analysis.

Very truly yours,

SCHAIBLE, STALEY, DeLISIO
& COOK, INC.

By: Stephen S. DeLisio
Stephen S. DeLisio

SSD/slb
cc: Len Hannaman

The Law Firm of
Schaible, Staley, DeLisio & Cook, Inc.

March 20, 1984

Anchorage Office
Stephen S. DeLisio
Alan Sherry
Joseph M. Moran
Michael C. Geraghty
Patricia L. Zobel
Walter J. Szczuko
Allan J. Olson
Gregory L. Youngman

Fairbanks Office
Grace Berg Schaible
Howard Staley
Dennis E. Cook
Barbara L. Schuhmann
Robert B. Groseclose
Charles D. Silvey, Jr.

Of Counsel:
William V. Boggess

Bruce Silverthorn, Investigator
Alaska Department of Labor
Wage & Hour Administration
Labor Standards & Safety Division
Pouch 7-021
Anchorage, AK 99510

Re: Anchorage Service-Hanshew Sports Complex
PWA 1183-025

Dear Mr. Silverthorn:

You will recall on February 21, 1984 our telephone conversations regarding the fact that, even the most recent revised proported payroll records produced to you by Ground Up Constructions were not presented under oath. You stated that Mr. Sterba was unwilling to provide a "certified payroll", on the ground that he felt such certification constituted a representation that the payroll had been paid, when it had not.

Accordingly, I requested that you obtain from Ground Up Construction a sworn affidavit to the accuracy of the information contained in whatever payroll record Ground Up intends now to rely upon. You advise that that would be an easy thing to accomplish, and that you would do so and send me a copy of the affidavit immediately.

We are now approximately one full month since that discussion, and I have not received any such affidavit. Has Mr. Sterba declined to provide one? When may we expect to see some sworn support for this oft changed and perhaps in the future often changing payroll "record?"

I attempted to call your office on March 19, only to be advised that you were gone on personal leave until April 1. I trust you will respond to this promptly after your return.

Very truly yours,

SCHAIBLE, STALEY, DeLISIO & COOK, INC.

By: Stephen S. DeLisio
Stephen S. DeLisio

ssd/slb

cc: Len Hannaman

943 West 6th Avenue
(907) 279-9574

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR
WAGE & HOUR ADMINISTRATION
LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET
POUCH 7-021
ANCHORAGE, ALASKA 99510
PHONE: (907) 264-2435

March 21, 1984

Schaible, Staley, Delisio & Cook, Inc.
PO Box 102340
Anchorage, AK 99510

Attention Stephen S. Delisio

RE: ASD-SERVICE HANSHEW SPORTS COMPLEX
PWA1183-025

Enclosed are the amended certified payrolls submitted by Gary Sterba, on behalf of Ground Up Construction, for work performed on the above referenced project. Mr. Sterba's certification is attached for your review.

Please compare these payrolls for consistancy with your own records and provide this office with any comments you might have by April 6, 1984.

If you have any questions, please don't hesitate to contact our office at 264-2435.

Yours,

Bruce H. Silverthorn
W/H Investigator
Wage & Hour Administration
Labor Standards & Safety Division

Enclosures

MEMORANDUM

TO: File

FROM: SSD

DATE: 12/19/83

Re: L & H Enterprises v. Ground Up Construction

On this date I spoke at length with Bruce Silverthorn regarding the status of the matter. He is expecting to meet with Gary Sterba on the morning of December 20, 1983. He indicated that he had not told Sterba that he would be ordering the School District to pay the wages. He will, however, be instructing the School District to withhold a sufficient sum to cover wages that he thinks from his preliminary inquiry may be due.

I informed him of the affidavit prepared by Junior Russell from the L & H job logs, and agreed to deliver a copy of the affidavits to him as soon as possible. I sent it with Sharon on the afternoon of 12/19/83. I also read from it the conflicting information from the certified payroll records.

He indicates that a couple of the employees have even filed conflicting claims indicating that there is more owing them than is shown on the certified payroll submitted by Sterba.

Once again he reiterated his belief that owners were entitled to payment under the Act as well as regular employees. I pointed out to him that, before he made a major mistake in enforcement, he should inquire for an opinion of the assistant attorney general that advises the Department of Labor. He also indicated that his research had shown that Gary Sterba was the only owner shown on the contractor's bond and business license. I pointed out to him that was irrelevant, for purposes of this job, since Denny Thomas had held himself out and signed the contract as a co-owner. Hence Thomas should also be dealt with as an owner with regard to this claim. I further urged him to obtain an opinion on this from the attorney general's office.

Silverthorn admitted that he was not attorney, but was simply following enforcement practices that are apparently well established in the department. They have apparently routinely been enforcing payment of wages to owners, as well as to employees, where the situation has arisen.

I also insisted that he take any further information from Sterba, Thomas or the employees under oath, since we wanted the sanction of perjury over their heads if they lied. He sounded as if he really did not intend to do that since his only purpose was to determine whether wages were due, and not to make a case for anybody. I pointed out to him that, obviously, his function was to get to the truth and the best way to get to the truth was to take testimony under oath

particularly where there were major conflicts. I pointed out that, if he required all of the evidence to come in under oath, he was much more likely to get to the real truth earlier.

I also pointed out that some of this work had been done by Ground Up directly for the account of the School District, and that we were being charged as if it was done for us. He indicated that he would check with Hanscomb Herry to find out about this aspect.

cc: Len Hannaman

State of Alaska)
) ss.
Third Judicial District)

To Whom it May Concern:

I am no longer an employee of L & H Enterprises, Inc. Therefore, not having the employee to company loyalty I have also had a past acquaintance and friendship with Ground-Up Construction, as well as a working relationship with them. I believe I am a neutral party in this matter of L & H Enterprises, Inc. vs. Ground-Up Construction.

I remember the contract very well, as I negtoiated it with Denny Thomas per instructions from Gary Sterba. Denny Thomas informed me that he was co-owner. I did not question if that meant, all past work, all future work or just this particular job.

On August 3, 1983 and August 4, 1983, Denny Thomas called Bob Kirkman (L & H Office per phone record,) to get L & H Enterprises' record of days worked on this job by Ground-Up personnel. These I supplied after our office notified Ground-Up to send copies of Certified Payroll. I have noted several discrepancies from our job log and time sheets turned in by Gary Sterba.

The record shows 2 loads of pipe hauled in, 2 loads of asphalt and broken concrete hauled off. The last load going with trailer and backhoe, therefore, the work was not in excess of four each ½ days for the truck driver, or a total of 2 full days. Note: Total job they show the time for truck driver as 8 days. There was not any fill or bedding hauled to the job. This man was not on the job 8 days.

A copy of the Certified Payroll time sheets turned in by Ground-Up Construction no way matches the job log. Time sheets for the week ended July 3, 1983 and for the day of June 27 show Gary Sterba working 16 hours. The job log shows him arriving on the job at 10:00am. As he indicated working 16 hours, this would mean he would not have gotten off until 2:00am the next morning. Also his certified payroll show his men working the same day, only got 11 hours. Something is amiss in their records. On July 11, 1983 the log book shows Ground-Up (Gary Sterba and Denny Thomas) arriving on the job at 3:00pm then showing on the time sheet only Gary Sterba working 12 hours. No one else from Ground-Up was working. On July 14, 1983 shown by log book, Gary Sterba left the job at 11:30am yet claimed 8 hours.

We have to assume the time sheet of week ending June 26, 1983 is really week ending July 17, 1983. Week ending June 26, 1983 is a week before their job even started. It looks as if after L & H Enterprises, Inc. gave dates of work on job, that Ground-Up went back 6 weeks and guessed on hours worked, and not very accurately I might add.

On July 17, 1983, Ground-Up Construction worked on contract between Anchorage School District and Ground-Up, a separate contract to that of ours, yet Sterba is claiming 8 hours of time to the L & H job. On July 15, 1983 they were working on the afore mentioned contract and charged L & H Enterprises 12 man hours. This is confirmed by our job log. Perhaps Certified

Payroll on the other contract with the School District will show this discrepancy. Maybe an oversight on their part. It is impossible from the Ground-Up time sheets to match our job log.

Andy Sterba was never an operator on this job yet time sheets show him as such. It is real confusing as to what they are trying to do. It looks as if they are guessing on their hours rather than being accurate.

I have no argument on hours for Denny Thomas. Though accurate hours on him were not properly kept, as he would leave the job during work hours and did so on many occasions and would also show up late. He was looking and bidding other work and charging hours to L & H job as it appears and was told to me.

The most accurate hours would be on Ed Growkoski. However, both Ed Growkoski and Gary Sterba are listed as operators on the same days. It is very hard in an 8 hour day to get in 16 hours of operators time on one piece of equipment. They only had one backhoe.

As a former employee of L & H Enterprises, Inc. I am under no obligation, connection, or ties with L & H Enterprises, Inc. at this time.

If I may be of further assistance please be advised that I will be gald to help. Log books, time sheets and personal knowledge of the above is true to the best of my knowledge.

Best Regards,
JR Russel

Subscribed and sowrn to before me
this 16 day of December, 1983.

(Seal)

Notary Public in and for
State of Alaska
My commission expires; My Commission Expires:

HB

720

Bill No. House Bill 720

Title "An Act relating to electrical codes."

Date

Contact: Eileen Plate 465-2750
Bob Bacolas 465-4870

The National Electrical Code is updated every three years, and the 1984 code is the most recent effort in this regard. The 1981 code presently in effect for the state of Alaska is, therefore, outdated and will not be reprinted. Adoption of the 1984 code would bring Alaska's minimum standards into conformity with those commonly accepted and used by industry across the nation. The latest edition of the National Electrical Code is also commonly adopted by political subdivisions in the state as the minimum standards enforced under their building inspection programs.

The Department supports adoption of the 1984 code. It will not have a fiscal impact on the Department.

APPROVED

Robert W Jordan
for Jim Robison
Commissioner

POSITION PAPER/Department of Labor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 720
Title: "An Act relating to Electrical Codes"
Sponsor: House Labor and Commerce
Requestor: House Labor and Commerce
Date of Request: 5/14/84

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards and Safety BRU, Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas
Phone: 465-4870
Division: Labor Standards and Safety
Date:

Approved by Commissioner: Robert W. Jordan for Jim Robison
Date: 5/14/84
Agency: Labor

LEG:A:69
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HCR

21

3/29/83

Rep. Walt Furnace

Re: HCR-21

The Sponsor has requested that the following changes be made to the resolution:

(1) In the Title - Page 1 - Line 6

Change [March 13-19, 1983] to March 11-16, 1984

(2) Page 2 - Line 7

change [March 13-19, 1983] to March 11-16, 1984

They will not have anyone to testify and have requested LtC Staff be prepared to answer any questions which may arise.

JB

HCR

52

SEAFOOD'S FUTURE

SALES STILL FLAT

As economists talk healthy retail sales, surprising unemployment drops, and steady economic recovery, seafood dealers are becoming weary of the good news. The recovery has not yet touched seafood sales, which remain depressingly flat.

Holiday sales of specialty and shellfish items did not materialize as expected. Confusion in the shrimp and scallop markets has kept buying at a hand-to-mouth level. Fish inventories are running 13 percent higher and shellfish inventories 16 percent higher than one year ago, mostly due to cod and shrimp.

The strong U.S. dollar has attracted imports from all over the world, intensifying competition for traditional suppliers. In the shrimp and scallop markets, prices have hit resistance levels. The U.S. dollar continues at record-high levels and is expected to remain strong, dampening exports.

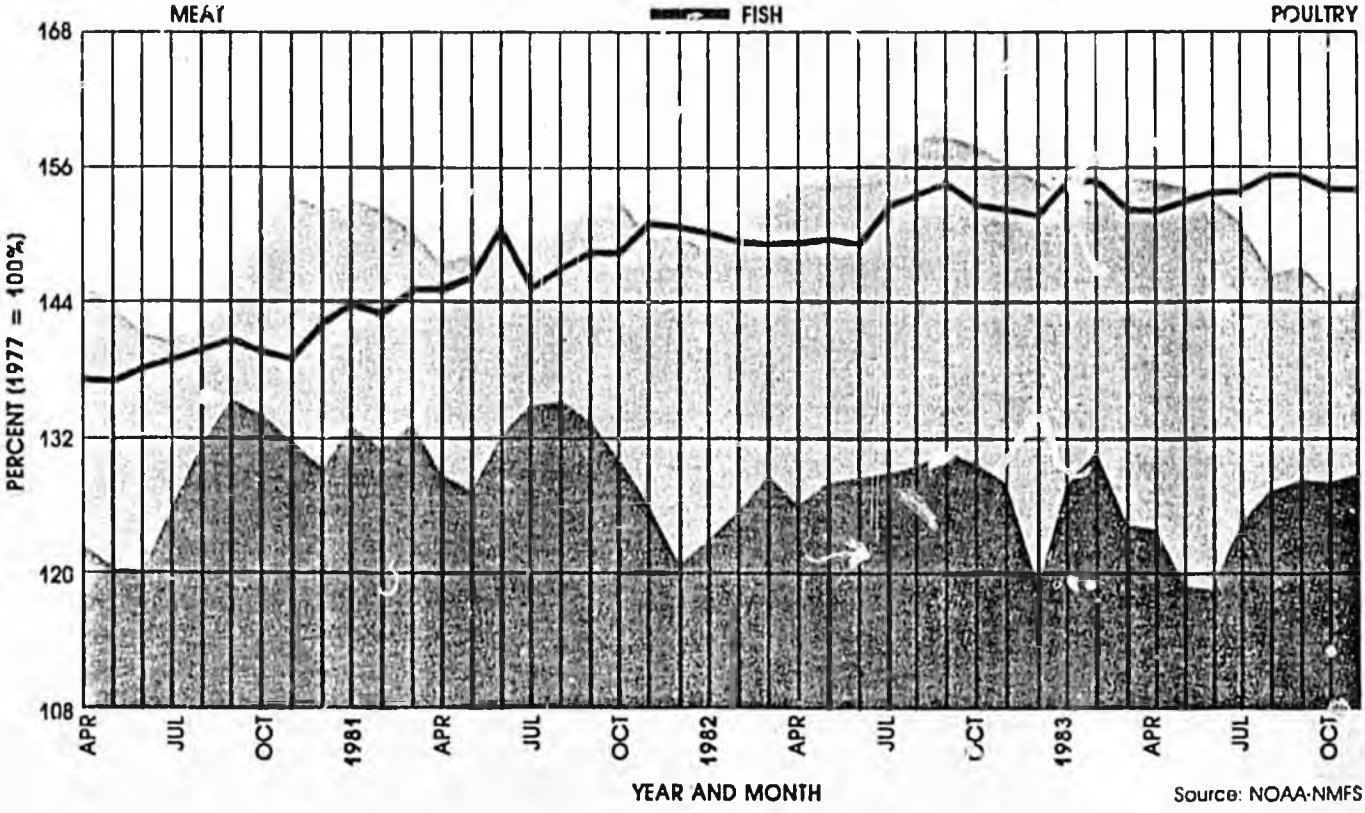
With Lent starting almost one month later this year than last (March 7 as opposed to February 16), more time is available for planning promotions and for suppliers and buyers to establish programs.

Despite the doldrums, there is good news on the horizon for seafood consumption. Beef, pork, and broiler prices are expected to rise in the spring, as supplies dwindle. An explanation by David Stroud follows on page 11.

The relationship between higher prices in competing protein sources and increased seafood consumption is made clear by a recent USDA report tying changing incomes and prices to consumption. Data on per capita consumption and prices of red meats, poultry, and fish in the U.S. from 1950 to 1978 showed that for every 1 percent rise in the price of red meats, red meat consumption is reduced 0.68 percent. At the same time, poultry consumption increases 0.56 percent, and fish consumption increases 0.16 percent. Thus, if beef prices rise the 2 percent predicted in the first half of the year, fish consumption should increase a minimum of 0.32 percent. Since the price of broilers is also expected to rise, more consumers should turn to seafood.

As incomes rise, as they are expected to, shellfish consumption should benefit. According to the USDA study, a 1 percent rise in consumer incomes prompts a 0.68 percent increase in dollars spent on shellfish, the category among all meats and poultry with the highest positive reaction. Finfish expenditures increase 0.14 percent with a 1 percent rise in income.

Retail Price Index for Meat, Fish, Poultry



Source: NOAA-NMFS

Amendments made to limited entry regulations

Plenty of changes have been made to limited entry regulations, and copies of the new regulations are available from: Commercial Fisheries Entry Commission, Pouch KB, Juneau, AK 99811, or call (907) 586-3456.

Some of the changes include the broadening of the definition of sablefish; rewording of gear codes to include power jigging equipment; changes in the boundaries of king crab administrative areas in the Bering Sea and Norton Sound; increasing the annual fee for Class VI permits from $15 to $30 for Alaska residents, and from $45 to $90 for non-residents; requiring applicants in limited entry fisheries to notify the Commission if they have not received confirmation that the Commission has received their application. □

Whitney processing plant closes

The *Whitney*, a processing barge owned by Whitney-Fidalgo Seafoods, is closing its doors following precipitous declines in shrimp and crab stocks. Plant supervisor Mike Thompson said the Dutch Harbor plant will probably remain closed in the near future.

Twenty people will be laid off by the closure and only one person will remain behind to maintain the barge. □

Naknek demo to chair new fish committee

Representative-elect Adelheid Herrmann (D-Naknek) has been selected by the majority coalition of the Alaska State House of Representatives to chair the Special Committee on Fisheries.

Herrmann is one of six rural legislators who have joined with other House members to form a coalition of twenty-seven members.

A Cold Winter Coming

for salmon buyers

by Brent Evans

'Salmon in the ice-box,
Salmon in the sink.
Salmon on consignment,
Floating in red ink.'

Step inside the corridors of any major processor or broker of frozen salmon and feel the chill. It's the cold draft of millions and millions of unsold frozen salmon; it's the despair of playing Japanese Roulette and losing.

"I've been in the fish business all my life. My father was a canner in Alaska . . . I've never seen it as bad as it is this year," says a manager of one seafood company. "Somebody's going to get hurt."

This year's Bristol Bay record run is a classic case of how volatile and dangerous the salmon market can be. By all accounts, both American processors and Japanese importers (trading companies and fishing companies) stand to "lose big" in 1983. Some companies, like Vanguard Fisheries, which filed for bankruptcy under Chapter 7 in Seattle, August 12, don't have the capital resources necessary to withstand initial losses. Other companies, already weakened financially by high interest rates and poor cash flows, could be forced into selling product at a loss in order to make their first quarterly payments to, as yet, friendly bankers.

Japanese buyers, too, are suffering from the plunge in the price of salmon. "We're absorbing most of the loss this year, not American processors," says a spokesman for one Japanese trading company. "We had the pre-season contracts based on the projected run and we lost. We had to take the salmon at the agreed upon price no matter what wholesalers in Japan will pay us for it. Unfortunately, most American fishermen and processors never, ever believe we lose money."

By all accounts, the knife cut both ways this year. Some American companies have reportedly done well by wisely sticking to pre-season arrangements and avoiding the temptation of bidding for fish without a guaranteed buyer. Most, however, took the fish. The excitement of the enormous run must have infected buyers as much as fishermen. How else to explain the enthusiastic buying of salmon that went on and on, days, even weeks after it was common knowledge that the Japanese weren't buying, that the Japanese were desperately trying to back away from previous commitments?

Frozen storage facilities in Seattle and Tokyo are bulging with salmon. The question is: whose is it? Reportedly, many American brokers and packers either didn't believe their Japanese counterparts that the market was bad, feeling they could hold out for higher prices, or they found transportation routes south overloaded and shipped salmon to Japan without a buyer. No one knows how many million pounds of sockeye left on trampers from Bristol Bay with no place to call home, but *everyone* knows there is a tremendous plug of fish in Japanese and American cold storage which inevitably has to be offered to the market at a price the market will accept. This year, for many, the price won't be enough.

How did matters get so bad, you ask. Well, fishermen aren't the only ones who know the price goes up sometimes, and sometimes it goes down. Despite the enormous financial and economic leverage of Japanese trading companies, the price of salmon *in Japan* depends to a great extent on the confidence of those closest to the market, the primary wholesaler. The Japanese wholesaler, or niuke (nee-oo-kay), is currently buying very little salmon, even though the price is low. He knows it will go lower. The danger for both American and Japanese

"Imported salmon fits neatly into an allotted time frame in the minds of most Japanese buyers," says one American processor who sells a great deal to Japan," right behind deliveries of Japan's mothership fleet and coastal fishermen, and right before the large Hokkaido chum runs in September and October. If the wholesalers lack the confidence to buy and distribute imported salmon aggressively during that interim, imported salmon could be largely ignored by the market."

That is the current dilemma. Though prices are low, wholesalers are only buying what they need on a daily basis. Why buy on speculation when any day now, some American packer is going to break, sell off his product at a loss and pay his banker?

Under normal conditions; the salmon market in Japan develops slowly each year. Buyers and sellers of the number and quality of fish available, of overall consumption, of last year's inventories, of weather and any number of other factors. Their profit margins are close, the volumes involved are large, and mistakes can be costly. They've all been burned before.

As a result, salmon consumption builds slowly. As projections and estimates match with actual harvests, as price expectations match actual prices, enthusiasm among wholesalers and retailers builds. Salmon gets sold . . . and eaten.

This year that scenario quickly fell apart. Even before the season began, the market was depressed by large inventories of frozen salmon from last year. Some estimates pegged the holdover as high as 70,000 metric tons, the highest level seen since the disastrous year, 1980. Still, Japanese buyers projected a

see **SALMON BUYERS** page 48

Fall 1983 Journal

continued from page 7

starting price for Japanese mothership salmon (semi-dressed, 3 fish/10 kilo box) at 1,750 yen/kilo, down from 2,000 yen the year before, but not all that bad either.

Every year, American and Canadian salmon get linked to this price, usually starting 200-300 yen lower for False Pass sockeye, and so on, for other areas. This year, working back from these prices and using projected runs in Alaska to estimate the overall harvest, Japanese importers made pre-season contracts with some American packers for a reported $1.65-1.75/pound. These prices in turn influenced processor-fishermen negotiations for ex-vessel prices. By July, the market, the importers, the processors, the fishermen—all were expecting an estimated 21 million salmon to be taken in Bristol Bay. Instead, 36 million were taken from the largest run in history. Wholesale prices plummeted. Mothership prices slid to 1,250 yen/kilo and purchasing of imported salmon ground to a halt.

Conditions were made worse, however, by a number of other factors. Russia closed its north Pacific waters to Japanese fishing ahead of schedule this year. Japan's mothership fleet returned home and its catch went on the market all at once, forcing down prices. In Bristol Bay, the salmon tended to be small, 2-4 pounds instead of 4-6 pounds and the enormous run coincided with sultry weather and warmer water. Combined with long holding times, these factors resulted in poorer quality, lower grade fish. The small sizes impinged upon both the pink and chum markets, and price fell.

For those who think having fish is the same as having money, the buying continued. Wiser heads got out fast. Japanese wholesalers were for a while "in an absolute panic." The buying stopped in Japan in the second week of July but went on for another two weeks in Alaska. For some who had turned down Japanese offers to buy at $1.60 the week before, there was only the bitterness of knowing no one would now buy their fish at any price.

Vanguard Fisheries is perhaps just the first to fall out. Owned and operated by Vince Goddard, a talented young entrepreneur with lots of Japanese expertise, Vanguard Fisheries aggressively sought fishermen and fish deals this spring. An agreement to market fish from the Copper River Fishermen's Co-op was one such arrangement. The company also took the plunge and set up processing operations and hired floaters, moving from brokering to buying their own, a calculated risk that didn't pay off. When the company filed for bankruptcy in early August, it listed assets of $300,000 and liabilities of $1,000,000.

The problem, then, is salmon: too much bought from fishermen at too high a price. Rumors in Seattle say that anyone that relied heavily on the frozen market this year could be in trouble. Most readers will know who they are.

The market right now is like the great earthen dam at the base of Mount St. Helens holding back what once was Spirit Lake. Everyone knows it's going to go, the only question is *when*. In the case of the salmon market in Japan, everyone knows the plug of salmon will have to go and that the price will fall with it. For some, there may be an axe on the way down, too. □

n of which extends into the ern District. The stocks r be 200 fathoms and r.

Northern District opened for king crab fishing May 1. The nit is 5½ inches. □

own king crab

ur boats check Shelikof

success of the Adak brown crab fishery has created t in exploring Kodiak's of Strait for brown king crab

rmit-only season opened in May 1. Four vessels applied rmits and headed out to . Small numbers of brown ab have occasionally shown he red king crab deliveries, ether Kodiak has any concen- of stocks is unknown. □

Tanner crab

Still scratching in Aleutians

There was little effort on the Aleutian tanner crab stocks after the April 15 closure of the Adak brown king crab fishery.

In the Western Aleutian District there was no fishing the last part of April and the season's catch stands at 463,000 pounds.

In the Eastern Aleutians a few local boats continued to scratch into May delivering about 10,000 pounds a week. As of May 4, the total harvest for the season was 516,000 pounds. □

Small fleet still on Bering Sea

In the Bering Sea the tanner crab fishery continued to be a shadow of days gone by. estimated 30 to 40 vessels continued to fish into the spring and, by May 4, had delivered 4.3 million pounds of bairdi and 11.7 million pounds of opilio tanner crab.

In 1982 the bairdi deliveries had reached 8.4 million pounds by the first of May and the opilio deliveries had reached 17.7 million pounds. There were more than 100 boats on the grounds during the 1982 fishery, about double the number of boats which fished the 1983 season. □

Shrimp

No joy at all in Kodiak

Kodiak fishermen have pretty much written off a spring shrimp fishery and are looking for whitefish markets. On April 25 the 86-foot stern trawler *Dawn*'s owners removed the vessel's outriggers as part of the conversion of the vessel from a double-rigged shrimp trawler

See **GROUNDS** page 42

June 1983 Fish Journal

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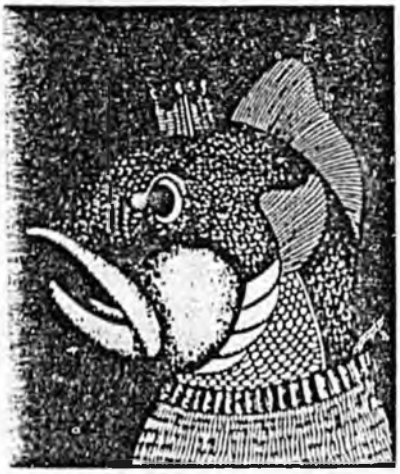

KING

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From the Grounds

continued from page 37

to a single-rigged dragger capable of mid-water trawling.

"It's the end of an era," commented part owner Al Burch. The *Dawn* was the first double-rigged trawler with a stern ramp to fish shrimp in Alaskan waters. It sailed into Kodiak in 1971, the year of the record 180 million pound shrimp harvest.

Robert J. Browning described the *Dawn* as "a pioneer vessel" which "quickly became a highliner," in his book "Fisheries of the North Pacific."

"We hope this will be the beginning of a new era—the era of whitefish," said Burch.

The Fish and Game research vessel *Resolution* left Kodiak May 9 to begin the annual shrimp survey, though biologists doubted there were any concentrations of shrimp left.

Recent work by Fish and Game biometrician Steve Thompson indicates there is a strong correlation between the decline of the Kodiak shrimp stocks and increasing water temperatures.

The recent warming trend, which began about 1975, was enough to cause stock reduction, Thompson's analysis of historic data showed. His work also indicated that shrimp stock declines are also correlated with the presence of pollock on the shrimp grounds. The presence of cod on the grounds is followed by a decline in the shrimp stocks a year later.

All three elements—warm temperatures, increased pollock stocks and increased cod stocks—are present in the Kodiak area. □

Shrimp
Cook Inlet looks bad

Cook Inlet's shrimp stocks appear to be collapsing and whether there will be a 1983-84 season depends on the results of the May 18-24 shrimp survey. "Even the areas not fished, the Outer and Eastern Districts, are affected the same way as the areas fished," reported the Homer shrimp management biologist.

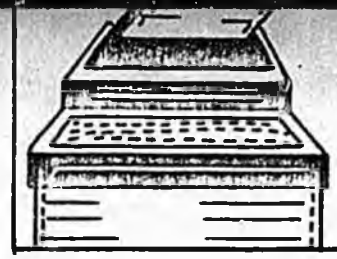
The disappearance of Cook Inlet's shrimp stocks coincided with the appearance of an unusually large biomass of young pollock. The pollock do not appear to stay in the inlet for more than a year.

Last year biologists saw the first evidence of a decline in the Cook Inlet shrimp stocks and slashed the quota from 6 million to 3 million pounds. Humpy shrimp populations were the first to disappear, followed by pink shrimp populations.

Despite one of the most conservative management strategies in the state, the shrimp population continued to spiral downward during the 1982-83 season. □

Whitefish
New pollock school found

A second major school of spawning pollock was discovered about April 20 by Mel Wick while enroute to Prince William Sound



FROM THE GROUNDS

Herring

PWS a bust with 2,600 tons

Bad weather and reluctant herring plagued this year's Prince William Sound herring fishery. During the only opening for seiners 2,600 tons of the projected 5,000 ton harvest was taken in the Naked Island area. The fleet then settled in to wait for the Montague run, but the Montague run never showed.

By the first week in April, marine mammals and birds were congregating in Prince William Sound right along with the seiners and tenders. Biologists estimated that the 20 companies buying herring had fielded "a tender for every seiner."

As 70 knot winds whipped the sound April 3, most of the fleet huddled in Cordova Bay. "It's like a floating city out there," commented one resident.

On April 11 snow fell in Prince William Sound and some boats reported three inches of the stuff on their decks. Snow and fog kept the spotter planes out of the air and fishermen worried that the herring might spawn befo anyone knew the fish were ripe.

On April 14, despite blowing snow and rain, the Naked Island run boiled up. Spotter planes were forced to fly at 200 feet in order to see the fish. In one hour the estimated 70 seiners on the Naked Island grounds took nearly 2,600 tons of herring.

In Montague Island's Rocky Bay the weather was so bad and the water so stirred up no one could see fish and the boats had to set blind.

"Even so six or seven boats managed to set on herring," said the Cordova Fish and Game management biologist. Total catch from Rocky Bay was 146 tons.

The big surprise was the size of the herring in the Naked Island area. "They're the biggest herring we've ever seen—very comparable

Spring 1983 Fish Journal

station in Cordova for five-day periods, and will bring with it a double crew to insure 24-hour operation. □

Processing Wrangell plant closed for 1983 season

Harbor Seafoods, Wrangell's only seafood processing plant, closed its doors in early May and says it will not operate for the remainder of the 1983 season. A spokesman for Harbor Seafoods said the company has suffered significant operating losses during the past several years and would have again lost money had the plant remained open.

Harbor Seafoods is owned by the Alaska Lumber and Pulp Company, a subsidiary of a Japanese-owned corporation. The timber company acquired Harbor Seafoods in 1974. The Wrangell plant employed about 20 people, but during the peak of the salmon runs the work force swelled to over 100. Harbor canned and froze all species of salmon from seiners, gillnetters and trollers delivering there and to the company's tenders. □

Canadian seized for poaching

The U.S. Coast Guard seized the Canadian halibut longliner *Cassiar 67* in Dixon Entrance for illegally fishing in U.S. waters. The cutter *Cape Hatteras* intercepted the Canadian fisherman 40 miles south of Ketchikan shortly after midnight on May 11.

any renegotiation of the U.S.-Canada salmon treaty which has been stalled by vehement opposition from Alaska's fishermen. The British Columbia position was conveyed to Canada's Minister of Fisheries, Pierre De Bane, in Ottawa on May 11. De Bane is expected to issue a statement on his country's position on the treaty by the end of May.

The Canadians have threatened a fish war in the event the U.S. refused to begin managing along treaty guidelines this season. In such a "war" Canada would cut enhancement efforts on rivers shared with the U.S., increase catches on those rivers, and allow their troll fishery to take king salmon in much larger numbers

Alaska and the U.S. responded to the Canadian threats by categorically refusing to consider a fish war as a viable response. Alaska Commissioner of Fish and Game Don Collinsworth said, "Alaska will not fire the first fish," when asked about participation in a dispute. Alaska Governor Bill Sheffield is personally overseeing the feelers from Alaska, through the State Department to Canada and has thus far assumed a conciliatory stance. However, Sheffield has outlined his objections to the current version of the treaty and clearly will not accede unless some changes are made. The consensus among U.S. fishing interests and politicians remains in favor of a treaty, but against the present version. □

Hoax brings false lead in 'Investor' murder case

Mike Douville

A former mental patient in Indiana claiming to know the whereabouts of a surviving crewman from the fishing vessel *Investor* led Alaska detectives on a chase to that midwestern state in April, according to a story in the *Bellingham Herald*. The *Investor* burned off Craig during the 1982 season after its skipper, his family and crew were murdered.

The tip from Indiana proved to be a hoax. It began on April 11 when a man telephoned long distance to Alaska State Troopers in Ketchikan and asked where he could contact the parents of one of the *Investor* [illegible]

impossible.

The man who called Ketchikan described the crewman "down to the last hair," according to the Troopers. He also knew the answers to questions about the case that investigators believed were known only to them and the killer or killers.

Investigators learned that the long distance call was made from a home in Goshen, Indiana, and they contacted the Goshen police. Two Alaska detectives then flew to Indiana and, with the Goshen police, took the caller into custody April 24.

Under questioning, the man's story held up for about two hours, according to the investigators, but eventually it broke down and deteriorated into a wild tale laced with paranoid conspiracy theory and inaccuracies about the murders.

Investigators then learned the man's real name from a mental hospital to which he had [illegible]

for the group which will plant said daily fish auc be held, offering salmon, bottom fish during the The plant will be equ bread, fillet and c process the fish and c spokesman said Crysta will be competitive witl rates for processing and l

Sealaska timl fined $9,500

Sealaska Timber Cor has been fined $9,500 fo timber into a salmo steelhead spawning cr Prince of Wales Islan violation occurred in 1981, when a large nur trees were found in St Creek.

Sealaska Timber is ow the Sealaska Corporat Juneau-based Alaska corporation which also Ocean Beauty Seafoods, the State's two largest pro companies. Sealaska pleaded no contest to the violation charges in Ke District Court. □

New direct for Fish Boa

Beth Stewart has been a ed executive director o Alaska Boards of Fisheri Game, replacing Mil Zah left the job in January serving for less than one Stewart was formerly the s assistant to the Commissior the Alaska Commercial Fis Entry Commission. She has in Alaska since 1958 an served in government pos several years.

Stewart said her first task as the administrative el the two Boards would be to the State's six Regional Fis [illegible]

Hard times

Sealaska backs out of NEFCO deal

After flirting with the idea for over two years, Sealaska has backed out of buying the Alaska processing plants of the bankrupt New England Fish Company (NEFCO).

The December 16 announcement is a blow to the settlement of the NEFCO estate, which is still trying to pay off a reported $35 million in unsettled claims.

Shortly after NEFCO went broke in May 1980, Sealaska agreed to pay the NEFCO estate $11.1 million for properties at Sand Point, Uganik, Chatham, Noyes Island, the Ketchikan Cold Storage, and the Totem Packing Company (formerly Nefco-Fidalgo Packing Company).

Sealaska lowered their original offer to $8 million in November because of the severe recession in the salmon industry. The purchase was also hampered by a still-pending class-action lawsuit called the Domingo case, in which a federal court found NEFCO liable for racial discrimination.

Sealaska spokespeople on numerous occasions said the deal would only be consummated if the lawsuit is settled.

Sealaska Corporation is Alaska's largest privately-owned business corporation and is the Alaska native regional corporation for Southeast Alaska.

Labor

Dutch Harbor workers OK union

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The salmon ir between the U.S. about to yield a t to the chief n announced compl treaty in Se December.

After going h two weeks, Lee Canadian nego Shepard were con final version of th be ready to pre respective gove December's end.

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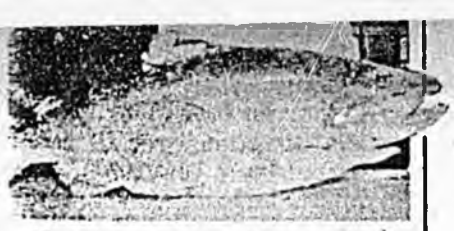
The draft treaty al that the U.S. federal will fund the expan Little Port W[illegible]



low to cook 65-pound salmon?

Troller Jim Barker of Wrangell ·fts a 65-pound king salmon hich he caught on July 4, near . Lazaria Island, on the *F/V ar.* Barker entered the giant ng in the Alaska Seafood Mar-·ting Institute's contest for the ggest and best-handled salmon the 1983 season. So far, ırker's entry is the front-nner. Plans are to present the lmon as a "centerpiece" at the ·sh Expo seafood reception, Oct. at the Westin Hotel in Seattle. Barker wins, he will be flown to ·attle where he can be on hand · tasting of his winning fish. ccording to ASMI, this will be e largest salmon ever cc ked hole; and no one knows exactly ow to go about it. Poach it? iat's a possibility if a poaching n big enough can be found. Chef einer Greubel of the Westin otel surveys his challenge pper right) along with Jon owley, banquet coordinator. □

Grace capsized and sank 22 miles north of Dutch Harbor on Aug. 14, bound for St. Matthews Island with fuel tanks full and loaded down with crab pots.

Lost are skipper Harold Pederson of Seattle; Randy Ficks of Seattle; Jim Converse of Engadine, Mich.; and Annette Fletcher of Port Townsend, Wash.

Surviving the sinking was a fifth crewman, Jeff Anderson of Everett, Wash., who escaped in a liferaft. He was picked up about 24 hours later by a Panamanian fishing vessel and taken to Dutch Harbor in good condition.

Anderson reported to Coast Guard authorities in Dutch Harbor that the crabber capsized so quickly that there wasn't time to send a May Day or put on survival suits. Other crewmen had escaped the capsizing vessel, he said, but they were limp in the water, and he was unable to paddle to them in the heavy seas.

The vessel had left Dutch Harbor after some temporary repairs had been made to her rudder system. Anderson reported to investigating Alaska State Trooper John Leonard that the vessel departed Dutch Harbor with "a slight list to port" and that the boat had been responding "sluggishly" during the trip. The search for the missing crewmen was hampered by heavy fog, said the Coast Guard. □

which sank after being hit by two giant waves, watched as a shark bit off the leg of crewman Dennis Murphy who then swam off to lure sharks away from him and a female crewmate. Crying, Boundy told the story to reporters from a hospital bed in Townsville, Australia. Murphy was killed, he said, and the sharks returned a few hours later and killed the woman. Six planes and a fleet of local trawlers searched for survivors for two days before finally spotting Boundy on Lodestone Reef, part of the Great Barrier Reef. □

Old NEFCO cannery to become a resort

The Chatham salmon cannery, located on the southeast corner of Chichagof Island, is slated to become a recreational community. The 55-acre property was purchased by three Juneau residents, including former Attorney General Av Gross. Built in 1905, the Chatham Cannery was purchased from the holdings of the former New England Fish Co. for an undisclosed amount. NEFCO closed the cannery in 1974 when it failed to meet E.P.A. standards; the following year a fire burned the main building. Plans call for a fuel dock, marina and general store. Other partners in the venture are Lee Coffman, president of Alaska Savings and Loan, and Bill Goertzen, a contractor. □

Low Prices and Short Season Squeezes Trollers to the Limit

by Karl Ohls

In the year when management had apparently stabilized, the Southeast troll fleet suffered an unexpected shock when salmon prices, all species, hit the lowest level in years.

"I hear it over and over again," said Jacqui LaRue, the Elfin Cove fish buyer for Pelican Cold Storage. "A guy bringing in a load of fish will say this is half of what he got last year."

Trollers have gotten used to premium prices for their fish, caught while feeding in saltwater, dressed on board the vessel and destined for the top quality market. From the fishermen's vantage point, the reasons for the price drop weren't clear.

Cal Boord, manager of Pelican Cold Storage, would only say that the prices "are reflective of the market situation worldwide." This means they were driven down by a combination of events, such as a devalued franc, high inventories, and, almost certainly, competition from Norwegian pen-raised salmon.

Whatever the exact cause, fishermen had the same answer when they were asked how their seasons were: "lots of fish, lousy price."

(At the dock in Pelican, the prices were $1.90 a pound for large red kings, $1.10 for medium kings, 73¢ for coho, and 35¢ for pinks. The buying stations, because of transportation costs, paid 5¢ less for each species.)

"I'd be sitting on top of a real nice season, except for the price," said Loren Carter of Tenakee Springs, skipper of the *F/V Relief*. He added that he won't be hurt by the season "because I've got the old slab paid for," but some other guys might not be so lucky.

Juneau resident Rod Pruitt, owner of the *F/V Kipling*, said, "Fishwise, I'm okay. I [illegible] I don't know if I'm going to make ends meet or not."

Chuck Piedra (*F/V Mercedes*) of Port Protection described 1983 as, "Financially, the worst season I've had in eight years."

The price for fresh troll-caught, dressed cohos is the real shocker. Jim Wild, an Elfin Cove power troller and handtroller since 1973, said that in a normal year he gets $10 for each 12 pound coho. "This year it's $6."

Jacqui LaRue, interviewed shortly before the Aug. 4 coho closure, said some guys had already

Troller Jim Wild: "We need help with the markets." Wild has developed his own markets for winter fish, but in the summer there are too many fish and not enough time.

Heading out from Elfin Cove: For Alaskan trollers, seasons are getting shorter and prices lower.

hung up the season and left. Some get disgusted and come in for most of the day. "Some are out twice as long because they're getting half as much."

Hugh Rietze, who, along with his wife Mary, buys fish in Elfin Cove for the Excursion Inlet Packing Co., said, "Of course nobody is happy with the price. But the fishermen have to realize there are ups and downs. I think most of them are taking it pretty well."

Alternate markets aren't really feasible for the trollers of the isolated north end. Jim Wild has his own markets for winter kings, but said that in the summer he handles too many fish. "It would take too much time to box them up and ship them out."

Wild is a recently elected member of the Alaska Trollers Association board of directors. He said he brought up at a recent meeting the idea of ATA somehow getting involved in the market situation. But the other board members felt there were too many issues upon us—the treaty, the single species fishery—to spend energy on it now." Others felt market problems should be left to the Seafood Producers Cooperative. Wild said there may be more interest in pursuing the matter at the end of the season.

"We need help with the markets," Wild said as he maneuvered his boat, the *Euphoria*, in the waters off Three Hill Island. Occasionally the conversation would be interrupted as he raised the line to bring in a coho or pink. "We can't dump off cohos at 68¢/lb. and expect to make any money."

With the troll seasons unlikely to improve, people in Elfin Cove and Pelican are starting to explore other ways of making a living, such as tourism. But there is uncertainty that people used to the rough and tumble commercial fishery would be able to comfortably cater to the needs of tourists and sportsmen. Also, no one knows if it would really generate enough business.

As for the future of the troll fishery, the fleet is divided into optimists and pessimists.

Jim Wild is an optimist. He points to the chinook quota not taking any further cuts and the unratified Canada-U.S. salmon interception treaty. "The governor is giving us support," he said, as he cleaned a humpy on one particularly slow day of fishing. "The state is starting to stand up for us and admit we exist. There's a heck of a lot more optimism than there was at this time last year."

He admits that there still may be some tough times ahead. "We've still got the treaty threat hanging over our heads."

Alaska trollers were outspoken in their opposition to the draft treaty because they felt the chinook cuts they would have to take were inequitable compared to what the Canadians would do in return.

Fred Howard, on the *Jolene M*, is also hopeful of better times ahead. He said there may be a light at the end of the tunnel in the governor standing up for the fishermen.

"Washington and Oregon are trying to get Alaska to sign the treaty," he said. "They ought to put their goddamn pressure on Canada and forget about Alaska because Alaska has things under control."

Rod Darnell of Elfin Cove is a pessimist. "As long as they keep a quota, there's no hope," he said. The managers aren't managing on the strength of the run, he added, and if there's a poor run it could be wiped out. Darnell's attitude toward management is that he's fighting a foreign government.

Darnell had spent the last couple days before the Aug. 4 closure rigging up a new trolling pole for his boat, the *F/V Pinta*. "I've only got one day of fishing left," he said. "Why should I rush out for 60¢ a pound?"

Darnell was optimistic about the fishery until he saw the price reduction. He caught 23 more king salmon than last year, but still isn't ahead. "I don't see how I'm going to make boat payments now," he said. "The state or the bank is going to repossess half the boats. The fishermen will become shoe clerks in town." He added that the only solution is to diversify into rockfish, cod and halibut.

Most of the fishermen on the north end commented on the high availability of king salmon in recent years. This was attributed to foreign trawlers being regulated a couple years ago to the west side of a longitudinal line running south of Yakutat.

The outcry over the presence of mysterious net-marks on troll-caught salmon also seems to have tapered off. Teresa Moen, the quality control supervisor for Pelican Cold Storage, said she does see quite a lot of them, possibly "more than one out of every hundred" fish. Rarely, though, are the marks bad enough that a troll salmon would be graded number two instead of number one.

Fish buyer Hugh Reitz in Elfin Cove said he's not seeing as many marks as in past years.

Still, almost everyone seems to have samples of nets, floats and other foreign fishing gear that they either found washed up on beaches or caught on their lines and stabilizers. The lack of marine organisms on much of the debris is evidence that it hasn't been in the water very long. This leads to the suspicion that some illegal foreign fishing is taking place close to Southeast.

All of these things add up to the conclusion that the troll fishery's problems aren't likely to be solved anytime soon.

Despite the preoccupation with the market problems, trollers still have plenty of complaints about the Alaska Department of Fish and Game's management of the fishery. For the last four to five years, trollers have been engaged in an ongoing battle with the state and federal fisheries managers over the optimum yield (OY) figure, or quota for king salmon. Each year, until this year, the trollers saw their allocation and seasons reduced so more chinooks could get back to the fisheries and spawning grounds of British Columbia, Washington and Oregon.

One common complaint was that when this year's quota was figured out, no one realized the prices would be so low.

"We could live with those prices if we could (continue to) fish," said Ernst Rasmussen, skipper of the

F/V Golden Eagle.

Even though all kinds of boats are used in the troll fishery, Rasmussen's vessel was one of the more unique sights in the Pelican boat harbor. It looks like a 53-foot pleasure craft. Rasmussen said he saw the trend in the troll fishery when he had it built in 1977. Just remove the trolling polls "and I can sell it as a yacht." No one would be able to buy it as a troller.

Myrl Hancock of Port Townsend, Wash., said his boat, the *F/V Murrlett*, and permit are now up for sale "for the simple reason that they've got me shut-down. I'm not allowed to fish." Hancock expects that his boat will stay tied up next year because no one will want to buy the package.

While Fish and Game catch statistics show that trollers are going to do the same or better than last year, no one in Pelican or Elfin Cove was very pleased with all the closures (Apr. 15 to May 15, most of June, and Aug. 4 to 14; also all federal waters from three to 200 miles shut down July 20).

Cal Boord at Pelican Cold Storage said the closure of the fisheries conservation zone certainly reduced his plant's ability to attract landings.

Rasmussen said that except for July, the closures came just when the fishing was getting good each month. Pulling out a tidebook and pointing to the series of building tides in early August, he said he would "trade all the rest of the year for the days from August 7th to the 17th."

'There's going to be more people winter fishing than anybody has seen before.'

The seasons and the prices are going to "force people to winter fish," said Fred Howard, from Whidbey Island, Wash. "There's going to more goddamn people winter fishing than anybody has seen before. Half the goddamn quota will be filled" (by spring).

The closures and the prices also have a major impact on the troll fishing communities and on the businesses that service the fleet.

"I have a feeling a lot of people are just making do with what they have to have," Walton said. "If it's not essential, they're getting it fixed. He added that between prices and the pressure of the season, a lot of fishermen don't want to lose fishing time driving into the cove to get something repaired.

Leslie Dudley manages Swanson's General Store in Elfin Cove. She has noticed that fishermen are very cautious with their money; they just buy the basics, "milk, eggs, bread."

Vivian Max, a lifelong Pelican resident and the owner for the last ten years of Vivi's Cafe, said she used to be able to get up in the morning, look at the boat harbor, and tell how busy her day was going to be. Now, they "all come in at once and leave at once."

Sitting at a table in her cafe, Max said, "Today (Aug. 5) probably is one of my busiest days all season. You can see the difference between yesterday and today." This unevenness causes problems in ordering food and hiring employees. Nonetheless, "I'll still keep going as long as it doesn't get worse."

Still, some people have tried to think up solutions. Juneau troller Rod Pruitt on the *F/V Kipling* has a simple solution to the whole dilemma. First, he said, adjust the Fraser River section of the proposed treaty so that the Canadians get 60% of the sockeye run and the Americans 40%. In return for this, he believes, the Canadians will allow the Alaska trollers the 20 year average of their king catch, 300,000. The last thing that needs to be done is reopen the traditional trolling grounds west of Cape Suckling to relieve pressure on Southeast.

"With those three simple things, we could do it," Pruitt said. "We could survive under a number and the troll fleet could return to a state of health."

Management and market problems often have a way of resisting simple solutions. Unforeseen things crop up.

Asked about the future of trolling, 23-year-old Dwight Riederer, skipper of the *Wendy A*, said his hope was that "20 years from now, I don't want to be down in Ketchikan, huddled around my stove, waiting for a 10-day opening in July." □

ADN 1-29-84

King crab demise hastens switch to groundfish

By ANDREW MacLEOD
United Press International

KODIAK — Collapse of Alaska's red king crab stocks — once the jewel of the Bering Sea — has spurred American fishermen to enter the foreign-dominated deep water fishery, officials say.

"The decline in the king crab fishery is largely responsible for the development of the bottom fishery as we know it today," said Jeff Stephan, manager of the United Fishermen's Marketing Association.

While some in the crab fleet are shifting to such species as cod and halibut, owners of many of the larger boats are concentrating on the ground fishery.

The ground fishery includes pollock and other high-volume, low-price species. It traditionally has been bypassed by American fishermen who concentrated on catches of lower volumer and higher prices.

Until the passage of the 200-mile limit in 1976, Americans had little opportunity to claim the 1.5 million metric-ton harvest of ground fish off Alaska.

"It is hard to say, but I would say you're looking in the next two years at 40 to 60 percent of the crab fleet seriously looking into, if not making, the necessary (mechanical) conversions," Stephan said.

The collapse of the red king crab industry came only three years after a record harvest of 190-million tons worth $169 million. The collapse has been particularly hard felt because recovery of the stocks is expected to be a slow process.

Cancellation of the season in September, the first time since statehood it had been closed, was prompted by decimated stocks. The exact cause, or causes, of the sharp drop in crab population is not known.

Disease, increased predation, a warming of water temperatures and just a natural change in the life cycle of the crab have been offered as answers.

What is known is that for several years biologists noted a drop in the number of young males entering the population and an alarming increase in the number of barren females.

"I don't think there is any one factor that is more responsible than others," said Martin Eaton, a state shellfish biologist who has studied the problem.

Biologists believe it will be at least eight years before the stocks recover. During that period, no commercial harvest is expected.

"The whole thing makes us pretty uncomfortable," said fisherman Vern Hall. "We've got a resource that is going down hill in several

See Page J-3, FISHERMEN

Fishermen gear up for ground fishery

Continued from Page J-1

ways."

With the prospect of a long wait before the red kings return, fishermen have an added incentive for considering the $300,000 to $750,000 cost involved in coverting their boats for the ground fishery.

Along the misty docks of Kodiak, which bills itself as the "King Crab Capitol of the World," not all are happy about the looming changes.

Control of the multimillion-dollar ground fishery off Alaska will not occur fast enough for some fishermen.

"Overall, I would say the vast majority of the people don't have the money to convert," said Ron Jolin, who operates a 90-foot schooner and 44-foot seiner.

In addition, there is little onshore processing capacity and the Alaskan fleet, for the most part, is diversified. To enter the ground fishery, some fishermen will have to forego other lucrative catches.

Jack Hill, operator of a 90-foot boat, said he would have to give up tendering salmon and fishing for tanner crabs and halibut to enter the ground fishery.

"Why should I convert?" he asked. "So I can give up (a good income) to get into a high-volume, low-price fishery."

However, some of the key historic obstructions to American fishermen entering the ground fishery, which is concentrated in the Bering Sea and dominated by the Japanese, are crumbling.

Japanese officials, faced with the prospect of being forced out of the 200-mile limit, agreed in November to nearly double their purchase from U.S. fishermen of the annual ground fish catch.

"The U.S. harvest has increased 10 fold since 1980 and the new agreement will put us in the range of 500,000 to 600,000 metric tons," said Bill Phillips, a fisheries expert on the staff of Sen. Ted Stevens, R-Alaska.

Anchorage Daily News/Craig Bartlett

Kodiak king crab fishermen deliver their prized catch in 1981 during better times.

Lack of onshore processing facilities has been addressed by legislation backed by Stevens that would ease financing for converting onshore plants to handle ground fish.

"I think the transition that is now under way is off the ground and rolling," Phillips said. "The full integrated system is within reach in 10 years. The (control of the) harvesting is within reach in five years."

Counting onshore processing, Phillips estimates the ground fishery off Alaska could develop into one of the largest in the nation.

"We've called it a billion-dollar fishery when you look at the processing and associated industries," he said.

The shift in product harvested also would bring a change in markets and put the U.S. into competition with large-scale fishing nations, according to industry officials.

"With a ground fishery, you're talking a different ballgame. You're looking at a world market," Stephan said.

Sept. 26, 1983

Strapped gillnetters blame politics

by Andy Ryan
Times Juneau Bureau

Juneau — Despite record runs of sockeye and pink salmon this year, gillnet fishermen in Southeastern Alaska say they are on the brink of financial ruin.

They blame their problems largely on past policies of the state Board of Fisheries, which they say have discriminated against them in favor of purse seine fishermen.

Two weeks ago, gillnetters presented Gov. Bill Sheffield and Fish and Game Commissioner Don Collingsworth with a set of statistics — culled from state records — showing that average Southeastern purse seine catches have jumped by 500 percent since 1975, while gillnet catches have stayed about the same.

The figures, compiled by Jeron Bruce, director of the United Southeast Alaska Gillnetters Association, also show that Alaskans hold about 69 percent of the state's 486 gillnet permits but just 45 percent of the 421 seine permits.

Seiners use a larger, different kind of net than gillnetters use. Also, seiners typically have a six or seven-person crew, compared to gillnetters, who tend to be soloists.

This year will bring the largest salmon harvest in the region since 1949, Bruce said.

But gillnetters' share of the take is expected to be about the same as in the past few years.

In fact, gillnetters' percentage of the total catch may be the lowest since 1900.

"Some people may be able to weather it better than others, but everybody is taking a beating this year," Bruce said.

The plight of the gillnetters, he said, has been caused by mismanagement in the Division of Commercial Fisheries and by "the political nature" of the Board of Fisheries.

Politics, he said, has kept gillnetters out of prime fishing areas, while purse seiners have filled their holds with salmon.

With Sheffield's election, however, and with his appointment of new members to the Board of Fisheries, gillnetters have begun to talk about a return to prosperity.

"We're real hopeful with the new administration," Bruce said. "There's a new commissioner of fish and game and an entire new board of fisheries. The time has finally come when the state is going to respond to the problems facing the gillnet fishery since 1977."

At their spring meeting, members of the Board of Fisheries voted that when they meet again in February they will take up how salmon should be allocated among fishermen using different type of gear. Previous boards had refused to consider the issue of allocation.

Steve Pennoyer, commercial fisheries director, said Sheffield and Collingsworth have agreed to try to bring seiners and gillnetters together before the board meeting to try to iron out their differences. But the state has been careful not to take sides in the matter, he said.

There is no doubt that seine catches have risen while gillnetters have been treading water, Pennoyer said.

But he noted that seine fishing on pink salmon stocks was cut back during the early 1970s for conservation reasons. It has been only recently, he said, that pink salmon — the mainstay of the seine industry — have made such a formidable comeback.

In the past, he said, the Board of Fisheries operated under the general axiom that fish stocks should not be reallocated — that is, dramatically shifted from one gear group to another.

"They thought that you shouldn't simply be able to waltz in and take the fish away from somebody else," Pennoyer said. If board members do decide to reallocate the fish, he said, they will be in for some tough choices.

Terry Gardiner, a former state representative from Ketchikan and a gillnet fisherman for 14 years, hung up his net this year and stayed home to work at his seafood packing business.

Before the number of salmon fishermen was restricted in the early 1970s, he said, there was a 35 percent annual turnover among gillnetters.

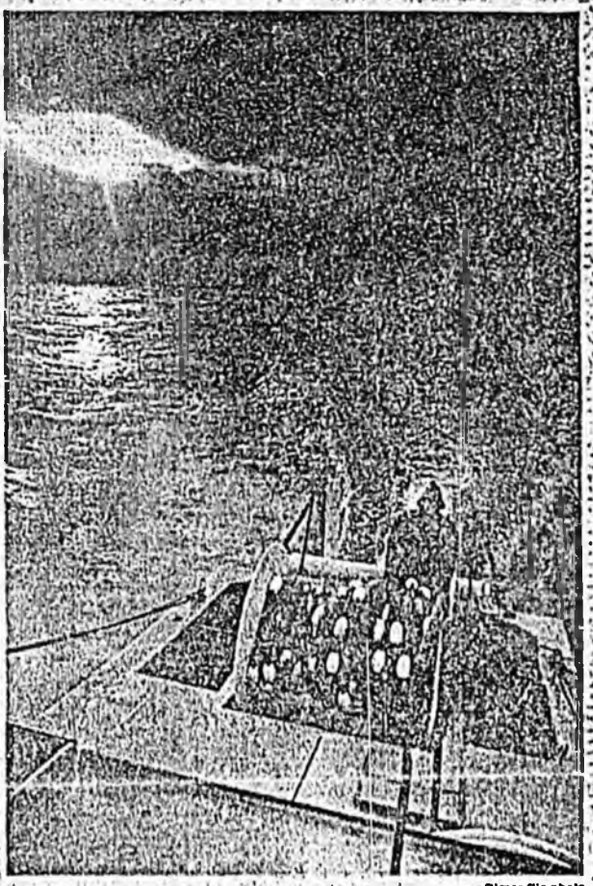
Gardiner said figures showing higher catches by seiners are a result of dramatic increases in pink salmon runs. And the areas where gillnetters fish aren't the areas where pinks are being caught.

As to the question of whether the Board of Fisheries has discriminated against gillnetters in assigning the areas in which they may fish, Gardiner said the board has simply maintained the status quo for the past 15 years.

"The board really hasn't done anything one way or the other. So they really haven't discriminated for or against someone, unless you initially make the moral judgement that the status quo was wrong," he said.

Gardiner was asked if, in light of changes in catch patterns in Southeastern Alaska, the salmon fishery needs to be reallocated between different gear groups.

"If I was a gillnetter I'd say it does, if I was a seiner I'd say no," Gardiner said. "If I was God, I'd say cut the baby in half."



Times file photo

Alaskan gillnetters feel they are being shorted in favor of purse seiners

Finance

$3 million in fed. loans ok'd

Three million dollars in emergency, low-interest loans have been made available from the federal fisheries loan fund through the Department of Commerce. The funds are intended to help fishermen avoid default on fishing vessel mortgages.

According to NMFS, the administrative agency in charge of the fund, mortgages must be on vessels of at least five net tons to be eligible for assistance. The money can be used to pay off mortgages incurred to finance the building, rebuilding, or reconditioning of those vessels.

One million dollars has been set aside for fishermen whose vessels are financed under the Federal Fisheries Obligation Guarantee Program. The deadline for application is June 1, 1984.

The remaining two million dollars is earmarked for fishermen whose vessels are not financed through the federal program. Application for this money is open from January 15 to March 31, 1984.

Contact the National Marine Fisheries Service for more information.□

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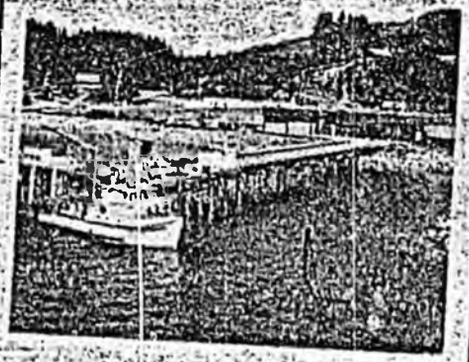


Sea Galley wants out of Seldovia plant

Sea Galley Stores, Inc., which owns Sea Galley restaurants, is trying to sell the Seldovia seafood packing plant it has owned for two years. The company blames heavy losses partially on the decline in king crab production and other operating problems.

The Seldovia plant produced portion controlled packages of crab, halibut, and salmon, most of which was for the Sea Galley restaurants. The company is also selling its meat processing and packing plant near Seattle.

At press time, no buyer had been found for the Seldovia plant on the south side of Kachemak Bay on lower Cook Inlet. Opening of the plant for the 1984 season will depend upon a successful sale. Numerous local fishermen have been delivering to Sea Galley.□

Seward waits for opening of shipyard

An ill wi carries f gift to K

On Dec. 15 the ste fish blanketed dow nt Residents buried th their coat collars lon find a phone and call demand olfactory reli

The odor was wafti westerly air current Dry, the fish meal pl of Kodiak is in the purchasing.

City Manager Sam asked that the fish been sitting in Bio-Dry for several months be c which is exactly what manager started doing can't believe they didn an offshore wind," said

Irate citizens calle Gesko called Police. Martin and Martin wen officer out to Bio-Dry t manager to cease and de

Sheffield pick Admiral Knap for cabinet

Coast Guard Rear A Richard Knapp has been by Alaska Governor Bill Sh to head the state Departm Transportation. Knapp, currently the commanding of all Coast Guard person Alaska. He will retire fro Coast Guard with 32 years vice to accept the cabinet p March 1.

Knapp is filling a vacancy $73,000 per year job that wa when Sheffield fired fo Commissioner Tom Casey Department of Transportat the largest department in government. Knapp has living in Alaska for three yea Sheffield said Kna experience as a

VOL.XXXVIII, NO...57, 164 PAGES ANCHORAGE, ALASKA, FRIDAY, SEPTEMBER 16, 1983 PRICE 25 CENTS

Crab stocks decimated; seasons canceled

By CHUCK KLEESCHULTE
Daily News business reporter

For the first time since statehood, Alaska officials Thursday canceled king crab seasons this year off Kodiak and in Bristol Bay because surveys show crab populations at critically low levels.

The closures by the state Department of Fish and Game in the two areas that produce most of the state's red king crab mean Alaska fishermen may harvest as little as 4 million pounds of red king crab this year, compared to 175 million pounds just three years ago.

Overall, the total harvest of all species of king crab — red, blue and brown — likely will be less than 25 million pounds in the 1983-84 season, officials say. That compares to 193.1 million pounds hauled in at the peak of modern crab catches in 1980-81.

The economic impact of the closure could be devastating for many Kodiak fishermen, who already are reeling from poor salmon harvests off the Southcentral island this summer.

"I've never seen a season this bad. It will just be disaster for a lot of fishermen. Hopefully, most will be able to hang on until tanner crab season opens (in February), but it is going to be tough," said Hank Eaton, a Kodiak commercial fisherman for 44 years.

Marty Eaton, a state regional biologist in Kodiak, said preseason surveys in Bristol Bay estimate there are only 9.6 million female crabs in the bay, down 50 percent from last year. The state estimates that 20 million females are needed to maintain healthy breeding stocks in the bay.

The number of male crabs in those waters was estimated at 1.5 million, the lowest ever recorded.

Last year Bristol Bay produced 3 million pounds of red king crab. The state estimates the bay could have produced only 1 million pounds this year if the season had opened, but only at the risk of destroying future harvests.

Off Kodiak, where stocks are sampled by a different method, estimates are that there are only 5.5 million pounds of male crab, compared to 30 million pounds just two years ago. Many of

See Back Page, KING

King crab

Continued from Page A-1

the female crabs surveyed off Kodiak were barren of eggs, leaving less than 70 percent capable of reproduction, compared to more than 90 percent two years ago.

Biologist Eaton said that in Uganik Bay off Kodiak, every female crab tested was barren of eggs.

"If this isn't a disaster, I don't know what is. It is precedent setting for us to close entire grounds, but we've never seen such dismal stocks before," Eaton said.

He said the state closed the Kodiak season, which would have opened Sept. 25, and the Bristol Bay season, which would have opened Oct. 1, because stocks are still declining after last year's sharp decline.

Eaton said the main cause of the fall in stocks seems to be the increase in cod and halibut that feed on king crab larva and immature crabs. "Our surveys are sampling record cod and halibut stocks. And we are seeing a decrease in undersized crabs that points a finger at cod as the cause," the biologist said.

The state is still trying to determine the cause for the great increase in barren females over the past two years.

Last year, fishermen netted $116 million off state crab stocks. With further increase in king crab prices likely to be triggered by the reduced harvest, state officials said it is too early to predict the final value of this year's catch.

The closure means that the total Alaska red king crab catch this year will consist of:

- 200,000 pounds caught off Southeast;
- 300,000 pounds caught in early August in Cook Inlet;
- 750,000 to 1 million pounds that are expected to be caught off the Alaska Peninsula; and,
- About 2.5 million pounds predicted for harvest off Adak.

UNITED FISHERMEN OF ALASKA

319 Seward Street, Suite #10
Juneau, Alaska 99801-1188
(907) 586-2820

Cass M. Parsons
Executive Director

RESOLUTION NO. 1

WHEREAS market value of Alaska salmon is depressed from the high levels achieved during the late 1970's and early 1980's by as much as 40% on some species; and

WHEREAS salmon fishermen from all areas of the state in response to the favorable economic conditions of the immediate past made substantial investments in up-grading their vessels and gear; and

WHEREAS many of these fishermen now in the areas of Kodiak and Cordova and tomorrow in other areas of the state are over-capitalized in relationship to the current market value of their products; and

WHEREAS many of these fishermen, who are professionals with years of productive experience, will soon be faced with the dismal prospect of defaulting on their vesssel and permit loans.

NOW THEREFORE BE IT RESOLVED that the United Fishermen of Alaska requests Governor Sheffield to take immediate action in determining the magnitude of this problem; and

BE IT FURTHER RESOLVED that a program be created and funded to assist those fishermen who can demonmstrate the potential to regain their economic viability in solving their immediate financial problems.

Robert H. Blake
President

Date: 2/2/84

Juneau fish processing plant to close Dec. 31

By CHUCK KLEESCHULTE 12-6-83
Daily News business reporter

The only fish processing plant in Juneau will shut down and be put up for sale at the end of the year, the victim of high Southeast operating costs.

Kodiak King Crab Inc., a subsidiary of Ocean Beauty Seafoods, said it will close Juneau Cold Storage and sell the downtown waterfront property Dec. 31.

Victor Horgan, president of Kodiak King Crab, said in a phone interview from Seattle that the Juneau plant has consistently recorded operating losses. In recent years, it has been processing and freezing 3 million to 4 million pounds of seafood — red, chum, pink and coho salmon.

While declining to discuss the size of the losses, Horgan said the company had tried new measures during the past two years to stem the red ink.

"It's been a steady decline for the past three or four years. And we're convinced it just can't be turned around," Horgan said.

He said the plant was closing since its older equipment resulted in inefficiency and higher operating costs than newer ones in the state. And he said Juneau's location, a long distance from major Southeast fishing grounds, also hurt its chances for profitability.

The closing will idle seven full-time employees and nine hourly workers. During the summer, an additional 16 hourly workers were hired. The plant is Juneau's largest non-governmental employer.

Horgan said this summer the plant bought fish from 101 fishermen. The company is trying to help the fishermen find new buyers.

Horgan said the closing likely will not have a major effect on the state's fish processing industry.

The Juneau plant is owned jointly by the Japanese trading company Marubeni Corp. and by Ocean Beauty, a wholly owned subsidiary of the Sealaska Native Regional Corp. based in Juneau.

The closing will not affect Kodiak King Crab's Kodiak processing plant, Horgan said.

MEMORANDUM

State of Alaska
Community and Regional Affairs

TO: Lennie Boston, Special Assistant
Office of the Governor

DATE: January 24, 1984

FILE NO:

TELEPHONE NO: 465-4700

FROM: Jeff Smith
Deputy Commissioner

SUBJECT: Kodiak Near-Term Assistance Project

Attached is an executive summary for the project effort, as well as individual reports produced by each of the Departments represented on the interdepartmental working group. The executive summary represents a distillation of the positive action steps proposed by each Department that would contribute towards near-term economic relief on Kodiak Island.

DRAFT

Kodiak Near-Term Assistance Working Group

Executive Summary

An interdepartmental working group was convened January 12, 1984 to address Kodiak Island's current economic difficulties. The working group consisted of members from the Departments of Commerce and Economic Development; Community and Regional Affairs; Health and Social Services; labor; and Transportation and Public Facilities. The object of this working group has been to produce a report regarding the options and prospects for near-term assistance which the State could provide to Kodiak Island residents who are coping with dramatic declines in the region's fisheries related economy. This report focuses on specific actions which the State could take in the near future to provide for some level of immediate economic relief to the region.

This executive summary presents the cumulative positive actions proposed by the separate agencies which participated in the project working group. The work plan for this project is attached as well as the separate reports as provided by the participating agencies.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

A. Loan Extensions. The Division of Accounting and Collections considers formal requests for loan extension on commercial fisheries loans issued by the Division of Investments. Most annual interest and principal payments are due in a lump sum each October and November. This year, 53 loan extension requests have been received from Kodiak Island.

Action Steps: Processing of extension requests are receiving priority attention. As of 1/20/84, 38 requests were approved, 1 request was disapproved, and 14 requests are under varying stages of review. All applications are expected to be processed by early February, 1984.

B. Bulk Fuel Loan. The Division of Investments has a bulk fuel loan program to assist small communties in the purchase of bulk fuel. The six outlying communities on Kodiak Island are eligible for this program. Loans are interest-free the first year, 5% the second year, and graduated upwards thereafter. Karluk presently has a loan; Akhiok would qualify for a second-year loan. All of the other communities could qualify for the interest free loan. Application requires a letter from an authorized community representative.

Action Steps: The DCED has initiated steps to inform all communities of the availability of these loans and procedures required to apply.

C. National Marines Fisheries Services loan Program. NMFS has a limited loan program ($3 million nationwide) designed to assist fishermen in making loan payments on their vessels. Tax and accounting records are required, the borrower must be in risk of default but not in bankruptcy proceedings, and the vessel cannot be secondhand. One year loans can be paid off over ten years at a rate of 3%.

Action Steps: The DCED has initiated steps to provide the Borough of Kodiak with appropriate regulations and information.

D. Fishermen/Vessel Matching services. Out-of-state vessels which fish off the Alaskan coast traditionally employ few Alaskans, since most gear up in Seattle. Alaskans have not actively pursued these positions. It is likely that many under-employed Kodiak Island fishermen are more skilled in Alaskan fishing than the present crews on these vessels.

Action Steps: The Office of Commercial Fisheries Development, DCED, has initiated conversations with the North Pacific Fishing Vessel Owners' Association for the purpose of determining the nature of potential job openings and to initiate a pilot program for matching those openings with fishermen on Kodiak Island interested in such employment. The Association responded positively to initial inquiries.

E. Tourism Survey. Several rural Kodiak communities have expressed an interest in tourism. There is, however, a lack of specific information on the characteristics of these communities that might attract tourists as well as a lack of market survey information on what potential tourists might be interested in and the kinds of services they would seek.

Action Step: The Division of Finance & Economics in Coordination with advocacy divisions within DCED has initiated a study which will survey rural communities on one hand and a sample of Anchorage's population on the other to determine the potential of tourism for rural kodiak communities.

F. Coast Guard Uniformed Service Provision. A number of maintenance services presently performed by Coast Guard personnel in Kodiak could be performed by the private sector.

Action Step: A letter has been transmitted from the Governor's Office to the Alaskan Delegation in Washington encouraging that such a transfer of maintenance services from the Uniformed Service to the private sector be considered.

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

A. Job Training Partnership Act (JTPA), Division of Community Development (DCD).

1. Matching Fund Assistance. JTPA offers a Dislocated Workers Program for residents who have been terminated due to industrial decline. Approximately $340,000 will be available (as of contract award in Feb., 84), $67,000 of which is state money. Program respondants (private-for-profit or non-profit) must provide an additional 25% in matching funds.

Action Step: The state could pick-up the 25% matching funds to facilitate access. Additionally, the DCRA will assist where possible in the local vendor application process.

2. Vocational Educational Funds. JTPA provides funding for a.) Employment Security counseling staff and b.) Pre-apprenticeship Training in building maintenance.

Action Steps: A supplemental appropriation could be targeted at providing such positions in Kodiak Island on a per-community basis. The building maintenance positions could be linked to proposed RDA building and hydropower projects.

3. Other JTPA Programs. JTPA offers On-The-Job-Training (OJT), Institutional Skills Training (IST) and Youth Programs (YP); all of which could be applicable to the diversification of Kodiak's fisheries industries. Direct infusion of job training/employment dollars into these small communities could provide for immediate economic relief. Lack of a private economy makes use of federal funds unlikely. Short-term assistance with OJT in the public sector, perhaps one to six jobs per community, could be accomplished through a direct grant to the regional non-profit for implementation.

Action steps: The state could provide additional immediate funding to these programs through a supplemental appropriation. Estimated cost would be $150,000 to $225,000. The Department's regional representative is in contact with City officials and community service agencies in regard to application of existing funding. DCRA's regional representative is currently negotiating with private industry in Kodiak with regard to IST contracts.

B. State Employment and Training Program (SETP), DCD. This program provides upgrade training and internships and would be applicable to the retraining needs of fishermen and fish processors in adapting to the new bottomfish industry. This state-funded program requires annual appropriations.

Action Step: An FY84 supplemental appropriation could be targeted to the Kodiak region.

C. State Low-income Weatherization Program, DCD. The Department has recently received two proposals from the Kodiak area: one from KANA ($182,000) to weatherize homes in Akhiok and Karluk; and one from ACDC for $1.5 million to weatherize homes in the City of Kodiak. At present, these proposals must pass through a competitive evaluation process and may or may not be approved and may be funded at a lower level than requested. The Department has received aproximately $15 million in requests and has aproximately $5.5 million available in program funds.

Action Step: The state could target a supplemental appropriation to assure the funding of these proposals, and perhaps additional, weatherization proposals and "fast track" the evaluation process.

D. Child Care Programs, DCD. Because of the economic difficulties in Kodiak, an increasing number of mothers wish to enter the active labor force. The lack of adequate child care facilities is a major constraint. There are three areas of critical need for which the state could provide additional near-term day care assistance: 1) more licensed child care facilities; 2) more program dollars to allow eligible families access to services; 3) additional training of staff and administrators.

Action step: The state could target a supplemental appropriation in the form of Child Care Grants to the communties on Kodiak Island.

E. Technical Assistance Grants, Municipal and Regional Assistance Division (MRAD). Existing FY84 program funds have been expended or committed.

Action Steps: A supplemental appropriation could be directed to providing technical assistance to Kodiak Island communities. Near-term benefits would derive most quickly from labor intensive projects such as community surveys performed in conjunction with longer term development concepts. Additional, funding could be targeted towards occupational training schemes which provide residents with maintenance and operational skills required for anticipated equipment or capital facilities purchases.

F. Rural Development Assistance, MRAD. Present program guidelines limit grants to $100,000 per community per fiscal year. FY 84 RDA funds have been disbursed or committed. At this time, there are several proposals submitted to the Department for FY85 consideration.

Action steps: A state supplemental appropriation could be targeted to each of the outlying six communities to be disbursed along the lines of the existing RDA program. The appropriation would be administered through the Kodiak Island Borough which has planning powers for Kodiak Island. Two general areas of program application would be the construction, expansion, and maintenance of community halls and the construction and maintenance of equipment storage facilities for existing or anticipated city equipment (oil trucks, graders, fire engines, etc.).

G. Capital Improvements Projects: Force Accounts, MRAD. Force accounts are where the community performs its own construction projects, in-house, rather than going out-to-contract. In this case, the community could hire local residents to perform the project. Small communities would need technical assistance/training in the efficient formulation and implementation of such programs.

Action Step: The Department would offer a program of training and follow-up technical assistance to support communities in this effort. This program would be well suited for placement in the Municipal and Regional Assistance Division and could be implemented rapidly.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

A. Office of Alcohol and Drug Abuse. The program caseload in the Kodiak area has more than doubled in the last year. The current economic problems have been identified as a major cause of this increase. This increase has forced the program to exceed appropriate counseler to client ratios. The Office reports that budget cuts last year necessitated the cessation of client services to residents of the outlying villages on Kodiak Island. In FY84 the Kodiak Council received a grant award of $265,000 requiring a local match of $29,400. The state has the option of waiving this match at any time.

Action Steps: An additional staff counseler should be added to the regional staff. This position would allow for increased aftercare and renewed outreach services to the six outlying communities. Additional travel funds would also be required. Total projected costs for the additional position and travel would be about $30,000.

B. Division of Mental Health and Developmental Disabilities. Based upon current trend information, there will be a major increase in demand for mental health services in Kodiak. This increase may be directly linked to the present economic difficulties. Unemployment both precipitates mental problems and precludes access to treatment without some form of financial assistance.

Action Steps: Two to five new positions are required. These should be local hire positions that would be involved with the residential training program as well the vocational rehabilitation cases (Trainers and Aides).

C. Division of Public Assistance. There is an increasing level of need and demand on DPA programs. Many households are seeking energy assistance (EAP) much earlier in the winter heating season than usual.

Action Steps: While DPA programs are reported to be well known in the region, DPA will initiate an outreach effort, including additional display advertisements in the local paper. An EAP outreach contract with the Kodiak Area Native Association has recently been executed. While recent increases in DPA caseloads have not been dramatic, DPA is "being particulary mindful" of monitoring caseloads in the Kodiak region in order to anticipate any dramatic increase in program demand.

D. Division of Family and Youth Services. The Division has experienced a 10-15% increase in caseloads in the Kodiak area during the last year.

Action Steps: Additional staff will be required. These would preferably be entry level positions such as Social Worker I or Social Service Associate III. Using an entry level position would promote local hire.

DEPARTMENT OF LABOR

A. Job Placement Assistance. Job Service personnel in Kodiak provide a wide range of employment placement services. These personnel work closely with managers of all plants on Kodiak Island to provide a service that promotes consideration of available workers in and around Kodiak.

Action Steps: To improve consideration for local hire of seafood workers, the State Seafood Placement Coordinator will revisit the Seattle offices of Kodiak plants in February and further encourage the use of job service in Kodiak ito obtain their workers. A special effort will be made to access federal emergency Veteran's Job Training funds by assisting local employers in the development of significant job training programs. Up to $10,000 in wage subsidy are available thrcugh this program, which offsets the employer's costs of trainings

B. Job Training Partnership Act (JTPA). Job Services functions as a liaison with the Department of Community and Regional Affairs and the Department of Education, to coordinate and provide JTPA services.

Action Step: Job Service will coordinate with the JTPA efforts described earlier under the Department of Community and Regional Affairs.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

A. Local Service Roads and Trails Program. The Local Service Roads and Trails (LSR&T) program was initially created in 1971 to provide State grant funds to improve local community roads. The distribution formula and funding cycle for the LSR&T program significantly affects its ability to be responsive to Kodiak needs in any significant fashion. As an example, if the present annual appropriation were devided evenly among the six outlying Kodiak communities, roughly $22,000 would be available per community, which would barely cover equipment mobilization costs.

Action Step: Designate some type of add-on or supplemental funding for the Kodiak Island Borough Local Service Road and Trail Program. Given such funding as indicated, the following local projects, which have been identified for immediate construction, would in each case provide some near-term employment opportunities for local laborers:

1. Cuzinkie Boardwalk; $60,000.

2. Old Harbor Landfill Access Road Improvements; $250,000.

3. Port Lyons Road Rebuilding and Extensions; $2,000,000.

4. Karluk Upgrade of Road to Sanitary Landfill; $200,000

B. Early Implementation of Funded Capital Improvement Projects. The DOT/PF has identified a number of projects on Kodiak Island for which funding exists and which are essentially ready for construction. However, the only project which could in some manner be facilitated is the Mission Road Reconstruction Project. The Project will be ready for construction this spring, but at a reduced scope unless supplemental funding is made available. An expanded project would translate into immediate employment opportunities.

Action Step: Supplemental appropriation for the Mission Road Reconstruction Project of $340,000.

C. Expediting Federal Construction Programs. There is currently only one outstanding program reservation for HUD housing in the Kodiak area. The reservation is for 15 units in Old Harbor. The Kodiak Island Housing Authority has been unable to proceed because they cannot ensure HUD of physical access to the site. KIHA is working with BIA to secure a commitment for road construction; however, BIA has very limited resources.

Action Step: The DOT/PF could be useful in expediting the HUD construction project by supporting an Old Harbor access road. Near-term benefits would derive from both the road and housing projects. It is anticipated that such a project could begin by late spring and would cost approximately $400,000.

D. "Other" Projects. The DOT/PF has identified several Kodiak Island Projects which could provide some level of near-term economic benefit to local residents.

Action Steps:

1. Upgrade Dog Bay Small Boat Harbor; $800,000.

2. Construct Community Equipment facilities; $100,000 per facility.

3. Port Lions Ferry Dock Repair; $500,000.

4. Old Harbor Fuel Dock Repairs; $800,000.

KODIAK PROJECT
NEAR-TERM ASSISTANCE

WORKING GROUP PLAN

Work Group Members

DCRA: Jeff Smith (lead agency)
DHSS: Jerry Harris
DOT/PF: Riley Snell
ASMI: Bill Hudson
DCED: Bill Beardsley
DOL: Jim O'Connor

The object of this working group is to produce a report regarding the options and prospects for near-term assistance which the State may provide to Kodiak Island residents who are coping with dramatic declines in the region's fisheries related economy. This report should present specific actions which the State could take in the near future to provide for some level of immediate economic relief to the region. Where appropriate, supplemental funding requirements should be defined. If possible, the effects of various levels of supplemental funding should be identified. The report is to be presented, in final form, to the Governor's mini-Cabinet on Tuesday morning, 1/24/84.

In order to achieve this timeframe, the following work plan is suggested:

1/12 (Thursday, a.m.): First group meeting; scoping session to review the general task, discuss the interagency report on Kodiak economic conditions, discuss specific agency assignments and areas of research/report coordination. We should leave this meeting with a clear idea of what each individual is responsible for producing, as well as agreed upon times for submission of draft materials.

1/18 (Wednesday, p.m.): Second group meeting; exchange preliminary findings, discuss research/report problem areas.

1/20 (Friday, p.m.): Submission of final draft materials for inclusion into final report.

1/23 (Monday): Preparation of executive summary.

1/24 (Tuesday, a.m.): Report to Cabinet.

Preliminary task assignments, by department, are as follows:

I. DCRA

A. Lead agency responsible for working group coordination and production of executive summary.

B. Investigate "matching fund" constraints to community access to federal funding (BIA, HUD, etc.)

C. Investigate requirements of increased facilitation of RDA projects.

D. Investigate requirements for expanding the LEAP program (fuel supplement).

E. Assess levels of most critical, immediate, needs (Fuel, Food)

II. DHSS

A. Inventory the Departments programmatic activity in the Kodiak Island Area.

B. Investigate "matching fund" constraints to community access to federal funding (HSS, HUD, etc.)

C. To the degree possible, define present and projected increases in program use (WIC, Food Stamp, ADF, Mental health, Y&FS, etc.) attributable to the recent economic slowdown. Investigate the cost requirements of serving this increased need.

D. Assess levels of most critical, immediate, needs (health, social)

E. Research temporary employment opportunities of DHSS program activity.

III. DOT/PF

A. Investigate the costs and effects of supplemental appropriations for Local Service Roads and Trails funds.

B. Investigate the specific steps of early implementation of funded capital improvements in the Kodiak Island area.

C. Investigate facilitating early implementation of proposed federal construction projects (BIA, PHS, HUD) insofar as they might provide immediate employment opportunities.

D. Erosion Control Programs

E. To research availability for contracting out to communities maintenance for State facilities.

IV. DOL

A. Supplemental Job Service Activity.

B. Research DOL regulations to obtain hiring at the community level for capital construction this summer.

V. DCED

A. Investigate short-term projects, loan vehicles, that could provide interim employment opportunities.

B. Investigate expedient implementation of the Raw Fish Tax Credit Incentive Program as recommended by Governor's Fisheries Policy Task Force.

C. Investigate status of the Fisheries Industrial Technological Center proposed for Kodiak Island.

D. Summarize recent/ongoing studies regarding economic diversification on Kodiak Island (State, Chamber of Commerce activity, etc.).

E. Look at transitioning Coast Guard enlistment employment to civilian at Kodiak Base.

cc: Bruce Twombly, Commercial Fisheries Limited Entry Commission

NEAR TERM ASSISTANCE TO KODIAK
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
SYNOPSIS AND ACTION STEPS

Loan Extensions:

Synopsis: The Division of Accounting and Collections considers formal requests for loan extension on commercial fisheries loans issued by the Division of Investments. Most annual interest and principal payments are due in a lump sum each October and November. This year 53 loan extension requests have been received from Kodiak Island.

Action Step: As of 1/20/84, 38 requests were approved, 1 request was disapproved, and 14 requests are under varying stages of review. Processing of extension requests are receiving priority attention, and all applications are expected to be processed by early February, 1984.

Bulk Fuel Loans:

Synopsis: The Division of Investments, DCED, has a bulk fuel loan program, the purpose of which is to assist small communities in the purchasing of bulk fuel. Any "organized municipality or unincorporated village with a population under 2,000, or individual endorsed by the municipality" is eligible. All communities on Kodiak Island, except for the City of Kodiak, qualify for this program. Loans are interest-free the first year that a community applies, 5 % interest the second year, and graduated upward thereafter. Karluk presently has a loan. Akhiok would qualify as a second-year candidate (i.e., for the 5% loan). The remaining communities qualify for interest-free loans. Application procedures are very simple (basically a letter to the Division of Investments from an authorized community representative).

Action Step: DCED has initiated steps to inform all communities of the availability of these loans and the procedures required to apply.

National Marine Fisheries Loan Program:

Synopsis: NMF has a very limited loan program ($3 million nationwide) designed to assist fishermen in making loan payments on their vessels. Tax and accounting records are required, the borrower must be in risk of default but not in bankruptcy proceedings, and the vessel cannot be secondhand. One year loans can be paid off over 10 years at a rate of 3%.

Action Step: DCED has initiated steps to provide the Borough of Kodiak with appropriate regulations and information.

Fisherman/Vessel Matching:

Synopsis: Out-of-state vessels and fleets which fish off the Alaskan coast traditionally employ few Alaskans, since most gear up in Seattle, and Alaskans have not actively pursued these positions. Many of the crews hired are not skilled fishermen and few know the Alaskan fisheries environment. Further, on the surface it appears that there may be a significant number of Kodiak fishermen who might be available and qualified for such employment.

Action Step: The Office of Commercial Fisheries Development, DCED, has initiated conversations with the North Pacific Fishing Vessel Owners' Association for the purpose of determining the nature of potential job openings and to initiate a pilot program for matching those requirements with fishermen on Kodiak Island interested in such emplcyment. The Association responded positively to initial inquiries.

Tourism Survey:

Synopsis: Several rural Kodiak communities have expressed an interest in tourism. There is, however, a lack of specific information on the characteristics of these communities that might attract tourists and a lack of market survey information on what potential tourists might be interested in and the kinds of services they seek.

Action Steps: The Division of Finance & Economics, DCED, in coordination with advocacy divisions within the DCED has initiated a study which will survey rural communities on one hand and a sample of Anchorage's population on the other to determine the potential of tourism for rural Kodiak communities.

Attachments:

Fuel Loan Information Sheet
Fisheries Loan Fund Application
Letter relating to Vessel/Fishermen Matching

WHB:gr/1-23-84

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
OFFICE OF COMMERCIAL FISHERIES DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2518

January 20, 1984

Mr. Barry Collier, Manager
North Pacific Fishing Vessel
Owners' Association
Fishermen's Terminal
Bldg. C-3, Room 218
Seattle, WA 98119

Further to our telephone conversation this morning I would like to explain in greater detail the fisheries related economic problems being experienced by rural Kodiak fishermen and the possibility of our working together to place some of those fishermen as crewmen in the upcoming Shelikof Straits joint venture fishery. As you may know, two years of poor Pink salmon returns in the Kodiak area have combined with the collapse of the King Crab fishery to severely disrupt the economy of rural Kodiak. In such villages as Old Harbor, Ahkiok, Larsen Bay, and Ouzinke experienced purse seine/crab fishermen who own their vessels or operate cannery owned vessels are virtually without alternate employment opportunities, fisheries related or otherwise.

As I indicated in our conversation earlier today, I would propose that our office, NPFVOA, and possibly the Kodiak Area Native Association (KANA) work together in a "matchmaking" role, exploring the possibility of creating employment opportunities aboard some of your members' vessels during the 1984 Shelikof Straits fishery. I would perceive that the respective roles of our organizations would be as follows:

NPFVOA would identify vessel owners interested in participating with the program and outline basic requirements for potential crewmembers.

KANA would perform the outreach function and preliminary screening of potential crewmembers.

OCFD would coordinate the program and would further screen potential crewmembers to insure that only truly qualified applicants were introduced to vessel owners.

I would appreciate it greatly if you could present this idea to your Board of Directors and subject to their approval

proceed with some more detailed discussions, possibly during the upcoming NPFMC meeting here in Juneau. Clearly we are only in the conceptual stage with this idea and I'm certain that more discussion would lead to a better understanding of the options. Should we be able to reach some agreement, I fully understand that in no way would NPFVOA be in a position to guarantee any actual employment and that any hiring decisions will ultimately rest with the vessel owner(s) involved.

Barry, thank you again for your interest in this issue and I look forward to seeing you here in Juneau for the Council meeting.

Best regards,

F. Gregory Baker
Director

cc: Commissioner Richard Lyon
Deputy Commissioner Vince O'Reilly
Ben Harding, Special Assistant
to the Governor

MEMORANDUM

State of Alaska
Community & Regional Affairs

RECEIVED
JAN 26 1984
COMMISSIONER'S OFFICE
COMMUNITY & REGIONAL AFFAIRS

TO: The Honorable Jeff Smith
Deputy Commissioner
Office of the Commissioner

DATE: January 20, 1984

FILE NO:

TELEPHONE NO: 465-4861

FROM: Mark Mickelson
Grant Administrator
Division of Community Development

SUBJECT: Kodiak Island Near-Term Assistance Project

Attached for your information and use are individual program manager reports from within the Division of Community Development which address' the Kodiak Near-Term Assistance Project. The major issues that our Division would like to put forward as practical suggestions are as follows:

1. Supplemental Funding Request - For the State Employment and Tr ning Program. Funds specifically earmarked for the Upgrade Skills Training component could effecti ly promote retraining efforts for fishermen and fish processors on Kodiak Island to adopt to the evolving bottom fisheries and related support occupations. Under this program other components could also provide short term subisidized employment in the form of vocational exploration for youth and internship possibilities.

2. JTPA Dislocated Worker Program - Because of lay-offs in the fishing industry and changes in species harvest/ processing, this special program might well be utilized in Kodiak. We can better promote the program there and provide assistance with application preparation.

3. Low-Income Weatherization - Pending proposed selection, two contracts may be issued which could impact on Kodiak Island communities. Because there is an obvious need there, supplemental funding under this program could reach more communities on Kodiak, with secondary effects of economic stimulus to local economies. Once contracts are awarded we can expedite their implementation.

4. Increased Child Care Funding - In addition to the obvious assistance provided to low income families which in turn enables them to work with affordable child care, additional child care industry jobs are created with more economic stimulus to the local economy.

5. Increased Outreach and Technical Assistance Efforts - Pursuant to all Departmental grant programs we can improve the Kodiak Communities access to and expertise in application procedures and successfully obtaining grant funds. Cross training of Departmental staff, a strong committment to Regionalization and circuit-riding educational and technical assistance efforts would all reap longer term results. Board, commission or council vacancies filled by Kodiak representatives could also potentially have a longer term benefit in program planning/design and allocation of grant funds for Kodiak communities.

If you have any questions on these recommendations on the attached reports please feel free to contact me.

Attachments

cc: Karen Perdue

MEMORANDUM State of Alaska

TO: Mark Mickelson
Grants Administrator
Div. of Community Development

DATE: January 18, 1984

FILE NO:

TELEPHONE NO:

FROM: Deborah Smith
JTPA Program Manager
Div. of Community Development

SUBJECT: Kodiak Near Term
Asst. Project

I. The following State JTPA programs may be available for use in the Kodiak area.

1. The Older Workers program for economically disadvantaged residents who are at least 55 years old.

   An RFP has been issued and awarded. The one respondent from Kodiak, KANA, did not receive a contract. However, another RFP for approximately $26,600 will be issued in April and any private-for-profit, non-profit, or state agency may respond.

2. The Dislocated Workers program is for Alaskan residents who have either been terminated or have received a lay-off notice due to industrial decline and are unlikely to return to that industry.

   The RFP was issued 1/18/84, is due in 2/17/84, and the contracts will be awarded 2/24/84.

   Approximately $336,900 is available, which includes $67,394 of State money. The respondents must provide an additional 25% in matching funds. Any private-for-profit or non-profit agency may apply.

3. The following recommendations for the Vocational Education monies have been made:

   a) $16,000 to S.E.R.R.C. for Skagway Host program.

   b) $65,085 to Employment Security for counseling staff to work in E.S. offices and community colleges.

   c) $60,000 in Pre-Apprenticeship Training in Building Maintenance.

The Kodiak area may be able to obtain some of the funds available under sections b & c of this program.

II. Kodiak's need appears to be a diversification of economy from a fishing base. The projections for the fishing industry are dismal at best for the Kodiak area. The completion of the Terror Lake Hydro project should provide some incentive for alternate industry to relocate, thus providing a stable year-round economy, but the nature and extent of that industry are unknown at this time. The harbor completion would assist in the fishing industry expansion, but at this point the current fisheries would receive little benefit.

III. It is possible that the Title III program under JTPA could be used to assist the Dislocated Worker in Kodiak, provided a proposal is received from a vendor to serve that population. The matching requirement of the program could be met through the State funded share of the unemployment benefits the participants are receiving.

MEMORANDUM

State of Alaska

RECEIVED
JAN 19 1984
Dept. of Community & Regional Aff
Division of Community Developme

TO: Mark Mickelson
Grants Administrator
Central Office

DATE: January 17, 1984

FILE NO:

TELEPHONE NO:

FROM: Michelle Church
Field Representative II
Region V

SUBJECT: Kodiak Project Near Term Assistance

Programs available, Dollar amounts, Planned Activities in Kodiak.

JTPA OJT	$ 86,400	(total Region V Adult and Youth)
JTPA IST	$ 43,000	(total Region V)
JTPA Youth Programs	$100,000	(total Region V)
SETP Programs	$ unknown	(Upgrade, In-School Counseling, Internship and VEP)
Displaced Homemakers	$ unknown	
Legislative Grants	$ unknown	

These funds are controlled by the legislature.

We are currently in contact with several employers in the Kodiak area in pursuit of OJT contracts. The RFP's are still out for Institutiona Skills Training and the Youth Programs; therefore, no projections can be made on the number of vendors to be served or the dollar amounts involved. As stated above, the SETP, Displaced Homemaker, and the name recipient legislative grants are controlled solely by the legislature and projections on the numbers and dollar amounts available can not be made.

OJT Contracts project as follows:

*North Star Seafoods	70 position	$ 5,000 $10,000
City of Port Lions	1 position	$ 2,500
City of Ouzinkie	1 position	$ 2,500
City of Larson Bay	1 position	$ 2,500
	Total	$17,500

*This is a possibility for a Performance Based contract however negotiations will not take place until January 18 or 19, 1984. If the contract is written on performance basis the amount may be higher

I will be traveling to Kodiak on January 18 through 20th to negotiate the North Star Seafoods contract and begin the necessary applicant pool. I plan to meet with other cannery representatives and interest employers to discuss the programs available. I also plan to meet with Tom Peterson from Kodiak Area Native Association to discuss a possible cooperative agreement.

Currently the economic picture in Kodiak is down due to the poor fish take and the closedown of crab fishing. The OJT contract we are negotiating with North Star is directly related to the changing fishing industry. The fishermen and canneries are turning towards bottom fishing. However they are both unprepared and untrained to deal with this total change in techniques. We are hopeful to assist in this change.

Action Plans:

We will keep in contact with the City offices and community service agencies. We will remain available to the private employers for input and we will work with KANA to provide cooperative services to Kodiak residents.

MEMORANDUM

State of Alaska

COMMUNITY AND REGIONAL AFFAIRS

TO: Mark Mickelson
Grants Administrator
Div of Community Development

DATE: January 16, 1984

FILE NO:

TELEPHONE NO:

FROM: Robert L. Brean
Deputy Director
Div of Community Development
Office of Energy Programs

SUBJECT: Kodiak Funding

The State's Low-Income Weatherization Program is the only program within the Office of Energy Programs having a potential funding impact on Kodiak. I use "potential" because we do not currently have any contracts in that area, but have just received two proposals (one from KANA for $182,296 to weatherize homes in Akhiak and Karluk and one from ACDC for about $1.5 million to weatherize homes in the city of Kodiak.)

These proposals must go through an evaluation and may or may not be funded or may be funded at a lesser amount than that requested.

We believe that weatherization is probably of greatest benefit of any energy conservation program since it improves the housing stock while simultaneously lowering fuel costs and also provides some temporary employment for local individuals.

By expediting the weatherization contracts once they're awarded, Kodiak will have their program available as soon as possible.

cc. Karen Perdue

MEMORANDUM

State of Alaska
Community & Regional Affairs

TO: Mark Mickelson
Grants Administrator
Division of Community Development

DATE: January 16, 1984

FILE NO: 6.1.8

TELEPHONE NO: 465-4890

FROM: Sherry Valentine
Block Grants Administrator
Division of Community Development

SUBJECT: Program Funds
Re: Kodiak Island

Pursuant to your request for potential and/or actual funding available to Kodiak Island, I have identified the following source of funds:

1. (A) Community Development Block Grant Program:

These federal Department of Housing and Urban Development funds are passed through to states in the form of a block grant. The state disseminates CDBG funds to incorporated communities on a competitive basis for community development and planning projects.

(B) Funding Available: $1,500,000

In FY84, the State will receive approximately $1.5 million. Cities are eligible to apply for community development funds up to $105,000 maximum per applicant, or $55,000 maximum for planning funds. Grantees are selected on the basis of a competitive review and scoring process.

(C) Matching Requirements:

There are no matching funds required of sub-grantees. However, due to the limited federal funding available for this program, the leveraging of other sources of funds is encouraged. An applicant can receive up to 40 points depending on the amount of other funds leveraged.

(D) Present Funding for Kodiak Island Communities:

The City of Kodiak was designated a three year comprehensive grantee by HUD for the period FY81-83. When the State accepted the CDBG program in FY82, it agreed to honor this three year commitment. As a result the City of Kodiak has received the following funds:

FY81:	$500,000	(directly from HUD)
FY82:	500,000	(through the State of Alaska)
FY83:	500,000	(through the State of Alaska)
TOTAL	$1,500,000	

Funds are being utilized for street construction, a mini park, and teen center renovation.

Utilizing FY82/83 combined competitive funds the City of Port Lions has been selected to receive a CDBG grant:

FY82/83: $78,000

These funds will be used to add an addition to the City offices. The community will use local hire to help offset high unemployment.

2. Critical Needs:

Most rural alaskan communities need capital project and planning funds. Funding which can create needed facilities, supply jobs, and aid in developing some level of economic development are critical. Employment opportunities are essential in Kodiak.

3. Action Plan:

Because of the competitive nature of the CDBG program, quick access to funding is not possible. However, other potential resources might be the federal Economic Development Administration (EDA) with an outreach office located in Anchorage. HUD should also be contacted concerning their Urban Development Action Grant (UDAG) program which can provide a percentage of funding for the overall cost of a project in distressed communities.

CDBG-84 grant cycle - deadline not known yet applications will probably not be available until mid April 84. (State Plan - still needs to be finalized + approved. Congress held up process)

Technical Assistance = Funds

MEMORANDUM State of Alaska

TO: Mark Mickelson

RECEIVED
JAN 18 1984

DATE: January 16, 1984

FILE NO:

Dept. of Community & Regional Affairs
Division of Community Development

FROM: Lare'
Child Care Coordinator

SUBJECT: Kodiak Island:
Child Care Programs

I. Child Care Programs Available

The Child Care programs administered by the Department and operating on Kodiak Island are:

	Program	Total '84 Budget $	Kodiak Island '8 $
1. a.	Day Care Assistance	5,693,393	150,121
b.	Local Administration for Day Care Assistance	569,739	15,012
2.	Child Care Grant	1,117,963	34,479 (Estimate
3.	Education & Training	84,500	2,430
4.	Developmentally Disabled	194,400	Not operati
5.	Head Start	2,768,000	(B

(A) Reallocation of Day Care funds takes place by the end of January. Kodiak is requesting $30,000 more to alleviate Waiting Lists caused by lack of program dollars for eligible families.

(B) RurAL CAP administers the Head Start program in Kodiak and is one of approximately 30 sites. The budgeted dollar figures for Head Start in Kodiak for FY '83 was $45,000 (federal and State dollars)

II. What are most critical needs?

From the child care perspective, the most critical needs are (1) more licensed child care facilities, (2) more program dollars to allow eligible families access to child care services (3) additional training of staff and parents in early childhood issues (4) additional training for early childhood administrators.

Because of the "recession" in Kodiak, more and more mothers are entering the active labor force. This will further increase the demand for child care, as well as place an even greater demand on limited State Day Care dollars for this community.

From a broader persepctive, diversification of employment is essential if Kodiak is to move from the rollercoaster syndrome of a one industry community. This will include not only attracting new and small industries but also developing a trained and diversified labor force.

III. Expansion and Infusion of Dollars:

Day Care: Day Care Assistance dollars are allocated by the number of licensed child care spaces in a given community. In the past two years (1981 to 1983) the number of licensed child care spaces has increased by 50. However, even with this increase, each year Kodiak requests additional program dollars to allow eligible parents to participate in the program. This has a direct impact on employment and training.

There is also a need for additional child care spaces. While there are six licensed child care centers, the number of licensed homes has dropped from 17 to 9 family day care homes in the past year. This issue has been discussed with the Department of Health & Social Services.

Thus, if more homes are licensed, there will be both a larger number of child care spaces as well as alternatives where parents can have their children in care.

Child Care Grant: The Child Care Grant has allowed Kodiak child care facilities to augment budgets in salaries, food and age appropriate equipment expenditures. The Child Care Grant Program has assisted child care providers in not drastically raising rates.

Education & Training: Kodiak's Small World Child Care Center was awarded two Education & Training grants in FY '84. One grant will provide a series of audio tapes on infant development for the Kodiak area, as well as Anchorage, Juneau, Bethel, Fairbanks, Kotzebue and Nome. The other grant provides funding for three Small World staff members to participate in the AAEYC annual conference in April of '84.

Kodiak, as with other rural areas in Alaska, is rather isolated. The Education & Training grants provide Kodiak child care staff an opportunity to work with other child care professionals within the State.

MEMORANDUM

State of Alaska
Community and Regional Affairs

TO: Jeff Smith, Deputy Commissioner
Municipal & Regional Assistance Div.

DATE: January 20, 1984

FILE NO:

TELEPHONE NO.

FROM: Michael Cushing, Research Analyst
Municipal & Regional Assistance Div.

SUBJECT: Kodiak Island Assistance

MRAD community assistance programs were reviewed with regard to their application to the immediate needs of the economically depressed communities of Kodiak Island. More specifically, the focus was on employment generation in the next 30 to 180 days. Appendix A presents an overview of the range of program options available within the Division. A number of these assistance options are not immediately applicable to the situation at hand, either because of lack of existing funding or because the program is inherently directed at longer range solutions. Budgeted FY 84 program funds are already expended or committed. FY 85 program funding will not be available until July or later. This essentially narrows the range of possible options to those which could be funded by a supplemental appropriation to the FY 84 budget.

Following is a presentation of selected options which could provide some form of short-term economic relief:

1. Planning Grants/Technical Assistance

Given a supplemental appropriation, funds could begin to enter the communities as early as March. The most immediate form of employment opportunity would be provided by a local-hire survey program. In this program two or more individuals would be employed in each community for several months to assist in the performance of an updated attitude and/or economic assessment survey of their community. The survey would be designed to provide baseline information in support of developing longer range solutions for the communities. Local people could be brought to Kodiak/Anchorage for initial training workshops, to assist in developing the survey instrument, and later, to assist in the assessment of survey results. These efforts would be coordinated through the Kodiak Island Borough/KANA.

Timeframe:

Jan/Feb: MRAD Staff Assignment; draft program requirements (budget) in preparation for supplemental appropriation request.
Feb/March: draft preliminary survey; coordinate with Kodiak Island Borough; select and hire local individuals.
March-June: hold training sessions, perform and assess survey.

2. Rural Development/Bulk fuel storage Grants

Present program guidelines limit grants to $100,000 per community per fiscal year. The six outlying Kodiak Island communities would require a designated supplemental appropriation totaling $600,000. The community of Old Harbor has an FY 85 request in for $27,000 and Larsen Bay is formulating a request for harbor development. Other project possibilities mentioned by communities which could generate some short term local employment are:

Akhiok: equipment storage buildings
road to new bulk fuel site
phase II bulk fuel storage facility ($65,000)
Karluk: equipment (proposed fire truck, existing fuel truck)storage buildings
Larsen Bay: community center
tie-down spaces at airstrip
Old Harbor: community building
Ouzinkie: water & sewer repair
Port Lyons: upgrade community building and Library
site preparation for cannery or cold storage

3. Coastal Energy Impact Program (CEIP) loan program

While all grant monies from the CEIP program have been disbursed, loan monies are available ($20,000,000). The present terms are unapproachable by smaller communities (10% interest), especially when potential default is already a major problem in the community. One possible approach that the State could consider would be the creation of a loan subsidy program whereby the State would pay all or part of the interest on a federal CEIP loan to communities. A further depth of subsidy would include the State's paying the costs of deferring the loan repayment for a period of time until the immediate economic problems are past. This loan subsidy concept should be pursued by the Department of Revenue and, more specifically, by the Municipal Bond Bank which presently maintains the CEIP loan account. Depending upon the mechanics of installing such a program, funds could be available in the communities by late-summer (84)

cc: Marty Rutherford, Director
Municipal & Regional Assistance Div.

Appendix A

KODIAK ASSISTANCE PROJECT

OUTLINE OF POTENTIAL MRAD ASSISTANCE OPTIONS

I. EXISTING PROGRAMS/ Existing (FY 84) funding

A. Summary: Primarily because such funding is expended or committed, existing MRAD programs and FY 84 funding provide no means of immediate employment generation on Kodiak Island.

B. RDA Grants/Bulk Fuel Storage: FY 84 funds have been almost entirely disbursed. There is a small RDA reserve which is committed to an appeals process.

C. General Planning Grant Money/ Technical Assistance: Of the original $180,000 for FY 84, approximately $33,000 remain. These remaining funds are to be distributed to existing proposals, none of which come from Kodiak Island. There were over a million dollars in requests for these funds, again, none of which came from Kodiak Island communities.

D. CEIP funds: All grant monies from this have been disbursed. Kodiak City received $140,000 in a grant; the Borough received $307,000 in 6 grants (1978-1983). While loan monies are available ($20,000,000), the present terms are unapproachable by smaller communities (10% interest), especially when potential default is already a major problem in the community. One possible approach that the State could consider would be the creation of a loan subsidy program whereby the State would pay all or part of the interest on a federal CEIP loan to communities. A further depth of subsidy would include the State's paying the costs of deferring the loan repayment for a period of time until the immediate economic problems are past. This loan subsidy concept should be pursued by the Department of Revenue and, more specifically, by the Municipal Bond Bank which presently maintains the CEIP loan account. Depending upon the mechanics of installing such a program, funds could be available in the communities by late-summer (84)

II. EXISTING PROGRAMS/ Supplemental FY 84 Funding

A. Summary: With regard to supplemental funding providing specific assistance to Kodiak Island, a major consideration is that existing MRAD programs function on a statewide basis incorporating distribution equity

guidelines. Therefore, in the case of supplemental appropriations to existing programs, Kodiak Island communities would be competing with communties throughout the State for supplemental funding. As an alternative, a supplemental appropriation to the Department could be provided which specifically targets Kodiak Island and then directs that the Department's RDA/Technical Assistance mechanisms be employed in the distribution/management of those funds to the community level.

Assuming that such a supplemental appropriation were passed in February, funds could probably enter the communities by March or April. This would require that community proposals for funding requests be in the works now and submitted as soon as possible after passage of the supplemental appropriation. Another time frame consideration is the necessary coordination of efforts through the Kodiak Island Borough, which has planning powers in the region.

B. RDA: Present RDA guidelines limit grants to $100,000 per community per fiscal year. Assuming this maximum were to be provided to each of the six outlying communities on Kodiak Island, this would require a supplemental appropriation of $600,000.

C. Planning Grants/Technical Assistance: Given a supplemental appropriation in late February, these funds could begin to enter the community by March/April, 84. One employment possibility would be a local attitude and economic conditions survey effort. This could include workshops, training, survey, and assessment activities at the local level. This would require coordination with the Kodiak Island Borough.

III. EXISTING PROGRAMS/ FY 85 funding

A. Summary: The time frame of FY 85 program funding would essentially preclude any immediate employment generation. The first effect of these funds, if proposals were successful, would begin in late summer(84). There are several ways in which the Department might be able to facilitate the disbursement of these funds.

B. RDA/Bulk Fuel: Community proposals are to be submitted to the Department by June 1. Depending on the duration of the legislative session, it could be mid-summer before an appropriation level is determined. A Statewide competative selection process must then disburse the available funding amongst submitted

proposals. One possiblity of facilitating this process would be to provide technical assistance to the communities during the process of proposal submission. This service is available, time and funding permitting, upon formal request from the community. A second possibility would be to advance the deadline date for proposal submission and begin a preliminary selection process before the final program appropriation level is actually known.

C. General Planning Grant/ Technical Assistance: These are general fund monies and the actual level of funding is determined contingent upon other internal funding requirements. Given the present budgeting process, the level of money available for such grants and assistance is not clearly established until July, or disbursed until at least August. This process might be fast tracked to disburse funds a month earlier, but probably no earlier than mid-July. The FY35 amount is estimated to be about $200,000, similar to the FY 84 figure.

KODIAK PROJECT

Options and Projects for Near-Term Assistance

Working Group Plan

Department of Health and Social Services

The Department of Health and Social Services was assigned the task of reviewing five specific areas to determine levels of services presently being provided, additional services or programs which may be needed and special projects which may be undertaken to provide economic relief to the Kodiak area. These five areas included:

(A) Inventory of DHSS programmatic activity in the Kodiak Island area

(B) Investigate "matching fund" constraints to community access to federally funded grants, projects, etc.

(C) To the degree possible, define present and projected increases in program use (WIC, Food Stamp, AFDC, Mental Health, Family and Youth Services, etc.) attrributable to the recent economic slowdown. Investigate the cost requirements of serving this increased need.

(D) Assess levels of most critical, immediate needs (health, social and financial)

(E) Research temporary employment opportunities of DHSS program activity.

I. Inventory of DHSS Programmatic Activity in the Kodiak Island Area:

(A) Division of Public Assistance

The Division of Public Assistance provides services to Kodiak and the surrounding villages through a network of fee agents, two full time Eligibility Technicians in Kodiak and field unit staff support from Anchorage. The Division offers a variety of cash, food and medical assistance programs which include the following:

Aid to Families with Dependent Children (AFDC) A nationwide state/federal financial aid program helping needy children who are deprived because at least one parent is absent, disabled, or dead. Assistance is intended to provide the basic necessities for the children, thereby enabling them to remain within the family unit.

Adult Public Assistance (APA) APA Includes Aid to the Blind, Aid to the Disabled, and Old Age Assistance. These programs provide cash assistance to needy adults who are unable to provide for their own basic needs.

Energy Assistance Program (EAP) EAP is a 100 percent federally funded program to aid low-income households. Cash assistance in the form of payments to home energy supplieers are made on behalf of eligible households to offset the impact of rising home energy costs. Renters and homeowners are served.

General Relief Assistance (GRA) The GRA program provides assistance for obtaining the necessities of life for people who temporarily have absolutely no other personal, private, or public resources available to meet their needs.

Food Stamp Program Food stamps provide assistance to low-income households in purchasing food. The objective is to improve nutrition of recipients.

Medicaid Medicaid is a joint state/federal program which pays providers of medical care for medical services delivered to eligible low-income Alaskans. Early and Periodic Screening, Diagnosis and Treament (EPSDT), a component of Medicaid, is a preventive health program for children of eligible low-income families.

General Relief Medical (GR Med) This state program pays providers for medical care and emergency dental care for low-income persons.

Catastrophic Illness Program This is a state-funded program established to financially assist residents of Alaska who have suffered a serious illness or injury resulting in unpaid medical expenses exceeding $1000.

(B) Office of Alcoholism/Drug Abuse

The Kodiak Council on Alcoholism is presently operating an Intensive Intermediate Care, 45 day non-medical treatment program at Hope House, utilizing 13 beds in the facility. Non-medical detox for those persons wishing to enter the treatment program is accomplished in a

seperate 1-bed and bath wing of Hope House. Outpatient, aftercare, family counseling, outreach and intervention are provided from a seperate clinic. Education and consultation, youth alternative and the alcohol safety action program (drunk driving diversion) are also provided through a subcontract with the Kodiak Area Native Association. Information, education and prevention services are provided through Community Health representatives to six villages on Kodiak Island.

(C) Division of Family and Youth Services

The Kodiak office provides services to residents of the island of Kodiak plus 15 villages on the peninsula. Services provided include child abuse investigations, individual and family assessments, adult protective services, individual and family counseling, information and referral, foster care for children and adults, residential care for children and adults, and protective services day care. Licensing services include homemaker support, residential child care, and day care. Our Kodiak staff also provides a good deal of community service serving as memebers of committees and boards.

(D) Division of Public Health

The Division of Public Health provides health services to Kodiak and surrounding villages through a staff of three Public Health nurses and two support staff. The Kodiak Area Native Association (KANA) receives a $120,500 rural itinerant health care grant. The Division offers a variety of services which include the following provided by Public Health nurses:

Immunizations: Immunizations to infants, preschool, school children and adults.

Tuberculosis: Give TB tests annually to preschool and school-aged children. TB testing and surveillance of cases and contacts.

Venereal Disease: Conducts VD clinics, obtains lab tests for diagnostic purposes and does surveillance and treatment of cases including follow-up of contacts.

Early Periodic Screening, Diagnosis and Treatment (EPSDT): Inform and outreach high risk Medicaid eligible children. Screen children according to guidelines. Refer for medical or dental evaluation. Track referrals to resolution.

Handicapped Children: Case finding through EPSDT and well child conferences; complete HCP application and coordinates case management until condition resolved.

Communicative Disorders: Cooperate with school personnel to screen hearing of preschool and school children according to schedule. Coordinate patient referrals, treatment, clinics and follow-up.

Infancy and Preschool: Early identification and intervention through home visits of newborn infants at risk for health or social reasons. Well child conferences to screen, refer and facilitate medical care; (target pop.0-3 years).

School Age: Coordinate with school nurses as indicated in TB, vision, hearing, screening and school entry immunization.

Child Bearing Years: Provide family planning outreach, education, counseling and referral services. Identify early pregnancy through testing, promote physician evaluation in first trimester and make home visits to postpartum referrrals and at risk infants or families.

Middle and Late Years: Promote adult health services aimed at reducing risks associated with the following: heart disease, stroke, cancer, accidents. Provide cancer screening services, pap smears, breast exam, stool testing, blood pressure, etc.

Health education is integrated into each individual encounter or through the utilization of group classes and sponsoring of local community health fairs.

Home Health Aides: PHNs set up plan of care and supervise HHA who provides health related personal care to individuals at their place of residence.

The public health nurse that works in the villages also teach and work with the community health aides.

HEALTH EDUCATION

Positive health practices are promoted by integrating health teaching into each encounter and through group classes, i.e., prenatal, childbirth, child rearing, family planning, stress management, etc. The focus of health education is personal responsibility for quality of life and the relationship between personal choices and health.

(E) Division of Mental Health and Developmental Disabilties

The Division of Mental Health and Developmental Disabilities offers a comprehensive services to include outpatient services, school counseling services, day care services, 24 hour emergency services, child and adolescent services, inpatient services, diagnostic and testing services to vocational rehabilitative clients, chemotherapy and residential training services.

II. Investigate "Matching Fund" Contraints to Community Access to Federally Funded Grants, Projects, etc.

(A) Division of Public Assistance

In the domain of cash, food and medical assistance DPA is offering communities all available state and federal resources for such aid. There are no constraints to a particular community's access to DPA programs. Communities do not have the option to operate these programs in most instances. In the event they could, it would not generally profit a community to duplicate an existing and currently available DPA service.

The Kodiak Area Native Association will soon be serving the area temporarily through the Bureau of Indian Affairs General Assistance program. They have limited one-time funding, but there is a possibility of additional funds being available this year if there is a caseload increase. Though not a major source of assistance it will provide temporary cash assistance to some households.

DHSS has transferred $500,000 from its Low Income Home Energy Assistance block grant to the Department of Community and Regional Affairs to augment their state and federal funding for low-income weatherization. This has helped create more flexibility in the program, thus allowing the weatherization program to be offered in the Kodiak area for the first time. It will create some temporary jobs and result in considerable energy savings to those households served. The work should occur this spring and summer.

(B) Office of Alcoholism and Drug Abuse

In FY'84 the Kodiak Council received a grant award of $265,000 requiring a local match of $29,400. The State Office has the ability to waive this match at any time. It should be noted that the program has ample funds to meet the match requirement this year and during the coming fiscal year.

(C) Division of Family and Youth Services

No impact as no local match required.

(D) Division of Public Health

KANA receives $120,600 which is a rural itinerant health care project and community health aide supervision and training. There are no matching fund constraints.

(E) Division of Mental Health and Developmental Disabilities

Currently, the Kodiak program is required to match the mental health grant by 25%. Reducing the match requirement to a proverty level 10% will have no appreciable effect upon the program since it now far exceeds the match requirement meeting nearly 50% of the program costs.

III. To the Degree Possible Define Present and projected increases in program use (WIC, Food Stamp, AFDC, Mental Health, Family and Youth Services, etc.) attributable to the recent economic slowdown. Investigate the cost requirements of serving this increased need.

(A) Division of Public Assistance

Some DPA programs are more likely to experience caseload increases than others. Aid to Families with Dependent Children, Adult Public Assistance, and Medicaid have had no significant recent increase in participation from the Kodiak area, nor is an increase anticipated.

This is due largely to the nature of these programs and their qualifying standards. If caseload increases occurred in these programs, applicants could be handled. Kodiak does not have a large enough population of potential eligibles to seriously impact program budgets.

The Energy Assistance Program, Food Stamps, and General Relief Assistance are the programs most likely affected by an economic slowdown. EAP has increased response from Kodiak this year. Last year approximately $275,000 in EAP benefits went to eligible applicants on the island. The increase in benefits and qualifying income guidelines this year, coupled with the poor economic situation have resulted in more applicants applying and being found eligible. There has also been increasing demand for additional emergency benefits to avoid home energy crisis such as utility service termination and running out of heating fuel. The FY 84 estimate is for expenditures in excess of $300,000. The FY 84 EAP budget can accommodate the projected caseload and emergency service increases. With its liberal eligibility requirements, EAP is the DPA program most accessible and drawn upon by Kodiak households facing economic difficulties.

The Food Stamp program has more restrictive eligibility requirements including an assets test. The food stamp program caseload in the Kodiak area is up only slightly in the last year.

DATE	HOUSEHOLDS	DATE	HOUSEHOLDS
May 1982	253	May 1983	268
Sept 1982	181	Sept 1983	201
Nov 1982	216	Nov 1983	211

Workers in the Kodiak DPA district office reported an overall increase in inquires and applicants, particularly from persons involved in the fishing related occupations. They also noticed an increase in first time applicants which had not previously applied for public assistance. A lengthy economic slump in the area could bring a rise in the food stamps caseload. In the event that this were to occur, it would not impact the food stamps program budget since it is 100 percent federally funded and can cover all qualifying applicants.

General Relief Assistance is a program of last resort aiding the destitute with basic subsistence needs. The caseload during October to December 1982 is identical to the same period in 1983. Its highly restrictive qualifying standards and low assistance amount make GRA available only to those in desperate need. There were but two such cases in Kodiak in December.

It is not anticipated that GRA will be drawn upon heavily in coming months. If it were, the FY 1984 GRA budget does appear able to accommodate a moderate increase in demand.

DPA programs basically have income and resource tests, and are designed to serve low-income households. Most have strict federal regulations concerning eligibility and benefit amounts. Many households facing temporary economic hardship may not qualify for public assistance, however, those falling to the point of eligibility have a range of services available to meet their basic needs. DPA is meeting the needs of those who currently qualify for its programs, and is capable of aiding those who may soon need to draw upon its services.

(B) Office of Alcoholism/Drug Abuse

The program has seen an increase in outpatient case load which may be due to the recent economic slowdown. During the past year, they have seen 325 clients compared to 152 the prior year. This is due in part to an improved program, but unemployment has been a major factor. Budget cuts last year necessitated the cessation of client services to residents of the outlying villages other than in Kodiak.

(C) Division of Family and Youth Services

The Division of Family and Youth Services is experiencing increases in caseloads. Child Protective Service investigations are estimated to increase this fiscal year by 10% and individual and family counseling cases will increase by 15%. Just how much of this projected increase may be attributed to the economic down-turn is unknown.

(D) Division of Public Health

In 1983 4,990 individuals were served by the Section of Nursing Services. This represents an increase of 770 over the previous year. At present, the current staff is able to meet the service demands. No significant demand for service resulting from the recent economic slowdown is anticipted.

(E) Division of Mental Health and Developmental Disabilities

The active number of cases in July 1983, was 370. This increased to 406 in August, 382 in September when several staff were on vacation, 400 in October, 435 in November and 415 in December. There has also been a noticeable increase in collaborative type cases between mental health and vocational rehabilitation since July. Thus, during the first half of FY84, the number of active cases served by the Kodiak Mental Health Program ranged from 370 in July to 435 in November, an increase of 18% in four months.

Based upon the current trend, there will be a major increase in the demand for mental health services in the Kodiak. There is an expected increase in the number of shared mental health/vocational rehabilitation cases. Patients who are carrying private insurance are dropping insurance coverage due to their inability to pay the premiums. This is resulting in an increased number of no-charge cases and an expected decrease in revenue for the program.

IV. Assess levels of most critical, immediate needs (Health, Social, Financial)

(A) Division of Public Assistance

From the DPA viewpoint there is an increasing level of need and demand on its programs. The DPA district office in Kodiak and village Fee Agents are busier than usual, but are currently meeting that demand. The Energy Assistance Program has been very active. Many households are contacting DPA seeking additional energy assistance much earlier in the winter heating season than usual. This program is well known and widely used in the area. To ensure that those unfamiliar with the program are made aware, additional display advertisements will be run in the local paper. The DPA network is good in the Kodiak area. The Fee Agents are of high quality and have been recently trained. The Kodiak Area Native Association has a good social services staff, and works cooperatively with DPA by referring needy households. An EAP outreach contract with the Kodiak Area Native Association has been recently executed.

DPA programs do form a "safety net" which can help needy families. The network is in place, and the services available to those who qualify. There has not been a crisis situation to date. Applicants are being served in a timely way by existing staff. Caseloads have

not dramatically expanded. With the economic slowdown in the area, many families are experiencing genuine hardships. This has not yet translated into a major migration to DPA programs. It may be that many of these households still have income and resources that keep them above the DPA qualifying standards. The most critical and immediate need is for DPA to be prepared to meet the demand should it increase suddenly, being particularly mindful of caseload trends.

(B) Office of Alccholism/Drug Abuse

The increase in the outpatient load has forced the program to exceed the appropriate counselor to client ration necessary for effective counseling interaction. The addition of another staff counselor would reduce the overload and improve service quality. The additional counselor position would also allow Kodiak Council on Alcoholism to provide increased aftercare and outreach services to strengthen those components of the program, and community development services to the six other villages on the island. Some additional travel funds would also be required. Total projected costs for an additional worker and travel would be $30,000.

(C) Division of Family and Youth Services

Unmet needs. In view of the anticipated workload, additional staff will be required, preferably at the entry level and/or paraprofessional level, either a Social Worker I or a Social Service Associate III. Using an entry level position should result in local

hire. Additional funds for support, such as office equipment, space, travel and per diem will be needed. This is the best projection we can give for needs for FY 85. A supplemental for this fiscal year would not be required.

(D) Division of Public Health

The existing staff is able to meet the service demands

(E) Division of Mental Health and Developmental Disabilities

The program has an immediate need to increase their residential training program and had plans to do so had they been allowed to apply for CSP monies. They would need 2-5 local hire positions that would be involved with the residential training program as well as the vocational rehabilitation cases. These people would be trainers and aides.

V. Temporary Employment Opportunities of DHSS Program Activity

The opportunity available for temporary employment through the expansion of DHSS appears minimal. The Department of Health and Social Services has not yet realized a significant increase in the demand for services which can be attributed to the recent economic slowdown in the Kodiak area. For the most part, the present level of demand for services can be met with the existing level of staff. Various program enhancements could be made which would provide employment opportunities in the Kodiak area, if the

department were to receive additional resources. These enhancements would be of benefit to both the programs and the people who are served. At the same time opportunity for employment, although minimal would be available to residents of the Kodiak Island area.

MEMORANDUM State of Alaska

TO: Jeff Smith
Deputy Commissioner
Department of Community & Regional Affairs

DATE: January 23, 1984

FILE NO:

THRU: Bob Landau
Assistant Commissioner

TELEPHONE NO: 465-4842

FROM: James J. O'Connor
Regional Supervising Investigator
Department of Labor

SUBJECT: Kodiak
Near-Term Assistance

1. Grants to City and/or Borough for capital improvements projects, to be used as force account. Force account are a do-it-yourself type of construction, wherein the City or Borough decides not to contract out the work, but actually performs it "in-house" with its own employees. Therefore, the City or Borough could hire local people, to provide interim employment opportunities.

2. Alaska's 34,000-miles coastline represent the world's largest and most productive commercial fishery. Therefore, the Governor's Fisheries Task Force, should communicate with, and contact all floating or shore based processors in/or outside the State, and ask them for assistance in hiring Kodiak residents, through private sources, or the state employment centers.

3. Contact all businesses working on the North Slope and ask for assistance in hiring Kodiak residents.

4. A joint effort between the state and private industries, to train Alaskan residents in the field of tourism.

JJO/BL/law
N-13

MEMORANDUM

ALASKA DEPARTMENT OF LABOR

State of Alaska

Employment Security Division

TO: Jeff Smith, Director
Dept. of Community & Regional Affairs
Division of Municipal & Regional Assistance

DATE: January 23, 1984

FILE NO: AK (EMS 9)

TELEPHONE NO: 465-2712

THRU: Robert Landau
Assistant Commissioner

SUBJECT: Kodiak Near-Term Assistance

FROM: John W. Shay, Jr.
Director

During the current drastic economic downturns the Employment Security Division will provide the residents of Kodiak with direct placement assistance, employer tax credits, Veterans Job Training enrollment and unemployment insurance benefits. In addition, the office will maintain information on job and training opportunities in other locations and can assist job seekers and employers in taking advantage of Job Training Partnership Act and other programs.

ESD operates a full-service office in Kodiak staffed by three Employment Service (ES) and two Unemployment Insurance (UI) workers who have the capability to deliver all division programs on site immediately.

UNEMPLOYMENT INSURANCE IN KODIAK

The Job Service office in Kodiak contains a full-service unemployment insurance contingent. The staff via direct satellite communication with the Employment Security Division's main frame computer, are able to directly input claim transactions which result in overnight payments or determinations of eligibility. The staff in Kodiak and the support system behind them in Anchorage and Juneau are capable of paying timely Unemployment Insurance benefits to those eligible and out of work in a falling economy. Those benefits not only provide partial wage replacement to the individuals affected, but provide much needed cash flow to the local economy. Without modification, unemployment insurance is designed for just such a situation.

EMPLOYMENT SERVICE

Basic Placement Assistance

The Kodiak Employment Center, as part of the Employment Service network, provides the full range of employment services for job applicants who are seeking employment and employers who are recruiting qualified employees.

Kodiak job applicants are assisted in matching their job skills to labor market demands through the registration process, referral to appropriate

jobs, job development, and through special referral for applicants who need pre-employment assistance from other appropriate service agencies.

Employers, through the Kodiak Employment Center, are able to recruit workers who meet their specific industrial needs.

The Kodiak Employment Center registered for work over 3,000 new job applicants during the 1983 Federal Fiscal Year. Over 1,200 of those registered applicants were identified as being qualified for occupations in the seafood industry. In addition, 1,325 job openings were filled and it is estimated that 42 percent of the openings were in the seafood processing industry.

The following special programs are administered by the Employment Service:

Job Placement Assistance For The Seafood Industry

With the exception of seafood plants outside of Kodiak City, housing for workers is a constant problem. As a result, there is a strong tendency for these plants to hire workers who live in Kodiak. On the other hand, those plants located away from the city have adequate quarters and have hired many of their workers from the mainland and from the Lower 48.

Job Service personnel in Kodiak are working closely with managers of all plants on Kodiak Island to provide a service that promotes consideration of available workers in and around Kodiak. Considerable progress is reflected in statistics for the local office as placement to seafood worker positions has nearly doubled over the past two years, from 310 in 1981 to 585 in 1983.

As a measure to further improve consideration for local hire of seafood workers, the State Seafood Placement Coordinator will revisit the Seattle offices of Kodiak plants in February and further encourage the use of Job Service in Kodiak to obtain their workers.

The ES Computer Network

The Kodiak Employment Center is assisted in its efforts to find jobs for people by an extensive statewide computerized network. Information describing both job orders and applicants for Kodiak, as well as statewide, is stored in the ES computer files and is retrievable from the computer via terminals at the Employment Centers. The computer is programmed to match employer job openings with qualified registered applicants.

This computerized network can also provide applicants with information on job openings and identify qualified applicants for employers in Kodiak and throughout the state. Current labor market information for areas within the state served by other Employment Centers is also available.

Job Training Partnership Act (JTPA)

Job Service functions as a liaison with the Department of Community and Regional Affairs and the Department of Education, to coordinate and provide JTPA services to eligible individuals and locate interested employers.

During the registration process, Job Service makes an assessment of an individual's need for training or other assistance to become employable. Applicants interested in JTPA are pre-screened for eligibility and enrollment is facilitated by referring the applicants to the Division of Community Development (DCD). Since DCD has no staff on site, Job Service is able to channel interested and eligible individuals for JTPA service that otherwise might not be reached in a rural area.

Job Service also promotes JTPA among employers to develop On-the-Job Training (OJT) slots, provides information on and recruits for JTPA openings and does pre-apprenticeship aptitude and proficiency testing.

Job Service will also provide placement services to JTPA-trained clients, such as job seeking skills assistance, job search information, specialized job development, and job referral.

Emergency Veterans' Job Training - (VJT)

A special effort can be made through Job Service, Job Service Employer Committees and its links with the private sector to assist employers to prepare significant training programs for eligible veterans. VJT will subsidize with federal funds up to $10,000 in wages. The subsidy will help offset employer's cost of training and bring federal dollars into the community while training eligible veterans to perform significant jobs. VJT can also be linked with other subsidized programs such as Targeted Jobs Tax Credit (TJTC).

Targeted Jobs Tax Credit

The Targeted Jobs Tax Credit (TJTC) program stimulates private sector employment opportunities by providing a federal income tax credit to those employers who hire and pay wages to eligible individuals. The potential two-year savings can amount to as much as $3,870 per eligible employee, depending upon the amount of wages paid and the employer's tax bracket.

Eligibility of applicants for the program is determined by Job Service. Those targeted groups who are eligible for TJTC certification include certain youth, Vietnam-Era veterans, ex-convicts, handicapped individuals, recipients of Supplemental Security Income (SSI) payments and recipients of Aid to Families with Dependent Children or general assistance.

SUPPLEMENTAL FUNDING REQUIREMENTS

Most of the above programs are currently funded with the exception of some of the Job Training Partnership Act (JTPA) activity. We are currently planning to request additional staffing to assist the statewide coordination of this program. Any increase in Unemployment Insurance payment activity costs will be covered by reimbursement from the Federal Government.

Kodiak Project
Options and Prospects for Near-Term Assistance
Working Group Plan
Department of Transportation and Public Facilities

The Kodiak Working Group assigned the Department of Transportation and Public Facilities the task of reviewing five specific areas to determine options and prospects for near-term assistance which might be undertaken to provide for some level of immediate economic relief to the Kodiak area. The five transportation areas identified for review are listed below, along with specific recommended action. The areas and projects include:

A. Investigation of the costs and effects of supplemental appropriations for the Local Service Roads and Trails Program;

1.	Akhiok Access Road from Airport to Floating Dock	$500,000
2.	Ouzinkie Boardwalk	$60,000
3.	Old Harbor Landfill Access Road Improvements	$250,000
4.	Port Lions Road Rebuilding and Extension	$2,000,000
5.	Karluk Upgrade of Road to Sanitary Landfill	$200,000

B. Investigate the specific steps of early implementation of <u>funded</u> capital improvements in the Kodiak Island area;

1.	Mission Road Supplemental	$340,000

C. Investigate facilitating early implementation of proposed Federal construction projects (BIA, PHS and HUD), in so far as they might provide immediate employment opportunities;

1.	Old Harbor Access Road to Proposed HUD Housing Project	$400,000

D. Erosion Control Program; and

E. DOT&PF Maintenance and Operations Program

Findings and conclusions regarding each of the five areas are detailed below. In addition, we have summarized one additional category which includes a variety of activities not identified above. In summary, the "other" activities include:

F. "Other"

1.	Dog Bay Small Boat Harbor Upgrade	$800,000
2.	Village Equipment Storage Facilities	$100,000
3.	Port Lions Ferry Dock Repairs	$500,000
4.	Old Harbor Fuel Dock Repairs	$800,000

A. Local Service Roads and Trails Program

Findings: The Local Service Roads and Trails (LSR&T) program was initially created in 1971 to provide State grant funds to improve local roads within municipalities, boroughs and small cities. In July 1982, the program was phased out. However, an appropriation was identified by the 1983 State Legislature and the program was reauthorized.

The allocation for the Kodiak Island Borough, determined on the basis of a formula which includes population, road miles and other factors, has amounted to $1,027,710, since the program's inception. This year the LSR&T allocation to the Kodiak Island Borough was $130,821. Individual projects for the program are determined by the Borough according to State Statute.

Practical application of this program in the villages within the Borough is very limited. Mobilization costs for equipment and machinery sufficiently inflate any single project cost to far exceed any cost-benefit ratio given the limited funds in the LSR&T program. As an example, if the annual appropriation were divided evenly among the six villages, roughly $22,000 would be available per village. This amount would barely cover mobilization costs for two pieces of heavy equipment to a village. For this reason, the Kodiak Island Borough has elected to use LSR&T program funding only for preliminary engineering design preparation for projects on the contiguous road system.

Actions: The distribution formula and funding cycle for the LSR&T program significantly affects its ability to be responsive to Kodiak needs in any significant fashion. However, if some type of add-on or supplemental funding were made available, designated for the Kodiak Island Borough and not the statewide Local Service Road and Trail program, several local projects have been identified for immediate construction. They include:

1. Akhiok Access Road from Airport to Floating Dock $500,000

   The project would fund construction of a road from the airport to the floating dock. Preliminary engineering estimates the project will cost $500,000. Most of the remaining work will involve heavy equipment work for grading, hauling and other construction activities. Consequently, near-term economic benefit to the community would be limited since little labor intensive work remains to be done.

2. Ouzinkie Boardwalk $60,000

   Boardwalk improvements are needed to provide safe access for pedestrians around the harbor area. It is estimated the project could be constructed, using local labor, at a cost of approximately $50,000-$60,000. Near-term economic benefit would be limited, but would provide immediate income for the laborers.

3. Old Harbor Landfill Access Road Improvements $250,000

   Improvements are needed to the existing landfill access road to prevent its continued erosion by tidal action. The project was originally estimated to cost $250,000. Some near-term economic benefit would accrue villagers employed as labors on the job.

4. Port Lions Road Rebuilding and Extensions $2,000,000

The Port Lions City Council has identified a number of local roads which need rebuilding and/or extensions to better serve the residential and commercial areas of the city. The roads include:

a. Main Street - 1,500 feet
b. Spruce Drive - 1,800 feet including 400' extension
c. Birch Drive - 1,200 feet
d. Birch Street - 1,800 feet
e. Beach Drive - 750 feet
f. Cove Drive - 300 feet
g. Bayview Drive (Phase II) including sewer and water - 1,300 feet

5. Karluk Upgrade of Road to Sanitary Landfill $200,000

Improvements are needed to the existing landfill access road. The project is estimated to cost $200,000 and would provide some near-term economic benefit to villagers used on local labor crew.

B. Early Implementation of Funded Capital Improvement Projects

Findings: The Department's annual capital budget has included a number of Kodiak area projects. The following construction projects are presently funded:

1. Pedestrian Safeway $670,000

Kodiak Borough has accepted funds through a TORA for project management and construction of a pedestrian bicycle path to run parallel to Rezanoff Drive from East Elementary School to Fort Abercrombie State Park.

2. Mill Bay Road $1,285,000

Mill Bay Road paving (CDS 1.90-2.59) and construction of a pedestrian walkway with curb and gutter.

3. Mission Road Reconstruction $1,000,000

Funds will be used to upgrade, realign, pave and aquire R-O-W for Mission Road between Cutoff Road and Shahafka Cove.

4. Kodiak Highway Repair $1,276,000

Emergency repairs on the Kodiak road in the area of Pillar Mountain. A $1,000,000 setaside remains from the original appropriation. A portion of the remaining funds will be used for rip-rap maintenance project this summer.

5. Port Lions Innerharbor $1,650,000

Project consists of construction to complete boat harbor mooring facilities with 50 berths and 10 transient mooring berths.

Three of the above five projects are ready for construction this spring, including the Pedestrian Safeway Project, Mill Bay Road and Port Lions Innerharbor. The Kodiak Highway Repair project is still in the design stage. The repair project includes a Pillar Mountain stabilization element and, because of the complexity of the design problem, probably could not provide any near-term economic benefit, even if accelerated. The Mission Road project has been identified as having a funding short-fall. If so, the project will not be able to proceed until additional funds could be secured or the project scope reduced.

Actions: Three of the funded Capital Improvement projects are already on line and ready for construction as soon as the weather allows. Nothing can be done to accelerate their implementation, barring an early spring. Little can be done to expedite the Kodiak Highway Repair project because of the design phase which must precede any construction activity. A small maintenance project using some of those funds has been planned for this summer. Mission Road will be ready for construction this spring, but with a reduced scope unless supplemental funding is made available. A supplemental appropriation for Mission Road could be considered for immediate action for its near-term benefit.

1. Mission Road Supplemental $340,000

C. Federal Construction Programs (BIA, PHS, HUD)

Findings: The Department has contacted the Bureau of Indian Affairs (BIA), the Public Health Service (PHS) and the Department of Housing and Urban Development (HUD) to determine if early implementation of any proposed Federal construction projects could be facilitated. All three of these agencies already seem to work in close concert with one another in the development of projects.

A large share of the housing in rural Kodiak is HUD housing, constructed and financed by HUD through the Kodiak Island Housing Authority. The Public Health Service generally piggybacks the housing construction projects by funding off-site water and sewer development. At the same time, the BIA generally tries to develop road projects which support the housing projects.

There is currently only one outstanding program reservation for HUD housing in the Kodiak area. The reservation is for 15 family units in Old Harbor. The Kodiak Island Housing Authority has not been able to proceed with the project because they cannot ensure HUD they have physical access to the site. The Housing Authority is working with BIA, at this time, to secure a commitment for the road construction. BIA, unfortunately, has very limited sources and is concerned it will not be able to make any financial commitment to the project. The housing units cannot be built without the access road because HUD will not release the reserved funds unless they are assured of site access.

Many village road needs have been met recently by the BIA construction program. The BIA recently completed road reconstruction projects in Akhiok and Old Harbor. This fall their road equipment was moved to Larsen Bay to await a spring start-up on a project there which will construct 8,000' of road to the village's new sanitary landfill. After Larsen Bay, the Bureau road crew and equipment will move to Ouzinkie for a road reconstruction

project. BIA operators travel with the equipment since few villagers are licensed as heavy machine operators. Whenever possible the Bureau employs local labor through force account hiring. Generally that work is limited to brush clearing and labor intensive tasks.

Actions: The Department could be useful in expediting the Federal construction project by supporting an Old Harbor Access Road project. A financial commitment here would allow the Kodiak Island Housing Authority to proceed with construction of the 15 housing units. It is likely at least some near-term economic benefit would be directly realized by Old Harbor residents given PHS and HUD local hire efforts.

1. Old Harbor Access Road to Proposed HUD Housing Project. $400,000

   This project would fund construction of a road from the village to the proposed new HUD housing area. Only preliminary cost estimates from the Kodiak Island Housing Authority are available at this time. Near-term economic benefit to the village residents for this project would include labor intensive work associated with brush clearing and site preparation. Lead time would be required to coordinate the road project's development with HUD. It is possible that construction could proceed late this Spring.

D. Erosion Control Programs

Findings: Three erosion control studies, completed by the Department, have identified potential problem areas and have recommended solutions. The three areas include:

1. Cape Chiniak Road Erosion Control Study

   Cape Chiniak road is located on Kodiak Island and connects Cape Chiniak residential area to the City of Kodiak. Wave erosion is cutting into a section of the highway at MP 0-1.0. The recommended alternative for mitigating erosion damage and maintaining access on Cape Chiniak Road is to relocate approximately 0.8 miles of road to the south of the existing route. The report includes a conceptual road relocation alignment. A ground survey and additional engineering studies will be needed to refine the final project, but preliminary estimates place the project cost at $1,069,000. The near-term economic benefit of this project would be limited since this would be a large scale construction project involving road relocation with much preliminary engineering yet required.

2. Karluk Erosion Control Study

   The recommended structural alternatives for mitigating damage include the construction of a rubblemound revetment at Karluk, a rip-rap revetment at Old Karluk, and a sacrifical gravel berm along the bank of the new townsite. Estimated project cost for this alternative is $631,500. Near-term economic benefit for this project would be limited because of the emphasis on heavy equipment work inherent in the structual alternative recommendation.

Recommended non-structural measures include the relocation or replacement of two endangered structures. This measure would provide several local employment opportunities. Total replacement cost are approximately $532,000. However, these types of improvements do not have strong local support.

3. Ouzinkie Erosion Control Study

The study recommends that a slope revegetation project be implemented to reduce the rate of side slope erosion. Other non-structural remedial measures include the regulation or control of foot traffic and reduction of the practice of hauling firewood over the eroding slope. It is further recommended the City's sewer outfall system be regularly inspected and future construction near the top of the bluff be discouraged.

The recommended structural alternative includes construction of a quarry stone revetment. Estimated costs for such a revetment is $407,000, assuming a breakwater project is not implemented. The revetment project should be reevaluated if harbor breakwater plans are ever finalized. If a breakwater is constructed, a less substantial revetment structure would be required. No funds have been identified either for harbor development or erosion control measures at this time. Near-term economic benefit for this project would be limited because of the emphasis on heavy equipment work inherent in the structual alternative recommendation.

Actions: Very little near-term economic development could be realized with the early implementation of any of these projects. All three of the projects emphasize heavy equipment work in their preferred structural alternatives. The most direct economic benefit would probably accrue to the Kodiak metropolitan area where contractors are prepared to handle such work.

E. Maintenance and Operations Effort

Findings: The State of Alaska currently provides maintenance service at the State Airport and on the Island's contiguous highway network of State roads. Services in the villages are limited to the airports and are provided, on a contract basis, with the local unit of government or a private individual.

The following table summarizes major expenses associated with the Kodiak Maintenance and Operations program:

Kodiak and Kalsin Hill Maintenance & Operations Staff	
Average Annual Salaries for 13 permanent full-time positions (including overhead)	$631,500
Kodiak Airport Annual Maintenance Contracts (local purchase)	
Petroleum Products	$ 32,000
Sand & Gravel	$ 50,000
Kodiak Highways Annual Maintenance Contracts (local purchase)	
Highway Grading Material	$ 60,000

Equipment Transportation Between Villages	
Barge (two trips per year)	$ 6,500
Personal Services Contracts (Village Airport Maintenance Program)	
Karluk - Airport (City)	$ 4,000
Larsen Bay - Airport (Private)	$ 4,000
Old Harbor - Airport (City)	$ 2,750
Port Lions - Airport and Road to Small Boat Harbor (City)	$ 14,000
Akhiok	-0-
Ouzinkie - Airport (being advertised)	$ 3,500
Total Maintenance & Operations	$808,250

Actions: The Department's Maintenance effort, to the greatest extent practical, is already being passed through to the local economy. No new positions are expected to be added to staff since no increase in the FY'85 operating budget is expected. Any additional maintenance funding of Kodiak would create inconsistencies in maintenance level within the region.

F. "Other"

Findings: The Department has reviewed the Kodiak Island Borough Capital Improvement Program and other DOT&PF projects in order to identity other possible funding opportunities. A number of projects which did not fall into one of the above five categories might be identified for funding given the special needs of Kodiak. Some of the projects might be most appropriately administered by DOT&PF, some by other Departments, and even others by local units of government.

Actions: DOT&PF Design has identified an improvement project for the Dog Bay Small Boat Harbor facility which would increase its moorage capabilities and provide some safeguards against future failures occurring as a result of strong winds.

1. Dog Bay Small Boat Harbor Upgrade $800,000

   The project would upgrade "N" float, replace finger float hinges and stall float hinges re-drive miscellaneous piling and replace exterior pile collars and overhead lighting.

Community equipment storage facilities have been identified as a need in many of the communities. The communities are beginning to acquire various types of equipment for providing community services (i.e. fire fighting trucks, bulk fuel delivery trucks, small road maintenance equipment). While the villages have been able to acquire funding for the equipment they have not been able to secure funds for construction of storage sheds. The Borough is confident that with a construction foreman a number of local residents can be employed in the construction of the sheds. The Borough estimates the sheds could be constructed for an average $100,000 per building.

1. Village Equipment Storage Facilities $100,000/facility

In addition, two dock improvement projects have village priority. They may be implemented with a minimum amount of design work.

2. Port Lions Ferry Dock Repair $500,000

3. Old Harbor Fuel dock Repairs 800,000

Other projects, including small equipment purchases and preliminary design (i.e. small boat harbors) have been identified, but their ability to respond to the near-term economic benefit criteria are much more limited.

SB

55

Alaska State Legislature

JUNEAU, ALASKA

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

June 21, 1983

TO: House Labor & Commerce Committee

FROM: Teresa B. Cramer Teresa B Cramer
Administrative Assistant

SUBJECT: CS for Senate Bill No. 55 (Rules)
Relating to Collective Bargaining

The Public Employment Relations Act provides that the monetary terms of any agreement entered into between the state and an employee representative are subject to funding through legislative appropriation. AS 23.40.215. The PERA does not set out a system of legislative review for the monetary terms. If the legislature is dissatisfied with the negotiated terms, there is no formal vehicle to explain to the parties to the agreement (the Administration and the employee union or association) the substance of the legislature's concerns. Therefore, the parties do not have a concrete set of limitations from which to work should they decide to renegotiate the original agreement. Furthermore, legislative delay and rejection of negotiated contracts has, in the past, led to the calling of a Special Session, which is an expensive way to resolve the issue.

The Blue Ribbon Commission recommends legislation to encourage legislative review of collective bargaining agreements early in the session. If the legislature is dissatisfied with the monetary terms, the parties may choose to renegotiate before the session adjourns with a clear understanding of the legislature's concerns.

Bill Analysis

Page 1 Line 9	The first section requires that the monetary terms of a collective bargaining agreement be submitted to the legislature within 10 days of agreement by the parties. If the parties reach an agreement while the legislature is not in session, then the monetary terms are to be submitted within 10 days of the convening of the next regular session. The legislature is given 60 days to consider the agreement and express its opinion by concurrent resolution.

Line 17 — Any approval given by the legislature is a "nonbinding, advisory expression of legislative intent." This language makes clear that the resolution does not take the place of an appropriation bill to fund the contract and permits the legislature to change its mind, should circumstances warrant.

Line 19 — If the legislature dissapproves the negotiated agreement, the parties may resume negotiations.

Line 23 — The second section adds a definition of "monetary terms of an agreement" to the Public Employment Relations Act to set out those items which are subject to legislative review.

Line 29 — The third section provides for an immediate effective date.

TBC:lmk

Offered: 6/17/83

Original sponsor: Rules/Legislative Council

IN THE SENATE BY THE RULES COMMITTEE

CS FOR SENATE BILL NO. 55 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to collective bargaining; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.40.215 is amended by adding a new subsection to read:

(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 days after the agreement of the parties, if the legislature is in session, or within 10 days after the convening of the next regular session. The legislature shall advise the parties by concurrent resolution if it approves or disapproves of the monetary terms within 60 days after the agreement is submitted to the legislature. The approval of the monetary terms of an agreement under this subsection is a nonbinding, advisory expression of legislative intent. If within 60 days after the agreement is submitted the legislature advises the parties by concurrent resolution ~~that it disapproves~~ the monetary terms of the agreement, ~~the parties may resume negotiations.~~ ARE CONSIDERED DISAPPROVED

* Sec. 2. AS 23.40.250 is amended by adding a new paragraph to read:

(8) "monetary terms of an agreement" means the changes in the terms and conditions of employment resulting from an agreement that will require an appropriation for their implementation or will result in a change in state revenues or productive work hours for state employees.

* Sec. 3. This Act takes effect immediately in accordance with

SB

67

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

April 7, 1983

The Honorable Richard Eliason
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Info on SB 67

RE: CSSB 67

Dear Senator Eliason:

The Committee Substitute for Senate Bill 67 makes the cost of relocating utility facilities incident to a municipal highway project a cost of the highway project. This practice in regard to municipal highway projects would then be identical to the practice relating to State highway projects.

By making these utility relocation costs a part of the cost of the highway project, the local utility rate payer is relieved of this burden. In most cases a State grant is the funding source for the road project. In those cases, these relocation costs would be transferred to the State government.

In some cases the expense will be assumed by the municipality. When this expense is transferred from the local utility rate payer to the local municipal taxpayer, there is no net change for residents who are in both roles. However, a utility's consumers and the municipality's taxpayers are not always the same people. Fairness requires that if a municipal project causes the cost of relocating utility facilities, then the municipality should be responsible for that cost. It is also important that all of the costs as well as all of the benefits of a proposed project be considered at the time a municipality decides to relocate or widen a highway. Without Senate Bill 67, the municipality considers all of the benefits of a proposed project, but it only considers a part of the cost.

Sincerely,

Dave

David Hutchens
Executive Director

DEMOCRACY IN ACTION

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

6000 C STREET • SUITE C • ANCHORAGE, ALASKA 99502 • (907) 276-3235

January 26, 1983

Senate Labor and Commerce Committee
Alaska State Legislature
Capitol Building
Pouch V
Juneau, Alaska 99811

RE: Senate Bill 67

Gentlemen:

Senate Bill 67 makes the cost of relocating utility facilities incident to a municipal highway project a cost of the highway project. This practice in regard to municipal highway projects would then be identical to the practice relating to State highway projects.

By making these utility relocation costs a part of the cost of the highway project, the local utility rate payer is relieved of this burden. In most cases a State or federal grant is the funding source for the road project. In those cases, these relocation costs would be transferred to the State or federal government.

In some cases the expense will be assumed by the municipality. When this expense is transferred from the local utility rate payer to the local municipal taxpayer, there is no net change for residents who are in both roles. However, a utility's consumers and the municipality's taxpayers are not always the same people. Fairness requires that if a municipal project causes the cost of relocating utility facilities, then the municipality should be responsible for that cost. It is also important that all of the costs as well all of the benefits of a proposed project be considered at the time a municipality decides to relocate or widen a highway. Without Senate Bill 67, the municipality considers all of the benefits of a proposed project, but it only considers a part of the cost.

Sincerely,

David Hutchens

David Hutchens
Executive Director

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

February 8, 1983

to: Senate Labor & Commerce Committee

from: Ginny Chitwood, AML Executive Director

re: SB 67 - Utility Relocation Costs

Municipalities oppose SB 67 because the issue is a local one and should be resolved at the local level. This bill would amend Title 19, Chapter 25 - Protection and Use of State Highways and Roads (emphasis added). The changes in SB 67, however, don't relate to state roads; they deal with local roads, paid for by local funds.

It is easy to understand why there is a provision in law for the state to pay the utility relocation costs since much of the funding is paid by the federal government. In municipal road projects, however, there is no way to shift 95% of the costs to a non-resident third party. The costs are paid by the local taxpayer unless the municipality receives a specific state grant for a specific project.

Since cost figures vary widely depending on the circumstances of each road project, I was not able to generate any average municipal cost per mile figures, but I do have general comments from several municipalities:

City of Palmer - Manager Dave Soulak estimates the provisions of SB 67, without section 5, would cause a 5 to 15% increase on 3 road projects currently being planned. In many cases, utilities are not where they're supposed to be. He doesn't think that municipalities should have to pay for utility mistakes, but does not oppose the municipality paying to relocate the utility if it is put in according to a permit.

Matanuska-Susitna Borough - Manager Gary Thurlow basically agrees with Soulak.

City & Borough of Sitka - Administrator Rocky Gutierrez believes that municipalities shouldn't be in state statutes except in Title 29. Sitka has worked out an agreement with the non-municipal utilities.

City of Kodiak - Manager Sam Gesko opposes section 3 of the bill, making the relocation costs a municipal responsibility.

City of Fairbanks - Manager Wally Droz says there would be

Alaska Telephone Association
3201 C Street / Suite 601
Anchorage, Alaska 99503
(907) 276-3293

A.C. Pistorius
President

Gordon Parker
Executive Director

February 4, 1983

Committee on Labor & Commerce
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Gentlemen:

I am writing in support of SB67, relating to the relocation of utility facilities. In doing so, the telecommunications industry joins the other utilities in our state in asking for passage.

SB67 asks fair treatment in paying the costs of relocating facilities required by a municipal government. It asks, simply, that the entity which causes the cost pay the cost. This is a responsibility already recognized by the federal and state governments in existing statutes.

Under current statutes, a municipal government may order a utility to relocate its facilities at its own expense. Since ratepayers aren't necessarily the same as taxpayers in a given situation, this places an unnecessary burden on the ratepayer.

Many communities have recognized their responsibility to reimburse the utility for costs resulting from relocations required by the municipal government. However, they are under no obligation to do so. Consequently, utilities are at a disadvantage in recovering costs.

I would be happy to answer any questions you may have. I ask your support for the bill.

Sincerely,

Gordon Parker

GP/jv

Tony Knowles,
Mayor

Anchorage Telephone Utility

600 EAST 38TH AVENUE, ANCHORAGE, ALASKA 99503-6041
TELEPHONE (907) 564-1000
Telex 090-25-100
Facsimile (907) 561-1703

Owned by the
Municipality
of Anchorage

March 18, 1983

Senator Eliason
Chairman, Labor & Commerce
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SB-67

Dear Senator Eliason:

The passage of SB 67 will resolve a long standing disparity between the Federal and State laws on one hand, and local government policies on the other hand, as to reimbursements to utilities when they are required to relocate installed facilities to accommodate road and highway construction.

The Federal and State governments have historically reimbursed local utilities all reasonable costs associated with such relocation requests. The Municipality of Anchorage, for one, has refused such reimbursement.

Passage of SB 67 will be of significant, positive benefit to all Municipal utilities and their customers. No longer will the utilities have to bear unreasonable expenses incurred due to the failure of local governments to properly absorb relocation costs as a rightful part of their projects. Also rectified is the improper assignment of such relocation costs to all customers of a particular utility when only those living within a particular road improvement district or along a particular street may actually receive the benefits.

Cordially,

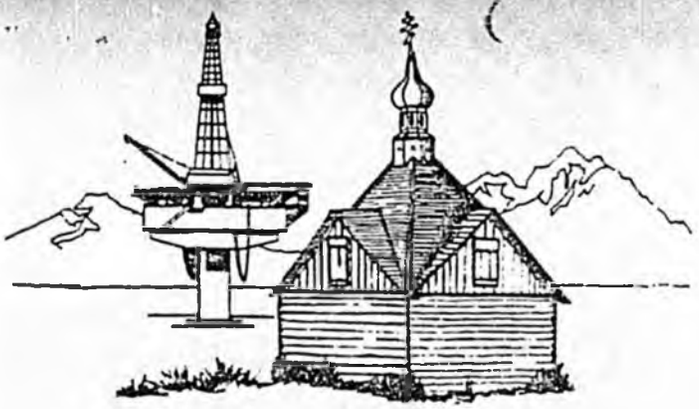
ANCHORAGE TELEPHONE UTILITY

A. C. Pistorius

A. C. Pistorius
General Manager

cc: Patrick Anderson, Legislative Affairs
Gary Tucker, Assistant Municipal Attorney
Executive Manager, Public Utilities
Alaska Municipal League

W10 AA1



CITY OF KENAI

"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

March 11, 1983

Honorable Richard Eliason, Chairman
Senate Labor and Commerce Committee
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

In response to a request by you directed through the Alaska Municipal League in providing you with information on how much it will cost municipalities to pay for relocation of utilities in connection with municipal highway projects, please consider the following:

Homer Electric which is the provider of electrical power for the City of Kenai and the surrounding areas has indicated to the City that during the years 1980, 1981 and 1982, the cost for relocating their utility poles in conjunction with road projects undertaken by the City of Kenai cost in excess of $300,000. In addition, for the last half of 1982, Homer Electric submitted a bill for $60,000 for a particular road project that the City had under construction.

At this time, the City has refused to pay that bill and as a matter of fact, we now find ourselves in court with that utility over the dispute of whether or not the utility or the City is going to pay those costs. The City's contention is and will remain until directed otherwise that the utilities are in our right of ways at the sufferance of the public and therefore when the City undertakes a major road redesign or improvement project, the utility shall bear the cost for moving the poles to comply with the road design.

In addition to that, in 1982 the City had a downtown road project for which we were asphalting almost a mile and a half of road, we requested that Homer Electric bury their lines in that area on the basis that it was downtown property. Homer Electric refused to bury those lines and we sat down and negotiated with Homer Electric and the City ended up paying for the burying of those lines and the cost to the City was $75,000.

Now, as a matter of fact, we could have fixed two or three of our roads in this community that during breakup no-one can even drive down, citizens have to park their cars as far away as four or five city blocks from their home because the roads are in such condition during breakup they cannot be traversed.

It is for these reasons that the City opposes SB 67. The City's contention is that it always has been and should remain the utility's responsibility for relocating their utility lines when the City is improving the highway system from a safety standpoint and for a convenience standpoint for the traveling public in these communities.

At this point we have only talked about the electric utility, you must remember that if those costs are representative for the electric utility, most all of the telephone lines must be at the same time moved and on many occasions, the gas lines also have to be moved. If you multiply $300,000+ then the City over the last three years was looking at a total expenditure of approximately $1 million just to relocate the utilities in order to permit the City to repair and maintain the roads to benefit the traveling public.

It becomes obvious that a city of 5,000 people does not have the kind of money necessary in order to do the roadwork that we feel is our obligation and at the same time provide the money for all of the utilities which are private entrepreneurs and in the profit making business.

Sincerely,

Wm. J. Brighton
City Manager

WJB/dg

cc: Senator Don Gilman
Senator Paul Fischer
Representative Hugh Malone
Representative Milo Fritz
Alaska Municipal League

ANCHORAGE WATER & SEWER UTILITIES

3000 Arctic Boulevard
Anchorage, Alaska 99503
(907) 277-7622

Tony Knowles
Mayor

Owned by the Municipality
of Anchorage

March 7, 1983

Senator Eliason
Chairman, Labor & Commerce
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: SB-67

Dear Senator Eliason:

From the perspective of water and wastewater facilities, passage of the subject legislation should not have a significant impact on the cost of municipal road improvements.

In Anchorage for example, it is rare when a municipal road improvement impacts much more than the surface or above surface water and wastewater facilities. Generally this would include moving fire hydrants, adjusting sewer manhole elevations, adjusting water valve box elevations, etc. These type of relocations cost AWWU approximately $100,000 in 1982, a year with significant road improvement activity.

An exception to the above would be a situation where a road improvement project necessitated relocating an entire stretch of water or sewer main. Generally this only occurs when the road grade is lowered so much that freezing becomes a potential problem for an existing facility. In these cases relocation could cost as much as $100 per lineal foot of pipe, including apurtenances.

If the Anchorage Water and Wastewater Utility can provide any further information please contact either myself or Brian Crewdson at 265-5561.

Sincerely,

Robert E. Smith

ROBERT E. SMITH
General Manager
Anchorage Water & Wastewater Utility

RES/BIC/slr
H/SE

cc: Alaska Municipal League
Patrick Anderson
John Harshman

Bill Sheffield, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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

March 25, 1983

BILL ANALYSIS

RE: CSSB 67
SPONSOR: SENATE LABOR & COMMERCE COMMITTEE

PROGRAM EFFECTS OF BILL

The current statute requires that if, as a result of a state highway construction project, utility facilities must be relocated the State may order the utility to relocate that facility and the State must also pay the cost of that relocation. This bill would also expand the statute to include Municipal highway construction. It also restricts the costs payable to utility facilitites located as a result of valid easement or permits.

COMMENTS

It is reasonable to allow municipalities, which are responsible for construction of local roads and highways, this type of authority. We do, however, have some concern about relocation costs in instances where strict easement and right-of-way procedures have not been adhered to. Many of the smaller, older utilities do not have formal easements or right-of ways. It would seem that strict interpretation of new language could cause undue hardship for some of the smaller utility companies.

It would be our recommendation that some individual case by case discretion should be considered.

Karen Rudwa for Cam Lewis
Mark Lewis, Commissioner

21-P1LH

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CS SB 67
Title: relocation of utility facilities
Sponsor: Labor & Commerce
Requestor: Community & Regional Affairs Committee

II. FISCAL DETAIL

Agency Affected: Community & Regional Affai:
Program Category Affected: development
BRU, Program of Subprogram(s) Affected: Local Government Assistance

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

Sponsor did not indicate.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Terry Earley Phone: 465-4730
Division: Local Government Assistance Date: 3/25/83

Approved by Commissioner: Date: 3/25/83
Department: Community & Regional Affairs

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

3/8/83

SENATE LABOR AND COMMERCE
STANDING COMMITTEE
February 8, 1983

Members Present: Senator Dick Eliason, Chair
Senator Bob Mulcahy
Senator Pat Rodey

Members Absent: Senator Don Bennett
Senator John Sackett

COMMITTEE CALENDAR

Senate Bill 67 - "An Act relating to the relocation of utility facilities incident to the construction of highway projects by a municipality; and providing for an effective date."

WITNESS REGISTER

Dave Hutchens, Executive Director
Alaska Rural Electric Cooperative Association, Inc.
237 East Fireweed Lane
Anchorage, Alaska 99503
586-2660
Position Statement: Supports SB 67, proposed amendment.

Ginny Chitwood, Executive Director
Alaska Municipal League
204 North Franklin St.
Juneau, Alaska 99801
586-1325
Position Statement: Opposes SB 67, issue should be determined on local level, placement should be in Title 29.

Patrick Anderson
Municipality of Anchorage
Pouch 6-650
Anchorage, Alaska 99502
264-4431
Position Statement: Voiced objection to specific portions of bill, and will provide specific recommendations by Friday.

Gordon Parker
Alaska Telephone Association
3201 C Street, Suite 601
Anchorage, Alaska 99501
276-3293
Position Statement: Supports measure.

PREVIOUS ACTION

No previous action to record.

ACTION NARRATIVE

TAPE #3
Recording
Number 004

Senator Eliason, Chair, called the meeting of the Labor and Commerce Committee to order at 1:35 pm with members Senator Mulcahy and Senator Rodey in attendance.

Number 020

Dave Hutchens, Executive Director of Alaska Rural Electric Cooperative Association, Inc., provided the first testimony on SB 67. He expressed support for the measure and offered an amendment to the bill. Several years ago, he stated, the legislature made a policy; whenever a state highway was being constructed utility relocation would be part of the construction cost. Presently the utility bears the cost when municipal road projects are in construction and a utility facility needs to be relocated. SB 67 will make the cost of the project include utility relocation. Last year the same measure passed the Senate late, and did not get through the House. The objections voiced last year included one concern with language (line 15, "under its jurisdiction" rather than "within its jurisdiction") and one concern dealt with by SB 67: for projects for which funding is in place (such as projects financed by bonding) and for which a municipality would not have adequate funds to cover utility relocation costs, an exemption is made. One of the major points stressed by Mr. Hutchens was that the utility does not cause the cost, but still pays. Dave Hutchens proposed an amendment prepared by Gary Thurlow of the Mat-Su Borough (Matanuska-Sustina); it amends Section 5 to read that "a municipality is not obligated for costs for relocating utility facilities which are not located in a municipal right of way pursuant to a valid easement or permit nor for costs for relocating utility facilities associated with a highway project for which general obligation bonds have been approved or for which state or federal grants have been received before the effective date of this act."

Number 300

Ginny Chitwood, Executive Director of the

Alaska Municipal League, provided testimony in opposition to SB 67. She stated that the measure did not belong in Title 19, Chapter 25, a section of the statutes concerned with state highways and roads. She further stated that the issue is a municipal one, and should be locally determined. In Anchorage a city ordinance is about to be adopted addressing the subject. Local determination more readily permits case by case determination. Ms. Chitwood stated that in the case of state grants going to a municipality for road construction it would be appropriate for the legislature to impose conditions. In the case of roads funded with federal dollars (state/federal) the cost is passed on to the feds.

Senator Rodey commented that the question is one of fairness. (Taxpayers end up paying...)

Number 380 Ms. Chitwood noted that most municipal officials are chiefly concerned about the proper placement of utilities.

Sen. Mulcahy commented that he didn't know why the measure wasn't placed in Title 29--that it seemed to be "sneaking in the back door".

Sen. Eliason commented that the measure seems to spread the cost, assigning some of it to the municipality rather than concentrating the burden on the users (utility users).

Number 428 Pat Anderson, representing the Municipality of Anchorage, stated that the cost to the Municipality (of paying for utility facility relocation) would be $1-2 million for what is on the street today. One objection of the Municipality not handled by Dave Hutchens' proposed amendment concerns the upgrading of utilities, and another concerns the question of general depreciation and whether the municipality bears the cost of replacement, thereby subsidizing the consumer. On a philosophical note, the Municipality of Anchorage maintains that the decision is best made at a local level. Mr. Anderson stated that he would submit the figures the committee had requested and would submit specific recommendations by Friday.

Number 505 Gordon Parker, representing the Alaska Tele-

phone Association (20 telephone companies) testified in support of the bill. He pointed out that although it is true that some communities do negotiate with the utility, but they are not compelled to do so under current law. He also clarified that there is not an intent to have municipalities fund expansion.

Number 538 There being no further testimony or questions, Sen. Eliason adjourned the meeting.

FLOOR COMMENTS ON SB 67

CSSB 67 MAKES THE COST OF RELOCATING UTILITY FACILITIES INCIDENT TO A MUNICIPAL HIGHWAY PROJECT A COST OF THE HIGHWAY PROJECT. THIS WOULD ALLOW ALL OF THE COSTS, AS WELL AS ALL THE BENEFITS, OF A PROPOSED PROJECT TO BE CONSIDERED AT THE TIME A MUNICIPALITY DECIDES TO RELOCATE OR WIDEN A ~~HIGHWAY.~~ STREET.

UNDER CURRENT STATUTES, A MUNICIPAL GOVERNMENT MAY ORDER A UTILITY TO RELOCATE ITS FACILITIES AT ITS OWN EXPENSE. IT SEEMS ONLY FAIR THAT IF A MUNICIPAL PROJECT CAUSES THE COST OF UTILITY RELOCATION, THEN THAT MUNICIPALITY SHOULD BE RESPONSIBLE FOR THAT COST. CSSB 67 WOULD ALLOW THIS TO HAPPEN.

HOWEVER, IF UTILITY FACILITIES ARE NOT LOCATED IN A MUNICIPAL RIGHT-OF-WAY UNDER THE CONDITIONS OF A VALID EASEMENT OR PERMIT, A MUNICIPALITY WOULD NOT BE OBLIGATED TO PAY THE COST OF THE RELOCATION.

CSSB 67 IS A FAIR RESPONSE TO THE QUESTION OF WHO WILL BEAR THE COST OF UTILITY RELOCATION AND I URGE YOUR SUPPORT TO THIS LEGISLATION.

ANSWER TO POSSIBLE CONCERN:

1) A MUNICIPALITY IS NOT OBLIGATED FOR UTILITY FACILITY RELOCATION COSTS ASSOCIATED WITH A HIGHWAY PROJECT FOR WHICH GENERAL OBLIGATION BONDS HAVE BEEN APPROVED OR FOR WHICH STATE GENERAL FUND APPROPRIATIONS HAVE BEEN RECEIVED BEFORE THE EFFECTIVE DATE OF THE BILL.

2) CURRENTLY STATE AND FEDERAL HIGHWAY PROJECTS RECOGNIZE UTILITY RELOCATION AS AN ALLOWABLE EXPENSE.

0.100. Use of the highway by industrial or commer-
(a) The department shall maintain the highway and keep
ıdustrial or commercial traffic throughout the year.
ɜtrial or commercial travel" means
necessary and related to resource exploration and
t or to support of those activities, if the individual engaged
ivities has all necessary permits; or
necessary and related to access by local residents to their

carriers engaged in commerce which are common carriers
:arriers regulated by the Alaska Transportation Commis-
\S 42.10. (§ 3 ch 177 SLA 1980)

).110. Public use of a portion of the highway. The
shall maintain the section of the highway between the
r and Dietrich Camp and shall keep that section of the
ɜn to use by the public between June 1 and September 1
§ 4 ch 177 SLA 1980; AS 19.40.120)

ɔtes. — This section was renumbered by the revisor of statutes pur-
\S 19.40.120 but was suant to AS 01.05.031.

).120. Closure of the highway to traffic. The provisions
100 apply to the closure of the highway by the department.
SLA 1980; AS 19.40.110)

ɔtes. — This section was renumbered by the revisor of statutes pur-
\S 19.40.110 but was suant to AS 01.05.031.

).200. Prohibition on disposal of land within five
highway. The state may not dispose of state land under
is within five miles of the right-of-way of the highway.
SLA 1980)

history reports. — For 1781. For attorney general's opinion
r returning SCS HB am S advising the governor that the house and
ıte) see 1980 House Jour- senate did not pass the same bill, see Op.
d 1980 Senate Journal, p. Atty. Gen. July 1, 1980.

.210. Prohibition of off-road vehicles. Off-road vehi-
ibited on land within five miles of the right-of-way of the
wever, this prohibition does not apply to a person who
ıg claim in the vicinity of the highway and who must use
ɜve miles of the right-of-way of the highway to gain access
; claim. (§ 5 ch 177 SLA 1980; AS 19.40.200(b))

Chapter 45. Miscellaneous Provisions.

Section
01. Definitions
02. Penalties
15. Highway construction near airports

Sec. 19.45.001. Definitions. In AS 19.05 — 19.40
(1) "commissioner" means the commissioner of transportation and public facilities;
(2) "construction" or any derivation means construction, reconstruction, alteration, improvement or major repair;
(3) "controlled-access facility" means a highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have either no right or easement or only a controlled right or easement of access, light, air, or view;
(4) "cost of change, relocation, or removal" means the entire cost incurred by the utility properly attributed to the change, relocation, or removal of a facility, less any costs for improvements or upgrading over and above the cost of a functionally equal facility; if a facility is to be relocated and replaced with new equipment, there shall also be subtracted from the entire cost any salvage value derived from the old facility;
(5) "department" means the Department of Transportation and Public Facilities;
(6) "excess lands" means land acquired by the state in excess of land required for a highway, when the remaining portion of a parcel of land so acquired is left in such shape or condition as to be of little or no value to its owner, or to give rise to claims or litigation concerning severance or other damage;
(7) "federal-aid primary, federal-aid secondary, and interstate system" include any highway which is a part of the federal-aid systems as provided in the Federal-Aid Highway Act of 1956, and any laws amending or supplementing it;
(8) "highway" includes a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;
(9) "maintenance" means the preservation of each type of highway, roadside structure and facility as nearly as possible in its original condition as constructed, or as subsequently improved, and the operation of highway facilities and services to provide satisfactory and safe highways;
(10) "municipality" means an incorporated city or political subdi-

#1

SENATE AMENDMENT

By Senator Gilman

To: Committee Substitute for SENATE BILL No. 67 (L&C)

To: _____ HOUSE BILL No. _____

PAGE: 2 AFTER LINE: 11

Insert new section 5.

*Section 5. A.S. 19.45.001(4) is amended to read:

(4) "cost of change, relocation, or removal" means the entire cost incurred by the utility properly attributed to the change, relocation, or removal of a facility, less any costs for improvements or upgrading over and above the cost of a functionally equal facility; if a facility is to be relocated and replaced with new equipment, there shall also be substracted from the entire cost any salvage value derived from the old facility; if a facility's service life is extended by the work done to change or relocate it, a percentage equal to the percentage of extension of the facility's service life shall be subtracted from the cost;

Renumber the following sections accordingly.

ANCHORAGE WATER & SEWER UTILITIES

3000 Arctic Boulevard
Anchorage, Alaska 99503
(907) 277-7622

Tony Knowles
Mayor

Owned by the Municipality
of Anchorage

March 7, 1983

Senator Eliason
Chairman, Labor & Commerce
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: SB-67

Dear Senator Eliason:

From the perspective of water and wastewater facilities, passage of the subject legislation should not have a significant impact on the cost of municipal road improvements.

In Anchorage for example, it is rare when a municipal road improvement impacts much more than the surface or above surface water and wastewater facilities. Generally this would include moving fire hydrants, adjusting sewer manhole elevations, adjusting water valve box elevations, etc. These type of relocations cost AWWU approximately $100,000 in 1982, a year with significant road improvement activity.

An exception to the above would be a situation where a road improvement project necessitated relocating an entire stretch of water or sewer main. Generally this only occurs when the road grade is lowered so much that freezing becomes a potential problem for an existing facility. In these cases relocation could cost as much as $100 per lineal foot of pipe, including apurtenances.

If the Anchorage Water and Wastewater Utility can provide any further information please contact either myself or Brian Crewdson at 265-5561.

Sincerely,

ROBERT E. SMITH
General Manager
Anchorage Water & Wastewater Utility

RES/BIC/slr
H/SE

cc: Alaska Municipal League
Patrick Anderson
John Harshman

STATE OF ALASKA
FISCAL NOTE

I. REQUEST
Bill/Resolution No.: CSSB 67 (L&C) am
Title: Reloc. of Utility Fac... Municipality
Sponsor: Labor & Commerce Committee
Requestor: Community & Regional Affairs

II. FISCAL DETAIL
Agency Affected: N/A
Program Category Affected: N/A
BRU, Program or Subprogram(s) Affected: N/A

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

N/A

IV. ANALYSIS: Attach a separate page for any Analysis (attached)

Prepared By: Bruce R. Freitag Phone: 789-0841
Division: Standards and Technical Services Date: 4/18/83

Approved by Commissioner: [signature] Date: 4/27/83
Department: Transportation and Public Facilities

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

3/8/83

ANALYSIS OF CSSB 67 (L&C) am

C.S.S.B. 67 (L&C) am is very similar to H.B. 244. (The basic difference is the addition of an amendment to Sec. 5. AS 19.45.001 (4).)

The Department of Transportation and Public Facilities currently has the authority to relocate utilities that are located in highway rights-of-way under the Department's jurisdiction. Current State Statutes also require the State to pay the cost of any change, relocation or removal of utilities necessitated by highway construction.

C.S.S.B. 67 am would give the municipalities the same authority and responsibility for highways and streets under their jurisdiction.

C.S.S.B. 67 am would have no effect on highways constructed by DOT&PF; however, if municipalities receive grants from the State for highway purposes, these grants would need to be adjusted to compensate for added costs of utility relocation.

It should be noted that the Department has had trouble with the present wording of Sec. 4. AS 19.25.020 (c) as the phrase "...notwithstanding the terms or provisions of any existing permit, agreement, regulation, or statute to the contrary." has been interpreted that no special condition regarding relocation costs on previously issued permits would be valid. This may also then affect municipalities which have allowed conditional utility installation permits within their rights-of-way to provide for certain rapid system expansions where code wasn't in all cases followed. If this situation within a municipality exists, they may, under this proposed statute, be liable for higher relocation costs than would normally be allowed. It is recommended that consideration be given to deleting this phrase from any new legislation.

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FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

N/A

IV. ANALYSIS: Attach a separate page for any Analysis (attached)

Prepared By: Bruce R. Freitag
Phone: 789-0941
Division: Standards and Technical Services
Date: 4/1[illegible]/83

Approved by Commissioner: [signature]
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Alaska State Legislature

Barbara Lacher, Chairman
Mac Tischer, Vice-Chairman
Randy Phillips
Mike Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

HCS CSSB 67 (C&RA)

House of Representatives
Committee on Community & Regional Affairs

Dear Mr. Speaker,

A majority of the House Committee on Community and Regional Affairs oppose HCSCSSB 67 (C&RA). The provisions of HCSCSSB 67 (C&RA) changes the historical relationship between utility companies and municipalities in matters pertaining to the use of public rights-of-way and streets by various utility companies. Present Alaska Statutes require municipalities to allow utility companies to use the public right-of-way and thereby avoid the expense of securing easements from private property owners. The proposed legislation is designed to further benefit the utilities by requiring municipalites to pay the costs of relocating the utilities when the relocaton is incident to a municipal street project. The requirement for municipalities to bear the burden of the relocation costs is contrary to practices establised in common law and contrary to procedures used throughout the United States. Imposition of such costs would amount to a public subsidy of private profit making ventures as well as for private non-profit utility companies.

Enactment of any legislation that would require municipalities to pay utility relocation costs will not, in the long run, reduce operating costs for utilities but in all probability will increase costs to the utilities. Municipalities will undoubtedly be highly restrictive in the conditions of future permits for the installation of utilities and will begin to charge maximum fees for the use of the public right-of-way as opposed to the general practice of providing use at no charge.

The Committee has found that municipalities are fair and reasonable in their relationships with utilities, and that the particular needs of each type of utility is considered when negotiations for the use of a public right-of-way are conducted. The continuation of reasonable fees, permit conditions, and equitable allocation of utility relocation costs is insured by the availability of arbitration and redress provided by the Alaska Public Utilities Commission. The considerable diversity of types and purposes of profitable private and of non-profit utility companies further reinforces the Committee's belief that the allocation of utility relocation costs can best be negotiated on the local governmental level, on a case by case basis.

In summary, the Committee believes that the proposed legislation is an unnecessary and unwarranted usurption of local governmental authority which may have an adverse monetary effect on the utility consumer and the municipal tax payer. Therefore, any attempt to legislatively interfere with the existing relationships between municipalities and utility companies should not be favorably considered.

/s/ Representative Lacher

Comments on House CS for CS for SB 67 (L&C)
by
Dave Palmer, City Administrator
City of Craig, Alaska
P.O. Box 23
Craig, Ak. 99921

I want to start by mentioning some specific problems with the bill, and follow with some general comment.

The first section (AS 19.25.020 [a] adds "municipality" as an entity with the authority to order the relocation of a utility within a right of way under its jurisdiction.

COMMENT: The municipal authority to regulate activity within rights of way already exists and in found in AS 29.48.035. This amendment duplicates existing authority.

AS 19.25.020 (c) references the definition of "cost" as in AS 19.45.001(4) a copy is attached.

COMMENT: No definition of "highway construction" is given. However, "highway" is defined at AS 19.45.001(8) and reads:

"highway" includes a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure of facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;"

This is an overly broad definition including minor activities such as the relocation of utilities for drainage culverts, driveways, and minor street improvements. The provisions of this bill extend beyond the transfer of cost of the relocation of utilities in major grant funded projects. Apparently, the relocation cost for any "highway" project is transferred to the municipality.

AS 19.25.020(c) in the bill contains several exclusions and exceptions, primarily battle scars of several committee hearings and it is difficult to understand.

First, relocation cost is identified as an allowable cost of construction and that cost is to be borne by the municipality...there is no discretion allowed, the bill states the cost is <u>TO BE PAID</u> by the state or municipality EXCEPT

(notwithstanding a valid permit system) a municipality is relieved of the relocation cost UNLESS

1. The facilities have been placed in the municipal right of way under a valid easement or permit; or
2. The facilities were placed BEFORE a system of permits existed.

In other words, the municipality pays if placement falls under a permit or agreement and the municipality pays if the placement occurred absent a permit process.

So: the municipality pays both when a process exists and when a process does not exist.

It appears that the bill would prohibit the municipality and a utility company from negotiating an agreement that would provide for the utility to assume the cost of relocation [from the mandatory language of 19.25.020(c)].

It appears that for facilities placed under a former (but now expired) agreement, the municipality would pay, regardless of the terms of the agreement, since the permit is not currently valid.

It appears that facilities placed without permission and without authority (absent a permit process) must be relocated at municipality expense, as well. I question the equity of requiring a municipality or any government to pay for actions taken by a utility company without permission or authority.

This bill reaches back in time and makes the municipality responsible to pay to move existing utilities, regardless of the authority--or lack of authority, granted to the utility. The bill places a burden on the municipality for actions taken in the past. It also commits the municipality for future costs.

DISCUSSION ON THE MERITS OF THE BILL:

The granting of permission to use rights of way is just that, a discretionary grant of permission to use land a utility does not own. There is a substantial benefit to a utility company for private use of public property. Acceptance of the cost to move utilities when necessary for the public good is a very reasonable cost of operation compared to the option of negotiating of purchasing easements privately. The use by the private sector of publically owned land is, in effect, a subsidy to that operation. To require the public, the owners of that land, to pay the cost incident to the use of public land is not a fair division of costs. The transfer of relocation costs from the private sector to the public sector does not benefit the public. It benefits the private utility company and the utility company's profit and loss picture. Further, this transfer removes from local control a legitimate negotiable item that can be and is dealt with at the local level. In exchange for a long term authority to operate in public rights of way, utility companies have not found the assumption of relocation costs unacceptable.

The City of Craig is served by Alaska Power and Telephone Company of Port Townsend, Washington. They serve Skagway, Hydaburg,Tok-Dot Lake and Craig. Their agreement with Skagway provides that the company will move utilities when necessary at their expense. In exchange, they are assured of a 20 year commitment to use the right of way and other aspects of their operation are clarified.

The 20 year permit in Craig expired about 2 years ago. Therefore, under the terms of the bill, Craig is liable for relocation expenses for all past installations (done under the then valid system) as well as current installations (placed before a system is put into place).

Alaska Power and Telephone officials ;have indicated to me that a permit system similar to Skagway's would be acceptable to them. This bill would obviously change the terms of our negotiation.

Basically, we believe the authority of a municipality to exercise its regulatory authority over rights of way pursuant to AS 29.48.035 should not be transferred by the state to private utility companies. Requiring a municipality to assume direct costs when it exercises its discretionary authority reduces the municipality's ability to properly protect the public interest (because some negotiating points with the utility have already been given away).

This is a local control issue. There is a satisfactory process in place to deal with this issue now. In this case, the old saying applies: "If it's not broke, don't fix it".

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(5) "department" means the Department of Transportation and Public Facilities;

(6) "excess lands" means land acquired by the state in excess of land required for a highway, when the remaining portion of a parcel of land so acquired is left in such shape or condition as to be of little or no value to its owner, or to give rise to claims or litigation concerning severance or other damage;

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(9) "maintenance" means the preservation of each type of highway, roadside structure and facility as nearly as possible in its original condition as constructed, or as subsequently improved, and the operation of highway facilities and services to provide satisfactory and safe highways;

(10) "municipality" ...

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(8) "highway" includes a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;

(9) "maintenance" means the preservation of each type of highway, roadside structure and facility as nearly as possible in its original condition as constructed, or as subsequently improved, and the operation of highway facilities and services to provide satisfactory and safe highways;

(10) "municipality" means an incorporated city or political subdivision which has jurisdiction over highways in its incorporated area;

(11) Repealed by § 6 ch 233 SLA 1968.

(12) "utility" includes railroads and all publicly, privately, or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, telecommunications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including publicly owned fire and police signal systems and street lighting systems;

(13) "encroachment" means and includes a tower, pole, pole line, pipe, pipeline, driveway, private road, fence, billboard, stand or building, or a structure or object of any kind which is or has been placed in, on, under or over a portion of a highway or road. (§ 1 ch 57 SLA 1961; § 3 art I title I ch 152 SLA 1957: am § 3 ch 124 SLA 1959: am § 1 ch 122 SLA 1960; § 1 art V title II ch 152 SLA 1957; § 3 (14) art I title I ch 152 SLA 1957: added by § 2 ch 122 SLA 1960; § 2 ch 59 SLA 1949; am § 1 ch 86 SLA 1953; am §§ 4, 5 ch 49 SLA 1963; am § 6 ch 233 SLA 1968; am § 29 ch 32 SLA 1971; am § 1 ch 64 SLA 1971; am §§ 1, 2 ch 106 SLA 1977; am Executive Order No. 39, § 11 (1977); AS 19.05.130)

Revisor's notes. — This section derives from AS 19.05.130 and was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Effect of amendments. — The first 1977 amendment substituted the language beginning "facility, less any costs for improvements" and ending "subtracted from the entire cost" for "utility after deducting any increase in the value of the new facility and" in paragraph (4) and rewrote paragraph (12).

The second 1977 amendment substituted references to the commissioner of transportation and public facilities and to the Department of Transportation and Public Facilities for references to the commissioner of highways and to the Department of Highways in paragraphs (1) and (5), respectively.

Legislative history reports. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

NOTES TO DECISIONS

Applied in State v. I'Anson, Sup. Ct. Op. No. 1102 (File No. 2032), 529 P.2d 188 (1974).

Sec. 19.45.002. Penalties. A person who violates any provision of chs. 5-25 of this title is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $10 nor more than $500, or by imprisonment in jail for a period not to exceed one year, or by both. (§ 7 art VII title II ch 152 SLA 1957; AS 19.05.140)

Revisor's notes. — This section derives from AS 19.05.140 and was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Cross references. — As to sentences for misdemeanors, see AS 12.55.135.

Collateral references. — 25 Am. Jur., Highways and Streets, § 73.

lations prescribed by the department and if authorized by a written permit issued by the department. (§ 8 art VII title II ch 152 SLA 1957; am § 3 ch 106 SLA 1977)

Effect of amendments. — The 1977 amendment rewrote this section.

Collateral references. — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 218-234.

40 C.J.S., Highways, §§ 232, 233.

Sec. 19.25.020. Relocation of utilities incident to highway projects. (a) If, incident to the construction of a highway project, the department determines and orders that a utility facility located across, along, over, under, or within a state right-of-way must be changed, relocated or removed, the utility owning or maintaining the facility shall change, relocate or remove it in accordance with the order. The order shall provide a reasonable time period for compliance.

(b) If the utility facility is not changed, relocated or removed in accordance with the order, the facility becomes an unauthorized encroachment and may be disposed of in accordance with AS 19.25.240 — 19.25.250. In addition, the owner of the facility shall indemnify the state for any amount for which the state may be liable to a contractor by reason of the encroachment.

(c) The cost of change, relocation, or removal necessitated by highway construction is a cost of highway construction to be paid by the state in accordance with AS 19.45.001(4), notwithstanding the terms or provisions of any existing permit, agreement, regulation or statute to the contrary.

(d) If requested by a municipality, the department shall implement this chapter by requiring to the maximum extent possible location underground of electric power transmission lines within the municipality. (§§ 2, 3 ch 57 SLA 1961; am § 4 ch 106 SLA 1977)

Revisor's notes. — A reference to AS 19.45.001(4) was substituted for a reference to AS 19.05.130(4) in subsection (c) to conform to the renumbering of that section by the revisor of statutes under AS 01.05.031.

Effect of amendments. — The 1977 amendment rewrote this section.

Opinions of attorney general. — This section is constitutional. 1961 Op. Att'y Gen., No. 12.

Article 2. Damages and Obstructions.

Section

30. Damages to obstructions, signs, and construction

Sec. 19.25.030. Damages to obstructions, signs, and construction. The driver or owner, or both, of a vehicle, self-propelling or otherwise, which passes through, over or around an obstruction placed under authority of AS 19.10.100, or a person who opens, removes or defaces an obstruction or warning sign without written permission

Ken Johnson, House Labor & Commerce Committee 2/6/84

BILL SHEFFIELD, GOVERNOR

STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

The Commission has been requested to provide comments in regard to legislation that addresses relocation of utility facilities.

The Commission, at this time, takes no position on the subject legislation. However, it would bring to the attention of the Committee the following observations.

1. If costs are incurred by a utility to relocate its facilities, the utility will generally be allowed to recover that expense in its rates. There is no "free lunch;" if a utility is not reimbursed by a governmental entity for its cost of relocation, the utility, absent neglect, would recover the cost from its consumers. Therefore, the issue of who should pay for the relocation of utility facilities appears to be a public policy issue of how best to distribute the economic burden.

2. However, it is respectfully suggested that the legislature should consider the likely sources of governmental funds that would be expended if the government, rather than the utility's customers continued to assume the costs of relocation. Frequently matching funds are involved which help defray the governmental entity's project costs, including utility relocations. However, if consumers are forced to pay, they will receive no such offset. Thus, the resultant dollar burden on consumers may exceed the actual dollar savings to the actual governmental entity directing the relocation.

3. The statute of the Alaska Public Utilities Commission speaks to the Commission's authority in this area.

> Section 42.05.251: Use of streets in cities and boroughs. Public utilities have the right to a permit to use public streets, alleys and other public ways of a city or borough, whether home rule or otherwise, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the city or borough requires. A dispute as to whether fees, terms, conditions or exceptions are reasonable shall be decided by the commission. The commission may require a utility to add the amount of any permit fee paid as a pro rata surcharge to its bills for service rendered at locations within the boundaries of any city or borough which requires payment of a permit fee.

> Section 42.05.640: Regulation by municipality. The commission's jurisdiction and authority extend to public utilities operating within a city or borough, whether home rule or otherwise. In the event of a conflict between a certificate, order, decision or regulation of the commission and a charter, permit, franchise, ordinance, rule or regulation of such a local governmental entity, the certificate, order, decision or regulation of the commission shall prevail.

The Commission assumes that the enactment of HCSCSSB 67 (C&RA) would not dimish the existing jurisdiction of the Commission.

4. The Commission currently has three proceedings under consideration in which the subject of utility relocation and the expense thereof is at issue, specifically which ratepayers should bear the relocation expense charged by a municipality to a utility providing service in an area greater than the municipaliy.

If there are specific questions, the Commission would be glad to respond.

ALASKA PUBLIC UTILITIES COMMISSION

Carolyn S. Guess
Chairman

Amendments Not Made

AMENDMENT
page 2, after ln. 10 add:

(d) Notwithstanding the terms or provisions of any existing permit, agreement, regulation or statute to the contrary, the municipality may charge the utility a fee for past use of a right of way under the municipality's jurisdiction, equal to the cost of change, relocation or removal neccessitated by highway construction, except that a utility is not obligated to pay the fee for past use of a municipal right of way unless

(1) the facilities were placed in the municipal right-of-way before the municipality had a system for granting easements or permits for utility facilities; or

(2) the facilities have been placed in the municipal right of way under a valid easement or permit.

February 7, 1984

To: John

From: Ken

RE: HCSCSSB 67--RELATING TO UTILITY RELOCATION INCIDENT TO HIGHWAY CONSTRUCTION.

WHAT THE BILL DOES

If this bill were to pass the House, it of course has passed the Senate, it would place the burden of cost-of relocating utilities-incident to highway construction-on the municipality. In other words, if the municipality decides to widen a road and utilities have to be moved, the utility would have to bear the cost.

COMMENTS

At present the state includes the relocating of utilities in its planning costs. Municipalities at present do not include such costs in planning proposals.

At issue is whether a utility's rate rate-payers get stuck with the cost of relocating the facility, or municipal taxpayers as a whole bare the cost. If a road is widened or built for the use of all, why should a few incur a major portion of the cost, such as utility relocation. These are the points the bill hits on.

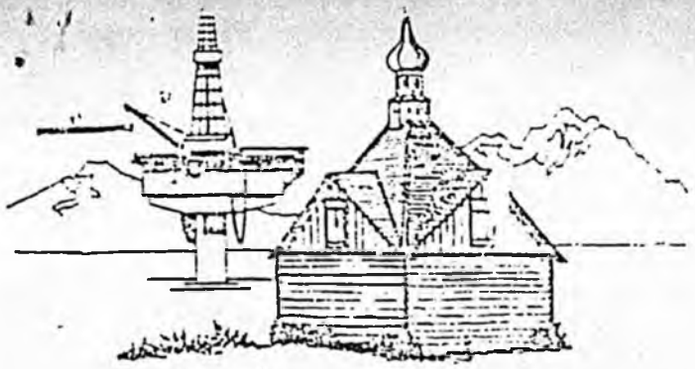
This committee substitute will make the fourth time the bill has either been amended or redrafted. The substitute planned for introduction by the Labor and Commerce Committee is much like the one passed out of the Senate Labor and Commerce Committee, except it has an amendment which softens the impact on municipalities. This amendment re-defines the cases in which the municipality must pay the cost of utility relocation.

QUESTIONS

1. Why is it a problem for municipalities to include in planning, the cost of relocating utility facilities ?

2. Has the state ever balked at appropriating funds for relocating utilities ?

3. Why has it been a practice in the past not to include utility relocation in planning costs ?



CITY OF KENAI

"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

August 17, 1983

Alaska Public Utilities Commission
1100 McKay Building
338 Denali Street
Anchorage, Alaska 99510

RE: Tariff No. 35-32

Dear Commissioners:

The City of Kenai adamantly opposes TA #35-32 by Homer Electric Association, Inc. (HEA) which would result in a surcharge to the consumers within our municipality for utility facility relocations required by the City of Kenai to accommodate municipal construction projects.

The present request of HEA is an attempt to do indirectly what it has not been able to accomplish directly under the common law, by contract, by legislation or by court order as a result of litigation. To permit this surcharge to the consumers within a municipality would be to give them exactly that which they have so far been denied and to which they are not entitled.

Under Alaska Statutes (AS 42.05.251) the electric company is entitled to a permit to use the streets, alleys, and other public ways "upon payment of a reasonable permit fee and on reasonable terms and conditions with reasonable exceptions" [emphasis supplied] the city requires. The contract of Homer Electric with the City to operate the electric system of the city contained no agreement as to terms for use of city streets nor did it provide for any permit fee. In contrast, Kenai Utility Service Corporation pays the City 2% of its gross income within the City for a permit to exercise the privilege which Homer Electric exercises without any payment whatsoever. This lack of a contractual requirement by the City to assume the responsibility or liability for any relocation expenses incurred by the utility because of work within the city right-of-way makes 12 McQuillim Municipal Corporations, Section 34.72 very applicable:

"The grantee of a franchise to use the streets takes it subject to the right of the municipality to make public improvements whenever and wherever the public interests demands, and if the improvement causes injury to the company, as by requiring it to relay or change the location of its pipes, tracks, or poles, or otherwise, the grantee of the franchise cannot recover damages from a municipality therefor."

In this same section it goes on to state that the damages may be recovered from a municipality:

"If the statutes or the charter of a municipality provide for a recovery of damages resulting from the grading or changing of grade of a street."

In Section 34.74 a of McQuillim, it is stated that:

"The fundamental common-law right applicable to franchises in streets is that the utility company must relocate its facilities in public streets when changes are required by public necessity. Accordingly, it is generally held that the municipality may require a change in the location of pipes or other underground facilities of the grantee of the franchise, where public convenience or security require it, even at the grantee's own expense,..."

In the same section it is stated that the common-law duty of the utility to relocate its facilities at its own expense when public convenience or necessity so requires:

"may be changed by contract between the utility and a municipality so that relocation expenses are borne by the municipality, or may be changed by statute so that relocation expenses in certain cases are borne by the State" [emphasis supplied]

Since there is nothing in state law, nor by contract, nor by legislation, nor by court order which would require the municipality of Kenai to bear such relocation expenses, nor does the charter of Kenai so require, there exists no basis upon which to assess either the City of Kenai directly or its citizens individually directly or indirectly for the costs of relocations required to accommodate municipal construction projects. Any requirements to the contrary would be arbitrary, capricious and unreasonable and in derogation of the common-law, present state law, contract law and the intent of our state legislative body.

The lack of any contractual obligation is apparent from a reading of the contract entered pursuant to Ordinance No. 199-71 which is attached hereto and consists of 24 pages and is designated as Exhibit 2. The Commission's attention is specifically drawn to page number 12, Section 9-3 regarding relocations. This document is also the subject of present litigation between the City of Kenai and HEA which is discussed elsewhere in this communication.

As previously noted, there exists litigation in the Superior Court for the State of Alaska, Third Judicial District at Kenai captioned Homer Electric Association, Inc. Plaintiff v. City of Kenai Municipal Corporation, Defendant, Case No. 3KN-83-461 CI, which concerns solely the responsibility for the costs of relocation and the amount. The present litigation was preceeded by a PETITION FOR DECLARATORY RELIEF by HEA dated January 6, 1983 which subsequently was dismissed by the Commission after responsive pleading by the City of Kenai.

The amended complaint and answer thereto are attached to this communication and designated as Exhibit 3. Again, only a cursory reading of the relevant documents is needed to ascertain that the sole thrust of the complaint is to burden the municipality of Kenai with relocation costs.

The attempt of HEA to burden the City with relocate costs is evidenced by their unsuccessful attempt to have SB 67 passed. In support of that bill, find attached a letter from HEA's attorney dated March 18, 1983 and marked as Exhibit 1, indicating relocation claims against the City in the amount of $150,000 which may give some indication of the magnitude of assessments that would be levied against the individual citizens of the municipality should they be granted the relief they are requesting. Similar legislation failed in the 1982 legislature.

It is the City's position that had that legislation passed or if the present relief were granted it would be in violation of AS 42.05.391 in that it would be an unreasonable preference or advantage and create an unreasonable difference as to rates as between localities served and categories of customers all to the detriment of those within municipalities.

Where state rights-of-way are concerned AS 19.25.020 specifically provides that the costs of relocations caused by highway construction are to be paid by the state. Obviously, the legislature has drawn a distinction between state right-of-ways and municipal right-of-ways.

Without legislation such as SB 67 it is the City's position that the rights of the public are paramount and the City is without power to accommodate HEA even if it wanted to. As stated by 39 Am Jur 2d, Highways, Streets, and Bridges, Section 278:

> "A municipal corporation has no right directly or indirectly to burden itself or its citizens with the cost of removing and replacing the structures and appliances of public service companies that may necessarily be interfered with in laying sewers in the streets,..."

In the same section, it is also stated:

> "with respect to municipally owned public service companies, it is generally held that the municipality is acting in a proprietary and not a governmental, capacity, and is therefore responsible for the cost of removal or relocation of its structures and appliances when required for highway purposes."

The latter statement correctly distinguishes between a utility service owned by a municipality as a "proprietary" activity and not a "governmental" activity, and it can hardly be assumed then the sale of the proprietary function the municipality intends to give up any of its governmental powers.

The above quoted 39 Am Jur 2d at Section 232 is in accord with the City's position wherein it states:

> "Rights and streets or highways granted to individuals or corporations are at all times held in subordination to the superior rights of the public. The grantee takes them subject to the paramount right of the public authorities to grade and improve the way and to make such requirements and regulations as are necessary and reasonable in order make it suitable and convenient for the use of the travelling public, and the grantee may be required to abandon the use granted, or to remove or change the location of structures erected under the grant, when demanded by the public necessity, convenience, or welfare. <u>This power of the public authority cannot be limited by contract</u>." [emphasis supplied]

It is the City's position that it would be inappropriate for the APUC to do either indirectly or directly that which the City is not empowered to do especially when one applies the rule stated in the above cited volume of 39 Am Jur 2d at Section 225 that states that:

"As a general rule, every grant in derogation of the right of the public to the use of the streets will be construed strictly against the grantee and in favor of the public."

Unfortunately, it appears that the commission itself may have precipitated the present filing by HEA in their communication of June 3, 1983 to Council where it is suggested that HEA "...should consider filing a special tariff to authorize collection of the unreimbursed costs of any municipally-directed relocation as a surcharge on the bills of customers residing within the political boundaries of the City of Kenai. The City takes exception to this position and also to any inference contained in the next paragraph of the letter that would infer that the City of Kenai negotiate away its immunity for having to pay relocation costs in any franchise or permit agreement.

The arguments being made by HEA before this Commission, the legislature and in the courts are not new but seem to be made more frequently along with other arguments nationally as shown by the communications with NIMLO and a copy of Chesapeake and Potomac Telephone Company of Virginia vs. Landries 674 Fed Second 298 (1982) attached as Exhibit 4, in which the courts have gone so far as to declare utilities "displaced persons" so that they can be reimbursed for a facility relocation. Hopefully, the decision of the Commission will not be circuitous or tortured in its reasoning nor arbitrary, capricious and unreasonable in application but will follow the common-law as well as the better reasoned and majority case law and applicable Alaska Statutes as well as the intent of our last two state legislative bodies.

In the alternative, the City would request that in view of the Commission's previous decision not to take jurisdiction of the controversy between HEA and the City insofar as relocation costs, that it also decline to directly assess the citizens of Kenai individually, at least until the courts decide the ultimate responsibility for relocation costs in order that conflicting decisions not be reached by the courts on one hand and an administrative body on the other.

While HEA may draw a distinction between a direct assessment to the citizens of Kenai versus an indirect assessment by a levy on the governmental and taxing authority for the City of Kenai, the City does not draw such a distinction. Any assessment against the City would be passed on to the citizens of Kenai by assessment or taxes or decreased services, facilities or improvements. The ultimate deep pocket remains the same; the

individual citizen. When one remembers that the municipalities provide services for those outside the immediate boundaries of the city and that taxes should be spread on as large a base as possible, it seems only just and equitable that the relief requested by HEA be denied.

Respectfully submitted,

Tim Rogers
City Attorney

TR/dg
Enclosures

cc: C. R. Baldwin

cc: Justin Maute
Larry Farmer
Ken Garzini

EXHIBIT 1

March 16,1983

Senator Don Gilman
Pouch V, Mail Stop 3100
Juneau, Alaska 99811

Re: SB 67

Dear Don:

I note that the above bill is now in the Community and Regional Affairs Committee. Please give serious consideration to a favorable report to the bill. Homer Electric has gotten into a real bind with the City of Kenai due to the significant increase in road construction which has been funded primarily by the State. The City has not allocated any portion of those proceeds to the costs of relocating utilities and has called upon Homer Electric to move the utilities and to bear the costs. Obviously the costs don't go away they just spread over a larger rate base. Fortunately the rest of the cities on the Peninsula have not taken this position but just a quick review of the Common Law convinces me that they might be within their legal rights to do so.

At the present time the claim by HEA against the City is well over $150,000.00, and the matter is being determined by the Public Utilities Commission which has jurisdiction over the purchase contract between HEA and the City. Any determination by the PUC will not affect the relationship of HEA with the other cities because basically the PUC is only being asked to interpret the contract under which HEA is purchasing the old KCL system.

It makes more sense and will be less expensive in the long run if the cities will fund the costs of relocation up front instead of requiring the Utilities to do the work, advance the money, and then attempt at some later date to

RECEIVED

collect that money thru a rate increase.

Thanks for your attention to a subject which is a vital concern to Homer Electric.

Very truly yours

C. R. BALDWIN

CRB/hs

cc: B. Kent Wick, General Manager
Homer Electric Association, Inc.

Sen. Paul Fischer
Rep. Milo Fritz
Rep. Hugh Malone
Rep. Bette Cato

EXHIBIT 2

CITY OF KENAI, ALASKA

ORDINANCE NO. 199-71

AN ORDINANCE of the City of Kenai, Alaska, providing for the submission to the qualified electors of the City at a special election to be held therein on 3 August, 1971 of a proposition of whether the City should enter into an agreement with Homer Electric Association, Inc. which would provide for the operation of the City's electric system by Homer Electric Association, Inc. and would further provide for the transfer of the ownership of the electrical system from the City to Homer Electric Association, Inc. upon the successful consumation of the agreement and would authorize, as a part of such agreement, a franchise or permit wherein Homer Electric Association, Inc. would be authorized to construct, direct, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the City, poles, wires, cables, underground conduits, manholes and other electric fixtures necessary or proper for the maintenance and operation in the City of an electric distribution system and wires connected therewith and declaring an emergency.

WHEREAS, the City has established and is presently maintaining and operating a municipal electric power system, and in connection therewith owns and operates properties for the purchase, transmission, distribution, supply and sale of electric power and energy; and is engaged in the business of selling and supplying electric power and energy to residential, commercial, industrial and governmental consumers within and about the City of Kenai, Alaska; and

WHEREAS, Homer Electric Association, Inc. (hereinafter called "HEA"), as an electric cooperative created and existing under the laws of the State of Alaska, engages, among other utility activities, in the business of purchasing, transmitting, distributing, supplying, and selling electric energy within the State of Alaska; and

WHEREAS, HEA's electrical system is or can be interconnected with the system of the City for the purpose of furnishing standby electric power; and

WHEREAS, the City Council of the City of Kenai ("Council") deems that the operation by HEA of City's electric system would be beneficial to the City and to City's users and consumers of electric energy; and

WHEREAS, the Council has resolved that such operation of the City's electric system can be accomplished by means of an operating agreement between the City and HEA; and

WHEREAS, the Board of Directors of HEA has determined that it is to the interest of HEA that an agreement should be entered into for the operation of the City's electrical system under the terms and conditions hereinafter set forth; and

WHEREAS, the parties have reached a basic understanding concerning the terms and conditions relative to the transfer of the operation and management of the electric system to HEA and the conveyance of the City's electrical system to HEA and the City Council desires to have the voters approve their entry into such Agreement within the guidelines set forth herein; and

WHEREAS, the Board of Directors of HEA desire to have a franchise or permit to operate within the City of Kenai and the Council has resolved that such a franchise or permit should be granted as is more fully set forth hereinafter; and

WHEREAS, the charter of the City requires that the question of whether the City should enter into the Agreement for the operation and transfer of its electric system to HEA and whether as a part of such Agreement a franchise or permit to operate an electrical distribution system should be granted to HEA should be submitted to the qualified electors of the City for their ratification or rejection;

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Kenai, Alaska as follows:

Section 1. Definitions.

1. The "System" means all tangible properties and property rights which, (as of the effective date of the Agreement) are being used by the City for, or are useful for, the transmission and distribution of electric energy and power within the limits of the City and in such area adjacent thereto as may be presently served by said System. Said tangible property shall include real property, rights-of-way, easements, poles and pole lines, crossarms, sub-stations, transformers, station equipment, meters, and other tangible property of every kind and description which are now used, owned and operated by the City in the operation of said System, together with any and all additions, betterments, improvements and extensions thereof which may hereafter be acquired and made a part of said System under the terms of this agreement; the System shall also include all rights and obligations which the City shall have under that certain contract existing between the City and Consolidated Utilities, Ltd., dated September 11, 1963, covering the generation by Consolidated and the purchase by the City of electric energy. The aforesaid definition of the System shall not include cash in the Revenue Fund of the System as of the effective date of the agreement, nor shall it include any of the funds, securities, investments or assets in any of the Bond Redemption Funds or Reserve Accounts of the Bond Redemption Funds or any sinking fund pertaining thereto, provided, however, that funds, securities, investments or assets in any such Bond Redemption Funds, Reserve Accounts or sinking funds shall be held and applied by the City for the purpose of redeeming Electric Light and Power Bonds of the City as herein defined in accordance

with the provisions of said bonds and the ordinances of the City.

2. "Outstanding Bonds" shall mean the City of Kenai, Alaska Electric Light and Power Revenue Bonds issued as follows: the 1963 City of Kenai, Alaska, Electric Light and Power Revenue Bonds in the original principal amount of $425,000, authorized by Ordinance No. 54 of the City, passed and approved on October 10, 1963; the City of Kenai, Alaska, Electric Light and Power Revenue Bonds, 1964, in the original principal amount of $25,000, authorized by Ordinance No. 70 of the City, passed and approved on the 26th day of August, 1964; the City of Kenai, Alaska, Electric Light and Power Revenue Bonds, 1967, in the original principal amount of $300,000, authorized by Ordinance No. 124 of the City, passed and approved on September 20, 1967; the City of Kenai, Alaska, Electric Light and Power Revenue Bonds, 1969, in the original principal amount of $25,000, authorized by Ordinance No. 174, passed and approved February 4, 1970; the City of Kenai, Alaska, Electric Light and Power Revenue Bonds, 1970, in the original principal amount of $275,000, authorized by Ordinance No. 180 of the City, passed and approved on May 20, 1970. Attached hereto, marked Exhibit C, is a schedule showing (1) the total amount of outstanding indebtedness upon each of the aforesaid Electric Light and Power Revenue Bond issues, and (2) the amounts of principal and interest payments required to be made each year hereafter upon each such issue of revenue bonds from the date hereof to the final maturity date of the bonds of each such issue.

3. The "Kenai 1963 Electric Light and Power Revenue Fund" shall mean the fund of that name created by Ordinance No. 54 into which are paid all gross earnings and revenue derived by the City from the operation of its System and all additions and improvements thereto and extensions thereof.

Section 2. The City shall, if approved by the voters, at the special election herein provided for, enter into an Agreement (hereinafter Agreement) with HEA which Agreement shall provide substantially as follows:

1. For HEA to manage and operate the System for and on behalf of the City of Kenai.

2. For the maintenance of the Kenai 1963 Electric Light and Power Revenue Fund as a trust fund for the payment of the Outstanding Bonds.

3. For HEA to assume and agree to perform all of the services and to provide all supplies and materials necessary to maintain and operate the System and for HEA to covenant and agree to maintain the System in good condition and repair and to meet all of the covenants heretofore made by the City with the holders of the Outstanding Bonds.

4. For HEA to interconnect its existing electrical distribution system with that of the City to the extent that the same may become necessary to provide continuous uninterrupted service for the inhabitants of the City of Kenai.

5. For HEA to provide for additions, improvements, betterments and extensions of the System which, in its judgment, will provide for the full, complete, efficient operation of electric power, light and energy as may be required from time to time by such consumers and users.

6. For HEA to pay into such accounts as may be created by the Agreement, sufficient sums to pay the Outstanding Bonds, maintenance and operation costs, protection of all reserve accounts and payment of any other necessary costs and expenses for maintaining and operating the System and for the payment of any balance to

HEA as reimbursement for wholesale power costs (as defined in the Agreement); its normal costs of maintenance and operation; costs of renewals and replacements of the System and additions, and betterments thereto and as payment for the services of HEA rendered in the management and operation of the System.

7. For HEA to pay to the City upon the effective date of the Agreement (1) a sum in cash equal to the money in value on such date of the investments in the several reserve accounts now held in the several bond funds, (2) a sum in cash sufficient to reimburse the City for moneys expended from the City General Fund for purposes of the system and (3) a sum equal to the value of all personal property used in the operation of the System which may be payable according to the terms of a negotiable note in equal monthly installments to bear interest at the rate of 6% per annum upon diminishing balances.

8. For HEA to account to the City for the operations of the System during each month it operates the System, including an itemized statement of all receipts and disbursements including amounts expended for maintenance, labor cost, additions, improvements, betterments and extensions. The City shall reserve the right to inspect books and records of HEA in so far as they pertain to the operation of the System.

9. For HEA to utilize the same billing policies and procedures as have heretofore pertained to the operation of the System by the City.

10. For the City to grant to HEA a franchise or permit to operate an electical distribution system within the City for a period of 30 years from the effective date of this Agreement.

11. For HEA to make any and all renewals and replacements, extensions, additions, improvements, and betterments

to the System in accordance with the same standards and criteria which HEA would operate its own electric properties and business.

12. For HEA to render an accounting to the City each year, showing in reasonable detail all retirements and renewals, replacements, additions, betterments, extension and improvements to the System made during the preceding calendar year.

13. For HEA to seek and secure the approval of the administrator for the Rural Electrification Administration Department of Agriculture, United States of America to the Agreement.

14. For HEA to endeavor to take into its employ all of the employees of the City's electrical system, excepting supervisory employees, at the same wage scale which are applicable to present employees of HEA in the same classification of employment and the seniority measurment by their continuous employment by the City immediately prior to the beginning of the Agreement.

15. For HEA to base a working crew within the City sufficient and adequate to properly service the System.

16. For HEA to agree not to discriminate in the sale of electrical energy between those who live within the City of Kenai and those who live without the City of Kenai unless there is a rational and justifiable cost basis for so doing.

17. For either party to suspend its obligations under the Agreement during the time it is prevented from doing so by force majeure, which means acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrest and restraints of government and people, civil disturbances, explosions, breakdown of machinery or equipment and any other

cause not within the control of the party claiming suspension.

18. For the City to retain the right to terminate the Agreement should HEA become insolvent or become default in any of its obligations, or ask for a receiver or file a petition in bankruptcy or under the reorganization provisions of the Bankruptcy Act of the United States.

19. For the City to retain title and ownership of the System until the full performance of the Agreement.

20. For transfer of the System to HEA upon full performance of the Agreement according to its terms and upon payment of or provision for payment of all principal and interest on all of the Outstanding Bonds.

21. For the Agreement to become effective upon the first day of the calendar month after the voters have approved the entry by the City Council into the Agreement and after the Agreement shall have been ratified and approved by the Board of Directors of HEA and by the Rural Electrification Administration of the Department of Agriculture, United States of America which ever date shall last occur.

22. For the City to continue to operate the System for the sole account and benefit of the City until the Agreement is effective.

23. For such other terms and conditions to be made a part of the Agreement as the Council shall deem necessary or desirable for the protection of the City and the System.

Section 3. If the voters approve the entry into the Agreement between the City and HEA as hereinabove set forth, the City will be obligated to grant a franchise or permit to HEA, and HEA desires to have a franchise or permit to operate an electrical distribution system during the time the Agreement

is in force, and thereafter when the System will be transferred to HEA as provided in the Agreement. The City therefore does grant to HEA, a franchise or permit to operate an electrical distribution system within the City on the terms and conditions set forth hereinafter.

During the time HEA is operating the System and prior to the time the System is transferred to HEA, HEA shall maintain the System, and HEA's system as separate entities, and maintain separate books and accounts, and the provisions of this ordinance relative to the franchise shall not be applicable to the system as distinguished from HEA's system. Following the transfer of the System to HEA, all of the provisions of this ordinance relative to the franchise or permit shall be applicable to any extension of the HEA's System into the City.

Section 4. Grant of Authority.

There is hereby granted by the City to HEA the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other electric fixtures necessary or proper for the maintenance and operation in the City of an electric distributuion system and wires connected therewith.

The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any period of this franchise.

Section 5. Compliance with Applicable Laws and Ordinances.

HEA shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide.

Section 6. HEA Liability - Indemnification.

It is expressly understood and agreed by and between HEA and the City that HEA shall save the City harmless from all loss sustained by the City on account of any suit, judgement, execution, claim, or demand whatsoever, resulting from negligence on the part of HEA in the construction, operation or maintenance of its electric system in the City. The City shall notify HEA's representative in the City within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of HEA.

Section 7. Service Standards.

HEA shall maintain and operate its plant and system and render efficient service in accordance with the rules and regulations as are, or may be, set forth by the Council as provided in Section 5 of this ordinance, or by the Public Utilities Commission of the State of Alaska.

1. Meter Accuracy. All electric service shall be supplied through meters which shall accurately measure the amount of electricity supplied to any consumer.

   a. Request for Meter Check. HEA shall at any time when requested by a consumer make a test of the accuracy of any electrical service meter.

   b. Result of Meter Check. If, upon test, it is found that such meter overruns to the extent of

2 percent or more, HEA shall pay the cost of such tests and shall make a refund for overcharges collected since the last known date of accuracy but for not longer than 60 months, on the basis of the inaccuracy found to exist at the time of the tests. If the meter is found to be accurate or slow or less than 2 per cent fast, the customer shall pay the reasonable cost of such testing.

c. Compulsory Check. Every meter, whether complained of or otherwise, shall be removed from service at least once each seven years and thoroughly tested for its accuracy. Any meter found inaccurate upon any test beyond a tolerance of 2 percent shall not be returned to service until properly adjusted.

2. Notice of Interruption for Repairs. Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments, or installation, HEA shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such repairs are unforeseen and immediately necessary, it shall give reasonable notice thereof to the consumers.

Section 8. HEA Rules.

HEA shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable HEA to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers. Such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws of the

State of Alaska, and shall be subject to approval by the Public Utilities Commission of the State of Alaska.

Section 9. Conditions on Street Occupancy.

1. Use. All transmission and distribution structures, lines and equipment erected by HEA within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minumum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

2. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, HEA shall, at its own cost and expense and in a manner approved by the City Inspector, replace and restore all paving sidewalks, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced.

3. Relocation. In event that at any time during the period of this franchise the City shall lawfully elect to alter, or change the grade of, any street, alley or other public way, HEA, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables and other electrical fixtures at its own expense.

4. Placement of Fixtures. HEA shall not place poles or other fixtures where the same will interfere with any electric light, telephone wire or conduit, water hydrant or water main, and all such poles or other

fixtures shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways.

5. Temporary Removal of Wire for Building Moving. HEA shall, on the request of any person holding a building moving permit issued by the City temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and HEA shall have the authority to require such payment in advance. HEA shall be given not less than forty-eight hours' advance notice to arrange for such temporary wire changes.

6. Tree Trimming. HEA shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of HEA, all trimming to be done under the supervision and direction of the City and at the expense of HEA.

Section 10. Preferential or Discriminatory Practices Prohibited. HEA shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment, of a graduated scale of charges and classified rate schedules to which

any customer coming within such classification would be entitled.

Section 11. Extension Policy. HEA shall file with the City Clerk its extension policy as filed, with, and approved by, the City Council and the Public Utilities Commission of the State of Alaska and HEA shall not make or refuse to make any extension except as permitted by this ordinance.

1. Publication. Upon acceptance of this franchise, HEA at its own expense, shall cause to have published in a newspaper of general circulation in the City its extension policy as filed with, and approved by, the City Council and the Public Utilities Commission of the State of Alaska and shall annually send to each of its customers living within the corporate limits of the City a copy of such extension policy.

Section 12. Approval of Transfer. HEA shall not sell or transfer its plant or system to another, nor transfer any rights under this franchise to another without Council approval. No sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all the conditions thereof.

Section 13. City Rights in Franchise.

1. City Rules. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall not be in conflict with the laws of the State of Alaska.

2. Use of System by City. The City shall have the right, during the life of this franchise, free of charge, where aerial construction exists, of maintaining upon the poles of the City within the City limits wire and pole fixtures necessary for a police and fire alarm system, such wires and fixtures to be constructed and maintained to the satisfaction of the City and in accordance with its specifications.

a. Compliance with HEA Rules. The City in its use and maintenance of such wires an fixtures, shall at all times comply with the rules and regulations of HEA so that there may be a minimum danger of contact or conflict between the wires and fixtures of HEA and the wires and fixtures used by the City.

b. Liability. The City shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of said wires and fixtures authorized by this Section and shall save HEA harmless from all claims and demands whatsoever arising out of the attachment, maintenance, change or removal of said wires and fixtures to the poles of HEA. In case of rearrangement of HEA plant or removal of poles or fixtures the City shall save HEA harmless from any damage to persons or property arising out of the removal or construction of its wires or other fixtures.

3. Supervision and Inspection. The City shall have the right to supervise all construction or installation work performed subject to the provisions of this

ordinance and to make such inspections as it shall find necessary to insure compliance with governing ordinances.

4. Procedure after Termination or Revocation. Upon the revocation of this franchise by the Council, or at the end of the term of this franchise, the City shall have the right to determine whether HEA shall continue to operate and maintain its plant and distributing system pending the decisions of the City as to the future maintenance and operation of the plant and distribution system.

5. Right of Acquisition by the City. At the expiration of the term for which this franchise is granted, the City, at its election, and upon the payment of an amount which shall be determined by a valuation provided by the Alaska Public Utilities Commission or its successor, shall have the right to purchase and take over the property of HEA within the City limits of Kenai. Upon the exercise of this option by the City by the service of an official notice upon HEA to that effect, HEA shall immediately execute such deeds or instruments of conveyance to the City as shall be required to convey to the City title to the property in fee simple, free from any and all liens and encumbrances. HEA shall make it a condition of each contract entered into by it with reference to operations under this franchise that the contract shall be subject to the exercise of this option by the City and that the City shall have the right to be substituted for HEA as a party to any such contract and shall have the right to succeed to all privileges and the obligations thereof at its option.

6. Payment to City. HEA shall pay to the City for the privilege of operating its system under this franchise a sum equivalent to ____per cent (%) of the annual gross operating revenues taken in and received by it on all retail sales of electricity with the City.

7. Rates. Rates charged by HEA for service hereunder shall be fair and reasonable and designed to meet all necessary costs of the service, including a fair rate of return on the net valuation of its properties devoted thereto, under efficient and economical management. When this franchise takes effect HEA shall have the authority to charge and collect not to exceed the rates presently in effect or as approved by the Public Utilities Commission of the State of Alaska.

1. Savings to Customers. If during the term of this franchise HEA purchases electric energy, other than dump or emergency energy, for distribution, any savings which accrue to HEA by reason of such purchase of the electric energy used in the City shall be forthwith passed on to its consumers. If during the term of the franchise HEA receives refunds, or if the cost to HEA of providing electric service is reduced, by order of any regulatory body having competent jurisdiction the Company shall pass on to its customers such refunds or any savings resulting therefrom.

8. Records and Reports. The City shall have access at all reasonable hours to HEA's plans, contracts, and

engineering, accounting, financial statistical, customer and service records relating to the property and the operation of HEA and to all other records required to be kept hereunder. The following records and reports shall be filed with the City Clerk and in the local office of HEA.

1. Rules and Regulations. Copies of such rules, regulations, terms and conditions adopted by it for the conduct of its business.

2. Meter Checks. Reports of the results of all requested and compulsory meter checks.

3. Gross Revenue. An annual summary report showing gross revenues received by HEA from its operations with the City during the preceding year and such other information as the City shall request with respect to properties and expenses related to HEA service within the City.

9. Term of Franchise. The franchise and rights herein granted shall take effect and be in force from and after the approval by the voters of the City of this franchise at a special election to be called and; upon final execution and approval of the Agreement between HEA and the City which is set forth hereinabove and; upon filing of the required acceptance by HEA with the City Clerk and shall continue in force and effect for a term of thirty (30) years from the effective date of the Agreement.

10. Publication Costs. HEA shall assure the cost of publication of this franchise ordinance as such publication is required by law. A bill for publication

costs shall be presented to HEA by the City Treasurer upon the Company's filing of acceptance and shall be paid at that time.

11. Penalties. Any violation by HEA, its vendee, lessee or successors of the provisions of this franchise or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this franchise and all rights hereunder and the City, after written notice to HEA, advising of the default and continuation of such violation, failure or default for a period of sixty (60) days following said written notice, may declare this franchise void.

Section 14. A copy of this ordinance shall be filed in the office of the City Clerk and subject to public inspection for thirty (30) days after it is filed.

Section 15. A public hearing on whether or not this ordinance should be adopted shall be held at 8:00 o'clock P.M. at City Library 30 June, 1971 and the City Clerk is hereby directed to give notice of such public hearing by publication in the Cook Inlet Courier at least one week prior to the time set for the hearing.

Section 16. Within two (2) weeks after this ordinance has been finally adopted, HEA must file with the City Clerk its unconditional acceptance of all terms of the franchise or permit as set forth herein. HEA further must deposit with the Department of Finance of the City, an amount of money estimated by the City Clerk to be adequate to pay all expenses of holding the special election provided for herein.

Section 17. The proposition of whether or not the

City shall be authorized to enter into the Agreement with HEA on the terms and conditions set forth herein, or terms and conditions substantially similar thereto, and whether the City shall, as a part of such Agreement, adopt the franchise provisions of this ordinance, as described hereinabove, shall be submitted to the qualified electors of the City at a special election to be held therein on 3 August, 1971. Said proposition shall be in the following form:

PROPOSITION NO. 1

ELECTRIC LIGHT AND POWER
OPERATING AND FRANCHISE AGREEMENT

Shall the City of Kenai, Alaska enter into an Agreement with Homer Electric Association, Inc. (HEA) for the operation and management of the City's Electrical distribution system by HEA and if all the terms of the Agreement are met, provide for the transfer of all of the City's electrical distribution system to HEA and will as a part of said Agreement, grant a franchise or permit to HEA to operate and maintain an electrical distribution system on the public streets and alleys and other public places of the City of Kenai, for a period of thirty (30) years all as is more specifically provided in Ordinance No. 199 adopted June 30, 1971, which ordinance is hereby submitted for ratification?

OPERATING AND FRANCHISE ORDINANCE YES . . . /___/

OPERATING AND FRANCHISE ORDINANCE NO . . . /___/

Section 18. Those eligible to vote at said special election must possess the following qualifications:

1. They must be at least 19 years of age.

2. They must be citizens of the United States, and for at least one (1) year preceding the election citizens of the State of Alaska, and for thirty (30) days immediately preceding the election residents of the City of Kenai, Alaska.

3. They must be able to read and write the English language, as prescribed by law.

4. They must not be barred from voting by any other provision of law.

5. They must be registered in the manner prescribed in Section 6-3, 6-4, 6-5, 6-6, 6-7 and 6-8 of the Kenai Code, 1963.

Section 19. For elector or voter registration the book will be open daily in the office of the City Clerk, City Administration Building, Kenai, Alaska, from 9:00 o'clock A.M. until 5:00 o'clock P.M. daily, except Saturdays, Sundays and holidays. Registration shall be closed five (5) days preceding the Special election.

A duplicate registration index shall be furnished by the City Clerk-Registrar to the precinct judges and clerks of the election.

Section 20. Notice of this special election shall be published once a week for not less than two (2) consecutive weeks in a newspaper of general circulation in the City, and the first publication thereof shall be not less than fourteen (14) days prior to said election date. Said notice shall be published in the "Cook Inlet Courier" which is hereby determined to be a newspaper of general circulation within the City.

Notice of this special election shall also be posted on the official City bulletin board in or on the City Administration Building and in two (2) other conspicuous places with the City.

Section 21. The designated polling places will be the City Administration Building, and the Kenai Airport Terminal Building. Said polls shall be open from 8:00 o'clock A.M. to 8:00 o'clock P.M. on the 3 day of August, 1971.

Section 22. The following qualified electors of the

City are hereby designated and appointed to serve as judges and clerks at said special election:

	Judges		Clerks
Precinct No. 1	Frances Meeks	Chairman	Frances Meeks
	Marion Kempf		
	Sharon Young		
Precinct No. 2	Nedra Evenson	Chairman	Nedra Evenson
	Louise Carter		
	Peggy Nevers		

If a replacement shall be required for any of the above-named officials, such replacement may be appointed at any meeting of the City Council.

Section 23. This ordinance shall be published in full after its passage not more than four (4) weeks and at least two (2) weeks before the election hereinabove called is held.

Section 24. An emergency is hereby declared and the rules governing the introduction, reading, passage, and approval of this ordinance are hereby suspended and this ordinance will be immediately effective upon its passage and approval.

PASSED AND APPROVED this 29 day of December, 1971.

CITY OF KENAI, ALASKA

By _____
Mayor

ATTEST:

By _____
Acting City Clerk

CERTIFICATE

WE, THE MEMBERS OF THE KENAI CITY COUNCIL DO HEREBY CERTIFY THE RESULTS OF A CANVASS OF THE BALLOTS FOR THE SPECIAL ELECTION OF 3 AUGUST 1971, TO BE AS FOLLOWS:

OPERATING AND FRANCHISE ORDINANCE - - - - - YES 211

OPERATING ANDCFRANCHISE ORDINANCE - - - - - - NO 171

SPOILED BALLOTS 07 CHALLENGED BALLOTS 01

ABSENTEE BALLOTS 21 TOTAL BALLOTS CAST 304

John F. Steinbock, Mayor

Councilman Ira McCrady

Councilman Robert Bielefeld

Councilman Robert Morene

Councilman James Doyle

Councilman Hugh Malone

Councilman James Hornaday

ATTEST:

Sharon Sterling
Acting City Clerk

DATED: 4 August 1971

SAMPLE

SAMPLE

OFFICIAL BALLOT
CITY OF KENAI
SPECIAL ELECTION
TUESDAY, AUGUST 3, 1971

SAMPLE

PROPOSITION NO. 1

ELECTRIC LIGHT AND POWER
OPERATING AND FRANCHISE AGREEMENT

Shall the City of Kenai, Alaska enter into an Agreement with Homer Electric Association, Inc. (HEA) for the operation and management of the City's Electrical distribution system by HEA and if all the terms of the Agreement are met, provide for the transfer of all of the City's electrical distribution system to HEA and will as a part of said Agreement, grant a franchise or permit to HEA to operate and maintain an electrical distribution system on the public streets and alleys and other public places of the City of Kenai, for a period of thirty (30) years all as is more specifically provided in Ordinance No. 199 adopted June 30, 1971, which ordinance is hereby submitted for ratification?

OPERATING AND FRANCHISE ORDINANCE YES . . . /☐/

OPERATING AND FRANCHISE ORDINANCE NO . . . /☐/

EXHIBIT 3

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT KENAI

HOMER ELECTRIC ASSOCIATION, INC.,

Plaintiff,

vs.

CITY OF KENAI, a municipal corporation,

Defendant.

Case No. 3KN-83-461 CI.

ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Comes now Defendant, City of Kenai, a home rule municipality, organized and existing under the laws of the State of Alaska, whose mailing address is as shown in the margin, and pleads and alleges as follows:

I

Defendant admits Paragraph 1 of the above captioned Amended Complaint.

COUNT I

II

Defendant admits Paragraphs 2, 3, and 6 of Count I of the First Amended Complaint.

III

Defendant is without sufficient knowledge or belief with which to answer Paragraph 5 of Count I of the First Amended Complaint and therefore denies the same.

IV

Defendant denies Paragraph 4 of Count I of the First Amended Complaint insofar as it alleges or infers an obligation or indemnification to Homer Electric Association, Inc. (hereinafter "HEA") by the City of Kenai for costs of relocation of electrical transmission facilities.

CITY OF KENAI

COUNT II

V

Defendant is without sufficient knowledge or belief with which to answer Paragraph 7 of Count II of the First Amended Complaint and therefore denies the same.

VI

Defendant admits Paragraph 8 of Count II of the First Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiff has a common law obligation to relocate facilities at its own expense when necessary to make way for proper governmental use of the streets.

SECOND AFFIRMATIVE DEFENSE

Any rights of Plaintiff are subject to Defendant's exercise of its police powers which include required relocations of facilities to make way for public improvements.

THIRD AFFIRMATIVE DEFENSE

Any rights of Plaintiff are subject to the paramount right of the public to use of the right-of-way and Plaintiff must bear expenses of relocation or improvement incident to facilitating a public use.

FOURTH AFFIRMATIVE DEFENSE

The agreement between Plaintiff and Defendant, a copy of which is attached to the First Amended Complaint in the instant case, is not, wholly or partially, a "relocation agreement" in derogation of the common law.

FIFTH AFFIRMATIVE DEFENSE

Defendant could not, and cannot, directly or indirectly burden itself or its citizens with the costs of utility relocations.

SIXTH AFFIRMATIVE DEFENSE

Defendant maintains that any cost relocation subsequent to August 10, 1971, is provided for by Paragraph 11 of the agreement which provides in part:

"HEA covenants to indemnify and save the City harmless from any and all claims and liabilities by reason of any matter or thing arising out of the operation and management by HEA of the System during the term of this agreement."

SEVENTH AFFIRMATIVE DEFENSE

Defendant maintains a failure of consideration as to any alleged duty of payment by Defendant to Plaintiff for relocation costs.

EIGHTH AFFIRMATIVE DEFENSE

Defendant specifically reserves until specific dates are known, the affirmative defense of the Statute of Limitations, or latches as its alternative, as to any claimed relocation for which Plaintiff claims Defendant is financially responsible.

NINTH AFFIRMATIVE DEFENSE

Defendant asserts as an alternate partial affirmative Defense that amounts claimed as relocation costs by Plaintiff are excessive, and do not reflect appropriate, accurate charges relative to the value of equipment and facilities being replaced.

TENTH AFFIRMATIVE DEFENSE

Defendant maintains requiring HEA to bear relocation costs is reasonable and, pursuant to A.S. 42.05.251 constitutes a portion of the reasonable terms, conditions, and exceptions for the right to a permit to use public streets, alleys, and other public ways of Defendant.

COUNTERCLAIM

As a Counterclaim herein Defendant, City of Kenai, a home rule municipality, organizing and existing under the laws of the State of Alaska, alleges and pleads as follows:

1

The Agreement incorporated by reference in Plaintiff's First Amended Complaint provides as the last sentence to Paragraph 14 of said agreement that:

"HEA further covenants and agrees to base at all times a working crew within the City sufficient and adequate to properly service the system."

II

Since shortly after execution of the Agreement quoted immediately above, Plaintiff has been in breach of Paragraph 14 of the Agreement.

Wherefore, the Court is requested to construe the terms of the Agreement between the parties and:

1. Confirm the obligation of HEA to acquiesce to the reasonable exercise of Defendant's rights and powers in regard to electrical utility facilities relocations.

2. Declare that the Agreement between the parties contains no "relocation agreement" such as would burden Respondent with costs of relocations incident to public improvements.

3. Declare the obligation of HEA to establish and base an adequate working crew within the City of Kenai.

4. Such other and further relief as is just and equitable in the premises.

DATED at Kenai, Alaska, this 22 day of July, 1983.

Tim Rogers
City Attorney for Plaintiff

CITY OF KENAI

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT KENAI

HOMER ELECTRIC ASSOCIATION, INC.,	)
Plaintiff,	)
vs.	)
CITY OF KENAI, a municipal corporation,	)
Defendant.	)

Case No. 3KN-83-461CI

FIRST AMENDED COMPLAINT

Plaintiff, HOMER ELECTRIC ASSOCIATION, INC., through its attorney, C. R. BALDWIN, alleges as follows:

1. Plaintiff, hereinafter called HEA, is a co operative organized and existing under and by virture of the laws of the State of Alaska and has filed its report and paid its taxes last due.

COUNT I

2. On August 10, 1971, HEA entered into an Agreement with the City of Kenai, a home rule municipality existing under the laws of the State of Alaska. A copy of the Agreement, without exhibits, is attached hereto as Exhibit A.

3. In the Agreement the City of Kenai granted to HEA the right to manage and operate the electrical utility system owned by the City of Kenai.

4. Paragraph 13 of the Agreement provides in part:

> The City covenants to indemnify and save HEA harmless from any and all claims and liabilities by reason of any matter or thing arising out of the ownership or operation by the City of the System prior to the effective date of this Agreement.

5. The City of Kenai has made demand upon HEA to relocate certain electrical transmission facilities which had

C R BALDWIN
ATTORNEY
KENAI ALASKA 99611

been installed by the City of Kenai prior to August 10, 1971, and HEA has complied with such demands.

6. HEA has made demand upon the City of Kenai for payment of the costs associated with such work and the City of Kenai has refused to pay the same and has denied any liability therefor.

COUNT II

7. The City of Kenai has made demand upon HEA to relocate certain electrical transmission facilities which have been installed by HEA, and HEA has complied with such demands.

8. HEA has made demand upon the City of Kenai for payment of the costs associated with such work and the City of Kenai has refused to pay the same and has denied any liability therefor.

WHEREFORE, Plaintiff requests this Court to grant relief as follows:

1. To declare the rights and obligations of the parties with respect to the terms of the contract referred to above and to render a judgment declaring that said Agreement obligates the City of Kenai to indemnify HEA for the costs associated with relocating all electrical transmission facilities which were constructed by the City of Kenai prior to August 10, 1971, when such relocation is done at the instance of the City of Kenai.

2. To award Plaintiff a judgment against the Defendant in an amount in excess of $10,000.00, for costs associated with relocating Plaintiff's facilities, the exact sum to be such as shall be proven at trial.

3. To grant Plaintiff such other and further

relief as may be appropriate under the circumstances.

DATED: AT Kenai, Alaska, this 13 day of July, 1983.

C.R. BALDWIN
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13 day of July 19 83 a true and correct copy was hand delivered to attorney of record.

by

AGREEMENT FOR THE OPERATION OF ELECTRIC UTILITY
OF THE CITY OF KENAI, STATE OF ALASKA

THIS AGREEMENT, made the 10th day of August, 1971, by and between the CITY OF KENAI, STATE OF ALASKA (hereinafter called "City"), and HOMER ELECTRIC ASSOCIATION, INC., a cooperative organized and existing under and by virtue of the laws of the State of Alaska (hereinafter called "HEA");

W I T N E S S E T H:

WHEREAS, the City has established and is presently maintaining and operating a municipal electric power system, and in connection therewith owns and operates properties for the purchase, transmission, distribution, supply and sale of electric power and energy; and is engaged in the business of selling and supplying electric power and energy to residential, commercial, industrial and governmental consumers within and about the City of Kenai, Alaska; and

WHEREAS, HEA, as an electric cooperative created and existing under the laws of the State of Alaska, engages, among other utility activities, in the business of purchasing, transmitting, distributing, supplying and selling electric energy within the State of Alaska; and

WHEREAS, HEA's electrical system is or can be interconnected with a system of the City for the purpose of furnishing standby electric power; and

WHEREAS, the City Council of the City of Kenai ("Council") deems that the operation by HEA of City's electric system would be beneficial to the City and to City's users and consumers of electric energy; and

WHEREAS, the Council has resolved that such operation of the City's electric system can be accomplished by means of an operating agreement between the City and HEA; and

WHEREAS, the Board of Directors of HEA has determined that it is to the interest of HEA that an agreement should be entered into for the operation of the City's electrical system under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings and agreements hereinafter set forth, the parties hereto agree as follows:

1. The electric utility system (hereinafter referred to as the "System") of the City shall include all tangible properties and property rights which, as of the effective date of this agreement, are being used by the City for, or are useful for, the transmission and distribution of electric energy and power within the limits of the City and in such area adjacent thereto as may be presently served by said System. Said tangible property shall include real property, rights-of-way, easements, poles and pole lines, crossarms, sub-stations, transformers, station equipment, meters, and other tangible property of every kind and description which are now used, owned and operated by the City in the operation of said System, together with any and all additions, betterments, improvements and extensions thereof which may hereafter be acquired and made a part of said System under the terms of this agreement; the System shall also include all rights and obligations which the City shall have under that certain contract existing between the City and Consolidated Utilities, Ltd., dated September 11, 1963, covering the generation by Consolidated and the purchase by the City of electric energy. The aforesaid definition of the System shall not include cash in the Revenue Fund of the System as of the effective date of the agreement, nor shall it include any of the funds, securities, investments or assets in any of the Bond Redemption Funds or in any of the Reserve Accounts of the Bond Redemption Funds or any sinking fund pertaining thereto, provided, however, that funds, securities, investments or assets in any such Bond Redemption Funds and Reserve Accounts or sinking funds shall be held and applied by the City for the purpose of redeeming Electric Light and Power Bonds of the City as herein defined in accordance with the provisions of said bonds and the ordinances of the City.

The properties and business as hereinbefore mentioned are more fully listed and described in Exhibit A hereto attached and made a part hereof. Said properties are situated and located as shown on Exhibit B attached hereto and made a part hereof.

2. Pursuant to proper authorization there have been issued revenue bonds of the City, generally known as "City of Kenai, Alaska, Electric Light and Power Revenue Bonds." The said issues of revenue bonds and the original

amounts of the bonds issued are as follows: the 1963 City of Kenai, Alaska, Electric Light and Power Revenue Bonds in the original principal amount of $425,000, authorized by Ordinance No. 54 of the City, passed and approved on October 10, 1963; The City of Kenai, Alaska, Electric Light and Power Revenue Bonds, 1964, in the original principal amount of $25,000, authorized by Ordinance No. 70 of the City, passed and approved on the 26th day of August, 1964; the City of Kenai, Alaska, Electric Light and Power Revenue Bonds, 1967, in the original principal amount of $300,000, authorized by Ordinance No. 124 of the City, passed and approved on September 20, 1967; the City of Kenai, Alaska, Electric Light and Power Revenue Bonds, 1969, in the original principal amount of $25,000, authorized by Ordinance No. 174, passed and approved February 4, 1970; the City of Kenai, Alaska, Electric Light and Power Revenue Bonds, 1970, in the original principal amount of $275,000, authorized by Ordinance No. 180 of the City, passed and approved on May 20, 1970. Attached hereto, marked Exhibit C, is a schedule showing (1) the total amount of outstanding indebtedness upon each of the aforesaid Electric Light and Power Revenue Bond issues, and (2) the amounts of principal and interest payments required to be made each year hereafter upon each such issue of revenue bonds from the date hereof to the final maturity date of the bonds of each such issue.

Pursuant to the provisions of Ordinance No. 54 aforesaid, a special fund was created, designated as the "Kenai 1963 Electric Light and Power Revenue Fund." Said ordinance and all of the aforesaid ordinances subsequently enacted provided, also, for the establishment of Bond Redemption Funds. Under each of said ordinances the City pledged and bound itself to pay into said Electric Light and Power Revenue Fund as collected all of the gross earnings and revenue derived by the City from the operation of its electric light and power system, and all additions and improvements thereto and extensions thereof, and all of the Electric Light and Power Revenue Bonds aforesaid excepting the $25,000 of bonds authorized by Ordinance No. 174 aforesaid were payable on a parity out of said Electric Light and Power Revenue Fund.

3. The City agrees that during the term of this agreement said Kenai 1963 Electric Light and Power Revenue Fund shall be maintained at the National Bank of Alaska, Kenai, Alaska, as a special trust fund for the uses and purposes herein set forth. Said Fund is hereinafter referred to as the "Escrow Account". Deposits into said Escrow Account and withdrawals therefrom shall be made in the manner hereinafter provided.

4. The City does hereby grant to REA the right, power and authority to manage and operate the System and REA does hereby agree to assume said management and operation for and on behalf of the City of Kenai, subject to the terms and conditions hereof.

5. REA does hereby assume and agree to perform all of the services and to provide all supplies and materials necessary to maintain and operate the System; REA covenants and agrees to maintain said System in good condition and repair, to operate the same in an efficient manner and at a reasonable cost, and to cooperate with the City to establish, maintain and collect rates and charges for light and power for so long as any of the aforesaid Electric Light and Power Revenue Bonds of the City shall be outstanding, sufficient to provide revenue available for the payment into the various Bond Redemption Funds of the City amounts equal to at least 1.4 times the average annual amount required to pay the principal of and interest on said bonds as the same shall become due, as provided in each of the aforesaid ordinances, and to be sufficient, further, to provide for the payment of normal costs of maintenance and operation of said System but before depreciation and before any taxes or payments in lieu of taxes. REA further agrees to comply with all covenants made by the City in the various ordinances authorizing the outstanding light and power revenue bonds of the City.

During the term of this contract and subject to the conditions hereinafter stated, REA covenants and agrees to provide a continuous, uninterrupted electric power and light service to the consumers and users of the System, which shall include the inhabitants, commercial and industrial users located within the City of Kenai and the vicinity thereof presently bei

served by the System, and to all such additional users and consumers who may be served thereby in the event that said System is enlarged, improved or expanded, whether within or without the corporate limits of the City; to accomplish such end MEA agrees to interconnect its existing electrical distribution system with that of the City to the extent that the same may become necessary to provide the continuous uninterrupted service required hereunder. MEA shall provide for such additions, improvements, betterments and extensions of the System as in the exercise of its best judgment shall be necessary and advisable to provide for the full, complete and efficient operation of the System and to provide such additional service to the consumers of electric power, light and energy as may be required from time to time by such consumers and users.

6. MEA shall pay into the aforesaid Escrow Account, on or before the first day of each month following the first month of the effective date of this agreement all of the gross earnings and revenues derived from the operation of the aforesaid electric light and power system and all additions and improvements thereto and extensions thereof.

In the event such gross earnings and revenues in any month shall not be at least equal to one-twelfth of 1.4 times the average annual amount required to pay the principal of and interest on the aforesaid Electric Light and Power Bonds of the City or the sum of $8,000, whichever is greater, MEA agrees to deposit additional funds each said month into said Escrow Account to supply such deficiency.

7. It is agreed that moneys in the Escrow Account shall be disbursed monthly in the following manner and in the following order of priority:

First. There shall be disbursed to the aforesaid several Bond Redemption Funds the sums required by ordinance to be deposited therein for the payment of the principal of and interest on the outstanding Electric Light and Power Revenue Bonds of the City.

Second. There shall be disbursed to the aforesaid several Reserve Accounts in the Bond Redemption Funds the sums required by ordinance to be deposited therein.

Third. The balance of the minimum amount required to be deposited into the Escrow Account by HEA pursuant to the last sentence of section 6 hereof shall be disbursed to a special trust fund which the City shall establish at the National Bank of Alaska, Kenai, Alaska. Moneys in said special trust fund shall be used solely to pay the principal of and interest and premium, if any, on the aforesaid bonds.

Fourth. The balance of the funds deposited in said Escrow Account shall be disbursed to HEA as reimbursement for Wholesale Power Costs, the normal costs of maintenance and operation, costs of renewals and replacements of the System and additions and betterments thereto and as payment for the services of HEA rendered in the management and operation of the System.

"Wholesale Power Costs" as referred to herein shall include wholesale power costs which shall be paid by HEA for the City under the contract dated September 11, 1963, as heretofore amended, between the City and Consolidated Utilities, Ltd. and any other power costs that may be incurred by HEA hereunder.

The payments required by this section to be made into the Bond Redemption Funds, the Reserve Accounts and the special trust fund shall continue until there has been set aside therein money and investments maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to redeem and retire all the outstanding light and power revenue bonds of the City in accordance with their terms.

It is agreed and understood that nothing herein shall in any manner change, modify or affect the existing aforesaid Bond Redemption Funds and Reserve Accounts therein of the City or change in any way, alter, modify or affect any of the covenants, obligations or contracts of the City with respect to each of said Bond Redemption Funds and Reserve Accounts, all as provided in the aforesaid ordinances respectively.

8. HEA, upon the effective date of this agreement, agrees to pay to the City the following sums:

(1) A sum in cash equal to the money and value on such date of the investments in the several Reserve Accounts.

(2) The sum of $100,000 in cash to reimburse the City for moneys expended from the City's General Fund for the purposes of the System.

(3) A sum equal to the value of all personal property used in the operation of the System, which shall be payable according to the terms of a negotiable promissory note in 120 equal monthly installments, the first of which shall be paid on the first day of the month following the effective date of this agreement. Said promissory note shall provide for interest at the rate of 6% per annum upon the diminishing balances thereof.

9. At the time of its monthly deposit into the aforesaid Escrow Account, HEA shall deliver to the City an itemized account of the operations of the System during the preceding month, including an itemized statement of all receipts and disbursements, including amounts expended for maintenance, labor costs, additions, improvements, betterments and extensions. The City shall have the right at the end of each quarterly period of each year to inspect the books and records of HEA insofar as the same pertain to the operation of the System as herein defined. HEA will utilize the same billing policies and procedures relating to all bills for electric service rendered as have been in effect heretofore and shall have the same rights and power with reference to the collection of charges due for electric service as have heretofore pertained to the operation of the System by the City.

10. The City agrees to grant to HEA to such extent as may be required by law a permit to operate the System within the City's streets, alleys and rights-of-way, which permit shall be for a period of thirty (30) years from and after the effective date of this agreement. Said permit will remain in force and effect following the termination of this agreement for any unexpired portion of said 30-year period following such termination.

11. HEA, within a reasonable time and at its own expense, shall make any and all renewals and replacements, extensions, additions, improvements and betterments to the System in accordance with the said standards and criteria under which HEA would operate its own electric properties and busines HEA agrees, on or before the first day of February each year, to furnish the city with an annual statement in reasonable detail showing all retirements of and renewals, replacements, additions, betterments, extensions and improvement to the System made during the preceding calendar year. Such statement shall include the following information:

(1) A description of the replacement, addition, betterment, extension or improvement; and

(2) A statement of the cost of the replacement, betterment, extension or improvement.

All of any such replacements, betterments, extensions or improvements shall upon installation become and thereafter remain a part of the System.

12. The Council of the City of Kenai agrees upon the execution of this agreement to enact an ordinance and call an election in the manner and form provided by the Charter of the City of Kenai to effectuate this agreement

13. Upon the execution of this agreement the Board of Directors of HEA shall approve and ratify this agreement by appropriate action. Any such approval shall be subject to and not be effective until the same is approved by the Administrator, Rural Electrification Administration, Department of Agriculture, United States of America. HEA undertakes to diligently make, file and apply for any orders and authority from the Rural Electrification Administration of the United States of America which may be required.

The City Attorney of the City of Kenai shall furnish HEA with an opinion in writing satisfactory to HEA to the effect that the City is duly and legally authorized to make and enter into this agreement for the term thereof and to carry out and perform all of the terms, provisions and conditions of this agreement binding upon the City in a manner consistent with the intent hereof. The City covenants to indemnify and save HEA harmless from any and all claims and liabilities by reason of any matter or thing arising out of the ownership or operation by the City of the System prior to

the effective date of this agreement. MEA covenants to indemnify and save the City harmless from any and all claims and liabilities by reason of any matter or thing arising out of the operation and management by MEA of the System during the term of this agreement.

14. MEA agrees, effective as of the date of the beginning of this agreement, that it will endeavor to take into its employ all of the employees of City's electric system excepting supervisory employees at the same wage scales which are applicable to present employees of MEA in the same classification of employment and with seniority measurement by their continuous employment by the City immediately prior to the beginning of this agreement. MEA further covenants and agrees to base at all times a working crew within the City sufficient and adequate to properly service the System.

15. In the event of either party hereto being rendered unable wholly or in part by force majeure to perform its obligations hereunder other than to make payments due hereunder, it is agreed that upon such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice so far as they are affected by such force majeure shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause, so far as possible, shall be remedied with all reasonable speed. The term "force majeure" as employed herein shall mean acts of God, strikes or other industrial disturbance, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, f washouts, arrests and restraints of government and people's civil disturbances explosions, breakdown of machinery or equipment and any other causes, whether of a kind herein enumerated or otherwise, not within the control of the party claiming suspension, and which by the exercise of due diligence such party is unable to prevent or overcome.

It is understood and agreed that the settlement of strikes shall be entirely within the discretion of the party experiencing same and the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes by acceding to the demands of the organization on strike when such course is, in the judgment of the party experiencing the strike, inadvisable.

11. HEA, within a reasonable time and at its own expense, shall make any and all renewals and replacements, extensions, additions, improvements and betterments to the System in accordance with the said standards and criteria under which HEA would operate its own electric properties and business. HEA agrees, on or before the first day of February each year, to furnish the city with an annual statement in reasonable detail showing all retirements of and renewals, replacements, additions, betterments, extensions and improvements to the System made during the preceding calendar year. Such statement shall include the following information:

(1) A description of the replacement, addition, betterment, extension or improvement; and

(2) A statement of the cost of the replacement, betterment, extension or improvement.

All of any such replacements, betterments, extensions or improvements shall upon installation become and thereafter remain a part of the System.

12. The Council of the City of Kenai agrees upon the execution of this agreement to enact an ordinance and call an election in the manner and form provided by the Charter of the City of Kenai to effectuate this agreement.

13. Upon the execution of this agreement the Board of Directors of HEA shall approve and ratify this agreement by appropriate action. Any such approval shall be subject to and not be effective until the same is approved by the Administrator, Rural Electrification Administration, Department of Agriculture, United States of America. HEA undertakes to diligently make, file and apply for any orders and authority from the Rural Electrification Administration of the United States of America which may be required.

The City Attorney of the City of Kenai shall furnish HEA with an opinion in writing satisfactory to HEA to the effect that the City is duly and legally authorized to make and enter into this agreement for the term thereof and to carry out and perform all of the terms, provisions and conditions of this agreement binding upon the City in a manner consistent with the intent hereof. The City covenants to indemnify and save HEA harmless from any and all claims and liabilities by reason of any matter or thing arising out of the ownership or operation by the City of the System prior to

16. HEA agrees that unless required by order of the Public Service Commission of the State of Alaska, it will not sell or deliver electric utility power or electric power or lighting service to users or consumers living outside the corporate limits of the City of Kenai at a more favorable rate or under more favorable terms than those served within the City of Kenai after taking into consideration wholesale power sources and the cost thereof.

17. In the event of any default in any of the obligations of HEA or in the event that any proceeding in bankruptcy or for an arrangement or reorganization under the Bankruptcy Act of the United States, or in the event of the appointment of a Receiver for the business, property or affairs of HEA, and in the event that any such action or proceeding be not dismissed within sixty (60) days from the commencement thereof, the City may, at its election, at any time thereafter declare this operating agreement to be terminated and at an end. In any such event the City shall be entitled to receive payment of any and all moneys then due under the terms of this agreement by HEA. Upon any such notice of cancellation and termination being given, HEA shall forthwith return the operation and management of the System to the City and shall deliver to the City all books of account, records, papers and documents pertaining to the operation of the said system.

18. The title to and ownership of the System and all of the properties and rights constituting the System shall remain with the City until the full performance of this operating agreement according to the terms herein set forth. Upon the payment of all principal and interest of each of the City of Kenai, Alaska, Electric Light and Power Revenue Bonds, as set forth in paragraph 2 hereof and in the exhibits hereto attached and upon the full retirement of all of said bonds the title to the System as herein defined and all of the component parts thereof shall thereupon pass to HEA, and at such time the City shall make, execute and deliver to HEA such grants, conveyances, assignments and title documents as may be necessary to effectuate such transfer of title.

19. At the effective date of this agreement the City shall deposit in a special escrow account at the aforesaid bank all meter deposits or secured deposits theretofore received from the consumers of the System. Said

deposits shall be retained in said Escrow Account for the purpose of complying with the provisions of the several agreements under which the same were deposited. In the event that any such deposits shall become forfeited to the City, the same shall be deposited in the aforesaid Escrow Account and be considered as part of the revenues of the System.

20. The effective date of this agreement shall be on the first day of the calendar month after a favorable election shall have been held by the City pursuant to this agreement and after the agreement shall have been ratified and approved by the Board of Directors of HEA and by the Rural Electrification Administration of the Department of Agriculture, United States of America, whichever date shall last occur. Pending said date the City shall continue to operate said System for the sole account and benefit of the City and at the City's risk.

This agreement shall terminate when all outstanding rights and obligations of the parties hereto have been fulfilled, and all of the outstanding Electric Light and Power Revenue Bonds have been retired or provision for such retirement has been duly made in accordance with the terms of such bonds, whichever is sooner.

21. Notices and communications required hereunder shall be deemed to be duly given and properly delivered if in writing and sent by United States mail, postage prepaid, addressed to the respective parties at the addresses stated below, or such other address as they shall respectively hereafter designate in writing, or personally delivered to any officer of the respective parties at such respective addresses unless otherwise provided herein:

City of Kenai
P. O. Box 580
Kenai, Alaska 99611

Homer Electric Association, Inc
P. O. Box 255
Homer, Alaska 99603

IN WITNESS WHEREOF, the City has caused this agreement to be executed and delivered in its name and behalf by its Mayor and its corporate

seal to be hereunto affixed and attested by its City Clerk each thereunto duly authorized, and HEA has caused this agreement to be duly executed and delivered in its name and behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, each thereunto duly authorized, all as of the 10th day of August, 1971.

CITY OF KENAI, ALASKA

By _____
Mayor

ATTEST:

_____
City Clerk

HOMER ELECTRIC ASSOCIATION, INC.

By _____
President

ATTEST:

_____
Secretary

APPROVED:

_____
Administrator for Rural Electrification
Administration, Department of Agriculture,
United States of America

Presently, under AS 42.05.251 a utility company is entitled to a permit to use of the streets, alleys and other public ways "upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions" required by the City. Absent a contractual relationship to the contrary the applicable law is stated at 12 McQuillim Municipal Corporations, Section 3472 in that "the Grantee of a franchise to use the streets takes it subject to the right of the municipality to make public improvements whenever and wherever the public interest demands, and if the improvement causes injury to the company, as by requiring it to relay or change the location of its pipes, tracts, or poles, or otherwise, the Grantee of the franchise cannot recover damages from a municipality therefor." McQuillim further maintains in Section 34.74 (a) that "the fundamental common-law right applicable to franchises and streets is that the utility company must relocate its facilities and public streets when changes are required by public necessity. Accordingly, it is generally held that the municipality may require a change in the location of pipes or other underground facilities of the Grantee of the franchise where public convenience or security requires it, even at the Grantee's own expense,....".

The recent success of the utility industry in the case of Chesapeake and Potomac Telephone Company of Virginia vs. Landrieu 674 Fed Second 298 (1982) wherein public utilities created under state law were found to qualify as "displaced persons" under the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, so as to entitle them to reimbursement for relocation costs seems to have precipitated some sort of concerted activity on the utility industry's part to change the ingrained long standing common law rules of the game. The copy of the attached communication from the National Institute of Municipal Law Officers dated January 26, 1983, is indicative of a national concern regarding the potential economic impact of assessing municipalities for utility relocates.

We respectfully request that no legislation be passed which would burden municipalities with the cost of utility relocates. Thank you in advance for your assistance and cooperation in this matter.

Respectfully yours,

Tim Rogers
City Attorney

TR/dg

cc: Senator Don Gilman
Senator Paul Fischer
Representative Milo Fritz
Ginny Chitwood, Alaska Municipal League

Institute of Municipal Law Officers

1000 Connecticut Avenue, N.W., Suite 800, Washington, D.C. 20036 (202) 466-5424

National Municipal Litigation Center of the National Municipal Legal Defense Fund

January 26, 1983

Dear NIMLO Member:

We are compiling information about the potential econor impact of a recent Fourth Circuit decision on municipalities nationwide. The decision in C&P Telephone Co. v. Landrieu, 674 F.2d 298 (4th Cir. 1982), if upheld, will mean that pub utilities created under state law may qualify as "displaced persons" under the Uniform Relocation Assistance and Real P perty Acquisition Policies Act of 1970, so as to entitle th to reimbursement for the cost of removing equipment from pu rights-of-way to accommodate projects funded with federal monies. On January 17, 1983, the United States Supreme Cou granted certiorari to review the Fourth Circuit ruling in t case (Norfolk Redevelopment and Housing Authority v. C&P Telephone Co. of Virginia, No. 81-2332).

There is concern about the potential impact of the de- cision on the availability of redevelopment funds if, contr to state common law, utilities are to be reimbursed for the cost of relocating utility facilities from project areas. For example, in the NRHA v. C & P Tel. Co. case, projection are that the utility's claim could reach $1 million with interest accrued since the mid-1970's.

In order to determine the implications of the Fourth Circuit ruling, we ask that all NIMLO members take time to answer, either affirmatively or negatively, the questions i the short survey on the back of this letter. The informati gathered from your responses will be compiled for use eith any NIMLO amicus brief that may be approved and prepared o the petitioner Authority or other amici involving in the c BECAUSE THE BRIEFING SCHEDULE REQUIRES THAT ANY SUCH INFOR TION TO BE CONSIDERED BY THE COURT MUST BE PRESENTED BY MA 3, WE REQUEST THAT YOUR RESPONSES BE MAILED TO THE NIMLO W INGTON OFFICE AT THE ABOVE ADDRESS BY FEBRUARY 10 (postmark

While we realize that this is a short turnaround time, we hope that you will understand the circumstances and nee for urgency. As in the past, the information provided to ours by NIMLO members may have significant persuasive val in this case.

Sincerely,

Charles S. Rhyne

Charles S. Rhyne
General Counsel

CSR:crj

Mid-year Seminar, Washington, D.C., May 8-10, 1983
44th Annual Conference, Milwaukee, Wisconsin, August 17-20, 1983

1. Does state law provide (t public utilities are responsibl(for the costs of removi., their equipment from public right-of-way at the request of the municipality? ☐ yes ☒ no ☐ don't know

a.) Are relocation costs considered by the state regulatory agency responsible for approving utility rates? ☐ yes ☐ no ☒ don't know

2. Does the grant of a franchise to a public utility by your municipality carry an express provision concerning liability for the cost of removing above ground utility equipment at the municipality's request? ☐ yes ☒ no ☐ don't know

If so,

a.) The utility must bear the cost. ☐ yes ☐ no ☐ don't know

b.) The municipality will reimburse the utility for relocation cost. ☐ yes ☐ no ☐ don't know

c.) Does the same provision apply to removal of underground equipment? ☐ yes ☐ no ☐ don't know

3. Has a public utility ever requested reimbursement of relocation costs from your municipality or any separate governmental entity serving part of your municipality? ☒ yes ☐ no ☐ don't know

If so, equipment above ground ☒ underground ☐ don't know ☐
name of action _____
highest level of decision Presently before the the Alaska Public Utilitie
cite, if reported case _____ Commissi
disposition, including any amounts awarded _____

4. Are any such claims (see #3) for relocation expenses currently pending? ☒ yes ☐ no

If so, equipment above ground ☒ underground ☐ don't know ☐
a.) name of action _____
court or agency in which filed Alaska Public Utilities Commission
date claim filed _____

** AMOUNT OF CLAIM 50,000+

b.) Did the 4th Circuit decision in C&P Tel. Co. v. Landrieu serve as a catalyst to encourage this claim? ☐ yes ☐ no ☒ don't know

5. Do you foresee a possibility of any such claims (see #3) being made in connection with specific projects? ☒ yes ☐ no ☐ don't know

If so, equipment above ground ☒ underground ☒ don't know ☐
kind of project _____
category of federal funding _____
**potential amount of claim will not be reported publicly with any specific reference as to origin) unknown

6. Comments or explanation:

ENCLOSED PLEASE FIND A COPY OF SB 67 PRESENTLY BEFORE THE ALASKA LEGISLATURE

Submitted by: name Tim Rogers title City Attorney
municipality City of Kenai date 2/8/83

-- Please return to: NLRB, Suite 900, 1000 Connecticut Avenue, N.W., Washington, DC 20036

TELEFAX COVER SHEET

TO: Tim Rogers PHONE: 283-7535

FROM: Sen. Gilman PHONE: 465-4935

INSTRUCTIONS: Please call

RECEIVED: DATE: 3/3/83 TIME: 5:00 p.m.

SENT: DATE: _____ TIME: _____

BY: (YOUR OFFICE AND PHONE NO.)

DISPOSAL OF ORIGINAL: _____ THROW AWAY

_____ HOLD FOR PICK UP

NUMBER OF PAGES: 2 (NOT COUNTING THIS COVER SHEET)

February 17, 1984

To: Rep. John Cowdery, Chairman
From: Ken Johnson, Committee Aide
RE: SB 67

House Committee Substitute For Committee Substitute for Senate Bill 67 would change Alaska statutes reguarding the relocation of utility facilities incident to highway construction. Current statutes place the burden of these cost on the utility companies themselves. If this bill were to become law, a much greater percentage of utility facility relocation would be paid for by municipalities.

The intention of this legislation is to define the cost of relocation and give a clearer understanding as to the responsibility of both the municipailties and the utilitiy companies in determining which party will bear the cost of relocation.

Senate Bill 67 passed first from Labor and Commerce in the other body. It was amended on the floor and sent to the House where it was referred to Community and Regional Affairs and then to Labor and Commerce. Each committee of referal has made amendments to the bill.

By direction of the chairman, this committee had a committee substitute of SB 67 drafted. This is the bill before the committee today. In concept it is very similar to the draft which passed from the Senate and this committee has heard testimony on this version of the bill in the past. The purpose of this hearing today is not to take the same testimony offered before. It is to examine the areas of the bill or the effects of SB 67 that have not yet been addressed.

DOCUMENT #1

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

February 7, 1984

To: House Labor and Commerce Committee

From: Scott A. Burgess, Executive Director

Re: SB 67 - Utility Relocation Costs

The League opposes SB 67, as introduced, relating to the relocation of utility facilities incident to the construction of road or highway projects by a municipality.

The League opposes any effort to shift to municipalities the cost of all non-municipal utility relocation within existing rights-of-way associated with municipal street work.

Municipalities are already facing decreased revenues from reductions in Municipal Assistance and State Revenue Sharing Programs. The additional burden of paying utility relocation costs could only come from an increase in property taxes, unless the municipality owned the utility and could pass the cost on to the ratepayers directly. The problem is further exacerbated in municipalities with limited road powers. The cost of relocating utilities would reduce the amount of money available to the road service districts for road construction and maintenance. Road service districts rely heavily on state funds and their ability to levy taxes is limited.

Document #4

Alaska State Legislature

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

HCS CSSB 67 (C&RA)

House of Representatives
Committee on Community & Regional Affairs

Dear Mr. Speaker,

A majority of the House Committee on Community and Regional Affairs oppose HCSCSSB 67 (C&RA). The provisions of HCSCSSB 67 (C&RA) changes the historical relationship between utility companies and municipalities in matters pertaining to the use of public rights-of-way and streets by various utility companies. Present Alaska Statutes require municipalities to allow utility companies to use the public right-of-way and thereby avoid the expense of securing easements from private property owners. The proposed legislation is designed to further benefit the utilities by requiring municipalites to pay the costs of relocating the utilities when the relocaton is incident to a municipal street project. The requirement for municipalities to bear the burden of the relocation costs is contrary to practices establised in common law and contrary to procedures used throughout the United States. Imposition of such costs would amount to a public subsidy of private profit making ventures as well as for private non-profit utility companies.

Enactment of any legislation that would require municipalities to pay utility relocation costs will not, in the long run, reduce operating costs for utilities but in all probability will increase costs to the utilities. Municipalities will undoubtedly be highly restrictive in the conditions of future permits for the installation of utilities and will begin to charge maximum fees for the use of the public right-of-way as opposed to the general practice of providing use at no charge.

The Committee has found that municipalities are fair and reasonable in their relationships with utilities, and that the particular needs of each type of utility is considered when negotiations for the use of a public right-of-way are conducted. The continuation of reasonable fees, permit conditions, and equitable allocation of utility relocation costs is insured by the availability of arbitration and redress provided by the Alaska Public Utilities Commission. The considerable diversity of types and purposes of profitable private and of non-profit utility companies further reinforces the Committee's belief that the allocation of utility relocation costs can best be negotiated on the local governmental level, on a case by case basis.

In summary, the Committee believes that the proposed legislation is an unnecessary and unwarranted usurption of local governmental authority which may have an adverse monetary effect on the utility consumer and the municipal tax payer. Therefore, any attempt to legislatively interfere with the existing relationships between municipalities and utility companies should not be favorably considered.

/s/ Representative Lacher

Document #5

THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

May 4, 1983

House Community & Regional
Affairs Committee
Room 102 Capitol Building
Juneau, Alaska 99801

FILE: Legislature - 1983-84 - SB 67
(Utility Relocation Costs)

SUBJECT: CSSB 67(L&C)am and proposed HCSCSSB 67(CNRA)

Ladies and Gentlemen:

In considering the subject Bills, please bear in mind the following:

1. The primary and superior use of streets is for transportation purposes for the general public. Use of streets for utility facilities is a mere convenience to the utility with the benefits accruing to the utility and its utilities, not the general public.

2. The state generally owns its highways in fee while municipalities generally hold their streets by way of dedication. The state is not required to permit a utility to be located within its right-of-way while municipalities are required by statute to permit utilities to locate within their streets.

3. Most state highway projects are substantially funded by federal grants; therefore, the cost of utility relocation is spread to all the people of the United States rather than just the State of Alaska. Municipal road projects are not funded by federal grants.

4. Many utility facilities are installed in municipal streets without permission or with an informal, oral authorization. Some facilities may be installed under a permit which does not address relocation. The common law controlling these situations is that such utilities must be moved at the expense of the utility when required by the municipality. Many utilities are installed under a franchise or a permit which deals specifically with the allocation of costs in the event of a required relocation.

CSSB 67(L&C) would not only reverse the common law, but it would also have the effect of altering the contracts or agreements which municipalities have with utilities regarding relocation. The legislature should not make a retrospective change in the common law. Also, existing agreements not involving the State of Alaska but which are in effect on the effective day of any change in the statute should not be altered by law.

At the teleconference hearing several points were raised by utilities which deserve further comment. First was the concept of "cost causer-cost payer." This is a catchy phrase that identifies the rate making principle that when one utility customer causes the utility to undergo an expense in excess of what it would undergo for the average customer, the customer necessitating the expense should pay the expense. For example, a customer who requires a line extension into an area that has no other customers should bear a major portion of the cost of such extension. Similarly, if a new industrial customer makes demands for energy which are in excess of what the lines and facilities serving his property can handle, then it is this customer who should bear the expense of the upgrade attributable to his increased energy demands. The principle does not apply to people who cause a utility expense who are not customers of the utility or who cause the expense in a capacity other than as a customer. For example, if the principle were to apply to non-customers, we could say that the landlord who leases office space to the utility causes a cost to the utility in charging it rent or in increasing the rent. A regulatory agency could require that the utility install certain pollution reduction devices on its generation facilities. A municipality, in the exercise of its zoning or street powers, could require that a utility suspend its above ground facilities a minimum distance above the street. In none of these cases does the "cost causer-cost payer" principle come into play. It applies only when a customer of the utility causes the utility to undergo an expense to serve that customer. The principle simply does not apply outside the customer-utility relationship; therefore, it is not appropriate to apply that principle to the allocation of costs of relocation caused by municipal street work.

It was pointed out by the utilities that if the utility must bear the burden of relocation then it would have to pass those costs on to its utility customers in the form of even higher rates. For that reason, the utilities said, the general public should bear this burden. That is, local government should raise its taxes to assume an expense that is normally borne by a utility that generally serves less than all those persons who are taxpayers. Not only does this shift what is normally a utility cost to non-utility users, it also overlooks the fact that utilities have generally been getting a break in the free use of public streets; that is, if the lines had been located on private property, the rate payers would have picked up the cost of an easement or a lease and the property owner would have received compensation for the use of his property. Here, municipalities have generally not received compensation for the private use of public streets. It would merely add insult to injury if municipalities are required to bear the burden of relocating utility facilities which have generally had free use of public

property. Even if a utility is a co-op, it generates income through its use of public, taxpayer-supported streets. Public use of the streets for transportation purposes does not generate a revenue. Why should the primary and higher use of a street (transportation) which generates no revenue be made subservient to a non-governmental, revenue-producing use of a public facility?

The City and Borough of Juneau opposes CSSB 67(L&C) am.

I have reviewed a proposed House C&RA Committee substitute for the Bill dated 4/29/83. This Bill is certainly more palatable than the

Senate version. However, it appears that the Bill would have the effect of reviving permits or franchises which were temporary or had expired or were otherwise invalid on the effective date of the Act. If it is not the committee's intent to revive such permits or franchises, I suggest that on page 2, in line 8, the word "before" be changed to "on".

May I add my voice to those who have questioned placing these provisions under Title 19 of the Alaska Statutes. That title deals with state highways and transportation systems and not with local government streets and roads. Because state highways are quite different from local streets, the two should not be lumped together. A later change in the statute to accommodate a state highway problem may have an unintended adverse affect on local streets if both are controlled by the same statute. Title 29 would be a much more logical place for these provisions if they are to be added to the law.

Sincerely,

Gerald L. Sharp
City-Borough Attorney

GLS:jr

cc: Mayor and Assembly
City-Borough Manager
Ginny Chitwood, AML

Document #6

Alaska State Legislature

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives
Committee on Community & Regional Affairs

TO: Representative Barbara Lacher

FROM: Staff

DATE: April 29th, 1983

RE: CSSB 67 and HB 244

During previous hearings on HB 244, several problems with the proposed legislation were identified which appeared to be unreasonable in view of past practices regarding the use of municipal right-of-way by utilities.

1) The purpose legislation would nulify the existing agreements under which utilities were located in the rights-of-way. It seems improper to arbitrarily revoke perhaps hundreds of contractual agreements that have been lawfully entered into by municipalities and utilities.

The proposed substitute re ains any existing permit, franchise agreement.

2) CSSB 67 and HB 244 would require municipalities to pay for all costs of utility relocations.

The proposal is not in accordance with long established law and the usual practice of the past, or of cities within the rest of the United States.

For the state to legislate such a requirement, is a considerable usurption of a municipalities legislative authority.

Additionally, if such a law were to be enacted, municipalities would undoubtedly become very restrictive in the conditions of any permit they would issue, and, would in all probability begin to charge significant permit or franchise fees which would be designed to cover their cost of utility relocations. In this event, there would be no net gain for utilities.

The Committee substitute bill allows for negotiation to take place between the municipality and the utility so that the costs of relocation can be allocated and some give-and-take can occur.

3) CSSB 67 and HB 244 would require municipalities to pay for utility relocations in those cases where utilities were installed without a permit.

Under existing law, utilities would generally be required to pay any costs of relocating these facilities. The existance of this practice may have played a large part of municipalities not instituting a permitting system. To change the existing practice, without notice, may cause an unreasonable and unexpected expense to municipalities.

The provisions of the proposed committee substitute establish a date certain from which the cost of relocations will be in accordance with the terms of a permit. Utility companies may obtain new permits for existing facilities whether or not they were installed with a permit.

4) The definition of relocation costs, as proposed in CSSB 67 does not require payment for depreciated cost, but no clarification of "service life" is provided.

The proposed substitute bill defines how service life may be determined.

Document #7

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

April 28, 1983

MEMORANDUM

TO: Representative Barbara Lacher

FROM: Jonathan Sherwood
Research Staff

RE: HB 244--Sectional Analysis
Research Request 83-135

EXCEPTS

Section 7. This section of the bill provides an effective date of July 1, 1983.

The Impact of the Proposed Legislation on Municipalities

Permits and Easements. There was considerable uncertainty among the individuals we contacted regarding the effects of the provision in Section 3 which exempts municipalities from paying for the relocation of utility facilities not located under the conditions of a valid easement or permit. Very few municipalities have had permit systems for utility facility placement in place for any length of time. Therefore, most utility facilities have not been installed under the conditions of a valid permit.

Municipalities are required by AS 42.05 to grant easements to utilities for the use of their right-of-ways. However, both Lee Sharp, Juneau City Attorney, and Dave Soulak, Palmer City Manager, stated that utility facilities are not always properly placed within the right-of-way. Mr. Sharp expressed concern that municipalities might be required to pay for the cost of relocating utilities that are not properly placed within the right-of-way. According to Linn Asper, facilities which are not correctly placed within the right-of-way would not generally be considered to be located under the conditions of a valid easement. However, he acknowledged that utilities have located their facilities under a variety of different arrangements with municipalities, and that it is difficult to anticipate the effects of this proposed amendment on every case.

Reimbursement Issues. Another impact of the bill is to apply the current and proposed provisions of AS 19.45.001(4) to municipalities. AS 19.45.001(4) currently defines the costs to be paid for relocating utility facilities, and would be amended to permit the State and municipalities to reduce this payment if the service life of the facility is extended. According to Peter Sokolov, Chief Engineer for the Alaska Public Utilities Commission (APUC), most regulated utilities have service life schedules, approved by the APUC, which are used to calculate depreciation. However, Mr. Sokolov stated that the actual service life of utility equipment varies considerably, with location of the facility being the most important factor affecting service life.

Mr. Sokolov stated that municipalities might experience difficulties determining when the equipment was installed. According to Mr. Sokolov, many of the smaller utilities do not have adequate records to determine when its facilities were installed and even some of the larger utilities may not have complete records of their facilities installation. He noted that the service life for some facilities can be as much as fifty years, a long time to maintain records.

According to Bob Lesher, auditor for the Alaska Department of Transportation and Public Facilities, the State currently reimburses utilities according to the federal guidelines established for federally funded highway projects; almost all of the Department's highway projects receive some federal funding. Under federal guidelines, depreciation of equipment is not taken into account unless the utility is forced to move at least one mile of their facilities as a result of the project. When this is the case, there are explicit formulas established by the federal government to calculate the depreciation. As a result, Mr. Lesher stated, State law is rarely applied to State reimbursement policies.

Mr. Lesher noted that the State has experienced no difficulties using the federal requirements for reductions in payments for service life extension. He stated that the most frequent area of disagreement between the State and utilities is the determination of what constitutes legitimate overhead charges for the relocation of utility facilities.

Cost to Municipalties. Several sources, including Lee Sharp, Juneau City Attorney, stated that under common law, utilities are generally held responsible for the cost of relocation in absense of any agreement to the contrary. The courts have found that right-of-ways primarily serve transportation needs, and the utility rights are therefore subservient to the transportation function of the right-of-way.

There are a variety of municipal policies in Alaska concerning reimbursement for the cost of utility relocation. A number of municipalities, including the Fairbanks North Star Borough, and the City of Fairbanks, are currently paying for the cost of relocating utility facilities. According to Pat Lancaster, Right-of-way Agent for the Matanuska-Susitna Borough, the borough recently adopted a new policy of paying for utility relocation, although no reimbursements have been paid yet. According to Lee Sharp, the City and Borough of Juneau decides whether or not to pay the cost of utility relocation on an individual basis. In some communities, some or all of the utilities are municipally owned. Muncipalities which are currently paying for utility relocation or own their own utilities should not be greatly affected by the legislation.

However, many municipalities do not now pay for the cost of relocating utility facilities. The City of Kenai currently requires utilities to pay for the relocation of facilities in municipal right-of-ways, as does the Municipality of Anchorage and the City of Palmer. According to Lloyd Hodson, General Manager of Alaska Village Electric Co-Op, his utility generally must pay for utility relocation in the 48 communities in western Alaska it serves. Although very little relocation has occurred in the past, he noted that road expansion in these communities has been increasing over the last few years.

We were unable to identify the exact percentage of municipalities that do not currently pay for relocating utility facilities. Both Dave Hutchins, with the Alaska Rural Electric Co-Op Association, and Gordon Parker, of the Alaska Telephone Association, stated that most municipalities in Alaska currently pay the utility relocation costs associated with their road projects. However, they both noted that a significant number of municipalities do not.

We are unable to determine the cost to the municipalities should this proposed legislation be enacted. Several municipal officials and utility representatives explained that relocation costs vary greatly according to the types of facilities to be relocated, the initial placement of the facilities, and the location of the project.

However, it is possible to state that those municipalities that are not currently reimbursing utilities may be faced with significant increases in the cost of road projects if this legislation is adopted. Pat Lancaster, Right-of-way Agent for the Matanuska-Susitna Borough, stated that the Mat-Su Borough uses a rough estimate of $25,000 per mile for utility relocation costs, although he emphasized that the actual cost varies tremendously among projects. Dave Soulak, City Manager for Palmer, estimates that paying for utility relocation will increase Palmer's road project costs between 5 and 15 percent.

One impact of the bill on municipalities might be to restrict the use of local improvement districts[1] by municipalities to fund road improvements. The City of Kenai, for example, currently restricts the assessments on property owners in a district to 25 percent of the value of the property and the improvement. According to Tim Rogers, City Attorney for Kenai, the ability of local improvement districts to finance projects could be reduced if utility relocation costs are added to the cost of the project. Mr. Rogers stated that in some cases, local improvement districts would be unable to finance projects at all; in some other instance, projects might have to be scaled down.

Dave Soulak, Palmer's City Manager, stated that some street improvement projects in Palmer might become cost prohibitive if local assessment districts were required to pay for utility relocation. Pat Lancaster also noted that the bill would place hardships on local improvement districts, although he felt that it was appropriate to include utility relocation in road project costs. However, local improvement districts are used to finance road projects in at least one municipality which

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[1] Local improvement district refers to any district or service area used to finance improvements through assessments against all of the property owners in the district.

pays for utility relocation. According to Dennis Holtry in the Fairbanks North Star Borough Engineering Department, local improvement districts in that borough pay for utility relocation resulting from their road improvements.

According to Peter Sokolov, with APUC, shifting the cost of relocating utility facilities to municipalities is not likely to result in a reduction of utility rates. However, he did state that future utility rate increases might be lower, as the APUC would expect any reduction in operating costs to be incorporated into future rate proposals.

* * *

If you have any questions, or if we can be of further assistance to you, please do not hesitate to contact us.

JK

Document #8

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 263-8160

TONY KNOWLES, MAYOR

DEPARTMENT OF PUBLIC WORKS
(3500 East Tudor Road)

April 11, 1983

Alaska Municipal League
204 North Franklin
Juneau, Alaska 99801

Dear Sir:

Re: UTILITY RELOCATION COSTS, HB244, CSSB67

I advised in an earlier telephone conversation with the Alaska Municipal League staff that the Municipality of Anchorage was considering revising our Title 24 in regard to reimbursement to utilities for relocation due to road construction. That revision has not been finalized as of this time, however, you may find the enclosed results of our recent telephone survey of interest. It appears that HB244 and CSSB67 are establishing new presidence for expenditure that other cities in the U.S.A. would not consider. In fact most officials insist the right-of-ways are first for traffic and public use and use by utilities is a privilege which many are required to pay for through their franchise agreements.

The telephone survey was conducted in an effort to confirm the direction we should take, especially concerning private utilities. Essentially all cities surveyed require the utilities to pay for their own relocation. This included cable TV. For the State to mandate paying relocation costs for a utility establishes a significant precedent which has not been required of local governments in other states.

The Municipality is not in favor of the proposed legislation. It is an unreasonable assumption of local authority. The local government should have the right to legislate the conditions upon which they will make reimbursement for relocation and how they will control use of their right-of-ways. Equally important, since some utility relocations are quite costly, requiring the local government to pay for those relocations will have a serious impact on the amount of monies available for upgrading or construction of new roads.

In some cases allowing the utilities to utilize the right-of-way for free and then paying for their relocation will preclude a local government from being able to finance constructing or upgrading the street.

Sincerely,

Everett P. Diener
Director of Public Works

EPD/clg
aw4/epd45

cc: Patrick Anderson

Document #9

TELEPHONE SURVEY METHODOLOGY

Thirteen cities throughout the United States were contacted by telephone last week. These cities were chosen at random with an emphasis on West Coast cities which are somewhat similar in size to Anchorage. In each case the Director of Public Works or the City Engineer was asked four specific questions relating to how utility costs are handled with respect to locally funded street improvement projects and relating to how cable television relocation costs are handled.

SUMMARY OF FINDINGS

In every case the costs associated with relocating utilities as a result of a locally funded street improvement project are borne by the utility companies. In three cases, (Tacoma, Washington; San Diego, California; and Denver, Colorado) and exception is made with respect to public utilities owned by the local government. These cases are discussed below.

In every City contacted, the local government has a franchise with the utility companies whereby the City takes a percentage of their gross revenues, on an annual basis, for the utility's use of the public right-of-way. Although undergrounding of utilities was not one of the questions asked, in one case (San Diego) it was learned that the San Diego Gas & Electric Company franchise recently came up for renegotiation and the annual percentage of gross income was increased to help fund their undergrounding program. This new program was discussed as a "model" for the United States. In the case of San Diego Gas & Electric Company, $4 million per year is collected from them and used in San Diego's undergrounding program.

CITY BY CITY RESULTS

Seattle, Washington: By ordinance, the utility companies pay all costs of relocation in every case unless the relocation is temporary because of the city's direction or error.

Portland, Oregon: Private utilities pay all costs associated with relocations. City owned utilities also pay relocation costs except if a street was changed after an improved location had been given. In such cases the costs are part of the project and they are assessed. All utilities exist in the right-of-way under a franchise, and the franchise with the cable television company specifically requires that this company pay all its relocation costs.

Spokane, Washington: Gas, telephone and electric are all private utilities and they pay for any relocation costs in a street improvement project. The same is true for city owned utilities, water and sewer only, except where Public Works establishes a

grade for the streets and if there is a change in grade, then Public Works bears the cost unless the relocation work was done without a grade or the city-owned utility disregarded the street grade. Spokane's cable television company has a pole agreement with the private owner of the pole and not with the City.

Tacoma, Washington: Private utilities, including gas, telephone and cable television pay all costs of relocation. Public utilities, which are another part of the local government, receive reimbursement for materials only, plus an overhead charge. If the street improvements are locally funded, this charge is usually 15 percent; if federally funded, normally the charge is limited to 10 percent. If the public utilities are being relocated from a recently assigned location, the project pays the relocation costs. Public utilities do not include those coming into Tacoma from the county subsequent to the passage of their local ordinance.

San Diego, California: In San Diego the city owns the water and sewer utilities and in the case of relocations, the city pays such costs. In every other case the individual utility companies pay the cost of relocation. The city has a franchise with each company whereby the city collects an annual percentage of their gross receipts. There are utility coordinating committees which meet monthly to work out utility conflicts before they actually occur. This City has just started an extensive undergrounding program which is paid for through the franchise agreements with the utility companies.

Minneapolis, Minnesota: All utility companies pay their own relocation costs including the water and sewer utility which is owned by the city of Minneapolis. However, once a utility is relocated, it cannot be asked to relocate again for another ten years. Otherwise, the city pays for the relocation costs. The City has franchise agreements with each of its utilities. Cable television is going in now in the Minneapolis area, and they will be paying any relocation costs pursuant to their franchise.

Boise, Idaho: Except for federal aid projects, local utilities relocate at their own expense. This is considered to be a cost of doing business.

Tucson, Arizona: All utilities are considered to be secondary users of the right-of-way. A utility coordination section contacts utilities when there is a need for relocation because of street or storm improvements. Utilities are given a schedule for

the work and they must relocate their utilities at their own expense in advance of the street construction.

Anaheim, California: All utilities, including the city-owned water and electrical utilities, pay for their own relocation costs. This City reported that they knew of no city in California where any relocation costs were paid for a privately owned utility company. Cable television is going into the Anaheim area this summer under a franchise with the City, and this company is required to pay all relocation costs.

Kansas City, Missouri: Utility companies pay their own relocation costs. The local cable television company is not entitled to reimbursement for relocations under their agreement with the City.

Denver, Colorado: All utilities pay their own costs for relocation except water and sewer, which is a city-owned utility and under the authority of the Director of Public Works, where the cost of relocation is borne by the project. This city is just getting started with cable television, and they have a franchise whereby this utility pays all relocation costs.

Knoxville, Tennessee: Every utility company pays its own relocation costs. The cable television company is on Bell poles and has its own agreement with Bell.

EPD/clg
aw4/epd45.1

Document #10

Alaska Municipal League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

March 29, 1983

To: Senate Community and Regional Affairs Committee

From: Ginny Chitwood, Executive Director GC.

Re: SB 67 - Utility Relocation Costs

Municipalities oppose SB 67 because the issue is a local one and shcuild be resolved at the local level. This bill would amend Title 29, Chapter 25 - Protection and Use of State Highways and Roads (emphasis added). The changes in SB 67, however, don't relate to state roads; they deal with local roads.

It is easy to understand why there is a provision in law for the state to pay the utility relocation costs since 95% of the funding is paid by the federal government. In municipal road projects, however, there is no way to shift 95% of the costs to a non-resident third party. The costs are paid by the local taxpayer unless the municipality receives a specific state grant for a specific project.

Since cost figures vary widely depending on the circumstances of each road project, I was not able to generate any average municipal cost per mile figures, but I do have general comments from several municipalities.

City of Palmer - Manager David Soulak estimates the provisions of SB 67, without section 5, would cause a 5% to 15% increase on three road projects currently being planned. In many cases, utilities are not where they're supposed to be. He doesn't think that municipalities should have to pay for utility mistakes, but does not oppose the municipality paying to relocate the utility if it is put in according to a permit.

Matanuska-Susitna Borough - Manager Gary Thurlow basically agrees with Soulak.

City and Borough of Sitka - Administrator Rocky Gutierrez believes that municipalities shouldn't be in state statutes except in Title 29. Sitka has worked out an agreement with the non-municipal utilities.

City of Kodiak - Manager Sam Gesko opposes section 3 of the bill, making the relocation costs a municipal responsibility.

City of Fairbanks - Manager Wally Drez says there would be no effect on

the City of Fairbanks because their policy is to pay r[illegible]cation costs, although the utility pays for any upgrades.

Fairbanks North Star Borough - Public Works Director Don Moore reports that current borough practice is for the utility to pay relocation costs so shifting the cost to municipalities would cut down on the amount of road work that could be done with the available money.

City and Borough of Juneau - Public Works Director George Porter says that cost allocations are decided on a case by case basis, depending on whether the utility is where it was supposed to be, the age of the line, etc.

City of Ketchikan - City Manager Jim Van Altvorst estimates that the bill would cost the city an estimated $50,000 this year.

Municipality of Anchorage - Public Works Director Paul Diener believes that this is a local issue. Anchorage has a new ordinance in the works that would require the municipality to pay the relocation costs if the utility has a permit and is at the location specified in the permit; in other cases, the utility would be required to pay.

City of Kenai - Paying relocation costs would cut down the amount of road work the city could do. Attorney Tim Rogers points out that common law indicates that "Rights in streets or highways....are at all times held in subordination to the superior rights of the public".

Document #11

Suggested by: City Council

CITY OF KENAI

RESOLUTION NO. 83-32

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA REQUESTING THE THIRTEENTH LEGISLATURE OF THE STATE OF ALASKA NOT TO BURDEN LOCAL GOVERNMENT WITH ADDITIONAL AND UNNECESSARY COSTS IN BUILDING, MAINTAINING OR REPAIRING ROADS WHICH ARE THE RESPONSIBILITY OF LOCAL GOVERNMENT BY PASSING SB 67 WHICH FORCES MUNICIPALITIES TO PAY THE COSTS OF RELOCATING UTILITY POLES AND/OR LINES IN CONJUNCTION WITH ANY OF THE MUNICIPALITIES' ROAD PROJECTS.

WHEREAS, the common law in the State of Alaska has always been that when a municipality requested a utility to move its poles or lines in conjunction with a road project undertaken by said municipality, that cost has been borne by the utility company, and

WHEREAS, the passage of SB 67 will only burden local taxpayers with additional costs which in the past have not been borne by the local taxpayers, and

WHEREAS, electric utilities have been provided an easement along said roads by municipalities without any cost to the utility,

WHEREAS, the utility will be a major benefactor from SB 67 at the expense of the local taxpayers, and

WHEREAS, transferring the burden of the cost of relocating utility transmission lines and poles to the public sector is contrary to the public good and welfare of the taxpaying public, and

WHEREAS, there is a strong possibility that with the passage of SB 67 it would discourage municipalities in many cases from trying to make appropriate and adequate repairs to existing streets because of the additional burden and therefore be detrimental and perhaps even dangerous to the motoring public in many municipalities.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, that said Council go on record urging the Thirteenth Legislature of the State of Alaska to defeat SB 67 on the basis that it appears not to be in the best interests of the citizens of the State of Alaska, and further that immediately after the adoption of this resolution the Clerk of the City of

Kenai shall mail copies thereof to Governor William J. Sheffield, Senators Don Gilman and Paul Fischer, Representatives Hugh Malone, Milo Fritz, Bette Cato and Vern Hurlbert; in addition, the Chairman and Vice-Chairman of the House Labor and Commerce Committee, Representatives Walt Furnace and Rick Uehling and Chairman and Vice-Chairman of the Senate Labor and Commerce Committee, Senators Richard Eliason and Bob Mulcahy as well as the Alaska Municipal League.

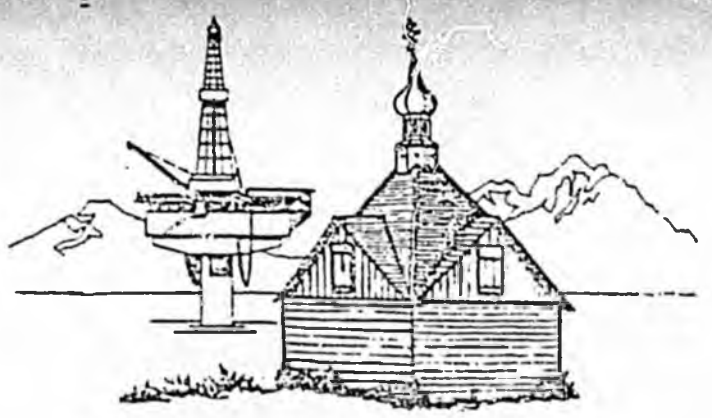
PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA this 16th day of March, 1983.

Ronald A. Malston, Mayor

ATTEST:

Janet Whelan, City Clerk

Document #12



CITY OF KENAI

"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

March 11, 1983

Honorable Richard Eliason, Chairman
Senate Labor and Commerce Committee
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

In response to a request by you directed through the Alaska Municipal League in providing you with information on how much it will cost municipalities to pay for relocation of utilities in connection with municipal highway projects, please consider the following:

Homer Electric which is the provider of electrical power for the City of Kenai and the surrounding areas has indicated to the City that during the years 1980, 1981 and 1982, the cost for relocating their utility poles in conjunction with road projects undertaken by the City of Kenai cost in excess of $300,000. In addition, for the last half of 1982, Homer Electric submitted a bill for $60,000 for a particular road project that the City had under construction.

At this time, the City has refused to pay that bill and as a matter of fact, we now find ourselves in court with that utility over the dispute of whether or not the utility or the City is going to pay those costs. The City's contention is and will remain until directed otherwise that the utilities are in our right of ways at the sufferance of the public and therefore when the City undertakes a major road redesign or improvement project, the utility shall bear the cost for moving the poles to comply with the road design.

In addition to that, in 1982 the City had a downtown road project for which we were asphalting almost a mile and a half of road, we requested that Homer Electric bury their lines in that area on the basis that it was downtown property. Homer Electric refused to bury those lines and we sat down and negotiated with Homer Electric and the City ended up paying for the burying of those lines and the cost to the City was $75,000.

Now, as a matter of fact, we could have fixed two or three of our roads in this community that during breakup no-one can even drive down, citizens have to park their cars as far away as four or five city blocks from their home because the roads are in such condition during breakup they cannot be traversed.

It is for these reasons that the City opposes SB 67. The City's contention is that it always has been and should remain the utility's responsibility for relocating their utility lines when the City is improving the highway system from a safety standpoint and for a convenience standpoint for the traveling public in these communities.

At this point we have only talked about the electric utility, you must remember that if those costs are representative for the electric utility, most all of the telephone lines must be at the same time moved and on many occasions, the gas lines also have to be moved. If you multiply $300,000+ then the City over the last three years was looking at a total expenditure of approximately $1 million just to relocate the utilities in order to permit the City to repair and maintain the roads to benefit the traveling public.

It becomes obvious that a city of 5,000 people does not have the kind of money necessary in order to do the roadwork that we feel is our obligation and at the same time provide the money for all of the utilities which are private entrepreneurs and in the profit making business.

Sincerely,

Wm. J. Brighton
City Manager

WJB/dg

cc: Senator Don Gilman
Senator Paul Fischer
Representative Hugh Malone
Representative Milo Fritz
Alaska Municipal League

Document #13

ANCHORAGE WATER & SEWER UTILITIES

3000 Arctic Boulevard
Anchorage, Alaska 99503
(907) 277-7622

Tony Knowles
Mayor

Owned by the Municipality of Anchorage

March 7, 1983

Senator Eliason
Chairman, Labor & Commerce
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: SB-67

Dear Senator Eliason:

From the perspective of water and wastewater facilities, passage of the subject legislation should not have a significant impact on the cost of municipal road improvements.

In Anchorage for example, it is rare when a municipal road improvement impacts much more than the surface or above surface water and wastewater facilities. Generally this would include moving fire hydrants, adjusting sewer manhole elevations, adjusting water valve box elevations, etc. These type of relocations cost AWWU approximately $100,000 in 1982, a year with significant road improvement activity.

An exception to the above would be a situation where a road improvement project necessitated relocating an entire stretch of water or sewer main. Generally this only occurs when the road grade is lowered so much that freezing becomes a potential problem for an existing facility. In these cases relocation could cost as much as $100 per lineal foot of pipe, including apurtenances.

If the Anchorage Water and Wastewater Utility can provide any further information please contact either myself or Brian Crewdson at 265-5561.

Sincerely,

ROBERT E. SMITH
General Manager
Anchorage Water & Wastewater Utility

RES/BIC/slr
H/SE

cc: Alaska Municipal League
Patrick Anderson
John Harshman

Document #14

THE HEART OF THE MATANUSKA VALLEY

CITY OF PALMER

COUNCIL-MANAGER GOVERNMENT
P.O. BOX 1368 • PHONE (907) 745-3271
PALMER, ALASKA 99645

February 7, 1983

The Honorable Richard Eliason
Alaska State Senate
State Capitol
Pouch V
Juneau, Alaska 99811

RE: SB ~~69~~ 67

Dear Senator Eliason,

The City of Palmer opposes SB ~~69~~ 67 in its entirety and for good reason.

Matanuska Telephone Association (MTA) has operated since 1972 without a franchise with the City of Palmer after the original franchise lapsed after twenty years. During the last ten years plus, MTA has embarked upon an underground burial program without obtaining permits or approval of the City for use of their right of way.

While Matanuska Electric Association has had a franchise since 1952 and renewed this in 1972. The MEA franchise stipulates that all relocations will be at their expense.

MTA's burial program may have not been too bad if they would have stayed adjacent to the property line as the municipal code spells out, but this was not the case.

Last September, we let contracts for paving of various streets using per capita money as seed money for special assessment districts. From the onset of construction we had problems. In one street, we had cable buried, from the left to right at 6'-0"±, 12'-0"± and 18'0"± in a sixty (60) foot right of way. Since this street according to our Comprehensive Plan is designated as a residential collector street its design width is forty four (44) feet back of curb to back of curb. The bill MTA has sent to the City of Palmer for relocating approximately six hundred (600) feet in this situation is $19,329.06.

In addition to this sum, we received a bill from the cable television installation company for damages too.

Now, this brings up another item. Prior to the cable television installation, we advised the contractor along with MTA representatives that the cable should be buried no more than six (6) feet from the property line and all street crossings to be a minimum three (3) feet deep. This was sent formally to MTA in the form of a letter. Since MTA hired a private contractor for this work, it was the private contractor's goal to bury as much as soon as possible. Even though every single parcel of land in the City has been surveyed at one time or the other, neither MTA nor the private contractor took the time to locate any property pins. There were instances we had them relocate cable since they were well beyond the six feet. Their reasoning was that they measured off the centerline of our dirt streets. Even so, the centerline of a street is not always the centerline of the right of way. This is especially true of non-permanent streets.

Further, the cable drop services to the residents which crossed the street were buried less than one (1) foot deep. MTA was advised of this fact and they said to cut the service as they are in the wrong.

On another street that was bid in the September street bid package, MTA has billed us $22,248.55 for relocation expense when the cable meandered through the right of way up to twelve (12) feet into the right of way and was from six (6) inches to two (2) feet deep.

On another street, we were billed $2,414.79 for cable relocation that varied from being on private property to ten (10) feet into the right of way to avoid bushes and branches. The reason for these costs being so small is that the street was not located in the center of the right of way and the shifting of the street did not cause as much relocation as normal, besides it was in an open area lacking of vegetation.

These costs will add between five and fifteen (5-15%) percent to the project cost depending upon street design. Each street will vary with the degree of encroachment.

We would agree that if utilities were placed in accordance with a permit issued by the City or Municipality and relocation was at our request, then we would be willing to pay for the costs. But to absolve the utilities, as in our case, Matanuska Telephone Association and Matanuska Electric Association, of prior helter skelter installation is inequitable and unjustified.

This naturally is a concern to the utility companies as they, in most cases, have gone about placing their utilities without care for proper placement.

Now with the possibility of natural gas being brought into many parts of the Matanuska Valley, utility corridor placement plays a larger role especially in the City of Palmer.

When the City of Palmer installs water, sewer or storm sewer, we engage the services of a professional engineer to design and stake out the construction to insure proper alignment and grade. It increases our costs marginally, but this is what all utilities should be required to do and we wouldn't have the conflicts that now exist. Anyone can draw lines on paper but the field installation is where it counts.

The problems and costs previously cited caused contractor delays which may or may not show up in the final construction costs since only the excavation and sub-base were completed last fall.

As City Manager of Palmer and Secretary-Treasurer of the Alaska Municipal Manager's Association, I urge you to vote against this bill in its present form.

Should you have any questions, please contact me.

Yours truly,

David L. Soulak
City Manager
City of Palmer

cc: Senator Jalmar Kerttula
Representative Ron Larson
Representative Barbara Lacher
Ginny Chitwood, AML

SB

78

FISCAL NOTE Revised Date: April 21 , 1983

to Legislative Office 4-21-83

I. REQUEST

Bill/Resolution No.: CS SB 78 (Hess)
Title: Teachers' Collective Bargain. Agmts
Sponsor: Health, Educ. & Social Serv.
Requestor:

II. FISCAL DETAIL

Agency Affected: Administration
Program Category Affected: Independent Oper
BRU, Program of Subprogram(s) Affected:
Labor Relations Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	0-	-0-	-0-	-0-
200 TRAVEL	-0-	7.5	4.7	4.7	4.7	4.7
300 CONTRACTUAL	-0-	27.6	17.3	17.3	17.3	17.3
400 COMMODITIES	-0-	0.4	0.3	0.3	0.3	0.3
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	35.5	22.3	22.3	22.3	22.3
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	35.5	22.3	22.3	22.3	22.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

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

None

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Ken Ryals Ken Ryals Phone: 465-2277
Division: Administrative Services Date: 4/21/83

Approved by Commissioner: Lisa Rudd Lisa Rudd Date: 4/21/83
Department: ADMINISTRATION

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

3/8/83

7/0421-06/BDGSF1

A. Assumptions: Since this bill will make the three member State Labor Relations Agency (LRA) serve as the majority of the new, five member Educational Employees Labor Relations Agency (EELRA), it will add to the LRA's workload. Our experience with implementation of the Public Employment Relations Act leads us to believe that the workload increase will be most pronounced during the first year of operation under the new law, as bargaining units are set up and representation elections conducted. Subsequent years' workloads will be permanently higher than present, since a larger client group will permanently be served, but the lasting impact on workload will be significantly less than the initial impact. We have assumed a 40% workload increase (above present) for the first year; subsequent years' workloads are assumed to be 25% higher than the present.

While serving as the EELRA, travel and perdiem costs will be proportionately higher, since five members will be participating instead of the present three.

B. Program Summary: Present Labor Relations Agency services include bargaining unit determination; conducting representation elections, investigation and conciliation of complaints, holding hearings, and issuing orders and decisions. A larger client group - educational employees, their representatives, and school boards - will receive these services. No new positions will be required; none presently are authorized. Since office and legal services are contracted for, there will be a significant increase in contractual services. Travel and perdiem will also increase with the size and workload of the Agency.

C. Computations: 1. First year under CS SB 78 - FY84

200 Travel: Funded @ $11.2 for FY83. This is for three members ($3.7 ea.) with an assumed workload of 1.00. If workload is increased to 1.40 and five members participate in the new case load, the increase in travel funding requirements will be:

Three existing members: $11.2 x .40 = $4.5
Two new members: $3.7 x .80 = 3.0

Total FY84 Travel Increase $7.5

300 Contractual: Funded during FY83 at $69.0. Increase of .40 = $27.6

400 Commodities: Funded during FY83 at $1.0. Increase of .40 = $.4

Total FY84 Increase $35.5

2. Subsequent years under CS SB 78 - FY85-88

200 Travel:

Three existing members: $11.2 x .25 = $2.8
Two new members: $3.7 x .50 = $1.9

Total FY85-88 Travel Increase $4.7

300 Contractual: $69.0 x .25 = $17.3

400 Commodities: $1.0 x .25 = $.3

Total FY85-88 Increase $22.3

SENATE COMMITTEE REPORT (HESS) - CSSB 78

Mr. President:

For years, the representatives of certificated school employees have asked for a change in the way disputes between their bargaining groups and school districts are resolved.

The matter is important to the public for several reasons. Alaska needs to attract and retained qualified school personnel. Alaska should avoid disruptions in the school year. An orderly and fair way to resolve disputes should be provided for.

The administration recommended that school boards be given the right to choose among three procedural options -- granting employees the right to strike, submitting to mediated arbitration, or granting employees the right to "limited strike" (strike for a limited time period).

The administration proposed that school boards be allowed to exercise these options after a dispute has arisen.

Your Committee preserves the idea of the school boards' right to select procedural options, but the Committee Substitute would require that the school boards make their respective option choice within 90 days after enactment of the bill, or thereafter from time to time but not while a dispute is in progress. The so-called "limited strike" option is removed, since testimony showed no compelling reason for its inclusion and indicated that this option would rarely, if ever, be chosen.

The Committee Substitute introduces the "last best offer" approach to mediation and arbitration. The Committee Substitute reflects the belief that by requiring the arbitrator to select between the settlement package proposed by management and the settlement package proposed by the employees, both sides will be induced to narrow the differences between them and to adopt reasonable positions.

The Committee Substitute expressly retains the boards' right to make final decisions on educational policies.

At present, there exists within the Department of Administration the State Labor Relations Agency. In school employee matters, this agency would serve as part of the educational employees labor relations agency. The agency would consist of three members of the State Labor Relations Agency augmented by two additional members to be selected by the Governor, one from a list submitted by the National Education Association-Alaska, and one selected from a list submitted by the Alaska Association of School Boards.

Among the educational employees labor relations agency's functions would be the determination of appropriate negotiation units; determinations as to the need for elections to resolve questions of representation in a negotiation unit; the determination of the eligibility of voters in such elections and the rules governing elections.

Sectional Analysis:

14.20.540. Declares the policy supporting collective bargaining in the public schools.

14.20.550. Includes noncertificated employees in the requirement that school boards negotiated with employees on matters pertaining to their employment, in good faith; defines "certificated employees" to include teachers, counselors, principals, assistant principals, and 'other certificated administrative personnel', but excludes superintendents, assistant superintendents, and other 'certificated executive administrative personnel who the educational employees labor relations agency determines to be inappropriate members of an employee negotiating unit.'

14.20.555(a). Corrects language in the existing law to address the new provisions for negotiations with noncertificated personnel in REAAS.

14.20.560. Provides that the educational employees labor relations agency will decide the appropriate unit for purposes of negotiation, and sets out criteria or factors to be used by the agency.

14.20.560(b). Contains procedures for representation elections within a proposed negotiation unit.

14.20.560(c). Prohibits a representation election in a negotiating unit if a valid election has been held within the preceding 12 months.

14.20.560(d). Permits a school board to recognize an employees' organization as the employees' exclusive representative, by consent of the board.

14.20.560(e). Limits the agency's power to direct an election to the 90-day period before the expiration date of the employer-employee agreement, except upon a petition of persons in the negotiating unit, who are not parties to the agreement, if more than three years have elapsed since the execution of the agreement or the last timely renewal of the agreement.

14.20.560(f). Permits noncertificated employees, or certificated administrated personnel groups, to decide by secret ballot to negotiate independently of other school personnel. Requires the educational employees labor relations

agency to conduct a representation election in such circumstances, upon petition of 25 percent of the employees in a proper negotiating unit.

14.20.565. Requires the school board, on request of an employee bargaining organization, to meet with the organization's representatives within 20 days after the request. Reciprocally, requires the employee bargaining organization to meet with a school board or its representatives within 20 days after its request.

14.20.565(b). Permits negotiation meetings to be in executive session, except that all final agreements shall be made at a public meeting of the school board.

14.20.570(a). When an employee bargaining agency or a school board certifies that the parties cannot agree on an independent private mediator, and that good faith negotiations have terminated in an impasse, and the requesting party asks for mediation from the U. S. Federal Mediation and Conciliation Service, the requesting party must notify the educational employees labor relations agency. This paragraph deletes provisions requiring a mediator to reduce "all the agreed terms, conditions and other items to a written contract" within 30 days "of the initial meeting of the parties (unless the parties mutually agree to extend the period)." This paragraph also deletes language in present law governing the size of the negotiating team that appears before the mediator.

14.20.580. Requires the mediator to notify the educational employees labor relations agency either when the parties reach agreement or when the mediator determines that they are at impasse. Provides for a 10-day cooling-off period following mediation.

14.20.581. Provides the "local option", i.e., the school board's right by resolution adopted following public hearing to decide "whether last best offer mediated arbitration or the right to strike shall follow the mediation procedure." However, the board's resolution shall be adopted before the "mediation process begins." (However, the parties may mutually agree to modify the option selected originally by the board).

14.20.582. Provides that where a school board has taken the right-to-strike option, a strike may occur if a majority of the employees in the bargaining agency elect to strike. Provides that where the employees vote not to strike, the school board shall not be required to particiaate in arbitration. Provides that "an aggrieved person" may apply to the Superior Court to enjoin a strike, and an injunction can issue if the strike "threatens the health, safety, or welfare of the public." If a strike is enjoined by the Court, after considering "the total equities", and an impasse still

remains, the parties shall submit to arbitration. Provides that elections under this section will be conducted by the educational employees labor relations agency.

14.20.583. Provides for arbitration if the school board's "local option" is the non-strike option, or if arbitration arises after a Court injunction against a strike, or where a strike has occurred in a district which permits strikes and a majority of the employees in the bargaining agency have elected to strike. Provides that the educational employees labor relations agency may direct the parties to use the services of and comply with the procedures of the Federal Mediation and Conciliation Service or the American Arbitration Association, if the parties are unable to otherwise agree upon a mutually selected arbitrator.

14.20.582(b). Provides for mediated arbitration. The parties are to submit evidence to support their respective positions before the arbitrator. Each party can respond to the other's evidence. The arbitrator may propose compromises. The arbitrator, on his own motion or the request of either party, may call for a public meeting to allow the parties to present and explain their "last best offer(s)". Before final submission to the arbitrator for decision, the arbitrator shall allow each party "to revise its last best offer."

14.20.582(c). Sets out the factors which the arbitrator will take into consideration.

14.20.582(d). Requires the arbitrator to adopt "without modification" the last best offer of either of the parties.

14.20.582(3). Requires the parties to share the cost of the arbitrator equally.

14.20.584. Provides for the confirmation by the Court of the arbitrator's award, and provides for Court vacation of an award in certain circumstances similar to those applicable under the Alaska Arbitration Act.

14.20.585. Provides for modification or correction of an award, under circumstances similar to those applicable in the Alaska Arbitration Act where modification or correction is provided for.

14.20.590. Requires grievance procedures and a definition of "grievances" in all agreements. Requires each agreement to provide a method for the selection of an arbitrator to resolve grievances.

14.20.600. Requires the educational employees labor relations agency to set forth procedures to safeguard the rights of "nonassociation" of employees having "bona fide religious convictions."

14.20.605. Establishes the educational employees labor relations agency, as explained above. Members of the agency receive no compensation, but are entitled to per diem and travel expenses. The agency may employ staff to implement the provisions of the chapter.

14.20.606. Functions set out in AS 23.40.120 - 23.40.180 are to be performed by the educational employees labor relations agency, as well as specific functions set out in this chapter. The school board and the employee organization alike are prohibited from "unfair labor practices", as described in AS 23.40.110.

14.20.610. Reiterates the power of school boards to "make final decisions on educational policies."

Sec. 13. (Temporary Provision). School Boards must make their initial local option decision between last best offer mediated arbitration and the right-to-strike within 90 days after enactment of the chapter.

Sec. 14. (Temporary Provision). "Grandfather" clause for existing negotiating units and negotiating agreements.

Sec. 15. (Temporary Provision). The effective date is to be immediate.

Respectfully Submitted,

COMMITTEE ON HEALTH, EDUCATION
& SOCIAL SERVICES

By: Joe P. Josephson, Chair

SB

134

Offered: 4/18/83
Referred: Rules

Original sponsor: Mulcahy

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 134 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to surety bond and financial requirements for insurers of surplus lines."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. A 21.33.160 is amended to read:

Sec. 21.33.160. FILING SURETY BOND AS A CONDITION TO LICENSE. Before receiving a license the applicant shall file with the department a surety bond in favor of the state and insureds in the penal sum of $50,000 [$25,000]. The bond shall be issued by an authorized corporate surety approved by the department. The bond shall be conditioned on the conduct of business under the license in conformity with the provisions of this title, including the payment of all taxes required to be paid by this title. The applicant shall keep the bond in effect during the period of the license. The surety may terminate the bond by giving at least 30 days written notice to the department.

25,000

* Sec. 2. AS 21.33.180(a) is amended to read:

(a) A surplus line broker shall ascertain the financial condition of an insurer before placing insurance with the insurer [HIM]. A broker may not place or renew surplus line insurance with an insurer which the broker [HE] knows or should with due diligence, determine to be financially unsound, nor may the broker place surplus line insurance with an insurer which has capital and surplus of less than $1,500,000 [$600,000] unless there is on file with the department a copy of a trust agreement, certified by the trustee, evidencing an existing trust of at least $1,500,000 [$450,000] which is deposited by

the insurer in a United States bank or a United States trust company and held for the protection of the insurer's United States policyholders. The department may waive the financial requirements in this subsection in circumstances in which insurance on risks located in this state cannot be procured under the requirements.

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

SB 134

Sectional Analysis:

Section 1) Increases the surety bond requirements for a surplus lines broker from $25,000 to $50,000. This proposed increase whould have the effect of placing the surplus lines broker under more thorough scrutiny by the surety posting the bond. The bond can be accessed by the state for recovery of unpaid taxes by the broker, and the addition of the words and insureds would allow the consumer to recover at least partial recompense for losses resulting from a policy placed with an insolvent company.

Section 2) Increases the capital and surplus requirements for surplus lines insurance from $600,000 to $1,500,000. In the alternative to that capital and surplus requirement, a trust agreement of $1,500,000 [currently $450,000] would be sufficient.

Sectional Analysis

Alaska National
INSURANCE COMPANY

A policy of service and protection

LEGISLATIVE POSITION PAPER:

LEGISLATION:

Senate Bill No. 134

PURPOSE:

An act relating to surety bond and financial requirements for insurers of surplus lines.

SUBSTANCE:

This measure would increase the bonding requirements for surplus line brokers and would increase the surplus requirements for surplus line insurers permitted for use in this State by surplus line brokers.

POSITION:

Not opposed.

ACTION:

No action is necessary, however, if asked you might suggest certain improvement amendments.

BACKGROUND:

In order to do business in the State of Alaska, an insurer must be authorized by the Division of Insurance to transact insurance in this State. As a condition of issuing the Certificate of Authority to an insurer, the Division requires that the insurer comply with the rating and form requirements imposed upon all insurers. Often times risks require coverages which a carrier cannot provide within the framework of approved rates and forms; and, thus, goes outside the State of Alaska to procure the insurance from carriers which are not authorized to write business in this State. Surplus line brokers are those brokers who are specially licensed to procure insurance outside the State of Alaska from carriers not authorized to write in this State for risks in this State that cannot otherwise acquire those coverages. Examples would be aviation liability or hull insurance, insurance on special properties located in remote areas and other hard to place risks.

This business is referred to as surplus lines or excess insurance.

7001 Jewel Lake Road • Post Office Box 3440, Anchorage, Alaska 99510 • Telephone (907) 248-2642 • Telex (090) 25-456

Though the Division of Insurance has no jurisdiction over these unauthorized insurers, it does have jurisdiction over the surplus-line brokers which procure the insurance and it attempts to protect the buying public by limiting the actions of the surplus line broker. This is, since the insurers are not regulated, only brokers with special experience are permitted to access these otherwise unauthorized insurers. It is appropriate that the bond be increased and it is appropriate that the surplus requirements for those unauthorized insurers which the surplus line brokers uses, be increased.

One of the difficulties with the existing law is that it does not require the surplus line broker to maintain any kind of surveillance over the financial condition of the unauthorized insurers; and only requires that at the time the insurance is placed, the broker have no knowledge of the insurers financial unsoundness.

I would argue that the broker has an ongoing responsibility to review the financial condition of the unauthorized insurers which it uses, and I would suggest that the language be modified to read as follows:

> 21.33.180 (a) "A surplus line broker shall ascertain the financial condition of an insurer before placing insurance with the insurer. A broker may not place or <u>continue</u> surplus line insurance with an insurer which the broker knows <u>or should with due diligence, determine</u> to be financially unsound, ... [Emphasis on language recommended to be added-other language as per amendment proposed by SB 134]".

SB 134, Line 21 to 24.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

POSITION PAPER

SB 134: An act relating to surety bond and financial requirements for insurers of surplus lines.

The Administration favors the passage of SB 134. This bill is admittedly a "band-aid" approach to resolving the shortcomings of the surplus lines law in the insurance code. It does allow time to effect a more thorough review of the surplus lines law by correcting some of the more glaring deficiencies in the law.

The bond requirements for a surplus lines broker was last revised in 1970. The purpose of such a bond is to prequalify the license holder. If the bond is of sufficient size, this is accomplished as the surety providing bond does a more thorough job of checking the person to be bonded. If the bond is not large enough, the surety may tend to be lax in its efforts. The bond should also be sufficient to provide some protection for the State and the public. Recent occurrences suggest that a $25,000 bond may no longer be adequate. A $50,000 bond is a reasonable step up until the issue is considered as part of a broader action.

The current minimum for an admitted multiple line property and casualty insurance company is $1,500,000. The surplus lines law which is unchanged in this regard since 1970 requires only $600,000. This is woefully inadequate, particularly since that market is basically not subject to State regulation except, perhaps, in its domiciliary state. An increase to a level that is required of an admitted company or one newly forming in this State is a reasonable step.

This is a good bill and we would urge its passage.

4/13/83

Richard A. Lyon, Commissioner

Position Papers

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 134 Date on Bill: 2/22/83
Title: An Act relating to surety bond and financial requirements for insurers of surplus lines.
Sponsor: Mulcahy
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

Revenue		0	0	0

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

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Kenneth C. Moore, Director Phone: 465-2515
Division: Insurance Date: 3/9/83

Approved by Commissioner: Richard A. Lyon Date: 3/9/83
Department: Commerce and Economic Development

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

Fiscal Note 2/15/83

INSIDE INSURANCE

Big losses raise question of 'moral hazards'

'Most people are not in a position to make money off of sinking their vessel'

by Robert Mann

Millions of dollars worth of fishing vessel losses in 1982 have broken over Seattle's marine insurance community like a rogue wave at sea. The result, according to brokers and underwriters, could be that fishermen will be paying higher deductibles and premiums in the very near future.

Although the Coast Guard does not keep track of the total number of fishing vessels and processors lost in a given year, some worried underwriters are drawing up lists of their own. The 1982 numbers look pretty grim to companies that are insuring Alaskan fishing vessels.

According to one list, there have been over $48 million worth of total losses of crabbers, seiners, draggers, processors and gillnetters through November of 1982. Five processors, three of which burned and sank within a six week period, accounted for $29 million worth of the total; the *Al-Ind-Esk-A-Sea*, which burned and sank off Everett on October 22, was perhaps the most spectacular of the losses. Another underwriter said over $22 million worth of crabbers sunk, burned, or ran aground this year.

Bad times seem to bring an increase in the number of reports of vessel owners burning or deliberately sinking their boats to collect the insurance money so they can get out of the business. The fact is, though, that not much is usually gained from that kind of act, according to several underwriters.

"When people are going broke, it seems that the friction of the mortgage against one's wallet seems to heat up the back of the boat, and away she goes," quipped John Adams. Adams manages Pacific General Agency, Inc., a company that insures millions of dollars worth of fishing vessels throughout the U.S.

Adds Adams: "It really does a fisherman no good to file a claim or have a convenient loss, if he is going to lose his ability to make a living. Most people are not in a position to make money off of sinking their vessel. At best, they usually get the mortgage paid off."

Maurice Oaksmith, an insurance broker, agrees with Adams for different reasons. "I really don't think that 'moral hazards' (intentional sinkings and burnings) are a factor right now, even with the depressed state of some of the fisheries. I've got great faith in human nature, particularly in the fishing industry."

Others in the insurance business, however, do not share Oaksmith's "faith" in human nature in the fishing fleets. One president of an insurance company here instructed his underwriters not to carry any more lines on converted processors, which he labeled, "floating fire hazards." Another marine insurance underwriting firm, Mathews & Livingston, Inc., bailed out of the fish vessel business in 1981 because "it is a volatile market and we were looking at doubling our rates from our London connection," says a company spokesperson.

"My friends at Lloyd's say the Northwest and Alaska losses have just about destroyed their marine underwriting syndicate," says a former British underwriter who has worked in the U.S. marine insurance industry for two years.

Lloyd's and other western European companies that assume part of the risk on American fishing vessels are quoting prices that many U.S. brokers and underwriters are finding hard to sell to customers. An understanding of why the European insurers are shying away from the fishing vessel business requires a brief explanation of how marine insurance works.

Imagine a pyramid with the broker or underwriter sitting at the top. The fisherman comes into the office, and tells the broker or underwriter what kind of policies he wants and what he is willing to pay. (Most fishermen are covered for losses or damage to the hull and

machinery. A fisherman, no matter what his past record, can usually find someone to insure him.) The broker then goes to his underwriters—the first set of risk-takers, who usually carry only a small percentage of risk themselves. The risk on expensive fishing vessels is always spread out among reinsurers.

The most reliable re-insurers are in London at Lloyd's or the Institute of London Underwriters and other western European countries. Those companies, though, may spread the risk even further down the pyramid. At the bottom of the pyramid, you might find that a company you never heard of in Latin America might be assuming a fraction of a percentage of the total risk on an Alaskan fishing vessel. When claims are made, payment starts at the pyramid's bottom and works its way up.

According to Adams and others, North Pacific fishing vessels have a bad reputation in the European reinsurance market, hence the doubling and tripling of rates in the last two or three months. As a result of the increases, some smaller companies have been forced to seek reinsurance with unproven foreign security firms.

"The London and Western European reinsurance markets have just dried up," says Adams. "It's imprudent for a company like ours to hold all the risk on a crabber with a high degree of hazard. We have to have re-insurers and as these re-insurers drop out, there goes the market."

In the competitive marine insurance business, some companies are so hungry for premium dollars they are re-insuring through companies in South Africa, the Bahamas, and Hong Kong. "You have to realize that there are over 600 companies based in Hong Kong alone, and most of them are only a name in the phone book," said Adams, who adds that many claims go unpaid. "Many of the foreign securities firms will disappear before the claims can get in."

Says Maurice Oaksmith, "Insurance companies and syndicates make money from underwriting *and* investment income. Now that interest rates are lower on short-term money, the competition for insurance premium dollars is getting even heavier. Some people want to make a quick killing by buying their reinsurance as cheaply as possible so that they can keep most of the premium. They tend to stray into left field reinsurers."

Oaksmith says that "If underwriters are selective, and properly re-insured, they can make money writing fish boats at or near the level of where premiums are today."

John Adams knocks on his desk and says his firm has made money. "We have tried to be cautious with those people that we suspect." But Adams feels that most marine insurance underwriters and brokers today do not know their market. "In the past few years we've seen the inundation of the marine insurance market with inexperienced people with all kinds of capacity. There have been more and more companies coming in and diving right out again after a few hard licks."

damn good salesmen who are very gullible because they don't want to know the truth about the security they're representing. If it's an undesirable risk, it will usually end up with what we consider to be the less inquisitive underwriters who fail to ask the questions they should ask."

Adams maintains that there are very few underwriters who truly understand the fishing business well enough to know when to ask if a person is a "known troublemaker with a poor record in the past. Some people, though, are not crooked, they're just doggone unlucky," says Adams.

Adams feels most underwriters insuring fish boats should know how machinery operates so that they can know if a claim is legitimate or not. "Most underwriters don't know anything about claims. Unfortunately, the claims people think the underwriters know everything," says Adams.

Although Adams has worked around fishing boats a long time, he says he is often too busy to get the chance to visit the docks to inspect fishing vessels he insures, although he says he tries to as often as possible. Like others, he relies on marine surveyors, the eyes and ears of every underwriter or broker. (See accompanying story.)

Marine surveyors perform condition and valuation (C&V) surveys for vessel owners, insurance companies, and banks. They check a vessel's wiring, construction, deck equipment, rigging, navigation equipment, electronics, cabin arrangements, safety and life saving equipment, hydraulics, engine room, and even the vessel's housekeeping and appearance. They also note any recommendations for improving the vessel before reaching what they feel is a fair market value for the boat.

"Surveyors have a pretty good feeling for what a boat's value is, and they understand replacement costs," says Oaksmith. "But there can be honest differences of opinion between a surveyor and a boat owner."

Some surveyors say they are pressured to keep boat values high even though their market values might be depressed in a weak market. According to one surveyor who ran a C & V survey on a large floating processor in 1979, the vessel's owners pressured him to keep the value high because the bank had loaned them a lot of money on processing equipment. The surveyor says he told the owners that the boat had no track record and needed more work, so he valued it substantially less than what the owners had wanted.

"I gave them two legal-sized sheets of repair and safety recommendations, and two months later they had somebody else doing the survey. They obviously wanted someone who would agree with their value," the surveyor says. He asked to remain anonymous. "I have quit one job before because the guy hasn't done what I've asked him to do. But within a week he's got insurance from somebody else."

"What's happening in the present market is that a lot of people are not insuring market values. They're insuring investment value," says another veteran surveyor. "A lot of money had to be put into that processor to get her operable, and

Maurice Oaksmith

BOAT INSURANCE

continued from page 31

the company wanted to insure that investment."

However, other surveyors say they are rarely pressured into inflating vessel values. John Adams, for instance, says "Sometimes the vessel owner wants surveyors to deflate the value because he doesn't want to pay the money on high insurance premiums on boats that are fully paid for."

"Most surveyors know what they're doing," says one claims investigator, "but some have great gaps in their experience and training. Some surveyors specialize in cargo only, others in tug boats, others in yachts, and some in crab boats. Frequently their expertise is limited to their specialty class of vessels, and they're not able to adapt well to new classes."

Adams adds, "The jam is that many people will accept a surveyor's report on a matter for which he is not truly qualified."

Surveyors have already formed their own national association fifteen years ago in an effort to police their own trade. In order to join the National Association of Marine Surveyors an applicant must have at least five years full-time surveying experience and he must pass an exam on his specialty class of vessel. "It's still in its infancy," says one member.

Whether an underwriter or vessel owner decides to hire, fire or believe a surveyor does not diminish the importance of their C & V surveys. When claims are paid, they are the most important records available, because foul play is almost impossible to prove. Underwriters rarely go to the bother and expense of trying to prove arson or intentional sinking; they simply pay the claims based on a vessel's surveyed value. Raising the vessel and re-surveying it is the only way to change the surveyed value.

Adams jogs his memory back to 1958 when a wooden seiner sank in the Puget Sound and the underwriters raised the vessel. "There were funny ax holes in the bottom of the boat that were made from the inside. These rapid termite jobs are good for some people, but when an owner gets caught with evidence like that, it is a federal crime and the punishment can be severe. From an underwriter's standpoint, you have to look at how much a mortgage is on a vessel before thinking about deliberate sinkings.

"It's easy to say that when the mortgage is high and the values are dropping beneath the mortgage, it becomes advantageous to have an accident. But that's only part of the story," says Adams.

"The other part is that people are working harder and pushing their crews harder and harder trying to make a profit. Everybody gets tired."

Maurice Oaksmith, who grew up on Alaskan fishing boats, says, "I think fishing vessels in many ways are a better risk today than they were four years ago. There are many more alarms, detection devices, and better navigational equipment. But one thing you've got to guard against, as technology advances, is complacency."

Adams blames accidents involving some crabbers on "electronic creature comforts" along with drug use by younger crew members who doze during their wheel watch.

In some cases, though, he says accidents are not due to overwork, drugs, or high-tech instruments. "In Bristol Bay we never have a total loss prior to the season unless it's truly accidental. It always seems to happen just before the end of the season, and "Oh, my god, the fire started," or "I hit a rock." There aren't very many rocks in Bristol Bay, so they either swamp or burn.

"It always happens where it's hard to recover the boat, in the dark of night; a friend just happened to be coming along and he saw the fire, and 'I got off without getting my tennie runners wet.'"

Adams admits that he is speaking somewhat facetiously; he knows that Bristol Bay permits can cost up to $100,000. Yet he sincerely feels that 'moral hazards'—"sinking the damn boat"—are higher these days,

John Adams

and the way to prevent them is to make sure the owner starts accepting some of the risk.

He looks back to the 1930's during the Great Depression when there were a lot of similar vessel losses occurring. According to Adams, an underwriter would co-insure the vessel, assuming only part of the risk in case of partial losses; the owner would pick up the rest. The other alternative he sees is charging very high deductibles.

Adams thinks strict Coast Guard enforcement of safety regulations helps reduce risk, too. Under Section 46, Parts 24 through 26 of the Code of Federal Regulations, the Coast Guard can board uninspected fishing vessels and check for safety and fire fighting equipment violations. But Coast Guard spokespeople say they do not have the manpower to check fishing vessels unless they receive a specific

See BOAT INSURANCE page 45

BOAT INSURANCE

continued from page 34

complaint.

Maurice Oaksmith, one of the founders of the National Council of Fishing Vessel Safety and Insurance, says the "industry ought to consider self-regulation. The principal reason for forming this national group was that insurance costs were high, and the only way to bring them down was to decrease the severity and frequency of accidents. I would say that about 90% of all accidents and fatalities are avoidable. Usually they result from somebody doing something they shouldn't do."

There is a general consensus among marine surveyors, underwriters, and claims investigators that human error, due to lack of adequate training, is responsible for many legitimate accidents. In the case of converted floating processors, however, there are other dangers.

During the conversion process, bulkheads and cofferdams are usually removed to make more room for processing equipment, forklifts, and elevators. "They cut out watertight bulkheads so it's easier to move cargo down to the freezing holds and along the processing deck," explains surveyor Jim Goldade.

"In the case of one processor," says another surveyor, "all three holds had been cut through all the way back to the engine room. You can pump such a vessel full of water, but you've got no way to pump it out again. There are no subdivisions to control flooding or fire in these vessels."

Highly flammable polyurethane foam is also an acknowledged fire hazard aboard such processors.

"We've glossed over these problems in the last few years because of a very competitive insurance market, due to excess capacity and underwriters seeking premiums at any cost," says one concerned claims investigator. "Now that interest rates are declining and losses are continuing to accelerate, the conditions are set for a scarcity of insurance and possibly a recognition that standards will be necessary if losses are to be controlled." □

SB

174

1978

Recommendation No. 1

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

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

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

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

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

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

Recommendation No. 2

The Statutes and Regulations governing the ATC should be reviewed.

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

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

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

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

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

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

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

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

Recommendation No. 3

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

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

Recommendation No. 4

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

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

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

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

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

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

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

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

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

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

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

Recommendation No. 5

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

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

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

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

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

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

1. revenue received as a result of the violation or violations;

2. duration and number of violations;

3. possibility of emergency circumstances;

4. availability of authorized carriers;

5. extent of respondent's experience in the transportation industry;

6. the quality of evidence submitted as provided in 3 AAC 60.290;

7. previous Commission orders assessing penalties for similar or comparable violations;

8. the nature and severity of the violations; and

9. mitigating circumstances provided by the respondent.

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

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

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

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

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

Recommendation No. 6

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

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

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

Recommendation No. 7

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

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

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

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

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

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

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

Recommendation No. 8

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

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

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

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

Recommendation No. 9

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

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

Recommendation No. 10

ATC should issue orders in accordance with the Alaska Statute.

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

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

Recommendation No. 11

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

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

Recommendation No. 12

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

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

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

Recommendation No. 13

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

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

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

Recommendation No. 14

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

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

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

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

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

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

1982 Audit

Recommendation No. 1

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

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

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

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

Recommendation No. 2

Temporary authority should be granted in accordance with statutes.

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

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

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

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

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

Recommendation No. 3

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

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

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

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

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

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

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

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

C. Annual and quarterly financial reports should be analyzed.

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

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

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

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

Recommendation No. 4

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

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

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

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

Recommendation No. 5

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

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

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

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

Recommendation No. 6

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

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

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

Recommendation No. 7

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

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

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

Recommendation No. 8

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

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

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

Recommendation No. 9

Regulation should be promulgated in a timely manner.

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

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

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

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

Recommendation No. 10

ATC should seek legislation to increase fees.

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

Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senator J. Kerttula

FROM: Senator Joe Josephson

DATE: May 11, 1983

RE: SSSB 174 Preferential Hire

Dear Mr. President:

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

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

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

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

Joe Josephson

Senator Joe Josephson

JPJ/dd/cme

cc: Senator Sackett
Commissioner Robinson
Peter McDowell, Director OMB

Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

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

FROM: Senator Josephson

DATE: May 5, 1983

RE: SS SB 174 Preferential Hire

Dear Colleague:

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

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

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

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

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

Joe Josephson

Senator Joe P. Josephson

STATE OF ALASKA
FISCAL NOTE — Revision Date May 6, , 1983

I. REQUEST

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

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		97.3	100.0	106.0	112.4	119.2
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

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

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Donald R. Wilson — Phone: 465-4870
Division: Labor Standards and Safety — Date: May 6, 1983

Approved by Commissioner: Jim Robison — Date: May 6, 1983
Department: Labor

LEG:A:48

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

3/8/83

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

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

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

Assumptions:

Effective date of July 1, 1983
Inflation rate of 6% per annum
Equipment Costs of $9,000 is a one time item
Inclusion of additional funding ($251.8 in the Senate Budget) in the final appropriations bill.

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

LEG:A:48

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

3.	CONTINUATION LEVEL	ADDITION XX

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

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

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

JUSTIFICATION

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

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

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

13 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

Revised Date

FY 84

LEG:A:36

01-1136 (7/82) - 13

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

3.	CONTINUATION LEVEL	ADDITION	X

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

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

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

JUSTIFICATION

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

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

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

3 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Public Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

Revised Date

FY 84

STATE OF ALASKA
FISCAL NOTE | Revision Date: , 1983

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

II. FISCAL DETAIL
Agency Affected: Department of Labor
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Guy Stringham Guy Stringham Phone: 465-4403
Division: Labor Relations Date: April 28, 1982

Approved by Commissioner: Lisa Rudd Date: 5/4/1982
Department: ADMINISTRATION

Distribution:
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3/8/83

7/0502-10-3/BDGSF1

Bill No. Sponsor Substitute for Senate Bill 174

Date May 4, 1983

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

Contact: Judy Knight
465-2700

Bob Bacolas
465-4780

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

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

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

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

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

Approved:

Commissioner

POSITION PAPER/Department of Labor

STATE OF ALASKA
FISCAL NOTE

Revision Date Original, 1983

I. REQUEST

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

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Don Wilson
Phone: 465-4870
Division: Labor Standards & Safety
Date:

Approved by Commissioner: Jim Robison
Date:
Department: Labor

LEG:A:47

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
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Detail Analysis Senate Bill 174

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

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

Assumptions:

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

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

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

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

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4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

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

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

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

13 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

Revised Date

FY 84

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

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

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

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

JUSTIFICATION

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

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

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

3 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

Revised Date

FY 84

LEG:A:36

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

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

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

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

JUSTIFICATION

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

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

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

13 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

Revised Date

FY 84

1.	POSITION TITLE: Wage and Hour Investigator I			RANGE/STEP: 16A	BARG. UNIT: GGU	FORM 12 PAGE/LINE: .0	GOV.	APPROP.	DISPT.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER: SSforSB 174	PCN NUMBER:	BRU PRIORITY:	LOCATION: Juneau	ELECTION DISTRICT: 99	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	30,888	
6.	Benefits	4,902	
7.	Supplemental Benefits	1,894	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	40,564
10.	Travel	02	12,000
11.	Contractual	03	12,468
12.	Commodities	04	500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		67,032

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

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

JUSTIFICATION

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

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

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

13 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Public Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

Revised Date

FY 84

POSITION TITLE	RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROP.	DISCR.
Wage and Hour Investigator I	16A	GGU				
TYPE OF POSITION / STAFF MONTHS / RP NUMBER / PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
PFT / 12 / 55forSB 174 /		Anchorage	99			
CONTINUATION LEVEL	ADDITION					

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

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

OMB USE ONLY
KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

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

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

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

REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Public Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

FY 84

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

RE: Senate bill 174--Alaska Hire Preference Law

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

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

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

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

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

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

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

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

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

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

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

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

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

SB

182

TO: Senator Eliason, Chairman
Senate Labor & Commerce

FROM: Senator Josephson

DATE: April 5, 1983

RE: SENATE BILL 132 "An act relating to elevator safety standards."

Mr. Chairman and members of the committee, Senate Bill 182 is before you today as another of those concerns to which we legislators must pay close attention. It is a house cleaning measure.

Every three years, the American Society of Mechanical Engineers revises and adopts the safety code for installation and operation of elevators, escalators, dumb waiters, and moving sidewalks, recognizing the most recent technology in the field. The 1981 code described in this bill is the most recent effort in this state to meet those standards.

Adoption of the 1981 Elevator Safety Code would bring Alaska's minimum standards into conformity with the Basic Building Code, the National Building code, the Standard Building Code, and the Uniform protective devices, alteration, repairs, and/or replacements. Other important features which are incorporated in the code are those regarding venting, as well as the operation of elevators under fire or other emergency conditions. It adopts the current National Safety Practice's inspector's manual as the guide for Department of Labor elevator inspectors.

The bill further permits municipalities to adopt their own standards for safety as long as the minimum standards do not conflict with minimum state standards. Currently, the Municipality of Anchorage has adopted an elevator code and performs inspections within its jurisdiction.

The bill has no fiscal impact.

Bill No. Senate Bill 182

Date March 31, 1983

Title "An Act relating to elevator safety standards."

Contact: Judy Knight
465-2700
Bob Bacolas
465-4870

Every three years, the American Society of Mechanical Engineers revises the safety code for installation and operation of elevators, escalators, dumbwaiters and moving sidewalks to incorporate technological advances. The 1981 code described in this bill is the most recent effort in this regard. The 1978 code presently in effect for the State of Alaska is, therefore, outdated and will not be reprinted by or otherwise be available from the American Society of Mechanical Engineers.

Adoption of the 1981 Elevator Safety Code would bring Alaska's minimum standards into conformity with the Basic Building Code, the National Building Code, the Standard Building Code, and the Uniform Building Code which are commonly accepted and used by industry as minimum standards. These codes are also commonly adopted by political subdivisions as the minimum standards enforced under their building inspection programs.

This bill also provides that municipalities may adopt and enforce their own elevator safety standards as long as the standards are at least as effective as the state standards. This would permit municipalities to extend their self-governing powers to this aspect of public safety if they wished. The Municipality of Anchorage presently has an elevator inspection program and conducts inspections in its jurisdiction.

The 1981 elevator safety code addresses the emergency power source provisions set out in AS 18.60.810. Repeal of this section as proposed in Section 5 of the bill is, therefore, appropriate.

The Department of Labor supports passage of this bill. It would not have any fiscal impact.

APPROVED:

Judy Knight
COMMISSIONER

4/4/83
DATE

POSITION PAPER/Department of Labor

STATE OF ALASKA
FISCAL NOTE

Revision Date Original , 1983

I. REQUEST

Bill/Resolution No.: Senate Bill 182
Title: "...elevator safety standards..."
Sponsor: Senator Josephson
Requestor: Labor and Commerce

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert J. Bacolas, Sr. (pac) Phone: 465-4870
Division: Labor Standards and Safety Date: March 23, 1983

Approved by Commissioner: Jim Robison (Deputy Knight for) Date: March 23, 1983
Department: Labor

LEG:A:29

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

3/8/83

1. Number of operational elevators in the state:

City of Anchorage	425
Rest of State	461
Total	886

2. Number of pending elevator installations (anticipated they will be installed by July 1):

City of Anchorage	30
Rest of State	10
Total	40

3. Number of elevator inspections:

July 1, 1982 - April 1, 1983 - State - 177
October 1, 1982 - April 1, 1983 - City of Anchorage - 196

4. Number of elevators overdue for reinspection:

State - 131 (longest was due for inspection in July 1982)
City of Anchorage - 25

The State has no backlog in new installation inspections.

5. Number of new elevator installations/inspections:

State - July 1, 1982 - April 1, 1983 - 23
City of Anchorage - October 1, 1982 - April 1, 1983 - 56

6. The problem with the elevator in the Hunt Building in Anchorage was caused by a blown fuse. The telephone system in the elevator was working but the answering service was not able to get ahold of the service people for 3 hours. The fire department stood by until the service people arrived.

Collateral references. — 26 Am. Jur. 2d, Elevators and Escalators, §§ 1-13.

39A C.J.S., Health and Environment, §§ 28-32.

What is "passenger elevator" within safety statute or regulation. 77 ALR2d 477.

Liability of owner or operator for injury caused by door of automatic passenger elevator. 63 ALR3d 893.

Liability of installer or maintenance company for injury caused by failure of automatic elevator to level at floor. 63 ALR3d 996.

Liability for injury caused by fall of person into shaft, or by abrupt drop, sudden movement, or stopping between floors, of automatic passenger elevator. 64 ALR3d 950.

Liability of installer or maintenance company for injury caused by door of automatic passenger elevator. 64 ALR3d 1005.

Liability of owner or operator for injury caused by failure of automatic elevator to level at floor. 64 ALR3d 1020.

Sec. 18.60.800. Elevator safety standards. (a) The 1978 edition of the American National Standards Institute Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks published by the American Society of Mechanical Engineers is adopted as the minimum elevator safety code in the state.

(b) The Department of Labor shall

(1) adopt or change regulations to carry out the provisions of AS 18.60.800 — 18.60.820;

(2) inspect and certify elevators to meet the safety requirements;

(3) establish, by regulation, fees for inspections performed under AS 18.60.800 — 18.60.820; and

(4) maintain a record of all inspections performed and of all inspection fees collected.

(c) Inspections of elevators by the department shall be performed in accordance with the procedures set out in the American National Standards Institute's Practice (Inspector's Manual — ANSI 17.2), as approved May 29, 1973.

(d) In AS 18.60.800 — 18.60.820, "elevator" includes elevators, dumbwaiters, escalators and moving walks. (§ 1 ch 44 SLA 1976; am § 1 ch 20 SLA 1979)

Effect of amendments. — The 1979 amendment, in subsection (a), substituted "1978 edition of the American National Standards Institute Safety Code" for "Department of Labor shall adopt the 1971 edition of the American National Standard Safety Code" and "elevator safety code in" for "elevator safety standards of" and inserted "is adopted"; in subsection (b), deleted "and" from the end of paragraph (1) and added paragraphs (3) and (4); and added subsections (c) and (d).

Sec. 18.60.810. Emergency power source. All elevators which do not have an alternate power source shall be equipped with an emergency power source which will produce sufficient power to provide lights inside the elevator and a ringing alarm which can be heard in the building for five hours. (§ 1 ch 44 SLA 1976)

Sec. 18.60.820. Enforcement of compliance. A Department of Labor inspector shall give written notice to the owner of an elevator of each violation of safety standards as a result of his inspection. If within 15 days after receipt of written notice of a safety violation the person notified does not rectify the condition, the commissioner of the Department of Labor shall authorize the elevator to be closed until the safety violations are rectified. (§ 1 ch 44 SLA 1976)

Article 11. Snow Safety.

Section
822. Snow safety and operation plan

Collateral references. — 39A C.J.S., Health and Environment, §§ 3, 5, 47.

Sec. 18.60.822. Snow safety and operation plan. A ski area may not be operated except under a snow safety and operation plan approved

(1) by the commissioner of public safety; or

(2) by the agency of the United States that manages land on which the ski area operates. (§ 3 ch 80 SLA 1980)

Cross references. — As to limitations on claims arising from skiing, see AS 09.65.135.

Chapter 62. Certificates of Fitness.

Section
10. Certificate of fitness required
20. Application for and issuance of certificate
30. Fee
40. Duration of certificate
50. Issuance and contents of certificate
60. Power of the department
70. Persons required to obtain certificate
80. Penalty

NOTES TO DECISIONS

For comparison of this chapter with AS 08.40.005 — 08.40.200, "Electrical Administrators," see Allison v. State, Sup. Ct. Op. No. 1703 (File No. 3716), 583 P.2d 813 (1978).

LEGISLATIVE PROPOSAL ANALYSIS

Subject of Proposed Bill:

"Elevator Safety Standards"

Background Information:

Every three years, the American Society of Mechanical Engineers revises and adopts the safety code for installation and operation of elevators, escalators, dumb waiters, and moving sidewalks, recognizing the most recent technology in this field. Existing elevator installations will not be required to meet the updated standards.

Summary:

The bill amends AS 18.60.800 to adopt the 1981 Safety Code which conforms to 1) the Basic Building Code; 2) the National Building Code; 3) the Standard Building Code; and 4) the Uniform Building Code with respect to fire resistance ratings, earthquake protective devices, alteration, repairs, and/or replacements. Therefore, all codes are uniform in addressing the safety codes for installation of elevators, escalators, etc. Other important features which are incorporated in the code are those regarding venting, as well as the operations of elevators under fire or other emergency conditions. It adopts the current National Safety Practice's inspector's manual as the guide for Department of Labor elevator inspectors.

The bill adds AS 18.60.830, to provide that municipalities may adopt their own standards as long as those standards are at least as stringent as those required under AS 18.60.800. Currently, the Municipality of Anchorage has adopted an elevator code and performs inspections within its jurisdiction. AS 18.60.810 is repealed in Section 4 of the bill. The current safety code adopted in Section 1 of the bill requires an emergency power source for elevators, making AS 18.60.810 unnecessary.

Estimated Fiscal Impact: (FY '83 - FY '87)

To the state: -0-

To others: -0-

Constituent Groups:

Opposed: N/A

In Favor: City of Anchorage

OTIS ELEVATOR COMPANY
Far West Region
Bayview Commercial Center
619 Warehouse Avenue, Suite 202, Anchorage, Alaska 99501 (907) 278-4575

April 12, 1983

Senator Joe Josephson
Alaska State Legislature
Pouch V (MS-3100)
Juneau, AK. 99811

Subject: Senate Bill No. 182 - Referred by the Department of Labor and Commerce - March 17, 1983

Dear Senator Josephson,

We have reviewed Senate Bill No. 182 and must express our concern regarding the change to the elevator safety standards.

Section 2 - AS18.60.800 (b)(2) permits inspections to be made in a Municipality at the option of the Municipal Inspection Division.

OTIS Elevator installs the majority of all elevators within and outside the Municipality of Anchorage and have found that the State of Alaska Elevator Inspection Division is most competant, fair and thorough although somewhat short handed.

Inspections for new installations have to be scheduled in advance (two to six weeks) to assure that an Inspector is available at the time the project is completed.

The code you are adopting does not permit the operation of the elevator without the approved inspection tests, which we feel is appropriate.

However, due to the number of installations we install and maintain, the single inspector the State has is extremely pressed to make all the additional annual safety inspections.

Moreover, we express our concern within the Municipality of Anchorage because of the degree of sopnistication of the elevator equipment and the large population of people using this type of equipment.

In the last several years the State has given over the inspection duties to the Municipality on the assumption that all inspections would be made in accordance with the ANSI code and will be at least as stringent if not more so than State Inspections.

The State at that time kept the right to make spot checks on Municipal elevators should it be determined that safety hazards and other considerations be involved.

It is the writers opinion that current inspections being made by the Muncipality are not as indepth as those made by the State.

Certain requirements being forced upon owners outside the Municipality are not being requested on similar installations within the Anchorage area.

Every nine days OTIS Elevators alone move the equivalent of the worlds population and we are exposed to tremendous liabilities. Subsequently, we encourage professional safety inspections by both our service mechanics, installation crews and the appropriate inspection agency to ensure that all aspects of the installation are within the ANSI guidelines.

By the same token we would encourage the Municipality to become more stringent in their inspections as we fear that any new competitors that come into our State may take shortcuts in installation and maintenance services to provide more attractive pricing with their products or services.

Although we realize the section indicates that it is up to the Commissioner to determine that the inspection and certification by the Municipality adequately protect the public we feel that this is a provision which will be ineffectively regulated and enforced. We feel the Commissioner is not intimately familiar with elevator systems and unless the inspectors are in constant training they themselves will not be able to understand the "workings" of the new computerized equipment.

We respectfully request that you reconsider your Senate Bill and not ammend Section 2 AS18.60.800 (b)(2).

Respectfully submitted,

OTIS ELEVATOR COMPANY

J. D. Verlinde

J. D. Verlinde
Manager - Alaska

CC: Senator John Sackett
Senator Don Bennett
Senator Pat Rodey
Senator Richard Eliason
Senator Bob Mulcahy

THIS

I. REQUEST

Bill/Resolution No.: Senate Bill 182
Title: "...elevator safety standards..."
Sponsor: Senator Josephson
Requestor: Labor and Commerce

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards and Safety Date: March 23, 1983

Approved by Commissioner: Jim Robison Date: March 23, 1983
Department: Labor

LEG:A:29

SB

184

SENATE
LETTER OF INTENT
FOR
CSSB 184

During the scheduled hearings in which the Alaska Transportation Commission (A.T.C.) was discussed and reviewed, many problem areas were identified. The Performance Review of the Alaska Transportation Commission conducted by the Division of Legislative Audit, April 1, 1982, concluded that the functions of A.T.C. could be better performed if A.T.C. were to merge with the Alaska Public Utilities Commission.

However, several questions were raised which remain unanswered:

1) Is State involvement in the Essential Air Service Program required?

2) Does the State want to deregulate surface and air transportation within Alaska?

3) What method does the State wish to employ to assure the public that air and motor carriers have sufficient insurance coverage to protect the public's interest?

4) What is the role of the Alaska Transportation Commission in regard to a commercial vehicle safety program?

5) Would a citizen's board be an appropriate mechanism to perform the oversight functions which are currently the responsiblity of the Commissioners of the Alaska Transportation Commission.

6) Do the Alaska Transportation Commission's policies regarding light aircraft ensure that innovative competition which could be beneficial to the public is not eliminated?

With the passage of this legislation, it is the intent of the Senate Labor and Commerce Committee that the Office of Management and Budget conduct a thorough performance review of the functions of A.T.C. The review will include, but will not be limited to, the scope of areas previously outlined.

The Office of Management and Budget will report back to the Thirteenth Legislature within ten days after the second session convenes in 1984. The report shall outline the findings of the audit as well as specific actions to implement any changes recommended.

Adopted in the Senate, April 27, 1983.

SUPPLEMENTAL
SENATE LETTER OF INTENT
TO CSSB 184 (L&C)

In the interim it is the intent of the Senate that the Alaska Transportation Commission fulfill its statutory responsibility with concentration on protection of the public.

Adopted in the Senate, April 27, 1983.

STATE OF ALASKA
FISCAL NOTE

Revision Date 4/6 , 1983

I. REQUEST

Bill/Resolution No.: SB 184
Title: Extending termina[illegible] of ATC
Sponsor: Labor & Commerc[illegible]mmittee
Requestor:

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Developm
Program Category Affected: Consumer Protec
BRU, Program of Subprogram(s) Affected: Alaska Transportation Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Catherine Wallen Phone: 465-2504
Division: Administrative Services Date: 4/7/83

Approved by Commissioner: Richard A. Lyon Date: 4/7/83
Department: Commerce & Economic Development

Distribution:
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3/R/F

SB 184 FISCAL NOTE ANALYSIS

The submitted FY '84 budget request for ATC follows:

Operating Expenditures	FY '83	FY '84
Personal Services	1,356.6	1,293.1
Travel	57.7	61.2
Contractual	182.5	192.2
Commodities	16.2	16.9
Equipment	1.2	-0-
	1,614.2	1,563.4
Capital Expenditures	Ø	Ø
Revenue	145.2	155.2

If the legislation fails to pass and ATC sunsets, there will continue to be a financial impact to the State for the administration of the State's share in the Essential Air Services Program and for verification of insurance registration. The reduced responsibilities would be reflected in the FY '85 budget request. In this case, the budget would be as follows:

Operating Expenditures	FY'83	FY '84	FY '85	FY '86	FY '87
Personal Services	1,356.6	1,293.1	69.6	73.8	78.2
Travel	57.7	61.2	Ø	Ø	Ø
Contractual	182.5	192.2	16.5	17.5	18.5
Commodities	16.2	16.9	2.0	2.1	2.2
Equipment	1.2	Ø	Ø	Ø	Ø
Total Operating	1,614.2	1,563.4	88.1	93.4	98.9
Capital Expenditures	Ø	Ø	Ø	Ø	Ø
Revenue	145.2	155.2	Ø	Ø	Ø
Positions (Full-Time)	30	28	2	2	2

SB

188

PATRICK M. RODEY
3271 MONTCLAIRE CT.
ANCHORAGE, AK 99503

DURING SESSION:
POUCH V
JUNEAU, AK 99811
(907) 465-3717

ALASKA STATE SENATE

M E M O R A N D U M

DATE: March 21, 1983

TO: Senator Patrick OK

FROM: Jim Kelly, Aide

RE: Senate Bill 188: "An Act relating to bank holding companies."

This bill would make a single change in the domestic bank holding companies section of the Alaska Banking Code. The change, accomplished by the deletion of the words "unless the bank is a recently formed bank" in AS 06.05.235(b), is intended to restore the principle of parity for banks doing business in Alaska.

The problem is that domestic bank holding companies, of which Alaska presently has four - Alaska Pacific Bancorp, Alaska Bancshares, Alaska Bancorporation and United Bancorporation of Alaska, are prohibited from establishing new banks in the state; and recently formed banks, such as the Alaska Continental Bank, are prohibited from establishing domestic bank holding companies.

These legal prohibitions went into effect on July 1, 1982, as a result of passage last session of SB 752, the interstate banking bill. That bill, being the first of its kind enacted anywhere in the country, though carefully drafted, was nonetheless quite complex. The major effect of SB 752 was to allow Outside banks to enter the local market; that has happened, and was intended. The problem mentioned above was not intended, and, in fact, was not even discovered until Alaska Continental Bank made application to establish its own domestic bank holding company and was informed by the Division of Banking that that was prohibited.

It is unfair to allow some Alaskan banks to form relationships with domestic bank holding companies, and prohibit some other Alaskan banks from doing likewise. As there can be significant economic advantages to such relationships, it is not in the public interest to grant the opportunity to some, and withhold it from others. For the consumer to realize the very real benefits of true competition, that is competitive services and competitive prices, it is necessary for rivals within the banking industry to be competing on a "level playing field". This legislation would help accomplish that.

I. REQUEST

Bill/Resolution No.: SB 188

Title: Act relating to bank holding companies

Sponsor: Rodey

Requestor:

II. FISCAL DETAIL

Agency Affected: Div. Banking

Program Category Affected: Public Pr[illegible]rt

BRU, Program of Subprogram(s) Affe[illegible]:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Willis F. Kirkpatrick Willis F. Kirkpatrick

Phone: 465 2521

Division: Banking, Securities & Corporations

Date: 3/23/83

Approved by Commissioner: Richard A. Lyon

Date: 3/28/83

Department: Commerce & Economic Developement

SB

281

Offered: 5/5/83
Referred: Finance

Original sponsor: Finance Committee

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 281 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to energy development and conservation functions of the Department of Commerce and Economic Development and the Department of Community and Regional Affairs; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 43.20.037(d)(2)(K) is amended to read:

(K) any other energy conservation [ENERGY-SAVING] device approved by the commissioner of community and regional affairs [COMMERCE AND ECONOMIC DEVELOPMENT UNDER AS 44.33.040-(12)].

* Sec. 2. AS 44.47.050 is amended by adding a new paragraph to read:

(19) plan, study, implement, and assist programs for energy development and energy conservation, including weatherization, to meet community and regional needs.

* Sec. 3. AS 44.83.162(1) is amended to read:

(1) In order to qualify for power cost assistance, each electric utility must make every reasonable effort to minimize administrative, operating, and overhead costs, including using the best available technology consistent with sound utility management practices. In reviewing applications for power cost assistance, the commission has the authority to require the elimination of duplicative or otherwise unnecessary operating expenses. Each eligible electric utility shall cooperate with appropriate state agencies [, INCLUDING BUT NOT LIMITED

TO THE ALASKA PUBLIC UTILITIES COMMISSION, THE ALASKA POWER AUTHORITY, THE ALASKA ENERGY CENTER, AND THE DIVISION OF ENERGY AND POWER DEVELOPMENT IN THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT,] to implement cost-effective energy conservation measures, and to plan for and implement feasible alternatives to diesel generation.

* Sec. 4. AS 44.83.177(d) is amended to read:

(d) In completing a reconnaissance study, the authority shall consult with the [DIVISION OF ENERGY AND POWER DEVELOPMENT IN THE] Department of Community and Regional Affairs [COMMERCE AND ECONOMIC DEVELOPMENT] to determine the information that each may require for energy planning and the development of technology.

* Sec. 5. AS 44.83.400(2)(B) is amended to read:

(B) the [DIVISION OF ENERGY AND POWER DEVELOPMENT,] Department of Community and Regional Affairs [COMMERCE AND ECONOMIC DEVELOPMENT]; and

* Sec. 6. AS 45.89.010 is amended to read:

Sec. 45.89.010. FUND ESTABLISHED. There is established in the Department of Commerce and Economic Development the residential energy conservation fund to carry out the purposes of this chapter. Loans and [REFUNDS,] grants [AND LOANS] made under this chapter may be used to purchase, construct, and install an energy conservation improvement in residential buildings. The fund may not be used for any [NO] other purpose.

* Sec. 7. AS 46.11.040(3)(B) is amended to read:

(B) is located or is to be located in an area where thermal and lighting energy standards are not justified because of the high cost of implementation of the standards, as determined under regulations adopted by the commissioner of community and regional affairs [COMMERCE AND ECONOMIC DEVELOPMENT], or

* Sec. 8. AS 46.11.900(3) is amended to read:

(3) "energy audit" means a determination and written summary prepared under [AS 46.11.030 OR] sec. 215(b)(1)(A) of the National Energy Conservation Policy Act (42 U.S.C. 8216(b)(1)(A)) of

(A) the energy consumption characteristics of a building, including the size, type, and rate of energy consumption of major energy consuming systems of the building and the climate characterizing the region where the building is located; and

(B) the energy conservation and cost savings likely to result from appropriate energy-conserving maintenance and operating procedures and modifications, including the purchase and installation of energy-related fixtures; for purposes of this subparagraph when a fossil fuel is the energy source, the energy cost savings shall be determined with reference to the projected price of that fossil fuel over a 10-year period;

* Sec. 9. AS 46.11.900(9)(B) is amended to read:

(B) by the commissioner of community and regional affairs [COMMERCE AND ECONOMIC DEVELOPMENT UNDER AS 44.33.040-(12)] for buildings and structures that [WHICH] are not public facilities.

* Sec. 10. The following laws are repealed: AS 44.33.030 - 44.33.060; AS 45.88.500(2)(C); AS 45.89.020, 45.89.500(3)(A); AS 46.11.030, 46.11.-900(1)(B)(iii); and AS 46.12.120(4).

* Sec. 11. On the effective date of this Act a program or project that is supervised by the section of power development in the Department of Commerce and Economic Development, including an unexpended appropriation for a program or project, is transferred to the Department of Community and Regional Affairs. The Department of Community and Regional Affairs may delegate supervision of a program or project transferred under this section

to a state department or agency, including the Alaska Power Authority and the University of Alaska.

* Sec. 12. Notwithstanding the repeal of AS 45.89.020 made by sec. 10 of this Act, a refund or grant shall be paid under AS 45.89.020 if an energy audit is performed before July 1, 1983 for the residential building that is the subject of the refund or grant application and if the refund or grant application is filed before January 1, 1984.

* Sec. 13. This Act takes effect July 1, 1983.

Fisher, DFC
6-21-83

CS for SB 281 (L&C)

AN ACT RELATING TO ENERGY DEVELOPMENT AND CONSERVATION FUNCTIONS

Sectional Analysis

This bill would repeal the statutes concerning the division of energy and power development and substitute general powers for the Department of Community and Regional Affairs to implement energy development and conservation programs. The energy audit/grant program would be repealed, and other energy responsibilities reassigned from the Department of Commerce to Community and Regional Affairs. Energy programs remaining in Commerce would be some energy planning (in Finance and Economics) and energy conservation loans (in Business Loans). The transition sections allow for program transfer and phase-out.

Sec. 1. Approval of an energy conservation device for the purpose of a business energy conservation credit is transferred from Commerce to C&RA.

Sec. 2. C&RA is given a general power to implement energy programs.

Sec. 3. The list of state agencies with which utilities shall cooperate in implementing energy conservation, for the purpose of the power cost assistance program, is deleted.

Sec. 4. The Alaska Power Authority, in completing reconnaissance studies, is required to consult with C&RA rather than Commerce.

Sec. 5. The APA, under the Energy Program for Alaska, shall ensure that communities cooperate on energy conservation with C&RA rather than Commerce.

Sec. 6. The residential energy conservation fund is changed from a refund, grant, and loan fund to primarily a loan fund, although the ability to use it to fund grants in the future is retained.

Sec. 7. Thermal and lighting energy standards are adopted by C&RA rather than Commerce.

Sec. 8. The definition of energy audit is amended to delete the state program.

Sec. 9. Thermal and lighting energy standards are defined as those adopted by C&RA rather than Commerce.

Sec. 10. Repealers.

44.33.030-060 are the division of energy statutes.

45.88.500(2)(C) is the part of the definition of an alternative energy system as one approved by Commerce under the division of energy statutes.
45.89.020 is the refunds and grants provision under the energy audit program.
45.89.500(3)(A) is the definition of an energy audit as established by the division of energy for the audit program.
46.11.030 is the energy audit program.
46.11.900(1)(B)(iii) is the portion of the definition of an alternative energy system as one approved by Commerce under the division of energy statutes.
46.12.120(4) is the requirement that the Energy Center consult with the division of energy and other state agencies.

Sec. 11. Transition. Energy programs or projects of the division of energy are tranferred to C&RA, and C&RA may delegate supervision to another agency.

Sec. 12. Transition. Those who have received energy audits before July 1, 1983 will have until Jan. 1, 1984 to apply for grants or refunds.

Sec. 13. July 1 effective date.

SB

286

Asper
4/19/84

Original sponsor: Ray ~~by~~ request

BY THE LABOR AND
COMMERCE COMMITTEE

IN THE SENATE

HOUSE CS FOR CS FOR SENATE BILL NO. 286 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to motor vehicle warranties."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.45 is amended by adding a new section to read:

ARTICLE 6. MOTOR VEHICLE WARRANTIES.

Sec. 45.45.300. MOTOR VEHICLE WARRANTIES. (a) If a new motor vehicle does not conform to an express warranty that is applicable to it and the owner of the vehicle reports the defect or condition to the manufacturer of the vehicle or to the manufacturer's or distributor's dealer during the term of the warranty, the manufacturer, distributor, dealer, or a repairing agent shall make the necessary repairs to conform the vehicle to the express warranty.

(b) If during the term of the express warranty or within one year from the date of delivery of the motor vehicle to the original owner, whichever period terminates first, the manufacturer, distributor, dealer, or repairing agent is unable to conform the motor vehicle to an applicable express warranty after a reasonable number of attempts, the manufacturer or distributor shall accept the return of the nonconforming motor vehicle, (at the owners option) - legal to change and shall refund the full purchase price to the owner, less a reasonable allowance for the use of the motor vehicle from the time it was delivered to the original owner. A refund under this subsection shall be made to a lienholder of record, if any, and the owner, as their interests may appear.

(c) Before claiming a refund under (b) of this section, the owner shall give written notice by certified mail to the manufacturer

and its dealer or repairing agent at any time before 60 days have elapsed after the expiration of the express warranty or the one-year period after the date of delivery of the motor vehicle to the original owner, whichever period terminates first (1) stating that the vehicle has a nonconformity; (2) providing a reasonable description of the nonconformity; (3) stating that the manufacturer, distributor, dealer, or repairing agent has made a reasonable number of attempts to conform the vehicle; and (4) stating that the owner demands that he receive intends to claim a refund within 60 days after mailing the written notice. Within 30 days after receiving the notice required by this subsection the manufacturer may make a final attempt to conform the vehicle before a refund is made under (b) of this section.

(d) An owner may not receive a refund under this section if the manufacturer or distributor shows that the nonconformity complained of

(1) does not substantially impair either the use or the market value of the motor vehicle; or

(2) is the result of

(A) alteration of the motor vehicle by the owner or a person other than a dealer or repairing agent that is not authorized by the manufacturer or distributor; or

(B) abuse or neglect by the owner or a person other than the dealer or repairing agent.

(e) A presumption that a reasonable number of attempts have been made to conform a motor vehicle under an applicable express warranty is established if:

(1) the same nonconformity has been subject to repair three or more times by the manufacturer, distributor, dealer, or repairing agent during the term of the express warranty or the one-year period after delivery of the motor vehicle to the original owner, whichever

period terminates first, but the nonconformity continues to exist;

(2) the nonconformity makes the vehicle unsafe to operate and the same nonconformity has been subject to repair at least twice by the manufacturer, distributor, dealer, or repairing agent during the express warranty term or the one-year period referred to in (1) of this section, whichever period terminates first, but the nonconformity continues to exist; or

(3) the vehicle is out of service for repair for a total of 30 or more business days during the express warranty term or the one-year period referred to in (1) of this subsection, whichever period terminates first; any period of time that repairs are not performed for reasons that are beyond the control of the manufacturer, distributor, dealer, or repairing agent is excluded from the 30-day time period referred to in this paragraph.

(f) A manufacturer whose vehicles are sold in the state through an authorized dealer shall provide its dealer or repairing agent with any part necessary to make a repair of a nonconformity covered under an express warranty, as soon as possible, without additional charge for freight or handling, if the part is not in the dealer's or agent's inventory when the nonconforming vehicle is brought to the dealer or repairing agent for repair.

(g) A manufacturer or distributor who fails to refund the full purchase price of a motor vehicle when there is a requirement to do so under this section is presumed to have committed an unfair trade practice under AS 45.50.471.

(h) A motor vehicle returned under (b) of this section may not be resold by the manufacturer or distributor in the state unless full disclosure of the reason for the return is made to the prospective buyer before the resale is concluded.

(i) The provisions of this section do not limit other rights and remedies that may be available to the owner of a motor vehicle under other provisions of law. This subsection does not create a new cause of action against a dealer or repairing agent who sells or attempts to repair a motor vehicle found to be nonconforming under this section.

(j) A manufacturer or distributor of motor vehicles who authorizes the sale of the manufacturer's or distributor's motor vehicles in the state shall maintain authorized dealership facilities within the state that are able to perform the service and make the repairs required by the manufacturer's express warranty and by this section.

(k) A manufacturer or distributor who accepts the return of a nonconforming motor vehicle under (b) of this section shall reimburse the owner for any reasonable cost incurred in shipping the vehicle to and from the nearest authorized facility for warranty service and repair of a nonconformity that causes the return of the vehicle.

(l) If a manufacturer or distributor has established an informal dispute settlement procedure that substantially complies with the requirements of 16 C.F.R. 703, as that section may be amended, or if the manufacturer or distributor, after receipt of notice required by (c) of this section, offers in writing to participate in an arbitration or mediation process with the owner and the arbitration or mediation decision is binding on the manufacturer or distributor but not on the owner, and if the informal dispute settlement or arbitration or mediation process is approved by the attorney general, the provisions of (b) of this section concerning refund or (k) of this section concerning shipping costs do not apply to an owner who has not first resorted to the informal dispute settlement procedure or arbitration or mediation process.

(m) In this section,

(1) "dealer" means a person who has obtained a franchise from, or is authorized by, a motor vehicle manufacturer to engage in the retail sale and warranty repair of the manufacturer's new motor vehicles in the state;

(2) "distributor" means a person who is authorized by a manufacturer to engage in the wholesale distribution of the manufacturer's new motor vehicles in the state;

(3) "express warranty" or "warranty" means an express written warranty provided by the manufacturer of a new motor vehicle;

(4) "full purchase price" means the total price paid for a motor vehicle by the original owner, including costs added to the manufacturer's suggested retail price, such as original registration fees, transportation fees, dealer preparation, dealer installed options, and accrued finance charges;

(5) "manufacturer" means a person who by labor transforms raw materials and component parts into motor vehicles for wholesale or retail sale;

(6) "motor vehicle" or "vehicle" means a land vehicle having four or more wheels, that is self-propelled by a motor, is normally used for personal, family, or household purposes, and is required to be registered under AS 28.10; but does not include a tractor, farm vehicle, or a vehicle designed primarily for off-road use;

(7) "nonconformity" means a defect or condition in a motor vehicle caused by a manufacturer, distributor, dealer or repairing agent that substantially impairs the use or market value of a vehicle;

(8) "owner" means a purchaser, other than for resale, of a new motor vehicle, and a person to whom ownership of the motor vehicle is transferred in conformity with AS 28;

(9) "reasonable allowance" means an amount attributable to an owner's use of a motor vehicle; a "reasonable allowance" may not exceed an amount equal to the depreciation in value of the vehicle for the period during which the vehicle is available for use by the owner, calculated by a straight line depreciation method over ~~seven~~ 10 years, plus an amount equal to the depreciation in value of the vehicle that is caused by

(A) any neglect or abuse by the owner; or

(B) body damage not caused by a nonconformity;

(10) "repairing agent" means a person who has been specifically authorized by a motor vehicle manufacturer or distributor to perform warranty repairs in the state on one or more of the manufacturer's or distributor's motor vehicles;

(11) "substantially impairs the market value" means a nonconformity that substantially decreases the dollar value of a vehicle to the owner when compared to the dollar value of a similar vehicle that does not have the nonconformity;

(12) "substantially impairs the use" means a nonconformity that prevents a motor vehicle from being operated or makes the vehicle unsafe to operate.

'Lemon law' needs strong support to keep its teeth

By MIKE MILLER

One of the most important consumer protection bills before the legislature this year would, if passed, force automobile manufacturers to repair or replace "lemons" sold to Alaska car purchasers.

This legislation is literally a matter of life and death. One Kenai Peninsula resident lost family members because of defects in a car he purchased as new. This is just one of the many actual and potential tragedies on our roads due to defective automobiles — vehicles supposedly brand new and just off the showroom floor.

According to the Consumer Protection Division of the Alaska Attorney General's Office, between 800 and 900 Alaskans purchase defective vehicles each year.

Most of us are car owners, and purchasing a new car is one of the major financial commitments we make. As sponsor of the House version of the "lemon law," I feel very strongly that automobile manufacturers have a responsibility to those who purchase their cars. Unfortunately, case after case shows that the manufacturers often turn a deaf ear to the owners of cars that spend most of their time in the shop.

The Senate version of the lemon bill, CSSB 286, has passed the Senate. The House Labor and Commerce Committee is currently conducting public hearings. I strongly encourage citizens to testify in favor of this legislation.

Unfortunately, powerful economic interest groups are currently trying to water the bill

down, so that business can go on as usual. That is the reason strong citizen response is so important right now.

The bill passed by the Senate gives strong protection to the purchaser of a defective car, while putting the responsibility on the manufacturer, not the Alaskan dealer. The bill requires the manufacturer to buy back defective vehicles if the defect is not repaired — under the terms of the manufacturer's own warranty — within a year after purchase. A car is considered a "lemon" if the same defect has been subject to repair three or more times within that year, or if the vehicle has been in the repair shop for a total of 30 or more business days during the year.

If these conditions are not met, the owner of the lemon vehicle then has the right to full refund of the purchase price of the car, including finance charges, less depreciation and any damage done while in the owner's possession.

Among other provisions the bill requires manufacturers to notify the buyers of their rights under this legislation. What could be more fair? This is already being done in Massachusetts and California, and there is no reason for Alaska not to protect its citizens in this manner.

Unfortunately, both dealers and manufacturers are attempting to take the teeth out of the bill.

Dealers want the bill amended to change the number of allowed repairs from three to four; to delete finance charges from the reimbursement requirement; and to place responsibility of notifying consumers of their warranty rights with the state, not the manufacturer.

Manufacturers also want the bill weakened. Currently, Alaska is the only state in the nation in which the car owner must pay air freight if parts must be ordered from Outside. The bill would close this loophole by requiring the manufacturer to pay air freight just as they do in the other 49 states. Manufacturers want this section of the bill deleted.

Manufacturers also want to delete the section that requires them to pay back finance charges to the lemon owner. The reason for requiring the repayment of financing interest charges is simple: according to the attorney general's testimony, 75 percent of all cars purchased in Alaska are financed. Many cars are financed through dealerships and manufacturer's subsidiaries. In fact, General Motors Acceptance Corporation finances 80 percent of all GM cars sold in the state. Dealers make money if a car is financed in this way. They certainly don't want to have to give it back, even if the car they sold is a lemon.

I also have some amendments that I would like to see, because in contrast with the opinions of the dealers and manufacturers, I don't think the bill goes far enough.

I think that purchasers of lemons also should be reimbursed for their out-of-pocket expenses for necessary car rental while their lemon is being repaired, and also for any towing charges resulting from warranted failures.

If the defect is one affecting the life safety of passengers, I think the dealer should be allowed only two attempts at repair instead of three before the refund process is triggered.

I strongly urge all Alaskans to call or write their legislators in support of this all-important consumer protection issue, as written or stronger. I can think of few issues this year that will affect public safety and well-being as much as the passage of this bill. Unfortunately, I am afraid that economic interests may be talking louder than the public interest.

Don't let the House Labor and Commerce Committee turn the lemon car bill into a law that is itself a weak lemon.

☐ A teleconference committee hearing on the "lemon law" bill will be held today at 8:15 a.m. Residents may participate by going to the Legislative Information Office at 624 West 6th Avenue.

☐ Mike Miller, D-Juneau, is minority leader in the Alaska House of Representatives and a six-term legislator.

By REP. MIKE MILLER

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If the defect is one affecting the life safety of passengers, I think the dealer should be allowed only two attempts at repair instead of three before the refund process triggers.

Your local Legislative Information Office can provide you with a copy of the bill, and with dates and times of upcoming committee hearings, the next one being Wednesday at 8:15 a.m. You can also call the L.I.O. to send a Public Opinion Message to your legislators in support of this all-important consumer protection issue, as written or stronger.

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Rep. Mike Miller of Juneau is House Democratic minority leader and a six-term veteran in the state House of Representatives.

Juneau Empire 4/17/84

from Connie Sipe
4/24 - hearing

Deleting finance charges from refund, continued--

Under the "Rule of 78s" which Alaska law says must be used to compute interest on early payment of a retail sales installment loan, here is an example of how a consumer will be penalized for the use of a lemon, if the finance charges are deleted from the bill.

Buyback of a lemon, used 12 out of 13 months:

Original cost of vehicle	$12,000.00
Maximum allowance for consumer use (deduction)	- 1,710.00
Buyback Refund	$10,290.00

If accrued finance charges are dropped from the bill, consumer's true purchase cost (without additional damages) is:

Down Payment	$ 2,000.00
12 payments (of 36)	3,350.04
Loan payoff	8,096.42
Total cost	$13,446.46
Less Buyback Refund	$10,290.00
Consumer's cost to use car 12 months:	$ 3,156.46

PRECEDENT:

Massachusetts, Delaware, and New Jersey specifically include finance charges in the refund. Six or seven more states allow refund of "full purchase price" plus a broad category of collateral charges (interest not specifically included or excluded).

APRIL 24, 1984

TO: JOHN

FROM: KEN

RE: CSSB 286 RELATING TO MOTOR VEHICLE WARRANTIES

THIS MORNING THE COMMITTEE IS AGAIN ADDRESSING COMMITTEE SUBSTITUTE FOR SENATE BILL 286 "RELATING TO MOTOR VEHICLE WARRANTIES. THE SUB-COMMITTEE APPOINTED TO REVIEW THIS LEGISLATION MET LAST THURSDAY. THE MEMBERS OF THAT SUB-COMMITTEE CONSIDERED AMENDMENTS TO THE BILL THAT WERE PROPOSED BY AUTOMOBILE MANUFACTURERS, AUTO DEALERS, CONSUMERS, AND BY OTHER MEMBERS OF THE LEGISLATIVE BODY. A HOUSE LABOR AND COMMERCE COMMITTEE SUBSTITUTE FOR SB 286 WAS ADOPTED BY THE SUB-COMMITTEE AND WILL BE PRESENTED TO THE FULL COMMITTEE THIS MORNING FOR CONSIDERATION. AT THIS TIME I WOULD LIKE ASK REP. FURNACE, WHO CHAIRED THE SUB-COMMITTEE, TO GO OVER THE CHANGES MADE IN THE PROPOSED COMMITTEE SUBSTITUTE.

FISCAL NOTE

Revision Date: May 4, 1984

REQUEST — HCSSB 286 (Labor & Commerce)
Bill/Resolution No.:
Title: "motor vehicle warranties."

Sponsor: Sen. Ray
Requestor: House Labor & Commerce
Date of Request: 5/4/84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services — Date: 5/4/84

Approved by Commissioner: Norman C. Gorsuch — Date: 5/4/84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HCSSB 286 (Labor & Commerce)

Revised
5/4/84

The latest version of SB 286, HCSSB 286 (Labor & Commerce), clarifies and defines the legal warranty rights and responsibilities between owners of new motor vehicles and the vehicle manufacturer, when a new vehicle is seriously defective. Subsection (g) of the bill makes the manufacturer's refusal or failure to fulfill its warranty duties an unfair trade practice under AS 45.50.471. AS 45.50.471, which is enforced by the Consumer Protection Section of the Department of Law, already covers warranties and repairs in a more general manner. The specific legal standards of the bill should not cause additional fiscal impact on Consumer Protection because the bill merely gives a better definition and therefore a better enforcement tool in the auto warranty area.

AS 45.50.471 also provides for the vehicle owner's private enforcement lawsuit, so some of the bill's impact will be in the private legal sector.

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSSB 286 (Labor & Commerce)
Title: "motor vehicle warranties."
Sponsor: Sen. Rav
Requestor: Sen. Labor & Commerce
Date of Request: 2/20/84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
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CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: 2-21-84
Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues / FOR) Date: 2-21-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Fiscal Note

Fiscal Note
Analysis
CSSB 286 (Labor & Commerce)

February 21, 1984

The latest version of SB 286, ~~SCSHB~~ CSSB 286 (Labor & Commerce), clarifies and defines the legal warranty rights and responsibilities between owners of new motor vehicles and the vehicle manufacturer, when a new vehicle is seriously defective. Subsection (h) of the bill makes the manufacturer's refusal or failure to fulfill its warranty duties an unfair trade practice under AS 45.50.471. AS 45.50.471, which is enforced by the Consumer Protection Section of the Department of Law, already covers warranties and repairs in a more general manner. The specific legal standards of CSSB 286 should not cause additional fiscal impact on Consumer Protection because CSSB 286 merely gives a better definition and therefore a better enforcement tool in the auto warranty area.

AS 45.50.471 also provides for the vehicle owner's private enforcement lawsuit, so some of CSSB 286's impact will be in the private legal sector.

APRIL 18, 19[illegible]

TO: JOHN

FROM: KEN

RE: SB 286 RELATING TO MOTOR VEHICLE WARRANTIES

WE BEFORE US AGAIN TODAY SB 286 RELATING TO MOTOR VEHICLE WARRANTIES, BETTER KNOWN AS THE "LEMON LAW." I DO NOT BELIEVE THE SUB COMMITTEE APPOINTED AT OUR LAST HEARING HAS MET MET. I HAVE HOWEVER DISCUSSED THIS BILL AT GREAT LENGTH WITH THE APPOINTED CHAIRMAN OF THAT SUB COMMITTEE AND WITH THE ORIGINAL SPONSOR OF THE BILL, SENATOR RAY. IT IS MY INTENTION TODAY TO GO OVER THE CONCERNS THAT THE COMMITTEE MEMBERS HAVE WITH THIS LEGISLATION, AND FROM THIS WORK FORMULATE A COMMITTEE SUBSTITUTE THE MEMBERS CAN APPROVE AND ONE THAT CAN BE SUPPORTED BY BOTH THE MEMBERS OF THE HOUSE AND THE SENATE.

APRIL 10, 1984

TO: JOHN

FROM: KEN

RE: CSSB 286 RELATING TO MOTOR VEHICLE WARRANTIES

WE HAVE BEFORE US COMMITTEE SUBSTITUTE FOR SENATE BILL 286, RELATING TO MOTOR VEHICLE WARRANTIES, BETTER KNOWN AS THE "LEMON LAW". THE INTENTION OF THIS LEGISLATION IS TO PROVIDE PROTECTION, IN ALASKA STATUTES, FOR CONSUMERS WHO PURCHASE MOTOR VEHICLES THAT FAIL TO PERFORM TO MANUFACTURERS STANDARDS, AND FAIL TO PERFORM TO THOSE STANDARDS AFTER NUMEROUS REPAIR ATTEMPTS ARE MADE.

THE OTHER BODY OF THIS LEGISLATURE HAS SPENT MANY HOURS WORKING WITH REPRESENTATIVES OF AUTOMOBILE MANUFACTURERS, AUTO DEALERS, AND CONSUMER PROTECTION. MANY OF THE ROADBLOCKS WHICH PREVENTED MOVEMENT OF THIS LEGISLATION HAVE BEEN REMOVED. STILL, SOME SNAGS REMAIN. IT IS THE INTENTION OF THIS COMMITTEE WORK OUT THOSE PROBLEMS THAT REMAIN AND FINISH WORK ON THIS BILL IN AN EXPEDIENT MANNER.

QUESTIONS:

1. ON PAGE THREE LINE ONE IT STATES A VEHICLE IS SUBJECT TO REPAIR THREE OR MORE TIMES. WHY THREE TIMES WHEN THE MAJORITY OF LAWS OF THIS NATURE IN OTHER STATES REQUIRES A VEHICLE BE REPAIRED FOUR TIMES ?

2. WHY IS IT THE MANUFACTURER OR DEALER HAS BEEN GIVEN THE RESPONSIBILITY FOR EXPLAINING THE PROCEDURE FOR REFUND UNDER THIS SECTION ?

3. SHOULD A MANUFACTURER OR DEALER BE LIABLE FOR REFUND OF FINANCE CHARGES ON A MOTOR VEHICLE RETURNED UNDER THIS LAW ? WHY ? WHY NOT ?

4. (FOLLOW UP) WHY SHOULDN'T THE FINANCIAL INSTITUTION WHICH SUPPLIED FINANCING FOR A VEHICLE RETURNED TO THE MANUFACTURER BE RESPONSIBLE FOR PAYING BACK THIS FINANCE CHARGE ? WHY SHOULD THIS INSTITUTION BE EXEMPT ?

AMENDMENTS MADE TO CSSB 286 BY THE HOUSE LABOR AND COMMERCE COMMITTEE SUB-COMMITTEE

1. Page 1, Line 29:
Insert the word "certified" following "by".

2. Page 2, Line 1:
Insert the words "dealer or" following "its".

3. Page 2, Line 11:
Delete "30 days or more" and in its place insert "within 60 days".

4. Page 2, Line 12:
A new sentence is added to paragraph (4) which reads "Within 30 days after receiving the notice required by this subsection the manufacturer may make a final attempt to conform the vehicle before a refund is made under (b) of this section."

5. Page 2, Line 13:
Delete paragraph (d).

6. Page 2, Line 23:
Insert the words "dealer or" before the word "repairing".

7. Page 2, Line 26:
Insert the words "dealer or" before the word "repairing".

8. Page 3, Line 6:
A new paragraph (2) is added which reads " the nonconformity makes the vehicle unsafe to operate and the same nonconformity has been subject to repair at least twice by the manufacturer, distributor, dealer, or repairing agent during the express warranty term or the one-year period referred to in (1) of this section, whichever period terminates first, but the nonconformity continues to exist; or"

9. Page 3, Line 6:
The original paragraph (2) is re-titled (3) and is inserted following the new paragraph (2).

10. Page 3, Line 20:
Insert the word "full" following "the".

11. Page 3, Line 25:
Insert the word "or" following manufacturer, delete "or repairing agent" and insert the words "in the state" following distributor. Both commas on this line are also deleted.

12. Page 4, Line 4:
Delete "sold in the state shall maintain repair facilities or authorize repairing agents" and insert "who authorize the sale of the manufacturer's or distributor's motor vehicles in the state shall maintain authorized dealership facilities".

13. Page 5, Line 1:
Insert the word "warranty" following "and".

14. Page 6, Line 8:
Delete the words "includes a dealer or other person" and insert the words "means a person".

APRIL 24, 1984

TO: JOHN

FROM: KEN

RE: CSSB 286 RELATING TO MOTOR VEHICLE WARRANTIES

THIS MORNING THE COMMITTEE IS AGAIN ADDRESSING COMMITTEE SUBSTITUTE FOR SENATE BILL 286 "RELATING TO MOTOR VEHICLE WARRANTIES. THE SUB-COMMITTEE APPOINTED TO REVIEW THIS LEGISLATION MET LAST THURSDAY. THE MEMBERS OF THAT SUB-COMMITTEE CONSIDERED AMENDMENTS TO THE BILL THAT WERE PROPOSED BY AUTOMOBILE MANUFACTURERS, AUTO DEALERS, CONSUMERS, AND BY OTHER MEMBERS OF THE LEGISLATIVE BODY. A HOUSE LABOR AND COMMERCE COMMITTEE SUBSTITUTE FOR SB 286 WAS ADOPTED BY THE SUB-COMMITTEE AND WILL BE PRESENTED TO THE FULL COMMITTEE THIS MORNING FOR CONSIDERATION. AT THIS TIME I WOULD LIKE ASK REP. FURNACE, WHO CHAIRED THE SUB-COMMITTEE, TO GO OVER THE CHANGES MADE IN THE PROPOSED COMMITTEE SUBSTITUTE.

APRIL 10, 1984

TO: JOHN

FROM: KEN

RE: CSSB 286 RELATING TO MOTOR VEHICLE WARRANTIES

#1

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STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

February 28, 1984

The Honorable Richard Eliason
Chairman, Senate Labor and
Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: Committee Substitute for
House Bill 286

Dear Senator Eliason:

My testimony before this Committee this day can be concise and to the point: namely, that on behalf of the consuming public in the State of Alaska, I urge you to now pass out, with "do-pass" recommendations, the Committee Substitute for House Bill 286, known as the "Lemon Law".

I thank the Committee, and especially the Committee Chair, for the significant effort and time which has been spent studying this bill. It is worthy of note how much time this Committee gave to the important task of hearing public testimony, from industry representatives and from consumers all over the state.

In the final draft of this Committee Substitute it is also clear that the Committee has succeeded in its endeavor to refine the concepts of this bill to Alaskan needs; both the needs of our consumers and of our automobile dealers. The Committee has made reasonable accommodation to the interests of the manufacturers, attempting at all times to balance the interests of consumers, dealers and manufacturers. The balance reflected in this bill will further the underlying intent of this bill, to provide a strong new protection to the consumers of our State when they make the second largest financial investment of their lives, the purchase of a new automobile.

Nationwide, forty states are expected to have lemon laws by the end of the 1984 legislative sessions. Alaskans need this bill passed into law now. I would urge the Committee and all members of the Legislature to remember that should this bill be delayed from passage for another year, over 20,000 Alaskan consumers will purchase new vehicles in this state, without the much needed protections offered by the Lemon Law. Therefore, I urge the Committee to pass this bill out, and for each Committee member to voice strong support for its passage on the floor of the Senate.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:vrb

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
of the United States, Inc.

300 NEW CENTER BUILDING • DETROIT, MICHIGAN 48202 • AREA 313-872-4311
1107 Ninth Street, Suite 1030, Sacramento CA 95814

PHILIP CALDWELL, *Chairman*
V. J. ADDUCI, *President and Chief Executive Officer*
THOMAS H. HANNA, *Senior Vice President*

March 30, 1984

The Honorable John Cowdery
Chairman, House Labor & Commerce Committee
Pouch V, Room 210, Behrends Building
Juneau AK 99811

Re: Senate Bill 286, dated 2/29/84

#3

Dear Representative Cowdery:

The Motor Vehicle Manufacturers Association would like to advise the House Labor & Commerce Committee that we are in opposition to SB 286. We do not find ourselves opposing the general concept of the "lemon car" provisions in the bill which provides for a mechanism by which the consumer can have a problem with his vehicle remedied in an expeditious manner. We do, however, find ourselves in opposition with sections of the bill which relate to the internal industry relationships between the dealers and manufacturers.

In particular, I am referring to page 3, section (g) which basically centers around the possibility of altering the industry-related Sales and Service Agreement between the manufacturer and dealer. Under this paragraph as written, a dealer would be encouraged to invest in little or no parts inventory and any parts could be ordered VIP air freight as they are needed. Obviously the shipping expense would end up in the new vehicle purchase price in Alaska.

This will not provide for a better "lemon law" statute in Alaska. The manufacturer does have the responsibility and liability under the proposed statute for buying the car back if the four times or 30 days provision were not met for the same nonconforming defect, but having the Legislature dictate in statute the contractual relationships goes far beyond the intent of this type of legislation.

In addition, section (j) on page 4, for all intents and purposes exempts the dealer or repairing agent from any responsibility for repairs under the express warranty. We feel this section either should be deleted, or additional language inserted. The manufacturer would be held totally responsible for the actions of the repairer or dealer. The manufacturer might as well do his own repairing rather than trust an independent franchiser if this language were to be left in the statute. The suggested

language could include, on page 4, line 3, after the word "section:"

> "except with respect to failure by an authorized dealer to properly effect preparation, installation of options or repairs when such preparation, installation of options or repairs would have prevented the occurrence of or cured a nonconformity."

These, along with several other areas, are provisions in the bill with which we have serious concerns. It is our understanding there will be further hearings on this issue and some proposed amendments will be considered from the committee and others. We would like to keep in touch with you and participate in these future hearings in Juneau.

Thank you very much for your consideration and we look forward to working with the Committee on this issue.

Sincerely,

James W. Austin
Public Affairs Manager
Pacific Coast Region

JWA/eb

Enclosure: SB 286, dated 2/29/84

cc: Members, House Labor & Commerce Committee

Lemon law: Automakers feel squeezed by Senate plan

By K.C. MOON
Daily News reporter

Legislators agree chances are good that Alaska will have a so-called "lemon law" this year, but some fear the bite of the consumer bill will be compromised before it becomes law.

"Lemon" is slang for a car that would have been better off not built. Attempts at repair are fruitless.

No one — not even the most quality-conscious carmaker — denies such miscarriages occasionally end up in the hands of a not-so-proud owner.

If SB 286 becomes law, auto manufacturers will be forced to give refunds to customers who unwittingly bought a new car gone sour.

Under the bill, a new car is labeled a lemon if it has spent 30 or more business days in the shop for repair of serious defects, or if mechanics are unable to fix the same defect after three tries.

The law would cover only those cars under warranty or less than a year old, whichever period ends first.

Those definitions are part of the bill passed unanimously last month by the Senate, which for months worked to reach a compromise between consumer and auto interests.

Now the bill faces more molding in the House Labor and Commerce Committee.

The prime issue isn't whether a refund should be issued for lemon cars, but how much of a refund.

The Senate decided a lemon buyer should be able to get back the sale price of the car — plus the expense of financing the purchase.

Auto manufacturers, represented by lobbyist Jim Austin of the Motor Vehicle Manufacturers Association, do not feel that would be fair.

"I've never seen a situation where people don't have to pay for the use of money," Austin said. A refund including interest charges would mean a consumer paid nothing to borrow the money to buy a car, he said.

Henry Pratt, lobbyist for the newly formed Alaska Auto Dealers Association, also would like to scratch finance charges from refunds. "When you buy something on credit from Sears and turn it in for a refund, they don't give you back the interest you paid on it."

The consumer protection section of the Attorney General's office, which has vigorously pushed the bill, maintains Alaska's lemon law would be gutless if finance charges were not included in a lemon car refund.

Scotty Dawkins, auto investigator for the office, said, "If interest costs are not refunded, we'd just as soon not have the bill."

He said a consumer who financed the purchase of a $12,000 lemon car would lose more than $3,000 if his interest payment were not refunded. "How's that consumer supposed to turn around and buy another car to replace the lemon?" he asked.

Dawkins also said about 80 percent of new cars sold in Alaska are financed by automakers' own financing programs. "If the auto interests have their way, they would still make money by selling lemons to people."

Rep. Mike Miller, D-Juneau, the sponsor of the origional lemon-law bill, said deletion of interest for the price refunded would be "debilitating."

Sen. Richard Eliason, whose Senate Labor and Commerce Committee worked much of the compromises into the bill, doubts the Senate would accept a law without privisions for a full refund. "We wanted a strong consumer advocacy bill."

Rep. John Cowdery, chairman of the House Labor and Commerce Committee which now is considering the bill, said he has no philosophical objection to returning interest.

But he added: "If we decide to return (interest), I can forsee a tie-up as to how much interest we should refund. And I want this bill to make it through."

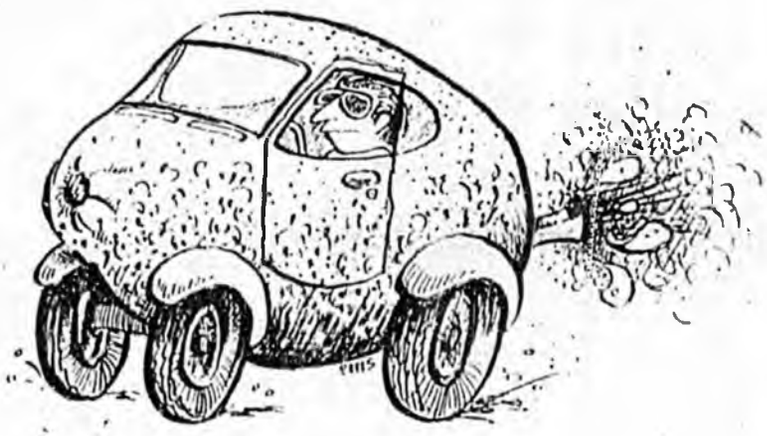
Manufacturers and dealers are at odds over a provision that would require automakers to air-freight parts to Alaska dealers for warranty-related repairs.

It was Alaska dealers who asked legislators to add the air-freight requirement. They say without the provision they would have little leverage to convince automakers to expedite shipment of parts.

Austin said, "This is something to be worked out between us and the dealers. It doesn't have to involve the legislature.

"We'd have to air-freight the parts anyway," he said. "The 30-day repair clock is running against us, not the dealers. We're the ones who have to sign the refund check."

Dawkins said the air-freight requirement should stay. "Most manufacturers air-freight parts to every other state in the union, including Hawaii," he said. "I can see no reason Alaskans shouldn't get the same treatment."



Another part of the bill under dispute is the three repair-attempt cutoff for defining a lemon. Auto interests maintain that should be increased to four attempts.

Auto interests also oppose a requirement that they notify car buyers of rights under the lemon law.

Cowdery's committee now is faced with the challenge of completing a compromise agreeable to three interests — that of consumers, dealers and automakers.

"I'd expect we'll pass it out of committee within 10 days," he said. "But I want to make sure it's in a form where it won't get tied up on down the line."

If Cowdery's committee does pass the bill out, it would go to House Rules Committee for scheduling a vote on the House floor.

If the House amends the bill, the law would be considered by a joint conference committee of House and Senate members before going to the governor's desk.

Perhaps the last public hearing on the bill will be held Wednesday morning by House Labor and Commerce.

Automakers, dealers disagree on 'lemon law' shipping provision

By K.C. MOON
Daily News reporter

4/11/84

Alaska auto dealers are at odds with carmakers over who should pay for fast shipping of parts needed for warranty repair work.

The conflict surfaced Tuesday during a statewide teleconference on a proposed "lemon law." The law would require auto manufacturers to buy back new cars that defy repair.

The bill is the subject of a series of hearings by the House Labor and Commerce Committee. A provision of it would force automakers to pay air freight on parts dealers need to fix a car under warranty.

Jim Austin, lobbyist for the Motor Vehicle Manufacturers Association, asked the committee to delete the provision. He said the air freight issue should be worked out between the dealers and manufacturers — not by the legislature.

Alaska dealers want the provision in the bill. Without it, they say, dealers or their customers would be forced to pay the extra costs of air freight, or wait two to six weeks for land or sea shipment.

Under the bill, a new car that spends six weeks of its first year in the shop is a "lemon" and must be bought back by the manufacturer.

The bill unanimously passed the Senate last month.

The arguments by auto interests took up most of the two-hour committee hearing. Only one consumer group testified before the hearing ended. It will continue today.

One Anchorage car dealer said that without the air freight requirement, automakers would not have to expedite the shipment of parts. If a lack of parts lengthened repair time, it could cause the buy-back provision to be invoked.

If forced to buy back a lemon, manufacturers and dealers said, they should not have to refund interest paid by consumers who borrowed money to make the purchase. They said they should only have to repay the sale price.

Consumer interests, led by the consumer protection section of the attorney general's office, disagreed. They say interest charges are a big portion of car payments in the first year and should be included in the refund.

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

February 28, 1984

The Honorable Richard Eliason
Chairman, Senate Labor and
Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: Committee Substitute for
House Bill 286

Dear Senator Eliason:

My testimony before this Committee this day can be concise and to the point: namely, that on behalf of the consuming public in the State of Alaska, I urge you to now pass out, with "do-pass" recommendations, the Committee Substitute for House Bill 286, known as the "Lemon Law".

I thank the Committee, and especially the Committee Chair, for the significant effort and time which has been spent studying this bill. It is worthy of note how much time this Committee gave to the important task of hearing public testimony, from industry representatives and from consumers all over the state.

In the final draft of this Committee Substitute it is also clear that the Committee has succeeded in its endeavor to refine the concepts of this bill to Alaskan needs; both the needs of our consumers and of our automobile dealers. The Committee has made reasonable accommodation to the interests of the manufacturers, attempting at all times to balance the interests of consumers, dealers and manufacturers. The balance reflected in thi bill will further the underlying intent of this bill, tc provide a strong new protection to the consumers of our State when they make the second largest financial investment of their lives, the purchase of a new automobile.

Nationwide, forty states are expected to have lemon laws by the end of the 1984 legislative sessions. Alaskans need this bill passed into law now. I would urge the Committee and all members of the Legislature to remember that should this bill be delayed from passage for another year, over 20,000 Alaskan consumers will purchase new vehicles in this state, without the much needed protections offered by the Lemon Law. Therefore, I urge the Committee to pass this bill out, and for each Committee member to voice strong support for its passage on the floor of the Senate.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:vrb

FORD MERCURY LINCOLN

SEEKINS FORD-LINCOLN-MERCURY, INC.

1625 Old Steese Highway Telephone (907) 452-1991
FAIRBANKS, ALASKA 99701

April 3, 1984

John Ringstad
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear John:

#2

The Fairbanks dealers of the Alaska Automobile Dealers Association recently met and considered Senate Bill No. 286, as passed through the Labor and Commerce Committee and adopted by the entire Senate (The Lemon Law).

Although we had opportunity to give some input into the Committee we still have changes we would like made before it passes the House. Since you are on the Labor and Commerce Committee, I have been deligated to explain to you what changes we would like to see and our supporting rationale on an item by item basis. I hope to be able to do so in such a way that it's obvious we are not trying to water down the bill but rather to make it even better.

In order to show you exactly what we suggest, I have prepared a draft, enclosed with this letter, and also have enclosed a marked copy of the Senate Bill showing those areas we have addressed.

We specifically object to any statement or inference which might mislead anyone into believing that dealerships are "agents" of manufacturers or distributors. We absolutely are not "agents" of the manufacturer or distributor. We have sales and service agreements (contracts) with manufacturers or distributors which specifically outline our respective relationships. I have enclosed a copy of page 14 of the Ford Sales and Service Agreement under which this dealership operates. Notice that paragraph 14 specifically addresses this concern and absolutely supports our arguement. Therefore, we feel it necessary to make a distinct difference between "dealers" and "repairing agents", which will be evident in our suggested changes.

With that out of the way, let me address each concern on an item by item basis.

Page 2, line 1...add "<u>dealer or</u>" just prior to "repairing agent". This request results from our earlier discussion.

Page 2, lines 11 & 12...remove (30 days or more) and add "within 30 days". We feel there should be a time certain under which this process should begin. In it's present form, the customer could wait for months or even years before claiming the refund. To leave it open-ended would be unfair to the manufacturer.

Page 2, lines 13, 14. 15 & 16...Delete this entire section. We can not find any other industry, in any other state, which is required to give the purchasers of it's merchandise a notice that explains how that buyer can bring legal action against it.

Page 2, line 23...add "dealer or" just prior to "repairing agent".

Page 2, line 25...add "dealer or" just prior to "repairing agent".

Page 3, line 1...delete (three) and substitute "four". This is the number used in ALL other similar legislation nation-wide.

Page 3, line 25...delete (or repairing agent) and add, in it's place, "in the state". We do not believe "repairing agents" should be in the sales business and we would just as soon see the vehicle leave the state.

Page 4, lines 4 & 5...delete (sold in the state shall maintain repair facilities or authorize repairing agents) and replace it with "who authorizes the sale of their motor vehicles in the state shall maintain authorized dealership facilities". First, we don't feel any manufacturer or distributor should be required by law to supply repair facilities in the state, either through dealerships or repairing agents, unless their vehicles are authorized for sale in the state. Secondly, we don't want legislation which would infer that any manufacturer or distributor was either required by or allowed by state law to step around the normal dealer/manufacturer relationship and maintain their own repair facilities in Alaska, either in lieu of or in addition to those which we are required to maintain in order to be authorized dealers. We feel the wording presently in the Senate version would open that door.

Page 4, line 28...Insert "or entity" between "person" and "who". Most of us operate as corporations and would feel

more comfortable with this insertion.

Page 5, line 1...Insert "warranty" just prior to "repair". This is for obvious reasons since this is a bill referencing just that, warranty repair.

Page 5, line 3...Insert "or entity" between "person" and "who". Same reasoning as above.

Page 5, line 12...Delete (and accrued finance charges;). The owner has enjoyed the use of the vehicle for a specific time, chose to finance the vehicle rather than pay in full for it at the time of purchase, has probably written these charges off on his income taxes and, for these and other sound reasons, we feel would not fairly expect to have them refunded.

Page 5, line 13...Insert "or entity" between "person" and "who".

Page 6, line 3...Substitute "five" for (seven). We believe a seven year straight line depreciation unfairly burdens the manufacturer. Standard depreciation within the industry for the first year of ownership is 2.5% per month. We feel five years on a straight line basis is more than fair to the owner and urge you to adopt this shorter period of time.

Page 6, line 8...Delete (includes a dealer or other person) and substitute "means a person or entity, other than a dealer,". This change in definition helps accomplish the differentiation between dealers and repairing agents and is consistent with the contractual relationships we have with our manufacturers or distributors.

Additionally, we have, in our enclosed draft, re-arranged the definition section in a more logical and sequential order. This was done simply for easier comparison in our local discussions but may be something which you may wish to consider.

The one portion we do NOT want changed in any manner is section (g) on page 3. We definitely believe this section alone will do much to mitigate current problems experienced by Fairbanks dealerships in administering warranty repairs and will avoid many future problems. This section will do the most for the owner by keeping us dealers from being caught between the manufacturers or distributors and the owners.

With these changes, we feel we can whole-heartedly support this bill as a dealer body.

We look foreward to your positive actions regarding our requests and carrying this legislation into action. The Fairbanks dealer body is willing to discuss any portion of this legislation with you at any time and would like to do so if you are in Fairbanks any time in the near future.

I am sending an identical letter to Niilo Koponen since he is on the committee with you.

Thank you for your time and consideration.

Sincerely,

SEEKINS FORD-LINCOLN-MERCURY, INC.

Ralph C. Seekins
President

cc: Fairbanks Dealer Body

enclosures

April 4, 1984

The Honorable John J. Cowdery
Chairman, House Labor & Commerce Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear John,

Regarding our phone conversation of April 2 regarding Senate Bill 286 offered on February 29, the following are requested changes that the Dealer's Association would like to see. I feel confident that with these changes the Association would give you their full support for the passage of the bill.

#4

* Page 1 line 12 should read "it and the owner of the vehicle reports in writing the defect or condition to the....."

* Page 2 should have lines 13, 14, 15 & 16 deleted in their entirety.

* Page 3 line 1 should read "(1) the same nonconformity has been subject to repair four....."

* Page 4 line 23 should read "of (b) of this section concerning refund or (1) of this section..."

* Page 5 line 11 should read "fees, transportation fees, dealer preparation, and dealer installed options." PLEASE NOTE WE DELETED THE PHRASE "and accrued finance charges;"

* Page 5 line 20 we would like to change to read "tractor, farm vehicle, motor home or a vehicle designed....." (John, we're open on this one.)

We have indicated any word or phrase changes by underlining for clarification. John, if you need any additional information or clarification I would be pleased to discuss it with you personally, or you may wish to speak with Doug Hulen or Henry Pratt. I'm sure Henry will be in touch with you in the near future.

Appreciate any assistance you may provide.

Sincerely,
UNIVERSAL MOTORS, INC.

Richard L. Silberer
President

RLS:db

821 East 5th Avenue • Anchorage, Alaska 99501 • (907) 279-8506

1

Section Analysis of CSSB 286 (2/23/84 version)

Subsection (a)

If a new vehicle does not conform to an express warranty, the manufacturer must make the necessary repairs. No time limitation is mentioned in this section. It merely requires the manufacturers to honor their own express warranty for whatever term they give it (1 to 5 years, or by mileage limits).

Subsection (b)

If the manufacturer is unable to repair a nonconformity vehicle within one year, the manufacturer must accept the return of the car and shall refund the full purchase price to the consumer.

Subsection (c)

This section clarifies exactly how and when a consumer must give notice to the manufacturer that the consumer believes he or she has a lemon car for which a refund is requested.

Subsection (d)

This section, following the lemon laws in the states of Massachusetts and California, requires the manufacturer to deliver some type of explanation to all new owners of vehicles about their rights under the lemon law.

Subsection (e)

This section states that an owner may not receive a refund if the manufacturer can show that the nonconformity does not impair the use or value of the vehicle or that the nonconformity is the result of alteration or abuse by the owner or a person other than the repairing agent.

Subsection (f)

A vehicle is considered a "lemon" if the same nonconformity has been subject to repair ~~four~~ or more times within a one-year period or if the vehicle has been in the repair shop for a total of 30 or more business days during the one-year period.

Subsection (g)

A manufacturer must provide its dealers with any part necessary to make repairs of a nonconformity covered under the warranty as soon as reasonably possible without additional charge for freight or handling.

Subsection (h)

Under this subsection, a manufacturer who fails to refund the purchase price of a "lemon" is "presumed to have committed" an unfair trade practice. "Presumed to have committed" sets out a legal presumption which the manufacturer can then rebut by showing the courts that the manufacturer had some valid reason (when applicable).

Subsection (i)

This subsection states that when a "lemon" is resold, a full disclosure of the reason for the return must be made to the prospective buyer.

Subsection (j)

This bill does not limit the rights of a vehicle owner as stated in other provisions of law.

Subsection (k)

This subsection requires manufacturers to retain repair facilities within the state, able to service the vehicles they sell.

Subsection (l)

Once a "lemon" car has been returned to the manufacturer for a refund, the manufacturer must compensate the owner for all reasonable costs which the owner incurred in shipping the vehicle back and forth from the nearest authorized repair facility for warranty service.

Subsection (m)

This subsection allows the manufacturer to use any arbitration or mediation process, even if the manufacturer has not set up in advance a Magnuson-Moss type (16.C.F.R. 703) informal dispute settlement procedure. In all cases, the attorney general must approve the process and the arbitration decision must be binding on the manufacturer but not on the owner. This subsection insures that as many of these lemon law disputes as possible will stay out of the court system, and that both consumer and manufacturer will be encouraged to use informal settlement processes.

Subsection (n)

The definition section outlines the specific meanings of terms used in this legislation. Note should be taken of the following definitions:

Subsection (n) (4) - "full purchase price" includes all fees paid at the time of the sale, including finance charges.

Subsection (n) (6) - "motor vehicle" includes land vehicles with four wheels "normally" used for personal, family or household purposes.

Subsection (n) (9) - "resonable allowance" is set at a sum which will include no more than straight-line depreciation figured over seven years, plus, when applicable, an amount for depreciation in value of the vehicle caused by neglect or abuse by the owner.

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3500

January 31, 1984

The Honorable Dick Eliason
Chair, Senate Labor and Commerce
Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: Committee Substitute for
SB 286 "Lemon Law"

Dear Senator Eliason:

The Office of the Attorney General takes the position that it supports and urges the Legislature to adopt the proposed "Lemon Law" before it.

My decision to support this bill is based on the realities of the automotive industry. Today a consumer's purchase of an automobile is the second largest purchase, next to a home, made throughout the consumer's lifetime. In Alaska, where consumers pay the highest retail prices for automobiles of anywhere in the United States, new, basic automobile prices start at $7,000, and quickly mount to $12,000 or $15,000. Consumers reasonably expect to be able to use and enjoy these automobiles for five to ten years after their purchase, and if sold earlier, to be able to recoup a reasonable portion of their purchase price upon resale.

The Lemon Law before you merely addresses how the manufacturers are required to perform upon the express warranties that they themselves offer to consumers as part of the inducement to buy their vehicles. The mass-marketing of automobiles puts heavy emphasis on warranties. We can estimate that the cost of a new car warranty, which is rolled into the sale price of a vehicle, is as much as $500 to $1,000 on every new car.

Across the nation, numerous states have recognized the need to address this problem of consumer warranties. Within a year after the first lemon laws were passed in Connecticut and California, 16 states had passed similar statutes. By the end of this legislative session there may be 25 states with lemon laws. This indicates national recognition of a problem, namely, con-

sumers' inability to obtain adequate redress under the warranties that they purchase as part of their vehicles, and a need to restore consumer confidence and manufacturer responsiveness in the new car market.

I support the "lemon law," not only for these general reasons, but as a fitting answer to problems in the Alaskan new car market. For many Alaskans, as soon as they take a new vehicle, wherever purchased, more than a few miles from the four major cities, they have rendered the warranty portion of their vehicle purchase useless. Very few Alaskans living outside major cities ever receive any benefit for the warranties that they purchase.

Even those Alaskans who can get their ailing vehicle to a manufacturer's authorized repair facility (dealership) are often met with inordinate delays due to the nonavailability of parts, the shortage of repair personnel or facilities, and at times, additional expenses incurred through the need to supply their own alternative transportation while their vehicle is being repaired or parts are being shipped.

Alaskans have more reason to complain against the manufacturers than anyone else in the country, since it is apparent through the experience of the staff in my consumer protection office, that the major manufacturers consistently discriminate against Alaskan consumers and dealers. They provide less backup to our dealers and service to our customers on their warranties than to residents of other states. This discriminatory treatment is especially grievous in light of the huge volume of sales made by these manufacturers in our state. This type of discrimination by manufacturers against Alaskans can be seen in these facts:

A. Despite the fact that many of the highest volume-selling dealerships in the country are in Alaska, until a few months ago not a single manufacturer authorized even one service representative employee to be stationed in the state of Alaska, nor travel here more than once every six to eight weeks in order for a service representative to review consumer warranty disputes and to authorize major warranty repairs. (Without this authorization dealers cannot satisfy their own customers, or else run the risk of not being compensated for their warranty work.) These same manufacturers have numerous employees in the state to deal with the financing and selling of these vehicles but none to deal with the warranties.

B. Several of the major manufacturers are willing to airfreight, at their own expense, necessary parts for warranty repairs to 49 of the 50 states including Hawaii, when the dealer does not have a part readily available. The one state where the manufacturer insists that the consumer must pay to have a part airfreighted if he/she does not wish to wait for surface freight is Alaska.

C. Despite the fact that many of the vehicles sold to Alaskans are used in remote parts of the state where the residents do not have access to the few dealerships, and despite the fact that the manufacturers have programs on their corporate books for designating independent repair shops as authorized repair facilities, as they do all over Europe, no manufacturer has ever authorized a shop anywhere in Alaska to be designated as an authorized repair facility for those consumers who cannot reach a dealership.

D. Many of our dealerships have often complained that the manufacturer does not adequately reimburse the dealers for their labor on doing warranty work, refusing to take into account the higher cost of doing business in Alaska and therefore a need for a higher reimbursement level.

E. In many other parts of the country manufacturers have set up "Autolines" or other types of consumer complaint handling programs, but despite the fact that several major manufacturers state in their warranty booklets that such programs are available to Alaskans, to this date not a single manufacturer has set up a consumer complaint handling program in the state of Alaska.

I wish to emphasize that I understand that our Alaskan dealers are often caught in the middle between their unhappy consumers and their manufacturers. We know that the Alaskan dealers do not always sell all the cars that they are being asked to service, and we also understand that dealers do not wish to jeopardize their relationship with the manufacturer. However, we know that every franchise dealership takes on both the benefits inherent therein and the burdens, such as the requirement to honor the manufacturer's national warranties for all vehicles which come to their facility. In addition, we know that if prodding a recalcitrant manufacturer to fix a problem car is difficult for the dealer, that difficulty is magnified ten-fold for the consumer. This bill should help our local dealers, not hurt them, as it should help them to better service and satisfy their own customers.

It is my understanding that the National Automobile Manufacturers Association does not oppose the passage of a lemon law in our state and in other states. Many consumers appeared last year at public teleconferences to testify to the need for a lemon law. Alaskan consumers continue to have numerous problems with manufacturers. For example, since late December when a Federal Trade Commission consent judgment with General Motors over several major defects was settled, over 350 Alaskan consumers have contacted my consumer protection office to say that they have suffered economic harm due to one of these defects and would like to seek redress.

The concept of a lemon law is one my office supports because whether or not we have lemon law statutes, consumers and their attorneys are bringing "lemon" lawsuits against the manufacturers over what they allege to be defective autos. With the lemon law in place, the manufacturers, the consumers, and the courts have clear standards to apply as to what is a "lemon", what is a reasonable number of attempts or time period for repair of a vehicle, how a consumer should be compensated, and what type of notice the consumer should give the manufacturer before demanding a refund or replacement. A lemon law clearly places the obligation to provide a refund or replacement upon the manufacturer, but only based upon the express warranties written by the manufacturer itself.

A lemon law actually saves the public time and money, as consumers are required to go to informal mediation and arbitration procedures before they run into court. Statistics around the country show that 95 to 98 percent of the cases get settled at these levels and will never reach the courts. The clear guidelines of the lemon law provide a backdrop for the settlement and arbitration proceedings. Without these guidelines, consumer willingness to settle in mediation or arbitration would be greatly diminished, as the consumer and manufacturer would both jockey for the "best" position.

Eighteen other states have enacted a lemon law. It is clear that Alaskans pay more than any other residents in the United States for their new automobiles, receive in many instances less value from their warranties, and are probably most deserving of a well thought out lemon law establishing clearly their rights and responsibilities vis-a-vis the manufacturer.

Therefore I urge this committee and the rest of the Legislature to duly pass out the lemon law.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:CJS:vrb

BILL SHEFFIELD, GOVERNOR

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DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

February 20, 1984

Senator Richard I. Eliason
Chairman, Senate Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

Re: C.S. for Senate Bill 286, incorporating suggestions of Alaska Automobile Dealers Association

The new draft of a proposed committee substitute presently before you is the result of the efforts of my staff and the representative of the Alaska Automobile Dealers Association to refine the bill so as to better accommodate the needs of the Alaskan automobile dealers who will, of necessity, be affected by this bill's passage.

Also, with apologies to the committee, and recognizing all of the prior hard labor that has gone into this bill, as these new amendments were added to the bill, in order to maintain clarity, we took the liberty of streamlining the language somewhat, most of which was done by removing some clauses which were repeated throughout the bill, and incorporating them instead into the definitions section. Therefore, I would urge that anyone looking at this new committee substitute first read the definitions.

I.
DEFINITIONS

I would also start my analysis of this draft with a discussion of the definitions. There are now twelve.

First of all, we have included a definition of "dealer" to include only those persons or legal entities holding franchises or retail sale authorization from the manufacturers.

"Distributor" and "manufacturer" have been carefully defined to make it clear that the manufacturer runs the factory producing the cars, and the distributor is someone in the distribution

chain who has the manufacturer's authorization to make wholesale sales of the vehicles.

"Express warranty" has been defined to mean the express written warranty, so that this term did not have to be included throughout the bill.

(Changed! IMPORTANT) "Full purchase price" has been defined to include most of the collateral charges taking place at the time of the sale, including any already accrued finance charges. (The committee members should note: both the Automobile Dealers Association and the manufacturers' representatives oppose the inclusion of finance charges, but it was my understanding that the committee wanted finance charges included.)

"Motor vehicle" has been limited to land vehicles, that are purchased primarily for personal-type use. Also, the definition excludes several categories of vehicles normally thought of as off-road or farm vehicles.

An important new definition is of "nonconformity." "Nonconformity" is a defect or condition which substantially impairs the use or market value of a vehicle and we moved this language from page 1,), into the definition section, so as to streamline the many places in the bill where this term occurs. The intent of nonconformity has not changed from prior bill drafts, although the definition more clearly states that the type of nonconformity covered by the bill is only one caused by a manufacturer, distributor, authorized dealer, or repairing agent, and not any nonconformity caused either by the consumer or some third party or circumstance. This was an important change in the mind of the dealers' association which I thought could be accommodated without any harm to the consumer interests.

The definitions of "owner," "substantially impairs the market value," and "substantially impairs the use" have not been changed since previous drafts.

However, debate is still going on over "reasonable allowance." "Reasonable allowance" is to be the amount deducted from a return or replacement of a vehicle for the owner's use. The dealers felt quite strongly that we should delete the language saying that there would be no deduction for the owner's use after the very first report of any nonconformity to the manufacturer or dealer. I agreed to this, but wish the committee to be aware of it, and to alter this decision if it is your desire. Also, the committee should make a final policy choice on how "reasonable allowance" would be calculated. The Automobile Dealers

Association very strongly wishes it to be tied to the IRS method of depreciation, which at this time is a 3-year depreciation. Their less-favored alternative is a 5-year straight line depreciation. On the other hand, our office's auto investigator, Scotty Dawkins, tells me that the average age of vehicles on the road in America today is 6.9 years, from which he and I both derived the idea that from a practical use standpoint, perhaps as opposed to a market value concept, the life expectancy of a vehicle should be around seven years, and that should be the time period for the depreciation deduction. (If a consumer drives a vehicle for 11 months out of the first 12 of the warranty, but at the end of that time still has unrepaired nonconformities, the consumer should not lose more than approximately 1/7th of the purchase price of the vehicle when trading it in, certainly not as much as 20% [1/5th] or even 33 1/3% [1/3rd]). However, the manufacturers' and dealers' representatives disagree strongly with the seven year method.

A new definition the committee has not previously seen is that of "repairing agent." A repairing agent is either an authorized franchise dealer or some other person who has been specifically authorized to do warranty repair by a manufacturer or distributor. The attorney for the dealers' association and myself felt that this definition was necessary to bring within the act those independent repair facilities who are sometimes authorized by a manufacturer to do warranty repairs, and who could cause problems in the chain of events causing a "lemon" vehicle. In addition, if the sections of the bill requiring the manufacturers to expeditiously ship warranty parts to Alaskan dealers passes, a repairing agent authorized by the manufacturer should also be able to get the parts quickly without extra cost to the repairing shop or the consumer. "Repairing agent" is definition 10 on page 6 of this draft.

II.
SUBSTANTIVE PROVISIONS OF THE BILL

The analysis returns to the beginning of the bill. While working on the bill, it seemed that the first two sections of the bill, (a) and (b), contained some fairly confusing language.

Basically, paragraph (a) merely requires manufacturers to live up to their warranties by attempting to repair vehicles. Therefore, at page 1, line 12, it was important that we clarify that in order to receive warranty repair service, the consumer needs merely to "report" the nonconformity either to the manufacturer or to an authorized dealer. This is not the section where a

procedure for written formal notice is necessary, but oral notice or taking the car to the dealer's shop should be sufficient notice. Also, at line 15, the word "original" has been inserted to make it clear that the one-year period covered by this bill starts with delivery to the first owner, even though a subsequent owner might file a claim under the bill.

Subsection (b), starting at page 1, line 18, is the section of the bill which requires a refund or replacement for nonconforming vehicles. You will note that wherever the word "defective" appeared, it has been replaced with "nonconforming." This was considered important by the dealers' association and, I believe, is to the benefit of consumers. (In product liability law, it is very difficult to prove that a vehicle is "defective," and therefore it is better to stay within the language of the statute and just talk about "nonconforming" vehicles.)

Also, you will notice in subsection (b) at line 21, that instead of setting out the substantive definition of nonconformity, the definition is incorporated by reference. This greatly helped the flow of the language of the rest of subsection (b).

At page 1, line 24, you will note that the words "full purchase price" are no longer followed by "including all collateral charges." This is because the term "full purchase price" has been defined in (m) so as to include most collateral charges incident to the purchase. In line 26 again, the word "original" is inserted before "owner" to make it clear that the allowance for use runs from and covers all use from when the vehicle was delivered.

The rest of the changes on page 1, lines 26 through 29, and the top of page 2, lines 1 and 2, were made at the suggestion of the dealers' association to properly cover the interests of lienholders on vehicles. Lines 26 to 28 are not new, but page 1, line 29, through page 2, line 2, now mandate that in the case of a refund, the manufacturer would first extinguish the interests of all lienholders of record, and only then pay the remaining amount to the owner. A consumer could of course go out and arrange for a new loan to finance the purchase of a new car, so that the consumer is not hurt by this language.

Page 2, lines 3 through 20. This is a new subsection (c) which significantly modifies the bill's operation, and deserves the committee's close attention. Many debates have gone on in committee, also between various persons discussing the bill with me, as to exactly how, when, and where consumers should have to give written notice to the manufacturer about a "lemon" car.

Finally, I wrote this new subsection (c), which the dealers' association representative approved, to set out exactly how the consumer has to give notice. This may seem more formalistic than the general reference to "report" made in the previous bill drafts, but in fact it would probably create less work for lawyers and courts to have the notice provisions clearly spelled out. (Also remember that should a consumer somehow fail to make the notice required by this bill, they still have other legal causes of action against the manufacturer for a lemon car, just not the provisions of this bill.)

New subsection (c) states that before consumers can claim a refund or replacement, they must mail to both the manufacturer and to the repairing dealer, within 60 days from when their express warranty or the one-year period from delivery terminates, a written notice. The notice must contain three pieces of information: (1) the fact that the vehicle has nonconformities which are reasonably described, (2) the fact that either the manufacturer, distributor, dealer or repairing agent have made a reasonable number of attempts to conform the vehicle, as those terms are used already in the bill, and (3) that the owner will, on the 30th day after the mailing of the written notice, demand a refund or replacement of the vehicle.

(This new section could be inferred to give the manufacturer and dealer yet another 30 days to satisfy the consumer by making one last attempt to fix the vehicle. If the consumer is still willing to work with the manufacturer and dealer, this is good. If, however, the relationship has become so strained that the consumer sends this notice and does not wish to allow any more repair, this is another outcome that the manufacturers will have to work to avoid in how they run their warranty system. Under this section, the manufacturer has still had the 30 business days during the first year to make repairs, or the four attempts to cure nonconformities per subsection (f).)

Subsection (d) is also a new section which goes along with the formalistic notice requirements of subsection (c). Basically (d) requires the manufacturer to deliver to every original owner a brochure explaining the Alaska lemon law, and how a consumer can use it.

Subsection (e) is the old subsection (c) from the previous draft. The language has been changed slightly at page 2, line 21 so that instead of saying that the manufacturer has a "affirmative defense" to a consumer's claim, it now reads that the consumer will not be entitled to a claim for refund or replacement if, as

set out at line 23, the manufacturer or the distributor "shows" that the nonconformity complained of does not impair use nor market value or is the result of a consumer's abuse or neglect. The dealers' representative and I agree that this new revision better sets out for all parties involved, including arbitrators and the courts, the fact that it is the manufacturer's duty to counteract a consumer's claim for refund by bringing up these two defenses.

Starting at page 2, line 30, subsection (f) is the old subsection (d), which sets out what is going to be the legal presumption about a reasonable number of attempts to repair a vehicle under a warranty. This language has stayed basically the same, with some clarifying amendments and the addition of words such as "original" owner. On page 3, starting at lines 2 through lines 13, we broke the two conditions for a lemon into subparagraphs for clarity of reading.

The committee should note in subparagraph (f)(2), page 3, lines 7 to 13, that we deleted the language previously at page 3, lines 7 through 9, which excluded from the one year period any time during which repair services were not available to the owner for reasons not the responsibility of the owner. (The dealers' representative and I discussed this at great length, and decided that if the intent of the deleted lines was to extend the consumer's warranty by every day that the car was in the shop, that there was really no need to do this in the case of a lemon car, because the consumer was going to be demanding a refund or replacement. I agreed that this term did not really seem necessary in light of the other consumer remedies in this bill.)

Page 3, line 14, subsection (g), is a new section, inserted specifically to meet the concerns of Alaskan dealers. This new subsection requires manufacturers to ship needed warranty repair parts in as quick a manner as reasonably possible at no additional freight charge, if the Alaskan dealer does not have a part in inventory. (This section only covers serious nonconformities as defined in the statute, so it would not require a manufacturer to air freight every brake light or windshield wiper, but only parts necessary to cure substantial nonconformities.) I believe that this would be a great benefit to Alaska consumers and dealers, and I urge the committee to adopt this language. However, I am sure that the manufacturers' representatives may have some disagreement with this stance.

Page 3, lines 21 through 24, subsection (h), has stayed basically the same, and basically makes it an unfair trade practice to refuse to replace or refund the motor vehicle when the manufacturer is required to do so. An addition is to make it also an unfair trade practice for a manufacturer to refuse to reimburse a "lemon" owner's costs for shipping a vehicle for repair or to ship warranty parts quickly to the dealer at no cost.

Page 3, lines 25 through 29, subsection (i), has not been significantly changed except for renumbering, and as the committee desired, requires full disclosure before a returned "lemon" vehicle is resold. However, the subsection now incorporates the dealers' association suggestion that this disclosure requirement only be imposed upon the manufacturer, distributor, or actual repairing dealer so that a innocent used car dealer or private consumer not be required to make this disclosure.

Page 3, line 29, through page 4, lines 1-5. The first part of this subsection (j) was already in the bill, and basically says that the provisions of the lemon law do not limit other rights or remedies available to the consumer. However, at the top of page 4, three new lines have been added to state that the lemon law does not create a new type of legal cause of action against a dealer or repairing agent, who either sells or attempts to repair a nonconforming vehicle. (This was a concern brought up by the dealer's association, and it is one which I believe can be accommodated without significant harm to the consumer. It never appeared to be the intent of the original sponsors of this bill, nor of this committee, to make the lemon law penalties directly apply to dealers. Although we all acknowledge that the dealers will be affected by the bill and their manner of doing warranty work may be altered, this bill was not meant to give consumers new legal rights against the dealer. The dealer is, of course, subject to being sued or complained about under any other existing statutes or common law theories, but just not under the lemon law.)

Page 4, lines 6 through 19, subsection (k), is a reworking of the section regarding repair facility requirements within the state. The committee should note at lines 9 through 13 that the concept of "population centers" has been reinserted in the bill. This section is meant to strongly encourage manufacturers to set up additional repair facilities or to select, train and compensate authorized repair facilities. I believe that the manufacturers' association will have a great deal of concern about this section, and the committee must make the choice.

In the same subsection (k), page 4, lines 13 through 19, we added a section which the committee saw at its last hearing, requiring the manufacturer who actually buys back a "lemon" vehicle to also pay for any shipping costs which the consumer had already incurred for getting the vehicle back and forth to a dealer for warranty work. I urge the committee to adopt this language, since this really makes a fair offset against the reasonable deduction for the consumer's use. It allows consumers who live in Sitka or Bethel, if they initially bear the cost of shipping their motor vehicle back to a dealer for repair, to recover those costs if and when the vehicle is found to be a "lemon." This section would not give all consumers back their shipping costs when, for example, they shipped a vehicle back to the dealership and it was repaired and the vehicle did not become a "lemon." Only when the car is a "lemon" and it is going to be bought back or replaced do these shipping charges get mandatorily added in.

Page 4, line 20, subsection (l) is about the informal dispute settlement procedures. You will note the addition of some new language at lines 23 through 30. The thrust of this amendment was suggested by the dealer's association, so as to allow maximum flexibility. In case the manufacturer does not set-up, in advance, a strict arbitration program under the federal Magnuson-Moss Act (16 C.F.R. 703), but is willing to participate in some other arbitration or mediation process, such as with a local conflict resolution center, or a local better business bureau, as long as that arbitration/mediation process is procedurally fair, and has been approved by the attorney general, there is no reason to limit the manufacturer to only using 16 C.F.R. 703 type of procedures. It is good policy to encourage settlement outside the courts and I believe this is a good change.

However, since subsection (l) requires consumers to go through this arbitration/mediation process before litigating, I wanted to make sure that manufacturers could not stall the consumer by negotiating for months and then suddenly offering to go to arbitration, delaying the consumer's right to go on to court. Therefore, I have inserted a requirement that once the owner sends the 30-day notice that they are going to claim a refund or replacement, if the manufacturer then offers to the consumer in writing to participate in an arbitration/mediation process which has been approved by the attorney general, then the consumer is bound to try this method of informal settlement before getting a refund or replacement or getting their shipping costs replaced as paid in subsection (k).

One more major change to the bill, which is significant by its absence is the deletion of the former subsection (j), which had set out the time limits of when consumers could file a court cause of action for a failure to refund or replace by a manufacturer. The dealers' representative and I had significant discussion over this point, and decided that since subsection (h) of this present draft makes the failure to refund or replace an unfair trade practice, that the statute of limitations in that other statute is sufficient. As the draft stands before the committee today, consumers have up to the length of their express warranty or one year from delivery, whichever comes first, plus 60 days, to give written notice to the manufacturer that they intend to file a claim within 30 days. Then at 30 days (this is now up to as much as one year and three months), the consumer can demand the refund or replacement. If the manufacturer offers to go to an approved mediation or arbitration process, the consumer has to go through that process. If the arbitrators award a refund or replacement, and then the manufacturer refuses to follow the award, the manufacturer would at that time be committing an unfair trade practice, and a consumer would have two years to file a lawsuit under the private cause of action section of the Unfair Trade Practices Act, AS 45.50.531(f). Similarly, if the manufacturer does not offer to go to arbitration, they would be "refusing" the consumer's claim and the unfair trade practice two-year filing limit of .531(f) would start to run.

III.
MATTERS OF CONTINUING DEBATE BETWEEN THE ATTORNEY GENERAL'S CONSUMER PROTECTION SECTION AND THE DEALERS' ASSOCIATION

I believe that the committee draft before you reflects a substantial agreement between the Attorney General's Consumer Protection Section and the dealers' representatives. However, there remain several areas of major disagreement, including specifically:

1. The length of time or depreciation method for calculating the "reasonable allowance" deduction for a consumer's use of a nonconforming vehicle. The dealers would prefer the IRS method, which is now three years, or at the longest, five years. Consumer Protection urges that seven years more accurately reflects the amount of time consumers can expect the vehicle to be useable.

2. The dealers' association, like the manufacturers' representatives, strongly disagree with subsection (b) at page 1, line 23, where the "lemon" vehicle is to be replaced by a "new, comparable" vehicle. They wish the word "new" to be deleted. This committee rejected such a proposal at its 1/31/84 hearing on the bill. The dealers and manufacturers feel that if a consumer-owner of a "lemon" drove the vehicle for nearly a year, or drove very hard, or damaged, or maintained it poorly, the replacement car should only be "comparable," but not necessarily "new." I understand their concern, but giving the "lemon" owner a comparable used car and also deducting a "reasonable allowance" for the owner's use of the "lemon" would be an unjust "double-whammy" against the consumer. (Further, if the owner of a "lemon" were thus penalized, the owner ought to be able to collect consequential damages such as lost wages, taxi or rental car fees, from the manufacturer.)

If the committee feels inclined to compromise further on this point, I would suggest a moderate amendment to the definition of "reasonable allowance," to read:

> (m)(9) "reasonable allowance" means an amount attributable to all owners use of a motor vehicle since its delivery to the original owner. A "reasonable allowance" on a vehicle which has been the subject of only normal wear and tear by the owner may not exceed an amount equal to the depreciation in value of the vehicle for the period during which the vehicle is available for use by the owner, calculated by a straight line depreciation method over seven years.

3. The Dealers' Association would prefer that this bill only cover vehicles sold by authorized franchise dealers within the State of Alaska. This would mean that a car sold by a franchise dealer in Texas and then moved to Alaska within the warranty or one-year period would not be covered by the statute. This would also mean that cars sold by dealers in the Pacific Northwest and shipped directly to Alaskans would not be covered by the bill. I do not support this proposed limitation of the bill.

The committee should note that under this draft in front of you, the bill has already become somewhat limited in that when a new vehicle is sold to an Alaskan by a dealer who does not have franchise authorization, then the consumer will not be covered by this bill if that non-franchise dealer causes the nonconformity defect to the vehicle. If the consumer buys from a non-franchise dealer, but then takes the vehicle to a properly authorized dealership for repair, the consumer should be covered for repairs

and for any lemon condition caused by the original manufacturer or by the authorized repairing dealer. However, I can contemplate some occasions where both manufacturer and repairing dealer would argue that a defect or nonconformity condition was caused by the improper setup or preparation of the vehicle by the non-franchise seller.

IV.
REMAINING AREA OF POSSIBLE AMBIGUITY

When I agreed to delete the words "including collateral charges" from subsection (b) at page 1, line 25, I did so because I believed the committee meant "collateral charges" to be only those additional costs incidental to the original purchase of the vehicle (which costs are in this draft included in the definition of "full purchase price.")

However, the committee members may wish to compensate "lemon" owners for a different type of "collateral charges," somewhat like consequential damages. These "collateral charges" could include costs incurred by the consumer directly due to the nonconformities of a "lemon," such as: taxi fares, rental car fees, towing charges, telephone calls. If this is the desire of the committee, I propose the addition of a definition to read:

> (m)(3) "collateral charges" means those additional charges or expenses incurred by the owner of a non-conforming vehicle, not part of the purchase price of the vehicle, which may include, but are not limited to, expenses for replacement transportation, towing, and long-distance telephone calls to the manufacturer, distributor, dealer or repairing agent.

I believe the manufacturers' representatives and the dealers' association would not support this additional amendment, but I wanted to be sure we all understood the intent of the committee.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Connie J. Sipe
Connie J. Sipe
Assistant Attorney General
Chief, Consumer Protection
Section

/aw
Attachment
cc Senator Bill Ray
Representative Mike Miller (Juneau)
Art Peterson, Department of Law
Norman Gorsuch

THE NEW LEMON LAWS—DO THEY WORK?

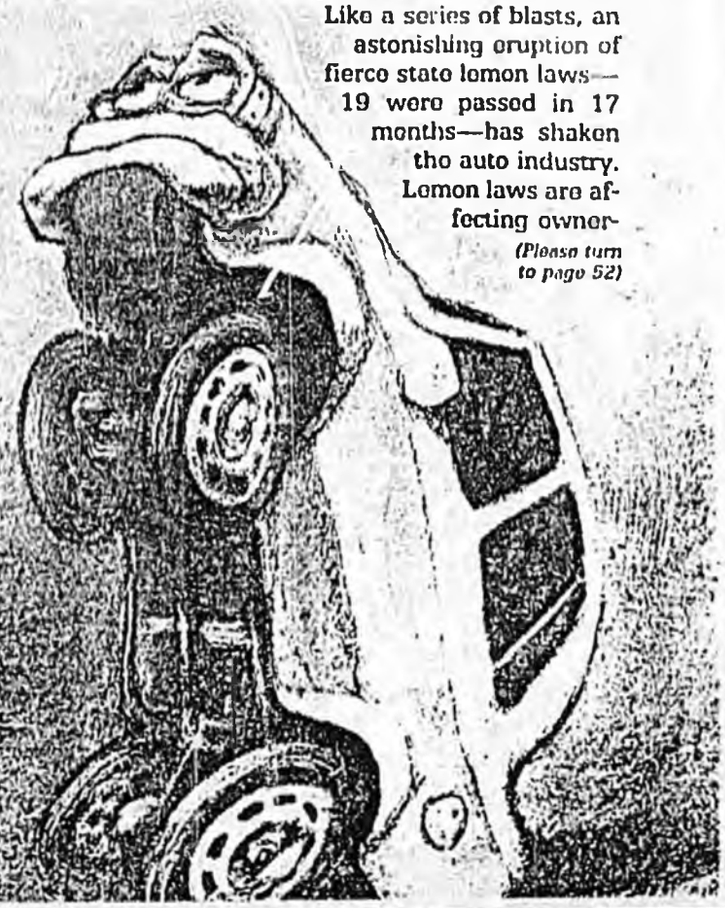
New laws in 19 states promise a fair shake for new car buyers. They are a last-resort alternative to lawsuits.

BY ED FALES; Illustration by Howard Lewis

When Anthony Conti's dealer in Connecticut couldn't fix his Lincoln Continental, he sued—under old credit laws that say any "appliance" must work. Sure enough, he got his money back. But it took seven years.

When Prof. Henry Adelman's feet got wet in his new '82 VW Quantum, his dealer couldn't find the trouble (open boltholes that let the rain in). Adelman, however, didn't sue. He waved a copy of California's brand new "lemon law." He got his money back in 100 days.

When Chester Sobolewski's new Ford wouldn't back up, his dealer couldn't cure it. Chet didn't sue, either. He know his rights under Connecticut's new lemon law: (1) a new car or (2) his money back. He got the new car—in seven days.



Like a series of blasts, an astonishing eruption of fierce state lemon laws—19 were passed in 17 months—has shaken the auto industry. Lemon laws are affecting owner-

(Please turn to page 52)

(Continued from page 50)

service manager relationships wherever they're in effect, from Oregon to Florida.

Although they vary, in general, they provide that any car under warranty that a dealer can't fix in four tries (Florida, Wyoming and Massachusetts say three) is a lemon. U.S. law says warranteed repairs must be made. But the lemon laws now add that if repairs are not made, you're entitled to a new car. Or you can get your money back. But your problem must be genuine—must involve a major problem that affects your car's value or use.

In some states your claim must be made in the first 18 months, in others within 24. New York allows four years. Some give no time limit. The cure is the factory's responsibility.

Buyers get more respect

All this is a drastic attempt—some say too drastic (and needless)—to soothe the angry owner who feels shafted. As written, the new laws are supposed to protect new-car owners. In fact, legislators say, there's a trickle-down effect. Even old-car owners say they're getting more respect from car dealers.

What really shook the industry is the dismaying enthusiasm with which 19 legislatures rushed to act. In some states, the vote was overwhelming. In New York's huge legislative body it was unbelievable: 201 to 3. All this has put backbone in owners who used to feel intimidated by some service managers. "I didn't get a new car," says one owner." (Few really do.) "But I did feel stronger at the service door."

Under lemon laws, settlements are free. The factory or dealer must do as ordered by a remarkable crop of quasi-judicial auto dispute juries that have sprung up from coast to coast.

Are the laws working?

How are the lemon laws really working? Even the first—Connecticut's—is only 17 months old. Some were born only weeks ago. So in most states, actual cases are few. But in Connecticut, Rep. John Woodcock, who fathered the law, estimates that in the first 17 months alone, 40 owners were either awarded new cars or refunds. "And in most cases," says Woodcock, who has become the nation's lemon law guru, "they got new cars."

Here's a small, early sampling of 13 cases in Connecticut, Minnesota and California:

- Got a new car: 1.
- Secretly settled, possibly with a new car: 1.
- Got money back: 3.
- Got troublesome problems fixed at last: 1.
- Owners lost their appeals, got no benefits, are "disappointed with the lemon law": 2.
- Cases pending: 5.

How appeals juries work

Many of these new juries—there are now at least 300—sprang up while lawmakers were busy drafting lemon laws. The most interesting, Autocap (Automotive Consumer Action Program), suddenly has 15,000 dealer-sponsors who pay to run its 41 appeals panels. The others were created by the manufacturers, U.S. and foreign, partly in self-defense, but partly in an honest try at winning back your loyalty.

Most lemon laws require that, before you can claim a refund or new car, you must go before an appeals jury that meets dispute-settlement standards established by the Federal Trade Commission. According to John Woodcock's staff, Ford and Chrysler juries do. Some Autocaps do, others are working toward it. The Better Business Bureau (BBB) is trying to find out whether it qualifies.

Here's what to do if you appeal:

1. Make one last try to settle the problem with the dealer, zone office, or factory. Local dealers have phone numbers of the zone office and factory.

2. If this won't get results, phone or write your appropriate jury (see list at the end of the story). Gather every scrap of evidence—bills, invoices, work orders, memos, dates. In Texas, you're required to appeal any dispute first to the State Motor Vehicle Commission.

Usually, the jury's staff will call the dealer or factory and try to coax a settlement. If this fails, most invite you to sit around their table, informally, with you and your dealer both telling your story. Some investigate very thoroughly. You may have to bring your car and they may test it.

You may get a decision in days, or

(Please turn to page 54)

Questions You Might Ask

What is a lemon?

The new laws in most states say a lemon is a car with a substantial defect that the dealer fails to fix in three to four tries. The defect must affect the value, use or safety of a car. Most laws also say a car must have been laid up for a total of 30 days. (Massachusetts and Florida say 15, Nebraska says 40.) Minnesota's tough law cites any car that has to be fixed just once for steering or brakes. Kentucky, although not considered strictly a lemon law state, has a law that involves any car with serious mechanical problems, even if not on warranty.

How old can a lemon be?

Most states say a car must still be on warranty, or, if warranty mileage has run out, no older than a year. New York stretches the limit to two years or 18,000 miles, and even lets the law be invoked if the owner warned the carmaker during the warranty period of troubles that might grow worse.

Are motorcyles covered?

Lawyers are still interpreting the laws in different ways. Center for Auto Safety attorneys say motorcycles appear to be covered in all lemon law states except California, Delaware, Illinois, Minnesota, New Hampshire, New Jersey and New York.

Are pickups covered?

Yes, in all states but Delaware. Most laws say pickups must be bought for personal, not commercial, use to be covered.

How much of a refund can an owner get?

Minnesota lets the carmaker deduct 10 cents a mile for past use (or a small percentage of the car's cost). New York allows a deduction for mileage over 12,000. Florida allows carmakers 20 cents a mile. Otherwise, you get what you paid for the car if you win.

Does the owner get back taxes, prep and other charges?

Several states, including Massachusetts and Florida, say refunds must include collateral items like sales tax, license fee, finance costs, and (in Florida) undercoating, towing, car-rental and dealer-prep charges.

Do lemon laws give free repairs?

They do not address this. U.S. law, however, says a manufacturer must stand behind his repair warranties. Lemon laws indirectly encourage dealers or carmakers to complete any entitled warranty repairs. And an owner who appeals to Autocap or some of the factory juries may get good-will bill adjustments if there has been mistreatment.

Can a lemon be resold by the factory or a dealer?

In Minnesota, no lemon with defective brakes or steering can ever be resold. In some states, the carmaker must give any buyer a note saying that the car had been a lemon (in some states, "an incurable lemon").

Are noncritical items like defective radios or upholstery covered?

Not by lemon laws. Autocap and some auto juries will consider such items, however.

If you lose a lemon law claim, can you still go to court?

Yes.

LEMON LAWS

(Continued from page 52)

even hours, and it binds the manufacturer and/or dealer. By contract, he must do what the jury says—unless, of course, you lose.

You don't usually need a lawyer. In fact, as this is written, BBB juries won't admit them. You can appeal to such juries in any state, whether it has lemon laws or not. Some juries have awarded new cars or refunds in states that have no such laws.

Who are the jurors? Mainly, they're unpaid volunteers, often leading citizens who give time as a public service. Often, they're merchants, independent mechanics, editors, housewives, teachers, ministers, lawyers. Some boards, like Autocap, have dealer members. But for every dealer, there's a consumer rep sitting opposite.

Most juries are fair

Are their decisions fair? There are gripes, but many juries seem surprisingly fair. Says Gerald Murphy, head of Autocap's Washington, D.C., jury office: "Funny thing, our dealer members are usually tougher on dealers, and our consumer reps are usually tougher on car owners!"

For U.S. and foreign-car owners in general, there are now 41 dealer-established Autocap panels coast to coast. Many have 10-member juries and they'll consider reasonable disputes about anything from a 1984 AMC to a Rolls-Royce that's gone 150,000 miles. Half the jurors are consumer reps, half are dealers.

For Ford-Lincoln-Mercury owners, a new network of over 30 Consumer Appeals Boards (CABs) will hear any honest product or service dispute, no matter how old your car. In fact, Ford's Mike Davis says: "We find most complaints are on out-of-warranty cars." CABs have five voting members (three consumer reps, one Ford, one Lincoln-Mercury dealer).

In its first five years, CABs have had 42,000 inquiries and accepted 10,000 cases for investigation. Ford says more than two in five get a better break on appeal. A few new cars have been given, there have been some refunds, and some major parts like transmissions or engines have been replaced. Only 43 owners went to court.

Reviewing warranty repairs

For Chrysler-Dodge-Plymouth owners, at least 52 Chrysler Customer Satisfaction Boards (CSBs) review only service-related disputes over warranty repairs. They won't handle disputes over alleged design defects or out-of-warranty cars.

CSBs have five members: a consumer rep, a public rep (who could be a public official), a technician certified by the National Institute for Automotive Service Excellence (NIASE), a Chrysler rep and a Dodge or Chrysler-Plymouth dealer.

Chrysler's routine is more stringent than some. Your appeal is all handled in writing. You do not appear. If your car must be tested, you get a free loaner. CSB decisions bind Chrysler or the dealer.

Keeping customers happy

Believe it or not, GM is getting tips from IBM, AT&T and even McDonald's on good ways to keep customers happy. GM began testing a Customer Assistance Program in 1978 and now pays the Council of Better Business Bureaus to administer the mediation of disputes in its 140 Bureaus. GM doesn't discuss details, but according to one report, each Bureau gets $15 to mediate a dispute or, if that fails, $35 for binding arbitration. GM calls mediation "an informal process of re-establishing communication between both parties." Arbitration binds GM but not the owner, if he doesn't like the decision. BBB will look at GM cars up to five years old, with no mileage limitation.

First, as noted, an owner must try to settle with (1) his dealer, or (2) GM's zone office or (3) by contacting GM Customer Service (see *Where To Call If You Have A Dispute* on this page).

If all this fails, BBB sends you a list of five names of possible jurors, with a biography on each. You score your preferences 1 to 5. So does the factory. The highest scorer becomes your jury. Some states require a panel of three.

According to CBBB, of 26,300 appeals in eight months last year, 17,000 were settled by mediation and 1,800 by arbitration. Some 7,500 are still pending.

Auto age limit

For VW, Datsun-Nissan and Porsche-Audi owners, BBB arbitrates as it does for GM, except that cars can be no more than three years old.

For Jaguar, Rover and Triumph owners, the procedure is the same as above, but cars must still be on warranty.

Disputes in some states are resolved by the attorney general, secretary of state or the motor vehicle commission. These have clout because they enforce commercial laws and license dealers and manufacturers.

Even if you lose a jury decision, you can still hire lawyers and sue, and whatever any auto-dispute jury has ruled now becomes legal evidence for or against you. But suing is expensive, can take months or years, and may cost more than your car is worth. Some suits fall under the Magnuson-Moss federal warranty act of 1975, which says manufacturers must stand behind their warranties.

Lemon law results

In Washington, D.C., an industry-advisory group cites a survey which shows that owners who get good treatment tell eight friends. Those who get bad treatment tell 16. With manufacturers and dealers more responsive than ever to consumer complaints, perhaps we'll see the day when lemon laws are no longer needed. **PM**

Where To Call If You Have A Dispute

Owners' manuals, especially the recent ones, often give phone numbers and/or addresses of owner-assistance boards. But first talk with your dealer, then the carmaker's zone office, then the carmaker's headquarters. Some zone offices will relay your inquiry to the head office.

Autocap is listed in many big-city Yellow Pages. For phone numbers and addresses in all states, contact NADA Autocap Office, 8400 Westpark Dr., McLean, Va. 22102 (or call 703-821-7144).

For GM cars, write GM Customer Service, GM Building, 3044 West Grand Blvd., Detroit, Mich. 48202, or phone 313-556-2294.

Better Business Bureaus appear in city Yellow Pages. For a full list, with phones, write to Council of Better Business Bureaus, Wilson Blvd., Arlington, Va. 22209, or call 800-228-6505.

Ford Consumer Appeals Boards: From most places, dial 800-241-8450.

Chrysler Customer Satisfaction Boards won't take calls. Contact them by mail. Address for your area is in owners' manuals (look under "Service Assistance"). Or ask dealer or zone office for a list of boards. Detroit Customer Relations address is Box 1718, Detroit, Mich., 48288. Phone 313-956-5970.

Lemon Law Tally

- There were 19 states with lemon laws as this report was drafted. The Center for Auto Safety in Washington, D.C., lists: California, Connecticut, Delaware, Florida, Illinois, Maine, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, Texas, Washington, Wyoming and Wisconsin.
- A federal lemon law has been proposed in Congress.
- These 18 states have considered, or are considering, lemon laws: Alaska, Arizona, Colorado, Georgia, Hawaii, Indiana, Kansas, Louisiana, Maryland, Missouri, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina and Vermont.

Lemon goes back to Buick

By K.C. MOON
Daily News reporter

Since he bought his Buick Century new in 1982, Dennis Stovall has been cursing the car, trying to find some way to get rid of it.

Window cranks fell off in his hand. Transmission failures left him stranded. Windshield wipers quit during heavy rains. Warning lights flickered as the engine sputtered and grumbled.

Now, in what Stovall says is a monumental victory for consumers, Buick must buy back the car.

The buy-back is the result of the first Alaska arbitration of consumer complaints

Anchorage Daily News/Fran Durner

See Back Page, CAR

Dennis Stovall stands with the Buick that he'll be selling back to its makers.

Anchorage Daily News 2/7/84

Car to be bought back by Buick after owner wins his case in arbitration

Continued from Page A-1

against General Motors, the maker of Buick models and one of the world's largest corporations.

The arbitration program is similar to one mandated three months ago by the Federal Trade Commission, which in a 1980 suit accused GM of failing to notify its customers of serious defects with many GM cars.

Instead of pursuing its federal court suit, the commission voted in November to accept GM's offer to arbitrate all consumer complaints through local Better Business Bureaus.

Since Alaska has no bureau, the bureau in Seattle handles consumer complaints for Alaskans.

Stovall's arbitration hearing was held Jan. 20 in Anchorage. He and a Buick representative argued their cases for about eight hours before three volunteer arbitrators, all from Anchorage.

Over the weekend, Stovall received a letter stating he had won his case. All arbitrators agreed with Stovall's contention that he "did not get the reliability he bargained for when he bought the 1982 Buick and does not foresee the situation improving" according to the letter.

Stovall will get most of what he asked for, but the arbitrators decided to deduct from Stovall's $9,865 purchase price 20 cents for each of the 7,500 miles the car has been driven.

"That deduction is the only part that upsets me," Stovall said. "But I would have put a lot more miles on it had I not been scared to drive it."

Stovall should get a check for more than $8,300 when he turns the car over to Alaska Sales and Service, the GM dealership that sold him the car.

"I'll be glad when I never have to deal with this car again," Stovall said. "It's taken a lot of work and a lot of time, but I finally got what I wanted."

Stovall showed copies of about 50 letters he had written to the dealership and Buick customer relations offices in an effort to get the car fixed.

In the two years of ownership, the car had been almost 60 days in the Alaska Sales and Service repair shop, according to repair documents. In the first seven weeks after the sale, the car was in the shop five weeks.

Buick representative Kerry Stasch, who defended the automaker at the Jan. 20 hearing, said he could not comment on the outcome of the arbitration. Buick zone manager Bill Powell said he would answer only those questions presented in writing.

Richard Hiatt, service manager for Alaska Sales, said Monday, "We support the Better Business Bureau and whatever decision is rendered."

He said Buick, not Alaska Sales, is responsible for paying Stovall. Hiatt said he had not been in contact with Buick headquarters to find out when and where the transaction would take place.

"Most likely the car will be resold, either by us or some other dealer," Hiatt said. "It's not a bad car.

"Unfortunately, (Stovall) had problems with it, but in my opinion it's completely safe."

Hiatt said that although it is not Alaska Sales' policy to buy back cars sold, "we have bought back cars before."

Normal procedure for handling a complaint like Stovall's "is to try to trade the customer into another car," he said.

That offer was made to Stovall several times, but the 33-year-old schoolteacher turned it down. "I could have traded my car in at any dealership," he said. "I wanted my money back."

"We've been bowing and curtsying to these huge coporations for too long," Stovall said. "It's time we stand up and fight them.

"What I hope my case does is open Alaska up to the arbitration process," he said. "People need to know they don't have to sit there and get kicked around after they've bought a 'lemon.'

"I know a lot of people who had worse cars than mine and couldn't do anything about it."

The arbitration program set up for Alaskans by the Seattle Better Business Bureau still is being developed. Wendy Bennington, who manages automobile arbitrations for the office, said the bureau is planning to contract with a local organization to monitor Alaska hearings until the Anchorge bureau office opens.

Two of those who heard Stovall's case were volunteers from the Anchorage Conflict Resolution Center. The state Consumer Protection Office helped coordinate Stovall's hearing.

Bennington said her office has received 200 calls from Alaska GM owners since the November FTC ruling. The next arbitration hearing in Anchorage will be held in four weeks, she said.

Demands that manufacturers buy back autos are rare, she said. Most consumers simply seek reimbursement for repairs.

Bennington said of the complaints her office has received, only about 3 percent make it to arbitration. The rest are settled when consumers accept automakers' mediation offers.

Bennington said Alaskans wanting to participate in the arbitration program can call the Seattle Better Business Bureau collect at 206-622-2578.

Ketchikan Daily News
Feb. 7, 1984

10

GM's earnings could set industry record

DETROIT (AP) — General Motors Corp.'s 1983 earnings could set a record for the nation's largest automaker and lift combined U.S. car industry profits for the year to an all-time high, analysts say.

Many analysts see GM surpassing its record profit of $3.51 billion set in 1978, a year before the American car industry plunged into a four-year sales slump that Detroit began to shake off just last year.

David Healy, an automotive industry analyst for Drexel Burnham Lambert Inc. in New York, said the earnings will be "in the neighborhood of" $3.7 billion.

"Dollars weren't what they were in 1978, so it won't be a record in real dollars. But that's still a very good figure," Healy said.

GM Chairman Roger B. Smith, who has led the company on its way out of the industry's sales slump, was to make the earnings announcement in an address to the National Press Club in Washington this afternoon.

When Ford Motor Co., Chrysler Corp. and American Motors Corp. close their books later in the month, the U.S. car industry is expected to have racked up profits far exceeding the industry record of $5.18 billion in 1977.

The record earnings for a year by a U.S. corporation was set in 1982 when AT&T recorded a profit of $7.23 billion, earning more than $2 billion in one quarter alone.

Analysts predict that Ford's earnings could approach, or even exceed, its record of nearly $1.7 billion in 1977. Chrysler is a sure bet to set a record for 1983. Its record for a year was $422.6 million in 1976 and it eclipsed that in just three quarters of 1983, earning $582.6 million. AMC says it will post a profit for the fourth quarter, but has not predicted a profit for the year.

Healy said GM's results came "from a combination of three things: the recovery in car sales, a reduction in their break-even point — doing it with fewer people — and the market mix, which is very profitable. They were selling more of the profitable big cars and not as many of the smaller cars."

Gary Glaser, an automotive analyst for Sanford C. Berstein & Co. Inc. in New York, said GM piled up the profits because of improved sales in big cars, GM's specialty, the improved sales market that has aided all carmakers and better efficiency, which has dramatically lowered GM's break-even point.

"The overriding factor has been the significant increase in (cars and trucks) sold as the market comes back," Glaser said. "Certainly, part of it relates to the fact that GM is the most significant player in the higher end of the market."

He also cited "the excellent programs GM has made in lowering and containing costs."

Glaser said that in 1978, when GM hit its previous record profit, "they needed to build 5 million vehicles to break even. By 1983, Glaser said, GM had lowered that "to 4 million. This is really the key, with the fact that sales have indeed come back."

Dealers	Manufacturers	Consumers
ll refund and not replacement Vehicle was at dealer's guest (sec. b) itten notice to dealer at dealer's guest (c) anufacturers must provide rranty parts to dealers as on as possible (sec g) 'arified that dealers do not ve any new legal liability for "lemon" (sec j) ropped service repair facility each population center of 500 as they didn't want to courage new dealerships ealer wanted definition to be ited to franchise dealers (sec n) otorcycles, scooters, ATV excluded ec n) rict def. of "nonconformity" at lers request (sec. n) pairing agent defined to make anufacturer liable for agents thorized warranty work (so dealer held accountable for agent's stakes (sec n)	- Consumer must give written notice to manufacturer at request of manufacturer. (c) - Thirty business days to repair nonconformity was at manufacturer's request (some have 15 days) (Sec f) - Added "nonconformity" parts and as "reasonably" possible to accommodate some of manufacturers concern (sec g) - Dropped service repair facility in each population center of 7,500 (was part sec k) - Manufacturer can require consumer to go to arbitration first before qualifying for a refund (sec m) - Reasonable allowance also to include depreciation due to abuse by owner (at dealers request) (sec. n) - After required consumer notice (sec c) manufacturer has 30 days to make final effort to negotiate settlement with consumer - All consumer warranties are not extended by time in shop for repair	- Manufacturer must make necessary repairs under warranty (sec a) - If a car is a "lemon," manufacturer must refund $ (sec b) - Explanatory to consumer re: lemon law (d) - A full disclosure of a "lemon" must be made when resold (sec i) - Manufacturer must pay transportation cost to repair facilities if it is proven a lemon. (sec l) - Full purchase price includes "finance charges" (Conn. putting in revision to include finance charges (sec n)

MAY 4, 1984

TO: JOHN

FROM: KEN

RE: CSSB 286 RELATING TO MOTOR VEHICLE WARRANTIES

COMMITTEE SUBSTITUTE FOR SENATE BILL 286 IS BEFORE THE COMMITTEE AGAIN THIS MORNING FOR I EXPECT WILL BE THE LAST TIME. AT OUR LAST HEARING ON THIS LEGISLATION, THE COMMITTEE ADOPTED A HOUSE SUBSTITUTE FOR THE SENATE VERSION OF THE BILL. AFTER CAREFUL CONSIDERATION OF THE CHANGES MADE IN THE BILL BY THE APPOINTED SUB-COMMITTEE, I HAVE ASKED LEGAL SERVICES TO PROVIDE A SECOND COMMITTEE SUBSTITUTE WHICH MAKES ONLY TWO CHANGES. SUBSECTION (2) OF PARAGRAPH (e) HAS BEEN DELETED AND THE NUMBER OF YEARS USED IN THE STRAIGHT LINE DEPRECIATION METHOD HAS AGAIN BEEN SET AT 7 YEARS. THE LANGUAGE IN THE PARAGRAPH TWO WAS TOO VAGUE AND DID NOT CLEARLY DEFINE "UNSAFE TO OPERATE." I FELT IT MAY CAUSE PROBLEMS IN THE FUTURE. AFTER CONSIDERING THE DATA AVAILABLE, I BELIEVE THERE ARE VERY FEW CARS IN ALASKA THAT HAVE A LIFE SPAN OF TEN YEARS. I FEEL THE 7 YEAR FIGURE IS MORE FAIR. I WOULD ENTERTAIN MOTIONS TO ADOPT THIS COMMITTEE SUBSTITUTE AND MOVE THE BILL ON TO ITS NEXT COMMITTEE OF REFERAL.

Section Analysis of CSSB 286 (2/23/84 version)

Subsection (a)

If a new vehicle does not conform to an express warranty, the manufacturer must make the necessary repairs. No time limitation is mentioned in this section. It merely requires the manufacturers to honor their own express warranty for whatever term they give it (1 to 5 years, or by mileage limits).

Subsection (b)

If the manufacturer is unable to repair a nonconformity vehicle within one year, the manufacturer must accept the return of the car and shall refund the full purchase price to the consumer.

Subsection (c)

This section clarifies exactly how and when a consumer must give notice to the manufacturer that the consumer believes he or she has a lemon car for which a refund is requested.

Subsection (d)

This section, following the lemon laws in the states of Massachusetts and California, requires the manufacturer to deliver some type of explanation to all new owners of vehicles about their rights under the lemon law.

Subsection (e)

This section states that an owner may not receive a refund if the manufacturer can show that the nonconformity does not impair the use or value of the vehicle or that the nonconformity is the result of alteration or abuse by the owner or a person other than the repairing agent.

Subsection (f)

A vehicle is considered a "lemon" if the same nonconformity has been subject to repair ~~four~~ or more times within a one-year period or if the vehicle has been in the repair shop for a total of 30 or more business days during the one-year period.

Subsection (g)

A manufacturer must provide its dealers with any part necessary to make repairs of a nonconformity covered under the warranty as soon as reasonably possible without additional charge for freight or handling.

Subsection (h)

Under this subsection, a manufacturer who fails to refund the purchase price of a "lemon" is "presumed to have committed" an unfair trade practice. "Presumed to have committed" sets out a legal presumption which the manufacturer can then rebut by showing the courts that the manufacturer had some valid reason (when applicable).

Subsection (i)

This subsection states that when a "lemon" is resold, a full disclosure of the reason for the return must be made to the prospective buyer.

Subsection (j)

This bill does not limit the rights of a vehicle owner as stated in other provisions of law.

Subsection (k)

This subsection requires manufacturers to retain repair facilities within the state, able to service the vehicles they sell.

Subsection (l)

Once a "lemon" car has been returned to the manufacturer for a refund, the manufacturer must compensate the owner for all reasonable costs which the owner incurred in shipping the vehicle back and forth from the nearest authorized repair facility for warranty service.

Subsection (m)

This subsection allows the manufacturer to use any arbitration or mediation process, even if the manufacturer has not set up in advance a Magnuson-Moss type (16.C.F.R. 703) informal dispute settlement procedure. In all cases, the attorney general must approve the process and the arbitration decision must be binding on the manufacturer but not on the owner. This subsection insures that as many of these lemon law disputes as possible will stay out of the court system, and that both consumer and manufacturer will be encouraged to use informal settlement processes.

Subsection (n)

The definition section outlines the specific meanings of terms used in this legislation. Note should be taken of the following definitions:

Subsection (n) (4) - "full purchase price" includes all fees paid at the time of the sale, including finance charges.

Subsection (n) (6) - "motor vehicle" includes land vehicles with four wheels "normally" used for personal, family or household purposes.

Subsection (n) (9) - "resonable allowance" is set at a sum which will include no more than straight-line depreciation figured over seven years, plus, when applicable, an amount for depreciation in value of the vehicle caused by neglect or abuse by the owner.

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly
Publisher

Howard Weaver
Managing Editor

Steve Lindbeck, Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Alaska's Only Morning Newspaper • Founded in 1946 by Norman C. Brown

Repair law would offer 'lemon aid'

It's called the lemon law, but it sounds sweet to Alaskans stuck with new cars that scream out — and out and out — for repair. Now before the Senate Labor and Commerce Committee, SB 286 sets specific standards for determining when a car can officially be declared "a lemon," and lays some legal groundwork for resolving habitual car repair hassles.

In doing so, it promises to put some teeth into the express warranties offered by manufacturers as part of virtually every new car package.

SB 286 stipulates that if new-car dealers fail to correct a serious defect after four attempts, or if a car has spent more than 30 working days under repair, manufacturers must replace the car or refund the purchase price. The law would apply only to those defects covered under new-car warranties, and only during the first year of ownership.

Although real duds comprise only a small fraction of the automobiles sold in this country, anyone who has ever suffered the maddening outrage of repeated — futile — attempts to rectify a warranty-covered problem will appreciate the need for some firm guidelines for all concerned.

Not surprisingly, some opposition to the measure has been voiced by some local automobile dealers. Although the dealers say they don't oppose the concept of the law itself, they fear they will be caught between such a law and manufacturer-caused delays they have no control over. They claim that much of the delay with auto repairs in the 49th state can be placed at the hands of the manufacturers themselves — who air-freight parts for warranty repairs to every state except Alaska. (If Alaskans want parts air-freighted, they must pay the additional cost.) The dealers also claim manufacturers are loathe to reimburse them fully for the higher cost of doing warranty repairs in Alaska.

Although we can sympathize with the dealers' often frustrating long distance role in the new car equasion, they represent the front line of automobile responsibility to consumers. They are the people who sell the cars; they must shoulder the responsibility to stand behind the cars they sell.

The Consumer Protection Division of the Attorney General's Office receives more complaints each year about warranty-related problems than any other consumer problem. And, as Attorney General Norm Gorsuch put it, "If prodding a recalcitrant manufacturer to fix a problem car is difficult for the dealer, that difficulty is magnified ten-fold for the consumer." It shouldn't be. A car is one of the major purchases most people make in their lifetimes, second only to a home.

So far, 18 states have passed lemon laws. Another seven states are now considering them. Alaskans pay more for their cars than anyone else; they have the right

Anchorage Daily News Wednesday, February 15, 1984

1983 sales of $74.58 billion also an alltime high

GM earns a record $3.73 billion

By Kathleen Hamilton
Financial Editor

When General Motors reported its 1983 financial results last week, it was hard to find a performance indicator that didn't set a record.

Sales of $74.58 billion were a record. Fourth-quarter sales of $20.82 billion were an any-quarter high. Profits for both 1983 ($3.73 billion) and the quarter ($1.30 billion) were records. Income per share was a fourth-quarter record.

GM of Canada and GMAC both set revenue and income records. And GM's results no doubt led the U. S. auto industry to a record profit total for 1983.

GM's earnings of $3.73 billion ($11.48 a share) were nearly four times 1982's $963 million ($3.09 a share).

Sales of $74.58 billion were 24 percent more than 1982's $60.03 billion. Unit sales also were up 24 percent — from 6.24 million to 7.77 million.

The old GM profits record was set in 1978, when GM made $3.51 billion — $222 million less than last year — but sold 9.48 million vehicles, 18 percent more than last year's 7.77 million.

Last year's sales value, meanwhile, was 18 percent higher than in 1978, and 12 percent higher than the old GM record of $66.31 billion, set in 1979.

"It's certainly true that we did get a lift from the rising economy, but our improved operating performance was the key," GM Chairman Roger B. Smith said in announcing the 1983 results in a speech at the National Press Club in Washington.

"For example, if we had operated in 1983 at our 1983 volume but at our 1978 performance rates, we would have barely broken even last year," he said.

Smith said GM still "has a long way to go" toward a record performance if its profits are adjusted for inflation.

GM's before-tax income skyrocketed from $22.8 million in 1982 to $4.97 billion last year — a far larger increase than the hefty after-tax increase — because GM paid out 45 percent of its income in taxes last year. In 1982, it garnered a tax credit of $252.2 million. GMAC contributions to GM income aren't included in the pre-tax figures.

In addition, GM said a new accounting procedure for foreign currency translations reduced its 1983 profits $422.5 million.

Almost all the pre-tax earnings increase — $4.22 billion worth — was attributable to domestic income increases, according to the GM figures.

After-tax income generated in the U. S. more than tripled, from $1.08 billion to $3.47 billion, on a sales gain of only 31 percent (from $50.32 billion to $66.16 billion).

Unit sales in the U. S. rose 27 percent, from 4.04 million to 5.12 million.

• In Canada, net income of $592.3 million was a $626 million turnaround from money-losing 1982.

(Those are the consolidated figures reported by GM in Detroit, and don't exactly match the figures issued from GM of Canada because of exchange rates and adjustments for cross-border shipments. GM of Canada reported record sales of $13.8 billion (Canadian) and net income of $675.6 million.)

Results from Europe weren't so rosy. Sales rose 8 percent to $7.97 billion, and GM set a record in market penetration, but it turned in a loss of $228.3 million. The company attributed most of the loss to the change in accounting procedures, but the competitive European market has led all makers to cut their margins there. Using the old accounting methods, GM broke even in Europe in 1982, with profits of $6.2 million.

GM also lost money in 1983 in Latin America ($15 million) and the Australia/Oceania region.

GMAC set another income record, this time $1 billion, compared with its old record of $688 million, in 1982.

GM added more than $3 billion to its cash pot during the year, ending 1983 with a stunning $6.22 billion in cash and marketable securities.

It spent $2.60 billion on R&D, up 20 percent from 1982's $2.18 billion.

Capital spending of $4.01 billion was 35 percent less than 1982's $6.21 billion. Capital spending is expected to be about $6 billion this year, GM said.

• GM contributed $180 million to its executive bonus plan, the first contribution in four years and the maximum allowable under the 1977 formula. As GM promised the UAW, the sum is less than allowed under the 1982 formula, which was approved by stockholders shortly after UAW members granted the company concessions.

Another $26.5 million accrued to the Performance Achievement Plan for 1983, the first such accrual since the plan was approved in 1982. It is the estimate of what will be paid to about 500 top executives for 1983 if they and GM achieve long-term performance objectives. Payouts are scheduled for 1985 and 1987.

Profit-sharing payouts for 1983 to lower-level salaried workers and hourly workers will amount to $322 million. GM paid $892 million in dividends during the year.

Fourth-quarter profits of $1.30 billion ($4.11 a share) were nearly nine times the $145 million (45 cents a share) made in the fourth quarter of 1982. Quarterly sales of $20.82 billion were 50 percent more than the $13.88 billion of a year earlier. Unit sales for the quarter rose 48 percent, from 1.43 million to 2.12 million.

Dealers bullish, cite strong sales prospects

By Al Fleming
Industry Editor

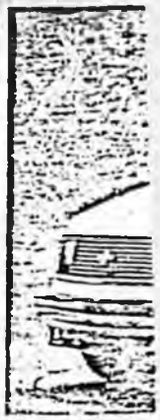
DALLAS. — Richard J. Gillis figures his timing couldn't be better.

Last June, he bought a Ford dealership in Sterling, Va. Its break-even volume was 950 new vehicles a year, but it sold only 256 vehicles in 1982 and was $300,000 in the red.

In the first half of 1983, Sterling Ford ("Home of the Silver Dollar Deal") sold 869 vehicles to wind up with 755 sales for the year.

"I'm excited about the next two, three, four years," gushed Gillis during a respite at the NADA convention last week.

"People are perceiving that now's a good time to buy a car," he said. "They're feeling good about their jobs and the cost of money and are turning in their old clunkers on new ones they've postponed buying."



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AMENDMENTS MADE TO CSSB 286 BY THE HOUSE LABOR AND COMMERCE COMMITTEE SUB-COMMITTEE

1. Page 1, Line 29:
Insert the word "certified" following "by".

2. Page 2, Line 1:
Insert the words "dealer or" following "its".

3. Page 2, Line 11:
Delete "30 days or more" and in its place insert "within 60 days".

4. Page 2, Line 12:
A new sentence is added to paragraph (4) which reads "Within 30 days after receiving the notice required by this subsection the manufacturer may make a final attempt to conform the vehicle before a refund is made under (b) of this section."

5. Page 2, Line 13:
Delete paragraph (d).

6. Page 2, Line 23:
Insert the words "dealer or" before the word "repairing".

7. Page 2, Line 26:
Insert the words "dealer or" before the word "repairing".

8. Page 3, Line 6:
A new paragraph (2) is added which reads " the nonconformity makes the vehicle unsafe to operate and the same nonconformity has been subject to repair at least twice by the manufacturer, distributor, dealer, or repairing agent during the express warranty term or the one-year period referred to in (1) of this section, whichever period terminates first, but the nonconformity continues to exist; or"

9. Page 3, Line 6:
The original paragraph (2) is re-titled (3) and is inserted following the new paragraph (2).

10. Page 3, Line 20:
Insert the word "full" following "the".

11. Page 3, Line 25:
Insert the word "or" following manufacturer, delete "or repairing agent" and insert the words "in the state" following distributor. Both commas on this line are also deleted.

12. Page 4, Line 4:
Delete "sold in the state shall maintain repair facilities or authorize repairing agents" and insert "who authorize the sale of the manufacturer's or distributor's motor vehicles in the state shall maintain authorized dealership facilities".

13. Page 5, Line 1:
insert the word "warranty" following "and".

14. Page 6, Line 8:
Delete the words "includes a dealer or other person" and insert the words "means a person".

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Deleting finance charges from refund, continued--

Under the "Rule of 78s" which Alaska law says must be used to compute interest on early payment of a retail sales installment loan, here is an example of how a consumer will be penalized for the use of a lemon, if the finance charges are deleted from the bill.

Buyback of a lemon, used 12 out of 13 months:

Original cost of vehicle	$12,000.00
Maximum allowance for consumer use (deduction)	- 1,710.00
Buyback Refund	$10,290.00

If accrued finance charges are dropped from the bill, consumer's true purchase cost (without additional damages) is:

Down Payment	$ 2,000.00
12 payments (of 36)	3,350.04
Loan payoff	8,096.42
Total cost	$13,446.46
Less Buyback Refund	$10,290.00
Consumer's cost to use car 12 months:	$ 3,156.46

PRECEDENT:

Massachusetts, Delaware, and New Jersey specifically include finance charges in the refund. Six or seven more states allow refund of "full purchase price" plus a broad category of collateral charges (interest not specifically included or excluded).

By REP. MIKE MILLER

One of the most important consumer protection bills before the legislature this year would, if passed, force automobile manufacturers to repair or replace "lemons" sold to Alaskan car purchasers.

This legislation is literally a matter of life and death. One Kenai Peninsula resident lost family members because of defects in a car he purchased as new. This is just one of many actual and potential tragedies on our roads due to defective automobiles — vehicles supposedly brand new and just off the showroom floor.

According to the Consumer Protection Division of the Alaska Attorney General's Office, between 800 and 900 Alaskans purchase defective vehicles each year.

Most of us are car owners, and purchasing a new car is one of the major financial commitments we make. As sponsor of the House version of the "lemon bill," I feel very strongly that automobile manufacturers have a responsibility to those who purchase their cars. Unfortunately, case after case shows that the manufacturers often turn a deaf ear to the owners of the cars that spend most of their time in the shop.

CSSB 286, the Senate version of the lemon bill, was introduced by Sen. Bill Ray and has passed the Senate. The House Labor and Commerce Committee is currently conducting public hearings on this legislation. I strongly encourage citizens to testify in favor of this crucial legislation.

Unfortunately, powerful economic interest groups are currently trying to water the bill down, so that business can go on as usual. That is the reason strong citizen response is so important right now.

The bill passed by the Senate gives strong protection to the purchaser of a defective car, while putting the responsibility on the manufacturer, not the Alaskan dealer. The bill requires the manufacturer to buy back defective vehicles if the defect is not repaired — under the terms of the manaufacturer's own warranty — within a year after purchase. A car is considered a "lemon" if the same defect has been subject to repair three or more times within that year, or if the vehicle has been in the repair shop for a total of 30 or more business days during the year.

If these conditions are not met, the owner of the lemon vehicle then has the right to full refund of the purchase price of the car, including finance charges, less depreciation and any damage done while in the owner's possession.

Among other provisions, the bill requires manufacturers to notify the buyers of their rights under the legislation.

What could be more fair? This is already being done in Massachusetts and California, and there is no reason for Alaska not to protect its citizens in this manner.

Unfortunately, both dealers and manufacturers are attempting to take the teeth out of the bill.

Dealers want the bill amended to change the number of allowed repairs from three to four; to delete finance charges from the reimbursement requirement; and to place responsibility of notifying consumers of their warranty rights with the state, not the manufacturer.

Manufacturers also want the bill weakened. Currently, Alaska is the only state in the nation in which the car owner must pay air freight if parts must be ordered from outside. The bill would close this loophole by requiring the manaufacturer to pay air freight just as they do in the other 49 states. Manufacturers want this section of the bill deleted.

Manufacturers also want to delete the section that requires them to pay back finance charges to the lemon owner. The reason for requiring the repayment of financing interest charges is simple: According to the Attorney General's testimony, 75 percent of all cars purchased in Alaska are financed. Many cars are financed through dealerships and manufacturer's subsidiaries. In fact, General Motors Acceptance Corp. finances 80 percent of all GM cars sold in the state. Dealers make money if a car is financed in this way. They certainly don't want to have to give it back, even if the car they sold is a lemon.

I also have some amendments that I would like to see, because in contrast with the opinions of the dealers and manufacturers, I don't think the bill goes far enough.

I think that purchasers of lemons should also be reimbursed for their out-of-pocket expenses for necessary car rental while their lemon is being repaired, and also for any towing charges resulting from warranted failures.

If the defect is one affecting the life safety of passengers, I think the dealer should be allowed only two attempts at repair instead of three before the refund process triggers.

Your local Legislative Information Office can provide you with a copy of the bill, and with dates and times of upcoming committee hearings, the next one being Wednesday at 8:15 a.m. You can also call the L.I.O. to send a Public Opinion Message to your legislators in support of this all-important consumer protection issue, as written or stronger.

I can think of few issues this year that will affect public safety and wellbeing as much as the passage of this bill.

Unfortunately, I am afraid that economic interests may be talking louder than the public interest.

Don't let the House Labor and Commerce Committee turn the lemon car bill into a law that is itself a weak lemon!

Rep. Mike Miller of Juneau is House Democratic minority leader and a six-term veteran in the state House of Representatives.

Juneau Empire 4/17/84

SB

296

MARCH 22, 1984

TO: JOHN

FROM: KEN

RE: CSSB 296 "RELATING TO CERTAIN LICENSES, PERMITS, AND REGISTRATIONS"

THE PURPOSE OF SENATE BILL 296 IS TO REDUCE THE AMOUNT PAPERWORK AND PREPARATION REQUIRED TO OBTAIN OR RENEW A LICENSE, PERMIT, OR REGISTRATION. UNDER CURRENT STATUTES REGISTRATION AND RENEWAL FEES ARE PAID ON AN ANNUAL BASIS. THIS LEGISLATION SET UP A BIENNIAL RENEWAL SYSTEM AND DOUBLE THE DOUBLE THE FEES.

FOR YOUR CONSIDERATION:

JOHN LINDAUER HAS PROPOSED A NUMBER OF AMENDMENTS TO THIS BILL WHICH WOULD AIDE THE DEPARTMENT OF LABOR IN THEIR FEE AND CERTIFICATE STRUCTURE. THE DEPARTMENT OF COURSE SUPPORTS THE AMENDMENTS. HALFORD AND BENNETT, WHO SPONSORED THE BILL ORIGINALLY, SAY THEY SEE NOTHING WRONG WITH ALLOWING THE AMENDMENTS TO BE ADDED.

QUESTIONS:

1. WHY DOES SB 296 RESTRICT ITS APPLICATION TO ONLY THESE BILLS ?

2. WHY HAS THE DEPARTMENT CHOSEN 296 FOR THESE SUGGESTED AMENDMENTS AND WHY ARE THEY NECESSARY ?

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/21/84

REQUEST
Bill/Resolution No.: CS SB 296
Title: "An Act relating to annual-biennial licensing"
Sponsor: Labor & Commerce Comm
Requestor: Senator Eliason
Date of Request: 2/20/84

FISCAL DETAIL
Agency Affected: Commerce & Economic Dev.
Program Category Affected: Public Protection'
BRU, Program or Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
900 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis (see attached)

Prepared By: Darrell Miller (Darrell Miller) Phone: 465-2535
Division: Occupational Licensing Date: 2/21/84

Approved by Commissioner: Richard A. Lyon Date: 2/21/84
Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

CS SENATE BILL NO. 296

FISCAL ANALYSIS:

The analysis of this bill is confined to Sec. 1 & 2, registration and renewal fees for construction contractors; Sec. 3, initial license and renewal fees for guides; and Sec. 8, renewal of registration for concert promoters. The remainder of this bill has no impact on the Division of Occupational Licensing functions.

The provisions of this bill has no impact on expenditures and provides a net zero fiscal impact on revenue generated from licen sing in succeeding fiscal years.

Under existing statutes, contractor registration, guide licenses and concert promoter registrations must be renewed annually. This bill provides an amendment to those statutes to extend the renewal of the licenses/registrations to biennial.

This bill provides for initial and renewal fees for contractor registration, guide licensing, and the renewal fee only for concert promoters registration, to be increased 100%.

In effect this is no net increase in the fee structure. The increased fees would cover a two year period instead of the present annual period. This would be reflected in the amount of revenue generated in a license/registration renewal year versus that of the off year. Over a period of two fiscal years the revenue generated would be identical to that if the annual renewal requirement is maintained.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CS SB 296 (L&C)
Title: An Act relating to certain licenses, permits, and registrations...
Sponsor: Halford
Requestor: Senate L & C
Date of Request: 2-21-84

FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Life & Property Protection
BRU, Program or Subprogram(s) Affected: Division of Motor Vehicles

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Bill Brown BB
Division: Motor Vehicles
Phone: 465-4335
Date: 2-21-84

Approved by Commissioner: [signature]
Agency: Public Safety
Date: 2/21/84

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 2/21/84

REQUEST
Bill/Resolution No: CSSB 296 (L&C)
Title: Extending the periods for which certain licns, prmts & registrtns are valid & adjusting fees for certain licns, prmts & registrns.
Sponsor: Halford & Bennett
Requestor: Senate Labor & Commerce Cmt.
Date of Request:

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected: Revenue Management & Collection

BRU, Program or Subprogram(s) Affected:
Public Services Division BRU

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL						
400	SUPPLIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	-	-	-	-	-
	TOTAL OPERATING	-0-	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
	CAPITAL	-	-	-	-	-	-
	REVENUE (General Fund)		12.0	(12.0)	12.0	(12.0)	12.0

FUNDING: (Thousands of Dollars)

	GENERAL FUND						
	FEDERAL FUNDS						
	OTHER						
	TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Revenue figures reflect timing of biennial license sales.

Prepared By: Martin J. Richard
Phone: 465-2392
Division: Public Services Division
Date: 2/21/84

Approved by Commissioner: Robert Ostrosky
Date: 2/21/84
Agency: Revenue

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 296
Title: an act relating to certain licenses, permits, and registrations
Sponsor: Halford & Bennett
Requestor: Elinson (L & C)
Date of Request: 2/21/84

FISCAL DETAIL
Agency Affected: Dept. of Fish & Game
Program Category Affected: Natural Resource Management
BRU, Program or Subprogram(s) Affected: Commercial Fisheries Entry Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		14.1	0	0	0	
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		14.1	0	0	0	
CAPITAL		0	0	0	0	
REVENUE		0	0	0	0	

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

NONE REQUESTED

ANALYSIS: Attach a separate page for analysis

Prepared By: Christine Kelly, Licensing Admn. Phone: 465-4081
Division: Commercial Fisheries Entry Comm. Date: 2/24/84

Approved by Commissioner: [signature] Date: 2/24/84
Agency: Commercial Fisheries Entry Comm.

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

FISCAL NOTE: SB 296

ANALYSIS

The implementation of optional two year licensing of commercial fishing vessels will increase operating costs by approximately $14.1 in the first year of implementation as system analysis and programming necessary to adapt on-line licensing files is estimated to take three months. In subsequent years there will be no increase in operating costs.

Revenue will not increase or decrease as a result of this legislation because the number of vessel licenses issued per year will not be affected. Vessel owners that choose the two year option will receive the license for the first year immediately upon the Commission's receipt of the application and the license for the second year will automatically be issued prior to the start of that year.

SB

434

Ulmer

Rexall DRUG STORES & True Value HARDWARE STORES

DOWNTOWN REXALL DRUG
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Lakeside Mall • Box 520
Homer, Alaska 99603 • (907) 235-8594

ALASKAN MERCHANTS SINCE 1954

23 March 1984

Honorable Joe L. Hayes
SPEAKER OF THE HOUSE
of Representatives
Pouch V
Juneau , Alaska 99811

Dear Joe,

Many thanks for your letter of March 17. It is gratifying to me to know that you , Representative Cowdery, and Senator Eliason are taking a hard look at what is happening regarding implementation of Alaska's Controlled Substance Act and particularly AS 17.. of that Act.

The Board of Pharmacy was handed the ball by the Legislature,along with funding to hire an Executive Secretary and Investigator. Unfortunatly these titles were not included as specific wording in the law , although these positions were repeatedly mentioned when the legislation was being considered and passed.

Board requests for an Executive Secretary , have repeatedly been ignored by the Governor, the Commissioner of Commerce , and the Director of Occupational Licensing (DOL). I believe all of them have a misconception of the intent , the importance , and the timely implementation of the Law.

Federal statistics,on file with the Alaska Department of Law , show that controlled substance from the legitimate industry account for some 60 % of deaths of patients brought to hospital emergency rooms with drug related problems (nation wide). Statistics also show ,over 60% of drug related problems of patients being treated in hospital emergency rooms, come from drugs from the legitimate industry. These drugs are obtained by armed robbery, by after hour breakins, by prescriptions from unscrupulous practitioners, by forgery of precsriptions, or by sale by unscrupulous pharmacists.....but all from the legitimate industry.

The federal Drug Enforcement Administration(DEA) and state and local drug enforcement units have their hands full dealing with the "street traffic" illegitimate entrance of and use of controlled substances in all states . They rely on state laws, such as Alaska's AS 17.30 to deal with the legitimate industry. Most states effectively do this through their Boards of Pharmacy. No big buearacy is needed . Wyoming does it quietly, and cost effectively with one Executive Secretary and one Investigator, Under the direction of its Board of Pharmacy. Alaska would do well to emulate this program and the Board planned just that.

Ulmer

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ALASKAN MERCHANTS SINCE 1954

23 March 1984

You and Representative Cowdery and Senator Eliason all have documented evidence of the valient effort by the Board of Pharmacy to carry out the intent of the Legislature. I will not repeat all of that here, but it is important for you to know that I did spend many long hours drafting both .....proposed regulations and job qualifications and a job description for the Executive Secretary. The later may be of value to you when you propose legislation to mandate creation of the position.

Again thanks for your letter , your interest , and your help in drafting and passing legislation that will clarify legislative intent . If I can be of assistance in this effort , please call me.

Since the Governor removed me from the Board, and refused to reappoint the member from Sitka and has indicated that he will not reappoint the present experienced Secretary of the Board, the Board will be down to one professional and one lay member with any real experience . The new inexperienced Board will desperately need the Executive Secretary .

Sincerely,

Eldon R. Ulmer, R.Ph

Copy: Representative John Cowdery
Senator Dick Eliason
Charles Rush , R.PH. Secretary Board of Pharmacy

A PERFORMANCE REPORT
ON THE
BOARD OF PHARMACY

July 1, 1980 to February 28, 1983

Audit Control Number

08-1114-51-83-R

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vincent O'Reilly Terry Elder

Members of the Board of Pharmacy

Chairman	Eldon Ulmer
Secretary	Margaret Soden
Member	Susan Roberts
Member	Robert Snider
Member	James McCorcle
Member	Charles Rush
Member	Sidney Fry

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

May 17, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE
BOARD OF PHARMACY

July 1, 1980 to February 28, 1983

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

TABLE OF CONTENTS

PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Pharmacy for the past three fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Pharmacy should be reestablished. The law now specifies that the Board will terminate June 30, 1984, and have one year from that date to conclude its affairs.

SCOPE

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Interviews with the license examiners.
3. Tests of files and documents of licensees.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.
5. Discussions with Board members.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General Opinions applicable to professional boards.

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ORGANIZATION AND FUNCTION

The Board of Pharmacy is a regulatory board with seven members; two public members having no direct financial interest in the health care industry, and five professional members with three years practical experience and licensed in Alaska. Whenever possible, each judicial district should be represented by a Board member.

The Board regulates five types of licenses; pharmacists, retail pharmacies, wholesale pharmacies, hospital pharmacies and drug rooms. The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.

2. Establishing, amending, or eliminating regulations controlling pharmacy practices.

3. Revoking, annulling or suspending licenses in accordance with the Administrative Procedures Act when a person has violated pharmacy statutes or regulations.

Applicants for registration as a pharmacist are required to pass the National Association of the Boards of Pharmacy Licensing Examination (NABPLEX), and a jurisprudence exam covering Alaska pharmacy law and the Federal Controlled Substance Act.

Pharmacists licensed to practice in another state who apply for licensure in Alaska, can be licensed by credentials, except for those applicants from California or Louisiana. These two states require applicants to pass a state exam, not the national exam. Consequently, these applicants must take the national exam when applying in Alaska.

The Board may also issue temporary or emergency permits. Temporary permits allow qualified applicants to practice until the Board can formally license them; emergency permits allow pharmacists licensed in another state to practice in Alaska in an emergency. Both permits are limited in their duration and application.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Pharmacy should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Pharmacy should allow the Division of Occupational Licensing (OL) to perform its administrative duties as described in AS 08.01.050 to improve documentation and file management.

The Secretary of the Board receives license fees and applications, keeps applicant files, sends notification of exam results, and issues temporary permits. Each of these responsibilities has been assigned by the Legislature to the Department of Commerce and Economic Development, Division of Occupational Licensing. The above situation exists because the previous Secretary believed he could be more efficient in maintaining the files and processing the applications. We disagree.

The Division of Occupational Licensing is able to provide continuous, uninterrupted service while Board membership changes causing address changes and file transfers.

Additionally, the Secretary of the Board may not be equipped with the space or security needed to maintain confidentiality of files and to safeguard State assets. Furthermore, applicants become confused about where to send their documents.

Noncompliance with AS 08.01.050 is the major cause of the following problems:

A. In seven of ten files reviewed for proper permanent licensure, we were unable to assure ourselves the applicant had passed the jurisprudence exam.

B. In two of the files, we were unable to verify the applicants had satisfied the internship requirement. The Board reviewed these files and was unable to satisfy us that the requirements had been met. One file was missing documentation and the other file had documentation we considered insufficient in relation to that required of other applicants. Most applicants were required to have certified copies of hours worked from supervising pharmacists. In this case, documentation consisted of an internship permit issued by the Board with no evidence any hours had been worked.

C. Temporary permits are being issued by individual Board members without complete documentation on file in DOL. This procedure has resulted in inconsistent issuances of temporary permits. Furthermore, it allows for the possibility of unqualified individuals being licensed.

Prior to the February 1983 Board meeting, we reviewed each application for permanent licensure scheduled for Board consideration. Each applicant had already been issued a temporary permit. In five of eleven cases, there was insufficient documentation in the applicant's file to show that all requirements for temporary licensure had been met.

By the time of the February 1983 meeting, all necessary documentation to support issuance of temporary permits, except for a jurisprudence exam, had either been received by OL or brought to the meeting by the Secretary of the Board. With the additional documentation, we determined that no temporary permit had been issued to an unqualified applicant. However, the possibility exists for a person to be improperly licensed for a short time.

The Board should ensure all documentation is sent directly to OL. When the file is complete, a member of the Board can either issue the permit or direct OL to issue the permit. This procedure will ensure that all necessary documentation is on file at OL before issuance of temporary permits.

D. Alaska Statute 08.80.157 requires proof that an applicant for a retail or wholesale pharmacy license has the land, facilities and equipment necessary to carry on business. Also, that the applicant be free of any conviction of a federal or state drug offense and free of any addiction.

We reviewed seven pharmacy files and none of the files contained sufficient documentation to issue a license. We discussed our finding with the Board and determined it was not their policy to include this documentation. They knew who had the facilities and relied on a telephone call from the Drug Enforcement Administration to satisfy the conviction requirement.

We believe the Board should adopt a policy to document satisfaction of the licensing requirements. The procedures need not be elaborate, but should supply sufficient proof that the applicant complies with law.

We recommend the Board ensure that all files, applications, fees and exam results are sent directly to OL. Also, that temporary permits are only issued after all documentation has been received by OL.

Recommendation No. 2

The Board of Pharmacy should reevaluate its regulations governing continuing education.

The following requirements of continuing education should be reviewed.

A. Regulations require nonacademic programs to have an examination or another method of assuring satisfactory completion of the program before continuing education credit will be given. The Board allowed continuing education credit to be given to an individual when the nonacademic requirement had not been met. The reason given for allowing these credits was that the regulations were too stringent.

   If the Board believes its regulations to be arbitrary or unreasonable, those regulations should be changed before accepting nonregulation continuing education credits. Compliance with existing regulations will ensure that all licensees are treated equally and consistently until changes can be made.

B. The Board has described four instances when they will excuse a licensee from continued competency requirements. These causes are chronic illness, retirement, military service, or hardships as individually determined by the Board.

   In our opinion, it is more reasonable to require individuals who have been chronically ill, retired or in the military to demonstrate their continued competency, than those who have not interrupted their practice. We also understand that those persons who have been chronically ill should not be penalized for their illness.

   However, the Board has the ability, under the hardship clause, to determine each case individually. They should evaluate the changes in the profession and develop a plan for the individual that would allow him or her to practice while fulfilling the continuing education requirements. This would fulfill the Board's primary purpose to protect the public while not unduly penalizing the professional.

Recommendation No. 3

The Board of Pharmacy and the Division of Occupational Licensing should introduce legislation that will clarify certain statutory requirements.

Alaska Statute 08.01.050(19) places the responsibility for

performing investigations with the Division; Alaska Statute 08.01.070 assigns to the Board the requesting authority. However, AS 08.80.030(3) also gives the Board the authority to conduct investigations. This conflict has caused friction between the Division and the Board.

The Board is concerned that the Division is not informing them of complaints or investigations concerning pharmacy, while the Division is concerned that the Board not become involved in the investigation to such an extent as to prejudice the case. Also, the Board must remain impartial in case they become involved in any disciplinary action against the licensee.

Legislation is necessary to clarify the responsibilities of the Board and the Division so both will be confident they are properly performing their statutory duties.

Recommendation No. 4

The Office of the Governor should ensure that Board members are properly appointed.

In July of 1980, the Legislature limited the number of consecutive terms a Board member could serve to two and reduced the term from five years to four. The intent of AS 08.80.020 as amended, was to make service on the Board accessible to more individuals in the profession.

In discussions with Legislative Affairs' attorneys, it became clear that the intent of the Legislature was to include service prior to July, 1980, in determining the limitation. Three members of the Board of Pharmacy have served longer than is allowed when prior service is applied.

One member has served for sixteen years as of March 31, 1983, thirteen of these years prior to July, 1980. This same member was reappointed after the effective date of AS-08.80.020. At the end of his present term, he will have served nineteen years. Two other members will have served twelve and ten years at the end of their present terms on March 31, 1984 and March 31, 1985, respectively.

Additionally, three members of the Board appointed after the effective date of the legislation, have been appointed for five year terms instead of four.

We recommend the Office of the Governor ensure that Board members are appointed in accordance with statute.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

I. The extent to which the board, commission or program has operated in the public interest.

A. The Board has held public meetings three times a year.

B. The Board administers the pharmacy test yearly.

C. The Board has passed regulations concerning dangerous drugs, continuing education as proof of continued competency, false or misleading advertisement of drugs, and prepackaging of drugs in hospital drug rooms.

D. The Board was instrumental in passage of the Controlled Substance Act and the Marijuana Therapeutic Research Program.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The Board adopted continuing education regulations that may be too stringent. The Board is reconsidering these regulations (see Recommendation No. 2).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Board actively supported passage of the Controlled Substance Act; it became effective January 1, 1983.

B. The Board succeeded in having various obsolete or vague statutory requirements repealed which provided for smoother operation of the Board.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. Board meetings are announced to the public. Comments on regulation changes are solicited by announcement in public newspapers. The Board does not actively solicit comments on its effectiveness.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

A. The Board announces proposed regulation changes or additions in newspapers according to the Administrative Procedures Act.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board, or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

A. We found no problems in this area.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. We found no instances where the Board had licensed unqualified practitioners.

B. The Board has licensed 83 pharmacists in the last three years, all but eight were licensed by credentials.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

A. Applications for licensure as a pharmacist require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with factors enumerated in this subsection.

Please refer to the recommendation section of this report.

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APPENDIX A

BOARD OF PHARMACY
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ended June 30, 1982

(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	$42,763
Less: Expenditures (Note 3)	46,166
Excess of Expenditures Over Revenues	$ 3,403

Revenue Type	Amount	Collection Time
Examination Fee	$ 50	With application
Re-examination Fee	15	With application
Investigation Fee	25	With application
Pharmacist Fee	200	With license issuance
Pharmacist Renewal Fee	200	Every four years
Temporary License Fee	20	With permit issuance
Wholesale Drug Dealer Fee	200	With license issuance
Wholesale Drug Dealer Renewal Fee	200	Every four years
Retail Pharmacy Fee	200	With license renewal
Retail Pharmacy Renewal Fee	200	Every four years
Pharmacy Interim Fee	10	With license issuance
Emergency Permit Fee	10	With permit issuance
Hospital Pharmacy Fee	200	With license issuance
Hospital Pharmacy Renewal Fee	100	Every four years
Hospital Drug Room Fee	100	With license issuance
Hospital Drug Room Renewal Fee	100	Every four years
Nursing Home and Related Facility Fee	100	With license issuance
Nursing Home and Related Facility Renewal Fee	100	Every four years
License Amendments or Renewal Fee	10	When applicable

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and accordingly we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Years 1981 and 1982 in order to obtain a more accurate representation of revenues collected.

Note 3

Expenditures include those made by board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments (such as the Department of Law) assisting the boards and the Division.

(Intentionally left blank)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

June 28, 1983

Mr. Gerald Wilkerson, CPA
Legislative Auditor
Audit Division
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Re: Board of Pharmacy -
Performance Report

Thank you for the opportunity to respond to the performance audit of the Board of Pharmancy and the Division of Occupational Licensing which is dated July 1, 1980 to February 28, 1983.

We concur with your evaluation that the Board of Pharmacy should continue to exist in interest of the public's health and safety. Your suggestions will be evaluated for implementation. Those determined to improve the efficiency and effectiveness of the division and the board will be strongly supported and recommended. We have reviewed each of your recommendations and will provide you with this agency's position if we do not agree.

RECOMMENDATION #1.

The board of Pharmacy should allow the Division of Occupational Licensing (DOL) to perform its administrative duties as described in AS 08.01.050 to improve documentation and file management.

We concur in this recommendation, and cooperative efforts have recently improved. As mandated by legislation, and in the interest of efficiency, DOL is committed to assisting the Board of Pharmacy in all areas.

RECOMMENDATION #2.

The Board of Pharmacy should reevaluate its regulations governing continuing education.

08-H2LH

This agency is continuing a review on requirement of continuing education by licensing agencies (boards). We do not agree that continued education ensures continued competency. As a licensing agency we determine that competency is the most important. Competency ensures the safety of the consumer. We also take the position that initial licensing is based on minimum qualifications; retesting on the entrance level may serve the purpose of ensuring continued competency. Continued education would, or should, be viewed as the professional association's responsibility to ensure knowledgeable professionals. This would also be in keeping with less government regulations and letting industry regulate itself.

RECOMMENDATION #3.

The Board of Pharmacy and the Division of Occupational Licensing should introduce legislation that will clarify certain statutory requirements.

We concur with this recommendation. This agency has been working with the Legislative Code Revision Committee in rewriting Title 8. This would have deleted the fragmentation throughout Title 8 and the various chapters. This effort was resisted by the board as an effort to diminish its authority. We will seek to have legislation submitted to clarify the issue of conflict within the statutes.

RECOMMENDATION #4.

The Office of the Governor should ensure that board members are properly appointed.

We would assure the auditors this has been addressed by the Governor's Office and by the Department of Law.

Again, thank you for the opportunity to respond to your re[illegible]lease feel free to contact this agency or the Division of Occupa[illegible]i-censing if additional information or clarification is needed[illegible]ssured, we determine your comments and findings to be fair and in the interest of Alaskan consumers and professional pharmacist.

Sincerely,

Richard A. Lyon
Commissioner

RAL/cw#23D01
62883B

SB

435

SENATE
LETTER OF INTENT

It is the intent of the Senate Labor and Commerce Committee to extend the existence of the Board of Barbers and Hairdressers one year until July 1, 1985. During this period of time a committee composed of, but not limited to, representatives from the current Board Members, practicing barbers and/or hairdressers, Office of the Governor, Division of Occupational Licensing, and Legislature will review the current statutes and regulations governing the operations of the Board of Barbers and Hairdressers.

This committee will review: 1) recommendations proposed by the Division of Legislative Audit in the Performance Report of April 29, 1983; 2) public testimony taken during the current Sunset Review process; and 3) other concerns brought to the attention of this committee. Necessary statutory and/or regulatory changes will be proposed by the committee to the 14th Legislature for consideration.

Adopted by the Senate 4/26/84.

SB

438

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

MEMORANDUM

To: All Committee Members

From: Committee Staff

RE: CSSB 438 "Relating to the State Board of Architects, Engineers, and Land Surveyors."

As a result of "Sunset Review", legislation was drafted which would extend the the Board of Architects, Engineers, and Land Surveyors through 1988 and make changes in statutes which govern the board. The legislation, SB 438 was amended by the Senate Labor and Commerce Committee to include the following changes:

1. The term of a board member is reduced from six years to four years.
2. A public member is added and the requirement that a mining engineer be named to the board was deleted.
3. A requirement for proven continued competency was added to statute.

The House Labor and Commerce Committee substitute deletes the last two statute changes made in the Senate Labor and Commerce Committee substitute.

A PERFORMANCE REPORT ON THE BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS

July 1, 1980 - April 15, 1983

Audit Control Number
08-1114-54-83-R

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vincent O'Reilly Terry Elder

Members of the Board of Registration for Architects, Engineers, and Land Surveyors

President	Wallace I. Deboff
Member	Wayne K. Jenson
Member	Paul Stutzman
Member	Gordin Unwin
Member	Wallace Wellenstein
Member	Gordon S. Best
Member	Robert Boswell
Member	Odin Strandberg
Member	Vacant

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

April 15, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE
BOARD OF REGISTRATION FOR
ARCHITECTS, ENGINEERS,
AND LAND SURVEYORS

July 1, 1980 - April 15, 1983

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

TABLE OF CONTENTS

PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Registration for Architects, Engineers, and Land Surveyors for the past three fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Registration for Architects, Engineers, and Land Surveyors should be reestablished. The law now specifies that this Board will terminate on June 30, 1984, and have one year from that date to conclude its affairs.

SCOPE

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.

2. Interviews with Board members.

3. Tests of files and documents of licensees.

4. Interviews with license examiners.

5. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman's Office.

6. Minutes of Board meetings and Division correspondence files.

7. Attorney General's opinions applicable to professional boards.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The Board of Architects, Engineers, and Land Surveyors is a regulatory board with nine members consisting of two civil engineers, one land surveyor, one mining engineer, two engineers from other branches of the engineering profession, and three architects.

The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.

2. Establishing, amending, or eliminating regulations controlling architect, engineer, and land surveyor practices.

3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated architect, engineer, and land surveyor statutes or regulations.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Registration for Architects, Engineers, and Land Surveyors should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Legislation should be introduced requiring continuing education for architects, engineers, and land surveyors.

Architects, engineers, and land surveyors must demonstrate a high degree of educational and practical competence before they can become registered in Alaska. However, renewal of certificates is not dependent upon evidence of a professional's continued competence.

In our questionnaire to registered professionals, 93% of the architects, 78% of the engineers, and 64% of the land surveyors responding reported that they had attended courses and/or seminars in the last two years. Most were concerned, however, that continuing education requirements would be too narrowly defined or too difficult to satisfy. To address these concerns, there must be active involvement by individuals and professional societies in the development of continuing education standards.

Architects, engineers, and land surveyors are acutely aware of the public's trust that they maintain their professional competency. Required continuing education is one means of fulfilling that trust. In addition, a program of continuing education will assist in avoiding professional obsolescence and keep practitioners aware of changes taking place in the profession.

Recommendation No. 2

The Board should repeal its anticompetitive and restrictive regulations prohibiting competitive bidding (12 AAC 36.230(b)).

We reviewed the Board's regulations to determine if they are anticompetitive and restrictive. Regulation 12 AAC 36.230(b) provides that an architect, engineer, or land surveyor may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding. We find this regulation restrictive, anticompetitive, and absent of clear and statutory policy to restrain competition.

This point of view is supported by memorandum A66-191-79A from the Attorney General's Office dated October 29, 1980. That memo states in part:

> There must exist clear statutory policy to restrain competition before a state regulatory agency may promulgate regulations to restrain competition if federal antitrust immunity is to occur. No direct

authorization for such an anticompetitive provision [12 AAC 36.230(b)] appears in the statutes. In such a situation, federal courts have specifically held such regulations to be violative of antitrust law.

This regulation is now being challenged by the United States' Department of Justice in the Anchorage Federal District Court (U.S. v. AK Board of Registration for Architects, Engineers, and Land Surveyors).

Recommendation No. 3

The Board should approve for examination only those applicants eligible to take the examination.

The Board has approved applicants for the fundamentals of engineering examination when they do not meet the eligibility requirements for the examination. 12 AAC 36.062 requires successful completion of at least 85% of an accredited engineering curriculum, or, if curriculum is unaccredited, a number of years in experience. At a November, 1982, Board meeting and a February, 1983, Board meeting, applicants were approved for examination who were in an unaccredited curriculum and did not have the requisite experience.

While we do not question the quality of the applicants approved for examination, we do believe that if the Board no longer believes that these requirements are necessary, they should propose regulation changes that would ensure that all applicants would be treated in a consistent and fair manner.

Recommendation No. 4

In order to ensure that the Board adequately represents the general public, the qualifications and conditions of Board membership should be reviewed and amended.

AS 08.48.011-.031 creates the State Board of Registration for Architects, Engineers, and Land Surveyors, specifies the qualifications and professions of the nine Board members, and establishes the members' terms of office. In order that the Board better represent the general public, these statutory provisions should be reevaluated. Some specific areas that should be reevaluated are:

A. The Board is the only licensing board that has no lay representation. In general, lay members with no direct financial interest in the regulated professions can and should contribute to policy formulation and enforcement decisions. It should be recognized that the public is the ultimate interest group and we recommend, as we did in the 1979 audit, that at least two lay members be included on the Board.

B. The term of Board members is currently set at 6 years with no limitation on the number of terms that can be served by one individual. This Board is the only licensing board that has a six year term for its members and only two other State licensing boards have an unlimited number of terms that can be served by their members. Such conditions might hamper the flow of new ideas since individuals could serve for an extended period of time. We recommend that a statutory change be considered to limit the number of terms a Board member can serve as well as reducing the years in a Board member's term.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

I. The extent to which the board, commission or program has operated in the public interest.

A. The Board holds at least four regular meetings each year.

B. The Board holds written exams at least twice each year, except for certain national examinations that are held only once a year.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The Board approved engineer in training (EIT) applicants for the fundamentals of engineering examination when the applicants did not meet the eligibility requirements of 12 AAC 36.062 (see Recommendation No. 5).

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest

A. The Board adopted regulations that clarified various vague statutory and regulatory requirements.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. The Board has advertised certain proposed regulations changes in only one city. The Board does not actively solicit comments on its effectiveness.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

A. Certain examinations and meetings have not been advertised in an adequate and timely manner.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

A. The Attorney General's Office has record of a case filed against the Board by the United States' Department of Justice concerning the Board's regulation banning competitive bidding. (12 AAC 36.230(b)). This case is pending in U.S. District Court (see Recommendation No. 4).

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. We found no instances where the Board had licensed unqualified practitioners.

B. Architects, engineers, and land surveyors are not required to demonstrate their continued competence through a continuing education program (see Recommendation No. 1).

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

A. Applications for licensure require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIX

(Intentionally left blank)

APPENDIX A

BOARD OF REGISTRATION FOR ARCHITECTS
ENGINEERS, AND LAND SURVEYORS
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ending June 30, 1982
(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	$108,052
Less: Expenditures (Note 3)	99,967
Excess Revenues Over Expenditures	$ 8,085

Schedule 1
Type of Revenues (See Note 2)

Revenues	Amount	Collection Time
Application for Examination Fee		
(A) NCARB Examination		
(i) Qualifying Exam	$50	With application
(ii) Section A	$50	With application
(iii) Section B	$75	With application
(B) NCEE Examination	$50/exam	With application
Reexamination Fee	$50/exam	Upon reexam
Comity Application Fee	$50	With application
Corporate Authorization Application Fee	$100	With Application
Individual Registration Fee	$15/year	Renewals paid biennially; new registrants pay $15/year for balance of biennial period.
Corporate Authorization Registration Fee	$50/year	Renewals paid biennially; new registrants pay $50/year for balance of biennial period.
Amendment to Corporate Authorization	$20	With amendment
Delinquent Renewal Fee	$30	With reinstatement
Postponement of Examination Fee	$20	With request for postponement
Late Fee Fine	$10	With late payment
Improper Payment Fine	$10	When payment is found to be improper

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenue in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Years 1981 and 1982 in order to obtain a more accurate representation of collected revenues.

Note 3

Expenditures include those made by Board members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments, such as the Department of Law, assisting the boards and the Division.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

August 11, 1983

Mr. Gerald Wilkerson
Legislative Auditor
Legislative Audit Division
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on the preliminary findings of your audit of the Board of Registration for Architects, Engineers and Land Surveyors. The following comments address each recommendation individually:

Recommendation No. 1: Legislation should be introduced requiring continuing education for architects, engineers and land surveyors.

The department is in substantial agreement with the intent of this recommendation. However, we feel that the emphasis of legislation should be put on continuing competency rather than on continuing education per se. It is appropriate for the State as a licensing agency to be concerned with continuing competency and with continuing education only to the extent that it is a vehicle for assuring competency and necessary public protection.

By focusing on continuing education exclusively, we are equating education and competency. The effectiveness in continuing education as a vehicle for assuring continuing competency is still open to debate. It would be premature to end that debate through legislation.

Additionally, both administrative costs and increased costs to the consumer must be considered.

Any additional costs that a professional incurs gets passed on to the consumer in the form of higher fees. The costs of services will increase to the extent that professionals are not presently taking continuing education courses. Yet, it is not known whether there will actually be an increase in public protection.

08-H2LH

Similarly, continuing education programs can be very expensive to administer and would probably require that an additional staff person be hired. There are presently 4,000 active licensees under the Board of Registration for Architects, Engineers and Land Surveyors. Assuming that the continuing education regulations are straightforward enough to be completely administered by the licensing examiner, this means that at a minimum, the Division of Occupational Licensing will have to manage an additional 4,000 pieces of paper every two years.

In this connection, it should also be borne in mind that approximately 95% of the active files are presently stored in Archives. Continuing competency requirements would most likely generate a need for the files to be kept in the office to be managed properly. There would also be a significant increase in both telephone calls and written correspondence, especially during the phasing in of the new regulations.

If the board review were required as part of the new continuing education requirements, the workload would increase that much more dramatically. Between FY '80 and FY '82, the State has experienced an increase of over 100% in the number of new applications for licensure received. At the present, this board is understaffed.

Since it is not known whether continuing education leads to a greater public benefit through continuing competency, serious consideration should also be given to funding research to determine whether present and proposed regulation in this area is actually effective.

Recommendation No. 2: The board should repeal its anticompetitive and restrictive regulations prohibiting competitive bidding (12 AAC 36.230(b).

The department concurs with this recommendation.

Recommendation No. 3: The board should approve for examination only those applicants eligible to take the examination.

The department concurs with this recommendation.

Recommendation No. 4: In order to ensure that the board adequately represents the general public, the qualifications and conditions of board membership should be reviewed and amended.

The department concurs with the recommendation and specifically with the suggestions contained therein for the addition of at least two public members and limitations on the terms of board members.

Sincerely,

Richard A. Lyon
Commissioner

RAL/kkk/C32
81183a

(1) at all times recognize his primary obligation to protect the safety, health, property, and welfare of the public in the performance of his professional duties; if his professional judgment is overruled under circumstances where the safety, health, and welfare of the public are endangered, he shall inform his employer or client of the possible consequence and notify such other proper authority of the situation as may be appropriate; and

(2) undertake to perform assignments only when he or his associates, consultants, or employees are qualified by education, training, experience, and licensing in the specific technical branches or fields involved;

(3) be completely objective and truthful in all professional reports, statements, or testimony and shall include all relevant and pertinent information in such reports, statements, or testimony when the result of an omission would, or reasonably could, lead to a fallacious conclusion; and

(4) not affix his signature or seal to any plan or document dealing with professional services in which he is not qualified by virtue of education, experience, and licensing; and

(5) issue no statements, criticisms, or arguments on architectural, engineering, or land surveying matters connected with public interests which are inspired or paid for by his interested party or parties unless he has prefaced his comment by explicitly identifying himself by disclosing the identities of the party or parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.111

12 AAC 36.220. CONFLICT OF INTEREST. (a) Each architect, engineer, or land surveyor shall avoid conflicts of interest with his employer or client but, when unavoidable, the architect, engineer, or land surveyor shall promptly inform his employer or client of any business association, interests, or circumstances and identify any circumstances which could influence his judgment or the quality of his service to his employer or client.

(b) An architect, engineer, or land surveyor may not accept compensation, financial or otherwise, from more than one party for services on the same project or for services pertaining to the same project unless the circumstances are fully disclosed to and agreed to by all interested parties or their authorized agents.

(c) An architect, engineer, or land surveyor may not solicit or accept financial or other valuable consideration from suppliers for specifying their products.

(d) An architect, engineer, or land surveyor may not solicit or accept gratuities from other parties dealing with his client or employer in connection with the work for which he is responsible. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

12 AAC 36.225. PUBLIC SERVICE. When in public service as a member, advisor, or employee of a government body, an architect, engineer, or land surveyor may not participate in considerations or actions with respect to services provided by him or his organization. An architect, engineer, or land surveyor, in his capacity as an elected, retained, or employed public official, may not review or approve work that he has performed, whether it was under his direction or on behalf of another employer or client. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

12 AAC 36.230. SOLICITATION OF EMPLOYMENT. (a) An architect, engineer or land surveyor may not pay, solicit nor offer, directly or indirectly, any bribe or commission for professional employment with the exception of his payment of the usual commission for securing salaried positions through licensed employment agencies.

(b) Deleted 11/18/83.

(c) An architect, engineer or land surveyor may not falsify or permit misrepresentation of his or her associates' academic or professional qualifications. He may not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments.

(d) Brochures or other presentations incident

to an architect's, engineer's or land surveyor's solicitation of employment may not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101
AS 08.48.111

Editor's Note: As of Register 88, Jan. 1984, 12 AAC 36.230(b) was deleted by the regulations attorney under AS 44.62.125 (b)(6) and in accordance with a Stipulation and proposed Final Judgment filed on November 18, 1983 by the Board of Architects, Engineers and Land Surveyors and the United States Department of Justice in the United States District Court for the District of Alaska in United States v. Alaska Board of Registration for Architects, Engineers and Land Surveyors, Civil Action No. A82-423 CIV. This Stipulation and proposed Judgment were filed because 12 AAC 36.230(b) was in violation of section 1 of the Sherman Antitrust Act [15 U.S.C. § 1 (1977)]. The proposed Final Judgment which may become final on or soon after January 16, 1984 will, also prohibit further enforcement of any ban or board policy against competitive bidding.

12 AAC 36.235. ADVERTISING. An architect, engineer, or land surveyor may not advertise his or her services in a deceptive or untruthful manner. (Eff. 9/30/78, Reg. 67; am 5/30/82, Reg. 82)

Authority: AS 08.48.101(a)(5)

12 AAC 36.240. IMPROPER CONDUCT. (a) An architect, engineer, or land surveyor may not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows or has reason to believe is engaging in business or professional practices in a fraudulent or dishonest manner.

(b) If an architect, engineer, or land surveyor has knowledge or reason to believe that another person or firm may be in violation of the provisions of AS 08.48, or any of these rules of professional conduct, he or she shall present that information to the board in writing and shall cooperate with the board in furnishing such further information or assistance as may be required. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

ARTICLE 3.
GENERAL PROVISIONS

Section
250. Definitions

12 AAC 36.250. DEFINITIONS. For the purposes of this chapter and AS 08.48, unless the context requires otherwise

APRIL 3, 1984

TO: JOHN

FROM: KEN

RE: CSSB 438 "RELATING TO THE STATE BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS"

THE HOUSE LABOR AND COMMERCE COMMITTEE FIRST HEARD LEGISLATION PERTAINING TO THE BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS ON MARCH 16th. A NUMBER OF BOARD MEMBERS AND REPRESENTATIVES OF THE INDUSTRY AND THE DIVISION OF LICENSING TESTIFIED. FOLLOWING THE HEARING THE COMMITTEE DRAFTED SUBSTITUTE LEGISLATION WHICH ADDRESSES MANY OF THE CONCERNS BROUGHT OUT IN THE HEARING. AN ANALYSIS HAS BEEN PREPARED BY STAFF WHICH OUTLINES THE DIFFERENCES IN THE SENATE BILL AND THE HOUSE LABOR AND COMMERCE COMMITTEE SUBSTITUTE.

SB

456

APRIL 16, 1984

TO: JOHN

FROM: KEN

RE: SB 456 RELATING TO EMBALMER AND FUNERAL DIRECTOR TRAINEES

UNDER THE CURRENT ALASKA STATUTES A PERSON INTERESTED IN PURSUING A CAREER AS AN EMBALMER OR A FUNERAL DIRECTOR MUST GRADUATE FROM A SCHOOL OF MORTUARY SCIENCE BEFORE BEING ALLOWED TO DO AN APPRENTICESHIP IN THE STATE. SINCE THERE ARE NO SCHOOLS OF THIS NATURE IN ALASKA ONE MUST TAKE RESIDENCE OUTSIDE TO STUDY IN THIS FIELD. SB 456 WOULD ALLOW ALASKANS TO APPRENTICE BEFORE GOING OUTSIDE FOR SCHOOLING SO HE OR SHE COULD GET A BETTER IDEA OF WHAT THE PROFESSION IS REALLY LIKE BEFORE LAYING OUT THE TIME AND MONEY FOR THE EDUCATION.

QUESTIONS:

1. HOW MANY EMBALMER OR FUNERAL TRAINEES ARE GOING TO BE AFFECTED BY THIS LEGISLATION ?

2. ISN'T THERE SOME NEED FOR FORMAL TRAINING BEFORE ENTERING AN APPRENTICESHIP ? SUCH PROGRAMS ARE TRADITIONALLY DONE AFTER THE EDUCATION ?

3. No Fees? How many other Trainees have
No Fee's charged.

Bill No. Committee Substitute for House Bill No. 540 (L&C) Date

Title "An Act relating to contractors' payment bonds." Contact: Eileen Plate 465-2700
Bob Bacolas 465-4870

Committee Substitute for House Bill No. 540 makes editorial changes to provisions in Title 36 with respect to action against a contractor's payment bond by persons performing labor for subcontractors on public construction projects. In this regard, the bill provides a sample form for a person performing labor for a subcontractor to notice the contractor when a claim for payment of labor is filed against the contractor's bond. The sample form will assist persons performing labor in filing adequate notice as it depicts the specific information which must be included.

The committee substitute also contains a number of more significant changes to Title 36 with respect to action against a contractor's payment bond by persons who supply materials, supplies, or equipment to subcontractors on public construction projects. Inasmuch as persons who supply materials, supplies or equipment on public construction projects fall outside of the department's authority or responsibility as far as collection of monies due them, we have no comments on these particular provisions.

The Department's position on Committee Substitute for House Bill 540 is neutral. It will not have a fiscal impact on the Department.

APPROVED

Robert W. Jamison, Asst. Comm.
for Jim Robison
Commissioner

POSITION PAPER/Department of Labor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSHB 540
Title: "An Act relating to contractors' payment bonds."
Sponsor: Bettisworth
Requestor: (H) Labor and Commerce
Date of Request: 4/13/84

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards and Safety BRU, Wage and Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas, Sr., Director Phone: 465-4870
Division: Labor Standards and Safety Date: 4/16/84
Approved by Commissioner: Jim Robison /s/ Tim Jandon for Date: 4/16/84
Agency: Labor
LEG:A:44
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Alaska State Legislature

Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269 H

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-3791

State Senate

April 16, 1984

MEMO TO: Representative John Cowdry, Chair
House Labor and Commerce Committee

FROM: Senator Paul Fischer PF.

SUBJECT: Senate Bill 456

SB 456, "An Act relating to embalmer and funeral director trainees," enables a person at least 18 years of age to undertake a traineeship with a suitably licensed embalmer or funeral director prior to that person's completing the necessary schooling required for licensure. The purpose of this bill is to permit a person to gain some experience in the profession of embalming or funeral directing without having to leave Alaska, prior to undertaking the formal academic program in fulfillment of the requirements for licensure.

As presently structured, Alaska Statutes require a person seeking to become an embalmer or funeral director to complete a required academic curriculum prior to undertaking any traineeship. An embalmer is required to graduate from an accredited college of mortuary science, a minimum two-year program. There are no such schools in Alaska, and the individual must therefore make a great expenditure of time and funds to receive the degree prior to returning to Alaska to undertake a traineeship. A funeral director candidate must have completed a year of college prior to undertaking a traineeship.

By permitting traineeships prior to completion of the academic curriculum, an individual will have an opportunity to get a realistic idea of the requirements of the profession and determine whether or not to then pursue the necessary academic course of study to become a professional embalmer or funeral director. There are currently 102 licensed embalmers, funeral directors, and funeral establishments in Alaska.

If any additional information in support of SB 456 is needed, please let me know.

PF/mc

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB NO. 456
Title: "An Act relating to emba-lmer/funderal director trainees"
Sponsor: Sen. P. Fischer
Requestor: State Affairs & L.&C.
Date of Request: February 13, 1984

FISCAL DETAIL
Agency Affected: Commerce & Economic Dev.
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No fiscal impact expected from this bill. The anticipated applications would be limited in number so as to reflect a minimal fiscal impact on the division. No revenue may be generated under the terms of this bill.

ANALYSIS: Attach a separate page for analysis

Prepared By: Darrell Miller (Darrell Miller) Phone: 465-2535
Division: Occupational Licensing Date: February 15, 1983

Approved by Commissioner: Richard A. Lyon Date: 2/24/84
Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Note

SB

470

CSSB470(L&C) Section by Section Analysis. 3/15/84

This proposal upgrades the Unauthorized (nonadmitted) Insurers Act and the Surplus Lines Insurance Act to comport with the recently adopted models of the National Association of Insurance Commissioners(NAIC). Currently, these two acts, along with a third, the Unauthorized Insurers Service of Process Act appear in AS 21.33.

This proposal continues the Unauthorized (nonadmitted) Insurers Act and the Unauthorized Insurers Service of Process Act in AS 21.33. Access to that market is more clearly stated. Most of the changes in AS 21.33 are not substantive. However the Surplus Lines Insurance Act has been removed from AS 21.33 and placed in a new chapter, AS 21.34. This chapter makes some substantial revisions with respect to how a surplus lines business can be conducted in this state. It will give the regulator a clearer ability to deal with the competence of the licensee and provide more meaningful protection for the public through:
-clarification of the duties and responsibilities of the licensee;
-higher financial requirements for the nonadmitted insurer;
-permission to form a surplus lines association with an active role in regulating the market; and,
-allowing admitted markets to compete with the nonadmitted markets.

Section 1. Page 1, lines 8-17.
Current law provides that when the state examines an insurance company, the insurance company pays for that examination. A surplus lines broker is also subject to examination but does not pay for that examination. The position of the surplus lines broker is in many respects similar to an insurer, particularly when the broker has utilized an insurer that is not able to meet its obligations. This section provides that the surplus lines broker must also meet the cost of its examination.

Section 2. Page 1, lines 18-29 & page 2, lines 1-7.
The change here is on page 1, lines 24-25. This section ties in with Section 1. It lists those entities subject to examination without charge.

Section 3. Page 2, lines 8-29 & page 3, lines 1-3.
This rewrite of the purpose section does not contain substantive changes. It is formatted in a more readable form and the application of the chapter to surplus lines brokers has been deleted.

Section 4. Page 3, lines 4-24.
The changes in this section are editorial. The phrase "doing an insurance business" has been changed to "transaction of insurance", and gender oriented references have been changed.

Section 5. Page 3, lines 25-29 & page 4, lines 1-13.
This section contains more of the same changes noted in Section 4. No substantive change.

Section 6. Page 4, lines 14-29 & page 5, lines 1-8.
The changes in this section are similar to those in Section 4. No substantive changes.

Section 7. Page 5, lines 9-29 & page 6, lines 1-4.
The difference here is found on page 6, lines 2-4. It is primarily a clarification. No substantive change.

Section 8. Page 6, lines 5-13.
Changes similar to those in Section 4.

Section 9. Page 6, lines 14-26.
The sole change in this section is the insertion of the word "nonadmitted" on line 16. This has been done in several of the earlier sections without comment. It is a clarification, and ond that is defined in the definition section on page 12, lines 15-18. Previously the words "insurer", "nonadmitted insurer", and, "unauthorized insurer" have been used synonymously. That is inconsistent and has led to some confusion. This change should clear up that situation.

Section 10. Page 6, lines 27-29 & page 7, lines 1-29.
This section is a consolidation of several other sections. (a) replaces AS 21.33.015 with no substantive difference. (b) replaces AS 21.33.075 with some shift in an individuals ability to enter and use the nonadmitted market place. This ability is broadened in this bill by removing the specific description of an industrial insured found in AS 21.33.075(9). (c) replaces the combination of AS 21.33.015 and AS 21.33.075(6) with no substantive difference. (d) replaces AS 21.33.041 with no substantive difference.

Section 11. Page 8, lines 1-24.
This is a new section and it limits a nonadmitted insurers access to Alaska courts. This is as to those not placed through a surplus lines broker in AS 21.34. It clarifies the standing of those insurers.

Section 12. Page 8, lines 25-29 & page 9, lines 1-6.
This is the same kind of change noted in Section 9. One additional change is that access by the director to an insureds purchases in the admitted or authorized market has been removed. This ability to access admitted purchases is probably unreasonable when placed on the insured. Presumably access to these records through other sources is sufficient.

Section 13. Page 9, lines 7-13.
This section reinforces the ability of the director to obtain records and information under this section. This is accomplished by allowing the director to apply for a court order to compel production of records and information.

Section 14. Page 9, lines 14-29 & page 10, lines 1-10.
"Unauthorized" has been changed to "nonadmitted" as noted in section 9. The penalty provision has been revised so that it is more readily calculable. This penalty will generally be stiffer than that now provided.

Section 15. Page 10, lines 11-26.
More editorial changes like those in section 9. Since the surplus lines law has been removed from AS 21.33 and placed in AS 21.34, that reference has been noted. The time for reporting has been shortened from 60 days to 30 days.

Section 16. Page 10, lines 27-29 & page 11, lines 1-6.
Same editorial change noted in section 9.

Section 17. Page 11, lines 7-15.
The penalty provision has been upgraded in the same fashion as section 14.

Section 18. Page 11, lines 16-21.
This section is intended to avoid any potential conflict with new sections AS 21.33.037 and AS 21.33.042.

Section 19. Page 11, lines 22-29 & page 12, lines 1-4.
This section upgrades the penalty section by increasing the per violation penalty from $500 for the first offense to $1,000 and by increasing the second offense penalty from $500 to $2,000. A new penalty is also structured for allowing a violation to continue uncorrected in the amount of $1,000 for each month of continuation.

Section 20. Page 12, lines 5-29 & page 13, lines 1-25.
This definition section is new. There is nothing representing a substantive difference from current law except in (9)(A) where vessels of 50 displacement tons or less are not included in the definition of marine and are therefor included in the requirements of this proposed law.

Section 21. Page 13, lines 26-29, all of pages 14-30, & page 31, lines 1-16
This section adds a new chapter to the insurance code dealing with surplus lines insurance. This chapter has essentially been removed from AS 21.33. A number of changes have been made to provide for a stronger regulation of the surplus lines market. This is accomplished by strengthening the financial requirements of a company in that market before it can be used in this state. The line of responsibility for the surplus lines broker is clarified. The bill permits the creation of a surplus lines association that can have a substantial self-regulatory role which has experienced substantial sucess in California and in Washington. This would allow the division to more effectively use its resources to avoid problems for persons insured in that market.

Sec 21.34.010. Page 13, lines 28-29 & page 14, lines 1-14.
This is the purpose section for the new chapter

Sec 21.34.020. Page 14, lines 15-23
This section conditions what can be placed in the nonadmitted market. There is no substantive difference from current law.

Sec 21.34.030. Page 14, lines 24-29 & page 15, lines 1-12.
This section permits workers compensation to be written in the surplus lines market provided the director finds it to be in the public interest. It is substantially the same as current law except that this proposal has financial requirements that are higher than other placements in that market.

Sec 21.34.040. Page 15, lines 13-29 & page 16, lines 1-29.
This section substantially increases the minimum capital and surplus requirements used in the surplus lines market. It also recognizes distinctions among insurers, Lloyds type organizations, and insurance exchanges.

Sec 21.34.050. Page 17, lines 1-9.
This section is a new provision which substantially tracks current practice. It provides for the listing of eligible surplus lines insurers. It also permits the surplus lines association to perform that task when approved by the director.

Sec 21.34.060. Page 17, lines 10-23.
This section requires that when a policy is written by more than one insurer and one or more of those insurers are not eligible, the insured must be notified. This prevents a practice where some brokers conceal the fact that there are ineligible insurers on a risk. One way that this is done is to list the insurers as "underwriters at Lloyd's and other companies." The division does not accept this practice now, but is not certain that even in those cases where we correct it, the insured is adequately informed. A little information at this stage can prevent a lot of problems later.

Sec 21.34.070. Page 17, lines 24-29 & page 18, lines 1-11.
This section establishes a procedure for removing an insurer from the eligible list and sets forth a notice requirement to all licensees.

Sec 21.34.080. Page 18, lines 12-29.
This section is similar to an existing requirement to file affidavits of coverage. It adds a requirement on the surplus lines broker to provide evidence of insurance to an insured within 30 days of placement of the coverage. It also provides that these filing requirements may be transferred to the surplus lines association upon an order by the director.

Sec 21.34.050. Page 19, lines 1-29 & page 20, lines 1-15.
This section permits the formation of a surplus lines association and sets forth the powers and purposes for which it may be formed. It establishes the requirements for its formation and makes it subject to examination by the director. It provides that the director may require membership in the association as a condition of licensure in this state.

Sec 21.34.100. Page 20, lines 16-29, all of page 21, & page 22, line 1.
This section describes the evidence of insurance which a surplus lines broker must provide for an insured. The basic idea is to require a full disclosure of the facts relating to a placement in the nonadmitted market. This also applies to changes made in coverage. The broker is required to maintain a full copy of all documents pertinent to the insurance transaction. A warning is required to apprise the insured that a policy placed in the nonadmitted market is not covered by the Alaska Insurance Guaranty Association Act.

Sec 21.34.110. Page 22, lines 2-13.
This section provides that the insured has no liability for premium until the broker has provided a notice to the insured to the effect that the insurer is nonadmitted, and there is no insolvency protection provided under state law. This is a new approach.

Sec 21.34.120. Page 22, lines 14-16.
This is similar to present law. I provides that contracts in the surplus lines market place are valid contracts.

Sec 21.34.130. Page 22, lines 17-22.
Section provides that payment to the broker is payment to the insurer.

Sec 21.34.140. Page 22, lines 23-29, all of page 23, and page 24, lines 1-6.
This section sets forth the licensing standards and requirements for a surplus lines brokers license. The requirements are not substantially different than those in current law. The bond requirement is higher. This proposal does permit nonresident surplus lines brokers licensees. (e) does provide a penalty for late renewal of license.

Sec 21.34.150. Page 24, lines 7-12.
This section clarifies the scope of a surplus lines brokers license. It allows the surplus lines broker to accept business from other surplus lines brokers and other brokers but not from agents.

Sec 21.34.160. Page 24, lines 13-29 & page 25, lines 1-11.
This section clearly outlines the kinds of records that must be maintained by a surplus lines broker and that such records must be open for examination by the director.

Sec 21.34.170. Page 25, lines 12-18.
This section requires a monthly report of business placed in the sulplus lines market.

Sec 21.34.180. Page 25, lines 19-29 & page 26, lines 1-27.
This section is substantially the same as current law. The premium tax is established here and the director may have the tax collected by the surplus lines association. The director has the ability to establish adequate safeguards to protect the monies collected in this fashion.

Sec 21.34.190. Page 26, lines 28-29 & page 27, lines 1-3.
A filing fee of 1% is established. This is presently at 1/2%.

Sec 21.34.200. Page27, lines 4-21.
This section provides for two alternate means of tax collection. The first is by the director in the usual manner. The second is by the surplus lines association upon an order by the director after establishing those safeguards deemed appropriate.

Sec 21.34.210. Page 27, lines 22-29 & page 28, lines 1-16.
In the current law, the director has discretionary suspension or revocation authority. The restructuring found in this section is more specific and lists those actions which can result in suspension or revocation.

Sec 21.34.220. Page 28, lines 17-28.
This section ties into AS 21.33 for service of process on a nonadmitted insurer used through the surplus lines market. The presence of a nonadmitted insurer on a surplus lines contract assumes that the insurer has subjected itself to AS 21.34.

Sec 21.34.230. Page 28, line 29 & page 29, lines 1-7.
This penalty section is an upgrade from the present law. It also includes an ability to take action under AS 21.33.320-330 in the unfair trade practices act.

Sec 21.34.240. Page 29, lines 8-12.
Separability section.

Sec 21.34.250. Page 29, lines 13-14.
This section enables the director to promulgate those regulations necessary to implement, define and enforce the provisions of this new chapter.

Sec 21.34.900. Page 29, lines 15-28, all of page 30, & page 31, lines 1-14.

The definitions here take the same explanation as those in Sec 20. There are a few additional definitions but these are not substantively different than current usage in the insurance code.

Sec 22. Page 31, lines 15-19.
This added section in the unfair trade practices act makes it an unfair trade practice to fail to make the required disclosures and reports.

Sec 23. Page 31, lines 20-29 & page 32, lines 1-2.
This section gives admitted insurance companies the ability to compete with the nonadmitted market. It ties in with sections 24 & 25.

Sec 24. Page 32, lines 3-9
This section ties in with Sec 23 and Sec 25 in allowing the admitted market to compete with the nonadmitted market. This is accomplished by providing these exceptions in the rate law which has to date acted as an impediment to that kind of competition.

Sec 25. Page 32, lines 10-15.
This section ties in with the previous two sections. It specifies those conditions under which an admitted insurer can work outside of its filings made with the director. This provides the ability to directly compete with the surplus lines market. This is in the public interest since most admitted market coverages are protected by the guaranty association act.

Sec 26. Page 32, lines 16-17.
This section repeals those sections in AS 21.33 which are no longer needed or have been replaced in the new chapter in section 21.

SB470 Section by Section Analysis.

This proposal upgrades the Unauthorized (nonadmitted) Insurers Act and the Surplus Lines Insurance Act to comport with the recently adopted models of the National Association of Insurance Commissioners(NAIC). Currently, these two acts, along with a third, the Unauthorized Insurers Service of Process Act appear in AS 21.33.

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The changes in this section are editorial. The phrase "doing an insurance business" has been changed to "transaction of insurance", and gender oriented references have been changed.

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This section contains more of the same changes noted in Section 4. No substantive change.

Summary

Section 6. Page 4, lines 14-29 & page 5, lines 1-8.
The changes in this section are similar to those in Section 4. No substantive changes.

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The difference here is found on page 6, lines 2-4. It is primarily a clarification. No substantive change.

Section 8. Page 6, lines 5-13.
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The sole change in this section is the insertion of the word "nonadmitted" on line 16. This has been done in several of the earlier sections without comment. It is a clarification, and ond that is defined in the definition section on page 12, lines 15-18. Previously the words "insurer", "nonadmitted insurer", and, "unauthorized insurer" have been used synonymously. That is inconsistent and has led to some confusion. This change should clear up that situation.

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This section is a consolidation of several other sections. (a) replaces AS 21.33.015 with no substantive difference. (b) replaces AS 21.33.075 with some shift in an individuals ability to enter and use the nonadmitted market place. This ability is broadened in this bill by removing the specific description of an industrial insured found in AS 21.33.075(9). (c) replaces the combination of AS 21.33.015 and AS 21.33.075(6) with no substantive difference. (d) replaces AS 21.33.041 with no substantive difference.

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This section reinforces the ability of the director to obtain records and information under this section. This is accomplished by allowing the director to apply for a court order to compel production of records and information.

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This section is intended to avoid any potential conflict with new sections AS 21.33.037 and AS 21.33.042.

Section 19. Page 11, lines 22-29 & page 12, lines 1-4.
This section upgrades the penalty section by increasing the per violation penalty from $500 for the first offense to $1,000 and by increasing the second offense penalty from $500 to $2,000. A new penalty is also structured for allowing a violation to continue uncorrected in the amount of $1,000 for each month of continuation.

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This definition section is new. There is nothing representing a substantive difference from current law except in (9)(A) where vessels of 50 displacement tons or less are not included in the definition of marine and are therefor included in the requirements of this proposed law.

Section 21. Page 13, lines 26-29, all of pages 14-30, & page 31, lines 1-16.
This section adds a new chapter to the insurance code dealing with surplus lines insurance. This chapter has essentially been removed from AS 21.33. A number of changes have been made to provide for a stronger regulation of the surplus lines market. This is accomplished by strengthening the financial requirements of a company in that market before it can be used in this state. The line of responsibility for the surplus lines broker is clarified. The bill permits the creation of a surplus lines association that can have a substantial self-regulatory role which has experienced substantial sucess in California and in Washington. This would allow the division to more effectively use its resources to avoid problems for persons insured in that market.

Sec 21.34.010. Page 13, lines 28-29 & page 14, lines 1-14.
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This section conditions what can be placed in the nonadmitted market. There is no substantive difference from current law.

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This section permits workers compensation to be written in the surplus lines market provided the director finds it to be in the public interest. It is substantially the same as current law except that this proposal has financial requirements that are higher than other placements in that market.

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This section substantially increases the minimum capital and surplus requirements used in the surplus lines market. It also recognizes distinctions among insurers, Lloyds type organizations, and insurance exchanges.

Sec 21.34.050. Page 17, lines 1-9.
This section is a new provision which substantially tracks current practice. It provides for the listing of eligible surplus lines insurers. It also permits the surplus lines association to perform that task when approved by the director.

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This section requires that when a policy is written by more than one insurer and one or more of those insurers are not eligible, the insured must be notified. This prevents a practice where some brokers conceal the fact that there are ineligible insurers on a risk. One way that this is done is to list the insurers as "underwriters at Lloyd's and other companies." The division does not accept this practice now, but is not certain that even in those cases where we correct it, the insured is adequately informed. A little information at this stage can prevent a lot of problems later.

Sec 21.34.070. Page 17, lines 24-29 & page 18, lines 1-11.
This section establishes a procedure for removing an insurer from the eligible list and sets forth a notice requirement to all licensees.

Sec 21.34.080. Page 18, lines 12-29 & page 19, line 1.
This section is similar to an existing requirement to file affidavits of coverage. It adds a requirement on the surplus lines broker to provide evidence of insurance to an insured within 30 days of placement of the coverage. It also provides that these filing requirements may be transferred to the surplus lines association upon an order by the director.

Sec 21.34.090. Page 19, lines 2-29 & page 20, lines 1-16.
This section permits the formation of a surplus lines association and sets forth the powers and purposes for which it may be formed. It establishes the requirements for its formation and makes it subject to examination by the director. It provides that the director may require membership in the association as a condition of licensure in this state.

Sec 21.34.100. Page 20, lines 17-29, all of page 21, & page 22, lines 1-2.
This section describes the evidence of insurance which a surplus lines broker must provide for an insured. The basic idea is to require a full disclosure of the facts relating to a placement in the nonadmitted market. This also applies to changes made in coverage. The broker is required to maintain a full copy of all documents pertinent to the insurance transaction. A warning is required to apprise the insured that a policy placed in the nonadmitted market is not covered by the Alaska Insurance Guaranty Association Act.

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This section provides that the insured has no liability for premium until the broker has provided a notice to the insured to the effect that the insurer is nonadmitted, and there is no insolvency protection provided under state law. This is a new approach.

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This is similar to present law. I provides that contracts in the surplus lines market place are valid contracts.

Sec 21.34.130. Page 22, lines 18-23.
Section provides that payment to the broker is payment to the insurer.

Sec 21.34.140. Page 22, lines 24-29, all of page 23, and page 24, lines 1-6.
This section sets forth the licensing standards and requirements for a surplus lines brokers license. The requirements are not substantially different than those in current law. The bond requirement is higher. This proposal does permit nonresident surplus lines brokers licensees. (e) does provide a penalty for late renewal of license. The language on page 23, lines 9 & 10 starting with the word "except", should be removed as it provides too broad a grandfather right.

Sec 21.34.150. Page 24, lines 9-14.
This section clarifies the scope of a surplus lines brokers license. It allows the surplus lines broker to accept business from other surplus lines brokers and other brokers but not from agents.

Sec 21.34.160. Page 24, lines 15-29 & page 25, lines 1-13.
This section clearly outlines the kinds of records that must be maintained by a surplus lines broker and that such records must be

open for examination by the director.

Sec 21.34.170. Page 25, lines 14-20.
This section requires a monthly report of business placed in the sulplus lines market.

Sec 21.34.180. Page 25, lines 21-29 & page 26, lines 1-29.
This section is substantially the same as current law. The premium tax is established here and the director may have the tax collected by the surplus lines association. The director has the ability to establish adequate safeguards to protect the monies collected in this fashion.

Sec 21.34.190. Page 27, lines 1-5.
A filing fee of 1% is established. This is presently at 1/2%.

Sec 21.34.200. Page27, lines 6-23.
This section provides for two alternate means of tax collection. The first is by the director in the usual manner. The second is by the surplus lines association upon an order by the director after establishing those safeguards deemed appropriate.

Sec 21.34.210. Page 27, lines 24-29 & page 28, lines 1-18.
In the current law, the director has discretionary suspension or revocation authority. The restructuring found in this section is more specific and lists those actions which can result in suspension or revocation.

Sec 21.23.220. Page 28, lines 19-29 & page 29, line 1.
This section ties into AS 21.33 for service of process on a nonadmitted insurer used through the surplus lines market. The presence of a nonadmitted insurer on a surplus lines contract assumes that the insurer has subjected itself to AS 21.34.

Sec 21.34.230. Page 29, lines 2-9.
This penalty section is an upgrade from the present law. It also includes an ability to take action under AS 21.33.320-330 in the unfair trade practices act.

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Separability section.

Sec 21.34.250. Page 29, lines 15-17.
This section enables the director to promulgate those regulations necessary to implement, define and enforce the provisions of this new chapter.

Sec 21.34.900. Page 29, lines 18-29, all of page 30, & page 31, lines 1-16.
The definitions here take the same explanation as those in Sec 20. There are a few additional definitions but these are not substantively different than current usage in the insurance code.

Sec 22. Page 31, lines 17-21.
This added section in the unfair trade practices act makes it an unfair trade practice to fail to make the required disclosures and reports.

Sec 23. Page 31, lines 22-29 & page 32, lines 1-2.
This section is intended to give admitted insurance companies the ability to compete with the nonadmitted market, however, some language was inadvertantly omitted. On page 31, line 23 remove "Under regulations which the director [HE] shall adopt". On page 31, line 27 following the word "used" add the phrase "or the filing and approval of which are in the director's opinion, not desirable or necessary for the protection of the public." On page 31, line 27, remove the words "and regulations."

Sec 24. Page 32, lines 3-9
This section ties in with Sec 23 and Sec 25 in allowing the admitted market to compete with the nonadmitted market. This is accomplished by providing these exceptions in the rate law which has to date acted as an impediment to that kind of competition.

Sec 25. Page 32, lines 10-15.
This section ties in with the previous two sections. It specifies those conditions under which an admitted insurer can work outside of its filings made with the director. This provides the ability to directly compete with the surplus lines market. This is in the public interest since most admitted market coverages are protected by the guaranty association act.

Finally, a section has been inadvertantly omitted. It is the repealer section. That section should read, "AS 21.33.015, AS 21.33.041, AS 21.33.045(b), AS 21.33.051, and AS 21.33.068-21.33.300 are repealed."

MAY 22, 1984

TO: JOHN

FROM: KEN

RE: SB 470 RELATING TO INSURANCE

SPECIFICALLY, THIS BILL DEALS WITH SURPLUS LINES INSURANCE. THE LEGISLATION IS AN ALASKA VARIATION OF THE MODEL ACT DRAFTED FOR THIS PART OF THE INDUSTRY BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. THE BILL WOULD AD A NEW SECTION TO TITLE 21 OF THE STATUTES WHICH WOULD GOVERN SURPLUS LINE TRANSACTIONS IN THE STATE.....WITH THAT, I WOULD ASK KEN MOORE, DIRECTOR OF THE DIVISION OF INSURANCE TO COME FORWARD AND OUTLINE THE LEGISLATION FOR THE COMMITTEE.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CS SB 470 (Loc)
Title: Relating to Insurance
Sponsor: Mulcahy
Requestor: Senate L&C
Date of Request: 2/15/84

FISCAL DETAIL
Agency Affected: Dept. of Comm. & Econ. Dev.
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	Ø	Ø	Ø	Ø	Ø	Ø
CAPITAL	Ø	Ø	Ø	Ø	Ø	Ø
REVENUE	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Kenneth C. Moore, Director
Phone: 465-2515
Division: Insurance
Date: 2/15/84

Approved by Commissioner: Richard A. Lyon
Date: 2/15/84
Agency: Department of Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Provided by Division of Insurance

CSSB470(L&C) Section by Section Analysis. 3/15/84

This proposal upgrades the Unauthorized (nonadmitted) Insurers Act and the Surplus Lines Insurance Act to comport with the recently adopted models of the National Association of Insurance Commissioners(NAIC). Currently, these two acts, along with a third, the Unauthorized Insurers Service of Process Act appear in AS 21.33.

This proposal continues the Unauthorized (nonadmitted) Insurers Act and the Unauthorized Insurers Service of Process Act in AS 21.33. Access to that market is more clearly stated. Most of the changes in AS 21.33 are not substantive. However the Surplus Lines Insurance Act has been removed from AS 21.33 and placed in a new chapter, AS 21.34. This chapter makes some substantial revisions with respect to how a surplus lines business can be conducted in this state. It will give the regulator a clearer ability to deal with the competence of the licensee and provide more meaningful protection for the public through:
-clarification of the duties and responsibilities of the licensee;
-higher financial requirements for the nonadmitted insurer;
-permission to form a surplus lines association with an active role in regulating the market; and,
-allowing admitted markets to compete with the nonadmitted markets.

Section 1. Page 1, lines 8-17.
Current law provides that when the state examines an insurance company, the insurance company pays for that examination. A surplus lines broker is also subject to examination but does not pay for that examination. The position of the surplus lines broker is in many respects similar to an insurer, particularly when the broker has utilized an insurer that is not able to meet its obligations. This section provides that the surplus lines broker must also meet the cost of its examination.

Section 2. Page 1, lines 18-29 & page 2, lines 1-7.
The change here is on page 1, lines 24-25. This section ties in with Section 1. It lists those entities subject to examination without charge.

Section 3. Page 2, lines 8-29 & page 3, lines 1-3.
This rewrite of the purpose section does not contain substantive changes. It is formatted in a more readable form and the application of the chapter to surplus lines brokers has been deleted.

Section 4. Page 3, lines 4-24.
The changes in this section are editorial. The phrase "doing an insurance business" has been changed to "transaction of insurance", and gender oriented references have been changed.

Section 5. Page 3, lines 25-29 & page 4, lines 1-13.
This section contains more of the same changes noted in Section 4. No substantive change.

Section 6. Page 4, lines 14-29 & page 5, lines 1-8.
The changes in this section are similar to those in Section 4. No substantive changes.

Section 7. Page 5, lines 9-29 & page 6, lines 1-4.
The difference here is found on page 6, lines 2-4. It is primarily a clarification. No substantive change.

Section 8. Page 6, lines 5-13.
Changes similar to those in Section 4.

Section 9. Page 6, lines 14-26.
The sole change in this section is the insertion of the word "nonadmitted" on line 16. This has been done in several of the earlier sections without comment. It is a clarification, and ond that is defined in the definition section on page 12, lines 15-18. Previously the words "insurer", "nonadmitted insurer", and, "unauthorized insurer" have been used synonymously. That is inconsistent and has led to some confusion. This change should clear up that situation.

Section 10. Page 6, lines 27-29 & page 7, lines 1-29.
This section is a consolidation of several other sections. (a) replaces AS 21.33.015 with no substantive difference. (b) replaces AS 21.33.075 with some shift in an individuals ability to enter and use the nonadmitted market place. This ability is broadened in this bill by removing the specific description of an industrial insured found in AS 21.33.075(9). (c) replaces the combination of AS 21.33.015 and AS 21.33.075(6) with no substantive difference. (d) replaces AS 21.33.041 with no substantive difference.

Section 11. Page 8, lines 1-24.
This is a new section and it limits a nonadmitted insurers access to Alaska courts. This is as to those not placed through a surplus lines broker in AS 21.34. It clarifies the standing of those insurers.

Section 12. Page 8, lines 25-29 & page 9, lines 1-6.
This is the same kind of change noted in Section 9. One additional change is that access by the director to an insureds purchases in the admitted or authorized market has been removed. This ability to access admitted purchases is probably unreasonable when placed on the insured. Presumably access to these records through other sources is sufficient.

Section 13. Page 9, lines 7-13.
This section reinforces the ability of the director to obtain records and information under this section. This is accomplished by allowing the director to apply for a court order to compel production of records and information.

Section 14. Page 9, lines 14-29 & page 10, lines 1-10.
"Unauthorized" has been changed to "nonadmitted" as noted in section 9. The penalty provision has been revised so that it is more readily calculable. This penalty will generally be stiffer than that now provided.

Section 15. Page 10, lines 11-26.
More editorial changes like those in section 9. Since the surplus lines law has been removed from AS 21.33 and placed in AS 21.34, that reference has been noted. The time for reporting has been shortened from 60 days to 30 days.

Section 16. Page 10, lines 27-29 & page 11, lines 1-6.
Same editorial change noted in section 9.

Section 17. Page 11, lines 7-15.
The penalty provision has been upgraded in the same fashion as section 14.

Section 18. Page 11, lines 16-21.
This section is intended to avoid any potential conflict with new sections AS 21.33.037 and AS 21.33.042.

Section 19. Page 11, lines 22-29 & page 12, lines 1-4.
This section upgrades the penalty section by increasing the per violation penalty from $500 for the first offense to $1,000 and by increasing the second offense penalty from $500 to $2,000. A new penalty is also structured for allowing a violation to continue uncorrected in the amount of $1,000 for each month of continuation.

Section 20. Page 12, lines 5-29 & page 13, lines 1-25.
This definition section is new. There is nothing representing a substantive difference from current law except in (9)(A) where vessels of 50 displacement tons or less are not included in the definition of marine and are therefor included in the requirements of this proposed law.

Section 21. Page 13, lines 26-29, all of pages 14-30, & page 31, lines 1-16.
This section adds a new chapter to the insurance code dealing with surplus lines insurance. This chapter has essentially been removed from AS 21.33. A number of changes have been made to provide for a stronger regulation of the surplus lines market. This is accomplished by strengthening the financial requirements of a company in that market before it can be used in this state. The line of responsibility for the surplus lines broker is clarified. The bill permits the creation of a surplus lines association that can have a substantial self-regulatory role which has experienced substantial sucess in California and in Washington. This would allow the division to more effectively use its resources to avoid problems for persons insured in that market.

Sec 21.34.010. Page 13, lines 28-29 & page 14, lines 1-14.
This is the purpose section for the new chapter

Sec 21.34.020. Page 14, lines 15-23
This section conditions what can be placed in the nonadmitted market. There is no substantive difference from current law.

Sec 21.34.030. Page 14, lines 24-29 & page 15, lines 1-12.
This section permits workers compensation to be written in the surplus lines market provided the director finds it to be in the public interest. It is substantially the same as current law except that this proposal has financial requirements that are higher than other placements in that market.

Sec 21.34.040. Page 15, lines 13-29 & page 16, lines 1-29.
This section substantially increases the minimum capital and surplus requirements used in the surplus lines market. It also recognizes distinctions among insurers, Lloyds type organizations, and insurance exchanges.

Sec 21.34.050. Page 17, lines 1-9.
This section is a new provision which substantially tracks current practice. It provides for the listing of eligible surplus lines insurers. It also permits the surplus lines association to perform that task when approved by the director.

Sec 21.34.060. Page 17, lines 10-23.
This section requires that when a policy is written by more than one insurer and one or more of those insurers are not eligible, the insured must be notified. This prevents a practice where some brokers conceal the fact that there are ineligible insurers on a risk. One way that this is done is to list the insurers as "underwriters at Lloyd's and other companies." The division does not accept this practice now, but is not certain that even in those cases where we correct it, the insured is adequately informed. A little information at this stage can prevent a lot of problems later.

Sec 21.34.070. Page 17, lines 24-29 & page 18, lines 1-11.
This section establishes a procedure for removing an insurer from the eligible list and sets forth a notice requirement to all licensees.

Sec 21.34.080. Page 18, lines 12-29.
This section is similar to an existing requirement to file affidavits of coverage. It adds a requirement on the surplus lines broker to provide evidence of insurance to an insured within 30 days of placement of the coverage. It also provides that these filing requirements may be transferred to the surplus lines association upon an order by the director.

Sec 21.34.090. Page 19, lines 1-29 & page 20, lines 1-15.
This section permits the formation of a surplus lines association and sets forth the powers and purposes for which it may be formed. It establishes the requirements for its formation and makes it subject to examination by the director. It provides that the director may require membership in the association as a condition of licensure in this state.

Sec 21.34.100. Page 20, lines 16-29, all of page 21, & page 22, line 1.
This section describes the evidence of insurance which a surplus lines broker must provide for an insured. The basic idea is to require a full disclosure of the facts relating to a placement in the nonadmitted market. This also applies to changes made in coverage. The broker is required to maintain a full copy of all documents pertinent to the insurance transaction. A warning is required to apprise the insured that a policy placed in the nonadmitted market is not covered by the Alaska Insurance Guaranty Association Act.

Sec 21.34.110. Page 22, lines 2-13.
This section provides that the insured has no liability for premium until the broker has provided a notice to the insured to the effect that the insurer is nonadmitted, and there is no insolvency protection provided under state law. This is a new approach.

Sec 21.34.120. Page 22, lines 14-16.
This is similar to present law. I provides that contracts in the surplus lines market place are valid contracts.

Sec 21.34.130. Page 22, lines 17-22.
Section provides that payment to the broker is payment to the insurer.

Sec 21.34.140. Page 22, lines 23-29, all of page 23, and page 24, lines 1-6.
This section sets forth the licensing standards and requirements for a surplus lines brokers license. The requirements are not substantially different than those in current law. The bond requirement is higher. This proposal does permit nonresident surplus lines brokers licensees. (e) does provide a penalty for late renewal of license.

Sec 21.34.150. Page 24, lines 7-12.
This section clarifies the scope of a surplus lines brokers license. It allows the surplus lines broker to accept business from other surplus lines brokers and other brokers but not from agents.

Sec 21.34.160. Page 24, lines 13-29 & page 25, lines 1-11.
This section clearly outlines the kinds of records that must be maintained by a surplus lines broker and that such records must be open for examination by the director.

Sec 21.34.170. Page 25, lines 12-18.
This section requires a monthly report of business placed in the sulplus lines market.

Sec 21.34.180. Page 25, lines 19-29 & page 26, lines 1-27.
This section is substantially the same as current law. The premium tax is established here and the director may have the tax collected by the surplus lines association. The director has the ability to establish adequate safeguards to protect the monies collected in this fashion.

Sec 21.34.190. Page 26, lines 28-29 & page 27, lines 1-3.
A filing fee of 1% is established. This is presently at 1/2%.

Sec 21.34.200. Page27, lines 4-21.
This section provides for two alternate means of tax collection. The first is by the director in the usual manner. The second is by the surplus lines association upon an order by the director after establishing those safeguards deemed appropriate.

Sec 21.34.210. Page 27, lines 22-29 & page 28, lines 1-16.
In the current law, the director has discretionary suspension or revocation authority. The restructuring found in this section is more specific and lists those actions which can result in suspension or revocation.

Sec 21.23.220. Page 28, lines 17-28.
This section ties into AS 21.33 for service of process on a nonadmitted insurer used through the surplus lines market. The presence of a nonadmitted insurer on a surplus lines contract assumes that the insurer has subjected itself to AS 21.34.

Sec 21.34.230. Page 28, line 29 & page 29, lines 1-7.
This penalty section is an upgrade from the present law. It also includes an ability to take action under AS 21.33.320-330 in the unfair trade practices act.

Sec 21.34.240. Page 29, lines 8-12.
Separability section.

Sec 21.34.250. Page 29, lines 13-14.
This section enables the director to promulgate those regulations necessary to implement, define and enforce the provisions of this new chapter.

Sec 21.34.900. Page 29, lines 15-28, all of page 30, & page 31, lines 1-14.

The definitions here take the same explanation as those in Sec 20. There are a few additional definitions but these are not substantively different than current usage in the insurance code.

Sec 22. Page 31, lines 15-19.
This added section in the unfair trade practices act makes it an unfair trade practice to fail to make the required disclosures and reports.

Sec 23. Page 31, lines 20-29 & page 32, lines 1-2.
This section gives admitted insurance companies the ability to compete with the nonadmitted market. It ties in with sections 24 & 25.

Sec 24. Page 32, lines 3-9
This section ties in with Sec 23 and Sec 25 in allowing the admitted market to compete with the nonadmitted market. This is accomplished by providing these exceptions in the rate law which has to date acted as an impediment to that kind of competition.

Sec 25. Page 32, lines 10-15.
This section ties in with the previous two sections. It specifies those conditions under which an admitted insurer can work outside of its filings made with the director. This provides the ability to directly compete with the surplus lines market. This is in the public interest since most admitted market coverages are protected by the guaranty association act.

Sec 26. Page 32, lines 16-17.
This section repeals those sections in AS 21.33 which are no longer needed or have been replaced in the new chapter in section 21.

CSSB470(RLS) · Section by Section Analysis. 5/18/84

This proposal upgrades the Unauthorized (nonadmitted) Insurers Act and the Surplus Lines Insurance Act to comport with the recently adopted models of the National Association of Insurance Commissioners(NAIC). Currently, these two acts, along with a third, the Unauthorized Insurers Service of Process Act appear in AS 21.33.

This proposal continues the Unauthorized (nonadmitted) Insurers Act and the Unauthorized Insurers Service of Process Act in AS 21.33. Access to that market is more clearly stated. Most of the changes in AS 21.33 are not substantive. However the Surplus Lines Insurance Act has been removed from AS 21.33 and placed in a new chapter, AS 21.34. This chapter makes some substantial revisions with respect to how a surplus lines business can be conducted in this state. It will give the regulator a clearer ability to deal with the competence of the licensee and provide more meaningful protection for the public through:
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This section ties in with the previous two sections. It specifies those conditions under which an admitted insurer can work outside of its filings made with the director. This provides the ability to directly compete with the surplus lines market. This is in the public interest since most admitted market coverages are protected by the guaranty association act.

Sec 26. Page 32, lines 14-15.
This section repeals those sections in AS 21.33 which are no longer needed or have been replaced in the new chapter in section 21.

ALASKA SURPLUS LINES BROKERS ASSN.

3605 Arctic Blvd. #1795

Anchorage, Ak. 99503

Representative John Cowdery
House Committee on Labor & Commerce
Juneau, Ak.

Dear Rep. Cowdery

RE: Senate Bill 470, Hearing May 22, 1984

As president of the Alaska Surplus Lines Brokers Association I wish to draw your attention to particular item of concern to our membership. Firstly, our association does basically support SB 470. We testified to that fact before Senator Mulcahay's Committee in March of this year.

However, Section 21.34.120 (b)(4), lines 9 through 18 are of concern and might seriously affect the public's ability to procure surplus lines insurance coverages (e.g. specialty and Lloyds London policies) unless adequately addressed by the Dept. of Insurance. This section increases a broker's bond liability to $200,000. We have no particular objection to this, however line16 makes a provision that the surety bond be available (inaddition to other items) "to pay proper losses promptly ". We have canvassed several corporate sureties, all of which are not interested in writing the bond until a proper definition of "promptly" is made by the Division of Insurance.

We feel this terminology is vague and that it would severly impact our particular line of insurance business. Many of the smaller agencies would not be able to procure the bond with the present text unqualified. Please delay your decision to pass out the legislation until proper definitions are made.

Sincerely,

Henry F. George
President
Alaska Surplus Lines Brokers Assn.
TEL: (907) 562-2266

SB

481

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 998[illegible]
907-465-3800

MEMORANDUM

March 8, 1984

SUBJECT: Sectional analysis of SB 481

TO: Senator Jalmar Kerttula
President of the Senate

FROM: Edward H. Hein
Legislative Counsel

Section 1 allows a nonprofit cemetery to incorporate under AS 10.20 as an alternative to forming as a cemetery association.

Section 2 adds clean-up provisions necessitated by section 1.

Section 3 expands to which a cemetery's endowment fund may be put to include improvement of the grounds, buildings, and lots, and the repayment of debts.

Section 4 adds clean-up provisions necessitated by section 1.

Section 5 expands a nonprofit cemetery's authority borrow money to construct and repair buildings and mausoleums, to purchase or lease equipment, and other purposes. Such debts may be secured by mortgages on the cemetery's land, except those burial lots in which association members or corporate officers, trustees, or employees have more than a one-half interest.

Sections 6 - 11 add clean-up language necessitated by section 1.

Section 12 adds a definition of the term "cemetery lot" for purposes of AS 10.30.

Section 13 adds a definition of the term "cemetery lot" for purposes of the consumer protection statutes in AS 45.50.

EHH:ojb
J4/054

EVERLASTING CARE ENDOWED

MEMBER
NATIONAL ASSOCIATION OF CEMETERIES

Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

PHONE 344-1311
OFFICE HOURS:
10 A.M. TO 3 P.M.

January 23, 1964

CEMETERY
AND
OFFICE
ON KLATT ROAD

Senator, Jalmar M. Kerttula
Alaska State Legislature
Juneau, Alaska

Dear Mr. Kerttula:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining to non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years ago before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association realy needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niches and storage vault. Also we can not even build a much needed administration building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corporation in our amendments is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non-paid.

Sincerely,
Mr. Harry L. Wimmer
Vice-President, Board of Trustees

ANGELUS MEMORIAL PARK ASSOCIATION

Enclosures
This material has also been sent to Representatives Joe Hayes and Randy Phillips.

ALASKA STATUTES

CHAPTER 30. Cemetery Associations

Sec. 10.30.070. Creation of irreducible fund. The association may by its bylaws provide that a stated percentage of the money realized from the sale of lots and donations (AND OTHER SOURCES OF REVENUE) constitutes an irreducible fund, which may be invested in the manner or loaned upon the securities the association or the trustees consider proper. The interest or income from the irreducible fund provided for in any bylaw or as much as may be necessary shall be devoted exclusively to the preservation and embellishment of the (CEMETERY) grounds, buildings and property of the association and or corporation and the lots and space in buildings or grounds sold to the members of the association and or corporation, or to the payment of the interest or principal of the debts authorized by the association for the purchase of land, equipment, erecting buildings and improvements. Where a bylaw has been enacted for the creation of an irreducible fund, (IT) the set amount or percentage stated in the bylaw, may not be amended except for the purpose of increasing the fund. (36-5-5 ACLA 19

I was told to put in caps and brackets words to be deleted and underline the new wording.

office

ALASKA STATUTES

CHAPTER 30. Cemetery Associations

Sec. 10.30.090. Debts of association and or corporation. A cemetery association and or corporation may (NOT) contract debts in anticipation of future receipts, (EXCEPT) for the (ORIGINAL) purchase of cemetery land and or for other cemetery purposes, the laying out and embellishmen of the grounds and avenues of the cemetery, repairing their buildings, erection of new buildings, mausoleums, columbariums, and purchasing necessary equipment, for which debts the association may issue bonds or notes. The association may secure these debts by mortgage upon its lands, except lots which have been conveyed to the members of the Association, or by security interest in no more than 50% of the irreduci fund. (36-5-5 ACLA 1949).

ALASKA STATUTES

CHAPTER 30. Cemetery Associations.

Sec. 10.30.125 Definition of "Cemetery Lot", one or more than one adjoining, lot, plot, space, grave, nich, mausoleum crypt, vault, and columbarium, for the interment of human remains.

61.738 Procedure for revoking certificate of authority. ORS 57.735, relating to revocation of certificate of authority, is applicable to nonprofit corporations. [1963 c.492 §38 (enacted in lieu of 61.735)]

61.740 [Renumbered 61.984]

61.741 Application to corporation authorized to transact business in this state on December 31, 1959. Foreign corporations which are duly authorized to transact business in this state on December 31, 1959, for a purpose or purposes for which a corporation might secure such authority under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, and from December 31, 1959, such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. [1959 c.580 §80]

61.745 Transacting business without certificate of authority. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. No action, suit or proceeding shall be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state. [1959 c.580 §81]

CEMETERIES AND CREMATORIES

61.755 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation. A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution and taxation, and from any appropriation for public purposes, and lots or portions of such land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 600 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 40 acres, but if the land already held for such purposes by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 10 acres at any one time. [1959 c.580 §95]

61.760 Revenues; restrictions on uses thereof. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws, provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund,

Oregon

SPECIAL PROVISIONS RELATING TO ORS 97.010 TO 97.040, 97.110 TO 97.450, 97.510 TO 97.730, 97.810 TO 97.920 and 97.990

97.010 Definitions for ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

(3) "Burial park" means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(5) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(6) "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

(10) "Entombment" means the placement of human remains in a crypt or vault.

(11) "Burial" means the placement of human remains in a grave.

(12) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(13) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains.

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(18) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

(19) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "Endowment care" means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund established and maintained pursuant to the provisions of ORS 97.810 to 97.860. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. [Amended by 1955 c.545 §1; 1965 c.396 §1]

the bank or trust company shall be governed by the provisions of ORS 128.057 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Secretary of State on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 97.810 (2) regarding endowment care funds. The Secretary of State may require the corporation to file, as often as he considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

(3) The interest or income arising from the irreducible fund provided for in this section or by any bylaws, or so much thereof as is necessary, shall be devoted exclusively to the preservation and embellishment of the grounds, buildings and property of the corporation and the lots and space in buildings or grounds sold to the members of the corporation, or to the payment of the interest or principal of the debts authorized by subsection (5) of this section for the purchase of land, erecting buildings, and improvements. Any surplus thereof not needed or used for such purposes shall be invested as provided in this section and shall become part of the irreducible fund.

(4) After paying for the land and the erection of the original buildings and improvements thereon, all the future receipts and income of the corporation subject to the provisions in this section relating to the creation of an irreducible fund, whether from the sale of lots and burial space, cremation of bodies, donations, gifts and other sources, shall be applied exclusively to laying out, preserving, protecting, embellishing and beautifying the cemetery or the crematory and grounds thereof, and the avenues leading thereto, and to the erection of such buildings and improvements as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

(5) No debts shall be contracted by such corporation in anticipation of any future receipts, except for originally purchasing the lands authorized to be purchased by it, laying out and embellishing the grounds and avenues, erecting buildings and vaults on such land, and improving them for the purposes of the corporation. The corporation may issue bonds or notes for debts so contracted and may secure them by way of mortgage upon any of its lands, buildings, property and improvements excepting lots or space conveyed to the members. [1969 c.580 §96; 1971 c.225 §1]

61.765 Selling land unsuited for burials. If in the board of directors' opinion, any portion of the lands of a nonprofit corporation organized and existing solely for the purposes of either owning or operating a cemetery or the cremation of dead bodies and the burial and care of incinerate remains is unsuitable for burial purposes or other purposes of the corporation, the board of directors may sell such portion and apply the proceeds to the general purposes of such corporation in the same proportion and manner as provided by ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. [1969 c.580 §97]

61.770 Burial lots or space; use, exemption from taxation, execution and liens; lien for purchase price of gravestone. Burial lots or space for burial of incinerate remains in buildings or grounds sold by a nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall be for the sole purpose of interment or deposit and safekeeping of incinerate remains. Such lots or space shall be exempt from taxation, execution, attachment or other lien or process, if used as intended by the purchaser thereof from such corporation, or his assigns or representatives, exclusively for burial purposes, and in no wise with a view to profit. The vendor of any gravestone, however, shall not be prevented from having and enforcing a lien thereon for all or part of its purchase price. If a suit is brought to enforce such a lien, the decree therein is enforceable thereafter; and, for the purpose of enabling the lien to be had and enforced, the gravestone shall be deemed personal property and may be severed and removed, under execution and order of sale, from the lot where it is situated and may be sold in the same manner as any other personal property. [1969 c.580 §98]

61.775 Recording plan; power to improve and regulate grounds. A nonprofit corporation organized and existing solely for the purposes of owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall cause a plan of its land and grounds and of the lots laid out by it and of the niches or burial space in the buildings erected thereon to be made and recorded in the county in which such grounds and land are located, such lots or

Calif Code

HEALTH AND SAFETY CODE

DIVISION 7. DEAD BODIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

7000. The definitions in this chapter apply to this division and to Divisions 8 and 9 of this code.

7001. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition and cremated remains.

7002. "Cremated remains" means human remains after incineration and necessary processing under Section 7054.1 in a crematory.

7003. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault interments.

(c) A crematory, or a crematory and columbarium, for cinerary interments.

7004. "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes.

7005. Except in Part 5 of Division 8 of this code, "mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

7006. "Crematory" means a building or structure containing one or more furnaces for the reduction of bodies of deceased persons to cremated remains.

7007. Except in Part 5 of Division 8 of this code, "columbarium" means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

7008. "Crematory and columbarium" means a building or structure containing both a crematory and columbarium.

7009. "Interment" means the disposition of human remains by inurnment, entombment, or burial in a cemetery or, in the case of cremated remains, by inurnment, entombment, burial, or burial at sea as provided in Section 7117.

7010. "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory and the placement of the cremated remains in a grave, vault or niche or burial at sea as provided in Section 7117 of this code.

7011. "Inurnment" means placing cremated remains in an urn and placing it in a niche.

7012. "Entombment" means the placement of human remains in a crypt or vault.

7013. "Burial" means the placement of human remains in a grave.

7014. "Grave" means a space of ground in a burial park, used, or intended to be used, for burial.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be used, for inurnment of cremated human remains.

7017. "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7019. "Cemetery corporation," "cemetery association," or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole.

7020. "Cemetery business," "cemetery businesses," and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property, including, but not limited to, any activity or business designed for the benefit, service, convenience, education, or spiritual uplift of property owners or persons visiting the cemetery.

7021. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

7023. "Plot owner," "owner," or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority.

7024. "Permit for Disposition of Human Remains" includes "burial permit" and is a permit, issued pursuant to law, for the interment, disinterment, removal, reinterment or transportation of human remains.

DIVISION 8. CEMETERIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. CEMETERY DEFINED

8100. Six or more human bodies being buried at one place constitute the place a cemetery.

CHAPTER 2. VANDALISM

8101. (a) Every person is guilty of a misdemeanor and punishable by a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail for not exceeding one year, or by both, who maliciously does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or any property in a cemetery.

(2) Obliterates any grave, vault, niche, or crypt.

(3) Destroys, cuts, breaks or injures any building, statuary, ornamentation, tree, shrub, or plant within the limits of a cemetery.

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

May 19, 1984

To: Rep. John Cowdery
Chairman/ Labor and Commerce

From: Rep. Joe Hayes
Speaker

Re: HB 481

HB 481 relating to cemetery associations is being referred to your committee today. This bill is almost identical to the House Labor and Commerce version of HB 569 which you passed earlier this session.

I would appreciate your quick action on SB 481.

Thanks.

MAY 22, 1984

TO: JOHN

FROM: KEN

RE: SB 481 RELATING TO CEMETARY ASSOCIATIONS

SB 481 IS DESIGNED TO UPGRADE STATUTES WHICH COVER CEMETARY ASSOCIATIONS, NON-PROFIT CEMETARY CORPORATIONS AND CEMETARY LOTS. THIS BILL IS ALMOST IDENTICAL TO HB 569 WHICH THIS COMMITTEE PASSED EARLIER THIS SESSION. HB 569 HAS ALSO BEEN PASSED ON THE FLOOR. IT IS MY UNDERSTANDING THAT THE STATUTES GOVERNING CEMETARY OPERATIONS HAVE NOT BEEN REVISED SINCE THEY WERE ORIGINALLY ADOPTED IN 1949 DURING TERRITORIAL DAYS. THE BILL WOULD GIVE THOSE OPERATING IN THE INDUSTRY MORE FLEXIBILITY IN DEALING WITH CONSUMERS IN TODAYS MARKET.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 14, 1984

REQUEST
Bill/Resolution No.: SB 481
Title: An Act relating to Cemetery Associations
Sponsor: Senator Kerttula
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce and Economic Dev.
Program Category Affected: Consumer Protection
BRU, Program or Subprogram(s) Affected: Banking, Securities and Corporations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Willis F. Kirkpatrick, Director — Phone: 465-2521
Division: Banking, Securities and Corporations — Date: 2/14/84

Approved by Commissioner: Richard A. Lyon — Date: 2/21/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE 12/1/83

SB

517

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 517
Title: "An Act relating to Workers' Compensation; and providing . . ."
Sponsor: Labor and Commerce
Requestor: Senate HESS
Date of Request: 04/03/84

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Jacquelyn McClintock Phone: 465-2790
Division: Workers' Compensation Date: 04/03/84

Approved by Commissioner: Jim Robison Date: 04/03/84
Agency: Department of Labor

LEG:A:42
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

MAY 15, 1984

TO: JOHN

FROM: KEN

RE: SB 517 RELATING TO WORKERS COMPENSATION

SB 517 IS DESIGNed TO [redacted] SOLVE THE PROBLEMS OF INCONSISTENCY OF TIME PERIODS WHICH NOW EXIST IN THE WORKERS COMPENSATION ACT. THE END DESIRED RESULT WOULD BE LESS CONTROVERTED WORKER COMPENSATION CLAIMS.

A DETAILED SECTIONAL ANALYSIS HAS BEEN PROVIDED AND I WOULD NOW ASK THE DEPARTMENT OF LABOR TO COME FORWARD AND GO THROUGH THE BILL WITH THIE COMMITTEE.

Section-By-Section Analysis

HCS CSSB 517 (L&C)

Section 1. This section requires the physician rendering treatment to file a medical report within 14 days following treatment instead of 20 days.

Section 2. This section extends the maximum time period for an employer to notify the board and employee that the payment of compensation has begun or has been increased, decreased, suspended, terminated, resumed, or changed in type, from 14 days to 28 days.

Section 3. This section extends the maximum time period for an employer to file a controversion from 14 days to 21 days from date of knowledge of the alleged injury or death, or, if payments have begun, within 7 days after an installment or compensation payable without an award is due.

Section 4. This section shortens the maximum time period for an employer to pay compensation to an injured worker from 28 days to 21 days.

Section 5. Provides for an effective date of July 1, 1984.

ANALYSIS

The proposed legislation rectifies many of the incompatible and inconsistent time periods presently existing in the Workers' Compensation Act. The bill changes the maximum time periods to file physician's notice of treatment, file notice of controversion, pay compensation benefits to injured workers and to notify the board and employee on the payment status of workers' compensation benefits.

Currently, the employer has a maximum time period of 28 days to pay compensation, but only 14 days to controvert a claim. A further conflict in making a determination to either pay or deny is the time period of 20 days for the physician to file notice of treatment verifying that the injury is work connected and that the worker is unable to work. This leaves little or no time for the employer/insurers to make an informed decision to accept or deny the claim. As a result, many employer/insurers controvert claims which unnecessarily delays payment of compensation for a longer period than the additional 7 days proposed under this legislation to investigate the claim.

This legislation will require the physician to file the medical report within 14 days instead of 20. The time period to file a controversion will be extended to 21 days instead of 14 days and the maximum time to pay compensation will be shortened from 28 to 21 days. In other words, the physician must file the medical report within 14 days and the insurer must either pay or controvert the claim within 21 days.

The proposed amendment allows an additional 14-day grace period for the employer/ insurer to notify the board and employee on the payment status of workers' compensation benefits by extending the maximum time period from 14 days to 28 days to file compensation reports.

C:10

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HCS for CS SB 517(L&C)
Title: "An Act relating to Workers' Compensation; and providing. . ."
Sponsor: Labor and Commerce
Requestor: House Labor & Commerce
Date of Request: 5/10/84

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Jacquelyn McClintock Phone: 465-2790
Division: Workers' Compensation Date: 5/10/84

Approved by Commissioner: Robert W Jandon for Jim Robison Date: 5/10/84
Agency: Department of Labor

LEG:A:45

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

SB

525

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST
Bill/Resolution No.: CSSB 525 (Fin)
Title: "An Act relating to Unemployment Insurance"
Sponsor: Senate Labor/Commerce
Requestor: Senate Finance
Date of Request: April 25, 1984

FISCAL DETAIL
Agency Affected: All
Program Category Affected: All
BRU, Program or Subprogram(s) Affected: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		169.1	463.3	518.6	522.4	526.6
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		169.1	463.3	518.6	522.4	526.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		126.8	347.5	389.0	391.8	395.0
FEDERAL FUNDS		11.8	32.4	36.3	36.6	36.9
OTHER		30.5	83.4	93.3	94.0	94.7
TOTAL		169.1	463.3	518.6	522.4	526.6

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Personal Service benefits would increase for all agencies based on the projected increase in unemployment insurance paid to ex-state employees and seasonal employees.

ANALYSIS: Attach a separate page for analysis

Prepared By: John W. Shay, Jr. Phone: 465-2712
Division: Employment Security Division Date: 4/25/84
Approved by Commissioner: Jim Robison Date: 4/25/84
Agency: Labor

LEG:A:4
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

All
12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST
Bill/Resolution No.: CSSB 525
Title: "An Act relating to Unemployment Insurance"
Sponsor: Senate Labor/Commerce
Requestor: Senate Finance
Date of Request: April 25, 1984

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Social Services
BRU, Program or Subprogram(s) Affected: Employment Security, Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		5.0				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	5.0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS		5.0				
OTHER						
TOTAL	0	5.0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:
Federal funds will be requested to fund reprogramming of automated programs. [125 hours x $40 per hour.]

ANALYSIS: Attach a separate page for analysis

Prepared by: John W. Shay, Jr. Phone: 465-2712
Division: Employment Security Division Date:
Approved by Commissioner: Jim Robison Date: 4/25/84
Agency: Labor
LFG:A:5
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget

LABOR

The following assumptions were made in preparing the forecasted costs:

1. State employment will continue to increase through FY 1986. Thereafter, state employment will level off with consolidation of administrative jobs and belt tightening being offset by jobs based on increased population.

2. There is no wage increase for calendar year 1984. The wages through FY 1986 reflect the recent agreement with APEA. A 5 percent yearly increase continues throughout the remainder of the forecast period.

3. As provided in this bill, the maximum weekly benefit amount paid for unemployent insurance claims will increase from $156 to $188, effective October 1, 1984.

As a result, the State of Alaska would be required to pay more in its personal service benefit costs for unemployment insurance. The total amount of the increased costs (which would affed all Departments in the State) is projected from past experience and a computerized modeling technique. The estimated increase in the average payment using this method is 12.7%. This increase would not uccur immediately in FY '85, because claimants are paid for an entire year at the rates in effect when they first claim benefics. The total effect of the increase would not be felt unitl FY '87.

U.S. Department of Labor

Employment and Training Administration
909 First Avenue
Seattle, Washington 98174

Reply to the Attention of: 10TGU DIM 7-1

EXECUTIVE March 26, 1984

TO:	ACTION	INFO	INITIALS
DIR.		✓	
DD			
ES			
FSI		✓	
MSU - Conclude		✓	
Expand to Tech	✓	✓	

REMARKS:

MEMORANDUM FOR: DESIGNATED EMPLOYMENT SECURITY AGENCY

Alaska - John W. Shay
Idaho - Scott B. McDonald
Oregon - Raymond P. Thorne
Washington - Norward J. Brooks

SUBJECT: Revision of Between Terms Denial Provisions Required by P.L. 98-21

This is a follow-up to earlier discussions and correspondence with individual States in this region regarding the provisions of P.L. 98-21. The national office has completed its analysis of current State law provisions and its determination of what States need to do to bring their laws into conformity with P.L. 98-21. They are also requesting our assistance in confirming information pertaining to the grace period allowed by Section 521 (b)(2) of P.L. 98-21.

Section 521(a)(2) of P.L. 98-21 amended Section 3304(a)(6)(A) of FUTA to provide as follows:

> "Clauses (ii)(I), (iii), and (iv) of such sections are each amended by striking out "may be denied" and inserting in lieu thereof "shall be denied".

This amendment means that the States no longer have the option of applying these clauses, but instead must do so as a condition for certification of the State law. Accordingly, for consistency with these new requirements in amended Section 3304(a)(6)(A), all States must:

- Deny benefits based on nonprofessional services performed by employees of educational institutions between terms under clause (ii) (and also provide for retroactive payment for these employees as specified);

- Deny benefits on any services performed by employees of educational institutions during vacation or holiday periods under clause (iii);

- Deny benefits based on any services performed by employees of educational service agencies who perform such services in an

educational institution both between terms and during vacation or holiday periods under clause (iv).

In addition, Section 521(a)(1) of P.L. 98-21 amended Section 3304(a)(6)(A), FUTA, by adding new clause (v) as follows:

"(v) with respect to services to which Section 3309(a)(1) applies, if such services are provided to or on behalf of an educational institution, compensation may be denied under the same circumstances as described in clauses (i) thru (iv), and..."

New clause (v) is not mandatory but rather gives States the option to apply the denials in clauses (i) through (iv) to employees of nonprofit organizations or government entities who provide services to or on behalf of educational institutions. However, if adopted by a State clause (v) must be accepted in toto and must be applied equally to both professional and nonprofessional services.

The changes made by Section 521(a)(1) and (2) of P.L. 98-21 will become effective for compensable weeks beginning on or after April 1, 1984. However, there may be an exception to the April 1, 1984, effective date. Certain States, depending on when their legislatures are in session may be allowed additional time after April 1, 1984, to amend their State laws. Specifically, Section 521(b)(2) of P.L. 98-21 provides that:

"In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to comply with the amendment made by this section, the amendment made by this section shall apply in the case of compensation paid for weeks which begin on or after April 1, 1984, and after the end of the first session of the State legislature which begins after the date of the enactment of this Act, or which began prior to the date of the enactment of this Act and remained in session for at least twenty five calendar days after such date of enactment. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature."

This means that States have until the end of the first legislative session which begins after April 20, 1983, (the date of enactment of P.L. 98-21), or April 1, 1984, whichever is later, to amend their law. If the State legislature was in session on April 20, 1983, and remained in session for at least 25 calendar days, the State has until the end of that session or April 1, 1984, whichever is later. The term session is defined in P.L. 98-21 as a regular, special, budget or other session of the legislature. It is irrelevant whether the legislature actually meets or whether it is in recess. It is only required that the

legislature be in session.

We request that you:

(1) Review the attached summary and verify the accuracy of the legislative session dates.

(2) If corrective legislation is not being sought, summarize how the State intends to remedy the issues described in the summary.

(3) Provide the information requested above, in writing, within 14 days of receipt of this letter. This information is needed in order for the Secretary of Labor to make the grace period determination and for certification required by the Secretary for employer tax credits and State administrative grants.

ROBERT E. JOHNSON
Associate Regional Administrator
for Unemployment Insurance

Enclosure

ALASKA

Status of Between/Within Terms Denial Provisions Required by P.L. 98-21

Section 521(a)(2) of P.L. 98-21 amended Section 3304(a)(6)(A) of the Federal Unemployment Tax Act to make clauses (ii) through (iv) mandatory rather than optional. Following is the status of the implementation of those clauses in Alaska's employment security law, according to our Commerce Clearing House (CCH) reports.

The Alaska employment security law currently does not implement either of the three clauses that are now mandatory. Consequently, all three clauses must be enacted by April 1, 1984, since Alaska does not have a grace period which extends beyond the April 1, 1984 effective date.

Alaska has no grace period because its legislature convened on January 17, 1983 and adjourned June 27, 1983, more than 25 days after April 20, 1983, the date P.L. 98-21 was enacted.

MEMORANDUM State of Alaska

TO: Ken Johnson
Administrative Assistant
Representative Cowdery's Office

DATE: May 10, 1984

FILE NO:

TELEPHONE NO: 465-2700

FROM: Eileen Plate
Special Assistant
to the Commissioner
Department of Labor

SUBJECT: CS for SB 525

This will confirm our telephone conversation and your request for additional information.

1. The UI Trust Fund currently has a balance of $148 million.

2. Sections 10 and 13 of the UI bill, CS for SB 525, are conformity items with the Federal Unemployment Tax Act (FUTA). The additional cost to Alaska for not remaining in conformity with FUTA is the loss of $21 million in Administrative funds to the State for operation of the Unemployment Insurance (UI) and Job Service programs; $86.4 million in increased FUTA taxes to all employers in the state; and loss of $4.8 million in benefit payments for their Extended Benefits program. The total cost would be $112.2 million.

   Attached is a copy of a letter from the U.S. Department of Labor regarding the conformity requirements of Section 10.

3. Sections 2 and 3, which are not strictly conformity items, would cost the employers in this state an additional $2 million annually if not passed. Attached is a paper that was prepared on this subject in cooperation with the House Research Agency. On page 4 of the paper, the affect on employers is detailed. On page 7 the options are listed--we elected to propose the option that would have the least affect on Alaskan employers.

If Sections 2 and 3 had been in effect for 1984, there would have been no impact on employers. This is because of the requirement that employers with the same payroll decline percentage must be placed in the lower rate class rather than splitting the group. In 1983 there would have been 163 employers affected, for a total of $2,800 (or $17 per employer).

If you need any additional information on CS for SB 525, please contact me at 465-2700 or Jack Shay at 465-2712.

Attachments (2)

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

April 26, 1984

MEMORANDUM

TO: Representative Joe Hayes

FROM: David Teal
Legislative Analyst

RE: Provisions for Financing Unemployment Compensation
Research Request 84-101

Among other provisions, SB 525 would increase the maximum amount of unemployment compensation from the current level of $156 per week to a new maximum of $198.[1] According to the Department of Labor, this change in the benefit schedule would cause Alaska employers to contribute an additional $21.5 million to the unemployment insurance system during the next four years.

You asked me to review the provisions for financing Alaska's unemployment insurance system in order to determine the possibility of reducing the fiscal impact on employers of implementing SB 525. The result of that review is a proposal that:

- increases current benefits by $12.1 million per year (i.e., the proposal retains the benefit schedule contained in SB 525);
- decreases employer contributions by $12.5 million per year without shifting the financing burden to some other group; and
- maintains the adequacy of the trust fund.

Details of the proposal are discussed below. A table is included to aid your comparison of the current law, SB 525 and the proposed revisions to SB 525. The table shows values through 1988 because three years are required to absorb the full impact of a change in the benefit schedule. A shorter period would understate the amount of contributions required to finance an increase in benefits.

---

[1]These benefit amounts do not include allowance for dependents. Additional weekly benefits of $24 per dependent can be claimed by those who are eligible.

TABLE 1

Unemployment Insurance Benefits and Contributions
State of Alaska--1985 through 1988
(in millions of dollars)

	Benefits Paid By Alaska		Employer Contributions		Reserve Ratio in 1988*
	Amount	Change from Current Amount	Amount	Change from Current Amount	
Current Law	$342.8	--	$328.7	--	5.2%
HB 525	391.0	$48.2	350.2	$21.5	4.7
Proposal	391.0	48.2	278.5	(50.2)	3.2

*The reserve ratio is defined as the trust fund balance divided by total wages paid in the state. It is often used as a measure of the ability of the trust fund to pay future benefits.

Source: Alaska Department of Labor

* * * * *

The above table shows that the proposed revisions to SB 525 would require employer contributions of $71.7 million less (over a four-year period) than can be expected under the current version of the bill. The reduced contributions would be the result of two possible revisions to the existing mechanism for financing Alaska's unemployment insurance system.

Revision #1. Classify the interest earnings of the trust fund as income to the fund for the purpose of determining contribution rates.

Revision #2. Alter the solvency tax provisions to reduce employers' contributions when the trust fund is determined to be adequate.

Interest earnings of the trust fund are currently excluded from the formula which determines contribution rates. Because the financing system is designed to recover benefit outlays regardless of the size of the trust fund, the trust fund balance will spiral upward at a compound rate of growth unless this deficiency is corrected. Inclusion of

interest earnings in the rate formula would lower contributions required of employers and employees. This deficiency in the financing mechanism can be corrected by the following amendment to AS 23.20.290(e):

> (2) the department shall subtract from the amount determined in (1) of this subsection the amount of any benefits reimbursed to the fund and the amount of interest earned on the trust fund balance during those computation years;

The second proposed revision to the law modifies AS 23.20.290(f) to give employers tax credits when the trust fund is judged to be adequate. Current law assesses additional contributions when the trust fund is judged to be inadequate but has no provision for tax credits.[2] The figures in Table 1 are based on the following additions to the solvency tax table contained in section 290 (f):[3]

Reserve Rate at least (percent)	but less than (percent)	Fund Solvency Contribution (percent)
3.4		-.4
3.3	3.4	-.3
3.2	3.3	-.2
3.1	3.2	-.1
3.0	3.1	0.0
2.9	3.0	.1

At reserve rates of less than 2.9 percent, the solvency tax table remains as shown in AS 23.20.290(f). (For your convenience, a copy of AS 23.20.290 is attached to this memorandum.) The modifications should cause Alaska's reserve ratio to stabilize at about three percent. The current reserve ratio is about 3.2 percent.

---

[2] If the solvency tax table in AS 23.20.290(f) is modified, several references to "solvency contributions" should be changed to refer to "solvency adjustments" in order to eliminate confusion.

[3] Assuming interest were included in the formula for determining contribution rates, the impact of the solvency tax revision would diminish once the reserve ratio falls to three percent. Because the period of analysis is relatively short (four years), the figures in Table 1 make the solvency tax revision more attractive than it would appear if the period of analysis were longer.

As shown in the attached graph, Alaska's 1982 reserve ratio (i.e., balance to wage ratio) was the highest of any state. Alaska's reserve ratio has increased since that time, and Department of Labor projections show that Alaska's reserve ratio will continue to increase under current law and under SB 525.

As you know, the reserve ratio is often used as a measure of the adequacy of a trust fund to pay future benefits. It is difficult to judge the point at which a trust fund is adequate because there is no accepted standard for reserve ratios. However, it is clear that systems which respond quickly to increases in benefit outlays do not need as large a reserve balance as systems that respond more slowly. Many states use experience of 20 years or more to determine contribution rates. These states respond very slowly and therefore require a larger balance to achieve a given level of adequacy. Alaska's system uses only three years of experience, placing it among those states with the quickest reaction to changes in benefit outlays.

In addition, Alaska's financing system differs from those of other states in that a large trust fund balance does not necessarily have a stabilizing effect on contribution rates when benefit outlays increase. Even if the trust fund were as large as the Permanent Fund, contribution rates under the current law would be determined solely by the level of benefits paid. That is, the system is designed so that the trust fund balance can increase to keep pace with economic growth, but can decrease only under unusual circumstances.

* * *

This subject is extremely complex and, given the time available to complete this request, I have not given adequate coverage to all the issues that deserve to be addressed in this memorandum. Some points you may wish to consider in your deliberation of the proposed revisions to SB 525 are listed below.

- The two tax revisions suggested in this memorandum are independent. Either could be implemented separately, with or without a change in the benefit schedule.

- The solvency tax revision would reduce contributions only for employers, while the inclusion of interest would reduce contributions by both employers and employees.

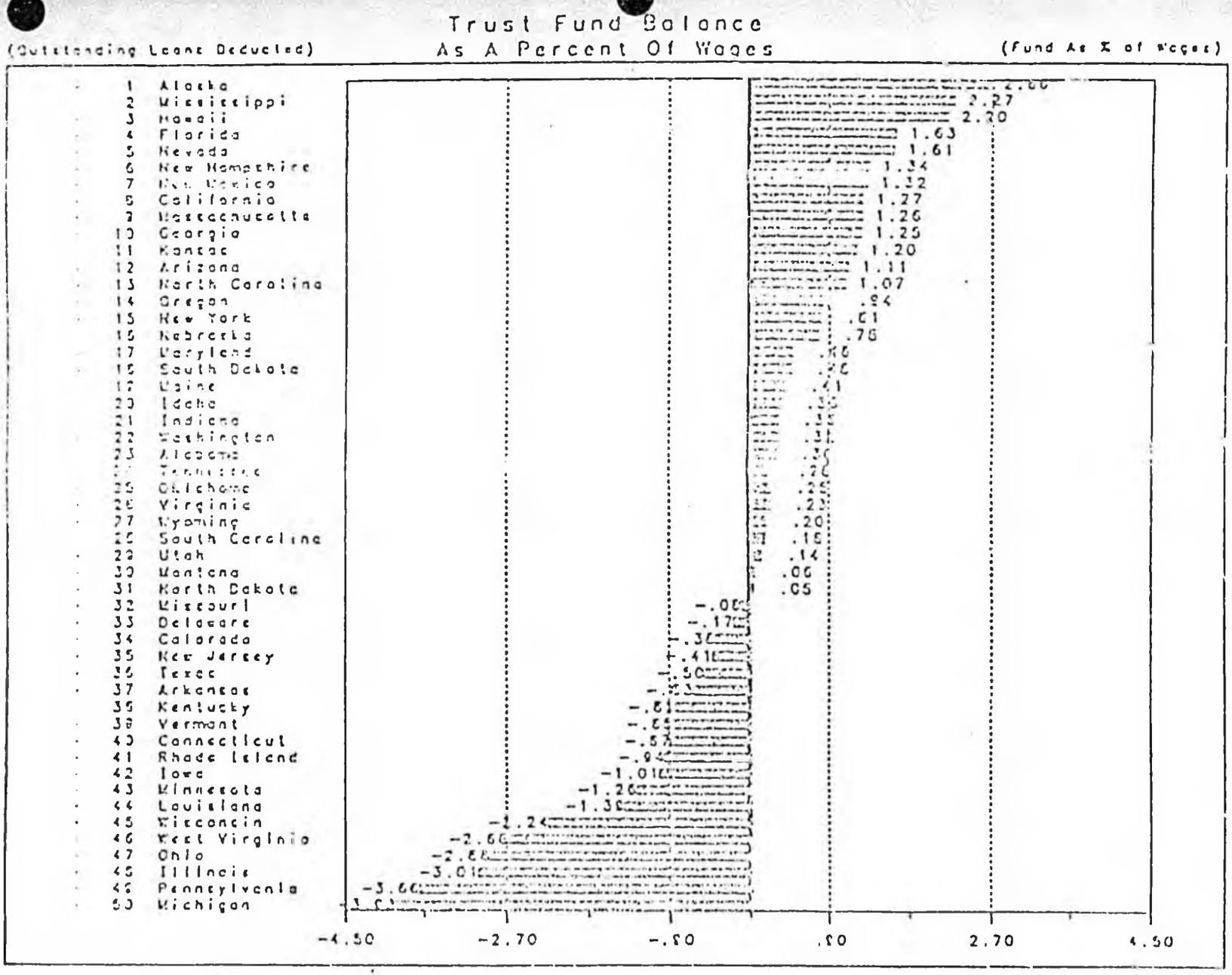
- "Excess" contributions are a drain on Alaska's economy. However, contributions during a period of economic growth may be preferable to contributions made during a period of economic

decline. A delay in implementing the suggested provisions would increase the trust fund balance. A large trust fund balance would generate interest that could be used to reduce contributions if Alaska experiences an economic downturn in the future.

I would be pleased to expand the scope of this memorandum or to discuss the subject at your convenience. Please call the agency if you would like additional information.

DT

Attachments



Source: State of Nevada

(b) This penalty does not attach if within 30 days after mailing or personal delivery of the demand, arrangements for payments are made with the department, and payment is made in accordance with the arrangements.

(c) Penalties collected under this section shall periodically be transferred from the clearing account to the training and building fund. (§ 513 ch 5 ESLA 1955; am § 4 ch 106 SLA 1969; am § 22 ch 9 SLA 1980; am §§ 60, 61 ch 59 SLA 1982)

Effect of amendments. — The 1982 amendment corrected an error in the designation of subsection (c). As originally enacted in § 4, ch. 106, SLA 1969, subsection (c) was designated as subsection (d).

Article 4. Experience Rating.

Section
290. Rate determination

Sec. 23.20.290. Rate determination. (a) The department shall determine each eligible employer's ratable payroll. The department shall then put all eligible employers in the order of their average quarterly decline quotients beginning with the smallest average decline quotient and shall determine, with respect to each employer, the cumulative ratable payroll during the four consecutive quarters ending with the computation date of the employer together with all employers who precede him on the list.

(b) The department shall segregate the employers into groups in accordance with cumulative ratable payroll. The limits of the groups are those set out in column B of the table in (c) of this section. Each of these groups shall be identified by the rate class number in column A which is opposite the figures in column B which represent the percentage limits of each group. An employer shall be assigned the experience factor in column C which is opposite the rate class in which the greater part of the employer's ratable payroll falls. If one-half of the employer's ratable payrolls falls in one class, and one-half in another, he shall be assigned to the lower numbered rate class. No employer may be assigned to a higher numbered rate class than is assigned to another employer with the same average quarterly decline quotient.

(c) Beginning January 1, 1981, the rate of contributions for each employer is 82 percent of the average benefit cost rate multiplied by the employer's experience factor set out in column C of the table in this subsection opposite his applicable rate class set out in column A plus the fund solvency contribution required under (f) of this section. However, the rate of contributions for an employer may not be less than one percent or more than six and one-half percent. The rate of contributions for an employer must be rounded to the nearest one-hundredth of one percent.

COLUMN A Rate Class	COLUMN B Cumulative Ratable Payroll		COLUMN C Experience Factor
	at least (percent)	but less than (percent)	
1		5	.30
2	5	10	.35
3	10	15	.50
4	15	20	.55
5	20	25	.60
6	25	30	.65
7	30	35	.70
8	35	40	.80
9	40	45	.90
10	45	50	1.00
11	50	55	1.09
12	55	60	1.10
13	60	65	1.20
14	65	70	1.30
15	70	75	1.35
16	75	80	1.30
17	80	85	1.35
18	85	90	1.50
19	90	95	1.55
20	95		1.60

(d) Beginning January 1, 1981, and for each succeeding year thereafter, the rate of contributions payable by each employee of an employer who is subject to AS 23.20.165 is 18 percent of the average benefit cost rate as determined in (e) of this section rounded to the nearest one-tenth of one percent. However, the rate of contributions for an employee may not be less than one-half percent or more than one percent.

(e) The department shall determine the average benefit cost rate as follows:

(1) the department shall determine the amount of benefits paid to insured workers during the last three computation years;

(2) the department shall subtract from the amount determined in (1) of this subsection the amount of any benefits reimbursed to the fund during those computation years;

(3) the department shall divide the amount determined in (2) of this subsection by the total wages paid by all employers required to pay contributions under this chapter during the first three of the last four computation years;

(4) the department shall determine the amount of total wages subject to contributions under this chapter paid during the preceding computation years;

CHANGES IN FEDERAL UNEMPLOYMENT TAX CREDITS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

PREPARED BY

THE ALASKA DEPARTMENT OF LABOR

and

THE ALASKA HOUSE OF REPRESENTATIVES RESEARCH AGENCY

August 1983

CHANGES IN FEDERAL UNEMPLOYMENT TAX CREDITS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

SUMMARY

Since the mid 1970s, this nation's unemployment insurance system has been plagued with shortages of funds for administrative purposes and for payment of unemployment compensation. The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) made changes to the unemployment tax system which provided additional administrative funds and which were intended to bolster the state trust funds used for payment of unemployment benefits. The changes which provide additional administrative funds were implemented in 1983. Alaska strongly supports the 1983 TEFRA changes. However, the State cannot support the changes scheduled for implementation in 1985. In that year, states must adopt a maximum tax rate of at least 5.4 percent or face the prospect of employers in the state losing federal tax credits. The loss of tax credits would cause employers to make additional contributions to the federal unemployment insurance system.

If the intent of the 1985 TEFRA revisions was to encourage increased tax collection efforts by those states which have failed to provide collections necessary to finance unemployment compensation, the legislation clearly fails to fulfill its objective. When TEFRA was passed in 1982, only three of the 30 states affected by the revisions had insolvent trust funds, while 13 of the 20 states not affected by the revisions were insolvent. Clearly, the legislated attempt to increase tax collection efforts fails to affect the majority of states that have demonstrated by their insolvency that increased revenue is necessary. In addition to the misdirected encouragement of fiscal responsibility, the 1985 TEFRA revisions are likely to cause some states to reverse fiscally responsible actions of the past.

Although technical problems associated with adopting a 5.4 percent state tax rate are not insurmountable, adoption of that state tax rate may redistribute the burden of financial support of the unemployment insurance system among employers and could upset the program balance that some states have achieved. The cause of the redistribution and imbalance is TEFRA's focus on tax rates rather than tax effort. Tax effort depends on the amount of earnings subject to tax as well as the rate at which those earnings are taxed. Although the State of Alaska mildly objects to the 1985 TEFRA revisions because they fail to encourage fiscal responsibility where a need for such responsibility has been demonstrated, we strongly object to the failure of the law to recognize collection efforts other than increases in tax rates. The treatment (under the 1985 TEFRA revisions) of states that have demonstrated fiscal responsibility adds insult to injury because other tax efforts--such as employee contributions and high tax bases--are recognized under provisions dealing with states that have insolvent trust funds.

As is often the case with federal intervention in the unemployment insurance system, compliance with the revisions is optional. However, the incentive to comply with the 1985 TEFRA revisions is so strong that "mandate" is an accurate description of states' potential courses of action. This paper discusses potential state actions, but the only attractive option is a revision of federal law. A revision need not remove the incentive to increase tax efforts at the state level; it could simply give states the flexibility to demonstrate effort in ways other than tax rates. We urge others to join the campaign to revise the TEFRA provisions so that states have a voice in the determination of tax effort.

CHANGES IN FEDERAL UNEMPLOYMENT TAX CREDITS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Prepared by
The Alaska Department of Labor and
The Alaska House of Representatives Research Agency
August 1983

The unemployment insurance system in the United States is administered as a partnership of the federal and state governments. Employers contribute a portion of their payroll to both the federal and state partners. Contributions to the federal government are used for program administration and for unemployment compensation for which the federal government is liable. Contributions to state governments are used only for payment of unemployment compensation.

In recent years, the federal unemployment insurance tax has been 3.4 percent of the first $6,000 paid to each employee in each calendar year. However, employers could receive credit for contributions made to an approved state unemployment insurance program. These tax credits could reduce employers' net federal contribution to .7 percent of the first $6,000 paid to each employee in each year, or $42 dollars per employee. Each state was free to set a tax base (the amount of earnings subject to state tax) and contribution rates which it deemed sufficient to support the unemployment compensation paid through its own program. However, full federal credit could be obtained by all employers in a state only if the tax base was at least $6,000 and the highest state contribution rate was at least 2.7 percent. Alaska's tax base in 1983 is $20,200, and Alaska employers pay state rates that range from 1.0 percent to 3.8 percent.

REVISIONS TO THE CONTRIBUTION SYSTEM UNDER TEFRA

Contributions to the unemployment insurance system in recent years have provided insufficient administrative funds and have seriously underfinanced benefit payments in many states. It was in this context of inadequate federal administrative funds and insolvent state trust funds that system changes were made by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Effective in 1983, the federal unemployment insurance contribution rate was raised to 3.5 percent and the federal tax base was increased to $7,000. The provision for a federal tax credit of 2.7 percent for contributions to an approved state program was unchanged, so contributions to the federal government by employers eligible for full federal tax credits were increased by $14 to $56 per employee per year.

The 1983 TEFRA changes also had an impact on state financing of unemployment compensation. In those states which use the federal tax base as the amount of earnings subject to state tax, the acceptance of a higher tax base can increase revenue to state unemployment insurance programs.

TEFRA also included revisions scheduled for implementation in 1985. In that year, the federal contribution rate will increase from the current 3.5 percent to a rate of 6.2 percent. Simultaneously, the potential federal tax credit for contributions to state programs will be increased to 5.4 percent. These changes appear to leave employers' net rate of contributions to the federal government unchanged (from the 1983 level) at .8 percent of each employee's first $7,000 of earnings, or $56 per employee per year.

IMPACT OF REVISIONS EFFECTIVE IN 1985

Although the 1985 TEFRA revisions maintain the $56 per year net federal unemployment insurance contribution that is currently applicable and therefore appear to have no effect on employers' costs, that appearance is deceptive. The revisions effective in 1985 force states with maximum state contribution rates of less than 5.4 percent to choose between 1) increasing their maximum state contribution rate to at least 5.4 percent or 2) allowing some employers in the state to lose federal tax credits.[1] Loss of federal tax credits would cause affected employers to pay additional federal taxes for support of the unemployment insurance system.

The 1983 TEFRA changes were clearly designed to increase contributions for both administrative purposes and for state benefit trust funds, but the 1985 changes leave the net federal contributions unchanged and are clearly designed to encourage states to take additional action that will increase their tax collection efforts. Alaska supports national efforts to improve the fiscal integrity of the unemployment insurance system, but we strongly object to the way in which the 1985 TEFRA revisions address the problem of insolvent state trust funds.

Although some states or groups of employers may have seen national legislation as an attractive alternative to state action, we do not believe that the 1985 TEFRA revisions will significantly reduce the number of states with insolvent trust funds. Insolvency occurs when benefits exceed contributions. The states themselves have been given--and should retain--the ability to implement a benefit schedule of their own choice. Along with that freedom comes the responsibility to implement an experience rating system that will adequately

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[1] Section 3302(a) of the Federal Unemployment Tax Act (FUTA) allows credit against federal tax liabilities for amounts actually paid to an approved state unemployment insurance program. Section 3302(b) of FUTA provides an employer with additional credit against the tax for the difference between actual payments to a state system and the amount he would have paid "if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 5.4 percent, whichever rate is lower." Unless a state has a tax rate of at least 5.4 percent after 1984, some employers are likely to lose additional credits provided by section 3302(b).

support the chosen level of benefits.[2] We are convinced that tax collection efforts depend on the amount of earnings subject to tax as well as the rate at which those earnings are taxed. The 1985 TEFRA revisions address tax rates but ignore the equally important function of the tax base. Further, the revisions do not appear to address the problem of solvency where that problem needs to be addressed.

Effect on States

If the intent of the 1985 TEFRA revisions was to encourage increased tax collection efforts by those states which have failed to provide the collections necessary to finance unemployment compensation, the legislation clearly fails to fulfill its objective. If the legislation does encourage increased tax collection efforts, it will do so primarily in those states that have the least need to generate additional collections. In addition, the legislation may have the unintended effect of encouraging states to reverse fiscally responsible acts of the past.

According to figures published by the Nevada Employment Security Department, 20 states already had maximum tax rates greater than 5.4 percent in 1982. If the TEFRA revisions requiring a 5.4 percent tax rate had been effective in that year, only those states with maximum tax rates below 5.4 percent would have been affected. Table 1 shows that Alaska is one of the 30 states affected by the 1985 TEFRA revisions.

The significance of this observaton does not lie in the number of states affected by the revisions, but in which states are affected. Thirteen of the 20 states which would not be affected by the federal revisions have insolvent state trust funds. In addition, only one of those 20 states has a

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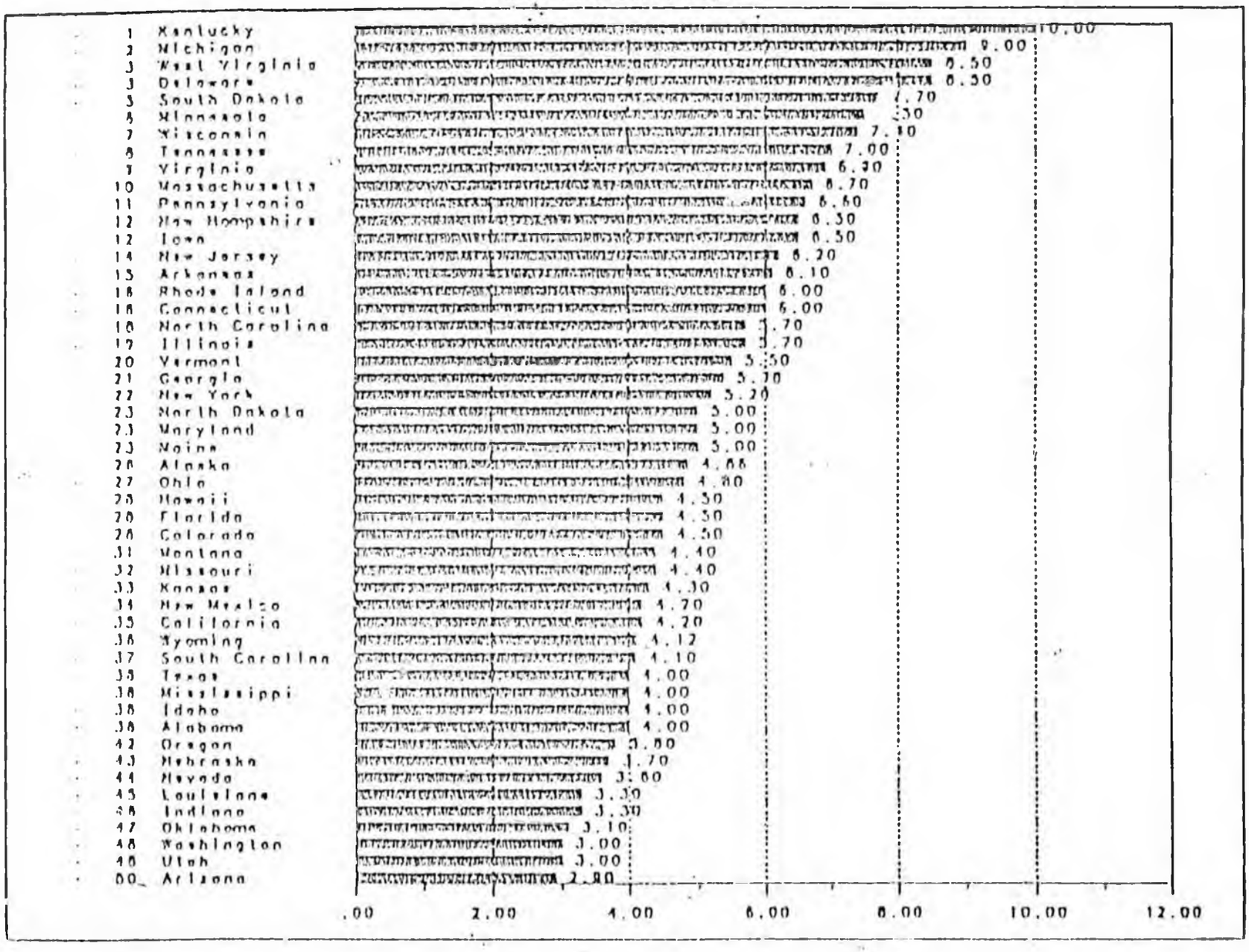
[2] Experience rating is a system whereby employers are assigned reduced contribution rates if they demonstrate a history of low unemployment risk for their employees. Theoretically, experience rating should increase employers' motivation to stabilize employment and to monitor the claims of the unemployed. When benefit payout is high and there is a need for additional tax collections, states with a low tax base must place more and more employers in higher tax brackets. As employers crowd into the higher tax brackets, the experience rating concept is eroded; a good record of unemployment risk has diminished influence on tax rates when all employers are at or near the top of the tax rate schedule.

We realize that some states may face great difficulty in moving tax increases through state legislatures and that states may therefore passively await federal "mandates" to increase taxes. We also realize that the simple solution to the erosion of experience rating--increasing the tax base--is unpopular in the majority of states which still use the antiquated "reserve ratio" experience rating system. (A mathematical quirk in that rate-making formula causes tax rates to rise when the tax base is increased.) However, we believe that adjustments to experience rating systems should be made by the individual states, not by the federal government.

TABLE 1

Maximum Tax Rate

Percent On Taxable Payroll



Nevada Department of Employment Security,

tax base greater than $9,000 and only three have a ratio of trust fund balance to total wages that exceeds one percent.[3] Of the 30 states that would be affected by the revisions, only three are insolvent, eight have a tax base greater than $9,000 and 15 have a ratio of trust fund balance to total wages that exceeds one percent.

Clearly, the legislated attempt to increase tax collection efforts fails to affect the majority of states that have demonstrated by their insolvency that increased revenue is necessary. The law does affect many states which have a trust fund of a size that indicates that additional collection efforts are unnecessary. Further, the law affects many states that have responded to the need for increased tax collections by increasing their tax base as an alternative (or supplement) to increased tax rates.

For those states that have already raised their tax base above the federal tax base in order to keep pace with increases in wages and unemployment compensation, the federal revisions are particularly troublesome. The new federal law may be counterproductive because it encourages states to reverse the fiscally responsible act of increasing their tax base. Although we mildly object to the law because it fails to encourage fiscal responsibility where a need for such responsibility has been demonstrated, we believe that the indirect encouragement for states to lower their tax bases is unconscionable. Lower tax bases diminish the ability of states to control total tax revenue and can distort an otherwise equitable distribution of program costs.

Effect on Employers

Adoption of a maximum unemployment tax rate of at least 5.4 percent is a state option. If a state fails to implement a tax rate at or above that level, some employers in that state may lose a portion of the additional credits granted by section 3302(b) of the Federal Unemployment Tax Act (FUTA). The attached table shows the cost to selected Alaska employers under the current contribution rate schedule and under the following scenarios applicable after 1984: 1) Alaska's maximum tax rate remains at 3.8 percent; and 2) Alaska adopts a 5.4 percent maximum tax rate with no change in the tax base. The impact of these scenarios on various groups of employers is summarized below.

Low Wage/Low Rate Employers

Employers who pay annual wages under $7,000 and contribute at the minimum state tax rate will be strongly affected if the state does not adopt a 5.4 percent maximum tax rate. These employers would lose federal tax credits and thus pay additional federal taxes. The maximum additional federal tax would be $112 per employee for employers paying annual wages of $7,000. In Alaska, trade and service employers tend to be in this category.

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[3] The ratio of trust fund balance to total wages is a measure of the adequacy of the trust fund. The one percent level is arbitrary. All figures concerning tax rates and tax bases are for 1982, the latest year for which data are available.

ANNUAL PER EMPLOYEE CONTRIBUTIONS TO THE UNEMPLOYMENT INSURANCE SYSTEM*

	Annual Average Earnings per Employee								
	$1,000	$3,000	$5,000	$7,000	$8,000	$9,000	$10,000	$11,000	$20,000
Alaska Taxes									
Current									
Minimum (1%)	$10	$ 30	$ 50	$ 70	$ 80	$ 90	$100	$110	$ 200
Maximum (3.8%)	38	114	190	266	304	342	380	418	760
After 1984									
Minimum (1%)	10	30	50	70	80	90	100	110	200
Maximum (3.8%)	38	114	190	266	304	342	380	418	760
5.4% After 1984									
Minimum (1%)	10	30	50	70	80	90	100	110	200
Maximum (5.4%)	54	162	270	378	432	486	540	594	1,080
Federal Taxes									
Current									
Normal Tax	8	24	40	56	56	56	56	56	56
Additional Tax	0	0	0	0	0	0	0	0	0
After 1984									
Normal Tax	8	24	40	56	56	56	56	56	56
Additional Tax	16	48	80	112	74	36	0	0	0
5.4% After 1984									
Normal Tax	8	24	40	56	56	56	56	56	56
Additional Tax	0	0	0	0	0	0	0	0	0
Total Taxes									
Minimum Tax Rate									
Current	18	54	90	126	136	146	156	166	256
After 1984	34	102	170	238	210	182	156	166	256
5.4% After 1984	18	54	90	126	136	146	156	166	256
Increase**	(16)	(48)	(80)	(112)	(74)	(36)	0	0	0
Maximum Tax Rate									
Current	46	138	230	322	360	398	436	474	816
After 1984	62	186	310	434	434	434	436	474	816
5.4% After 1984	62	186	310	434	488	542	596	650	1,136
Increase**	0	0	0	0	54	108	160	176	320

*Contributions under current law assume a state tax base of $20,200 and a maximum state tax rate of 3.8%.

**"Increase" refers to additional taxes owed by employers if the state adopts a maximum tax rate of 5.4% after 1984. Negative numbers show savings associated with adopting a maximum tax rate of 5.4% relative to retaining the current law after 1984.

Low Wage/High Rate Employers

Employers who pay annual wages under $7,000 but contribute at the maximum state tax rate would pay increased taxes regardless of which alternative is chosen. Contributions to the state by this group of employers would, of course, be higher if the maximum state tax rate were increased to 5.4 percent. However, the increased state contribution under a 5.4 percent state tax rate would be the same amount that would be paid in additional federal taxes if a 5.4 percent state tax rate were not adopted. The sum of federal and state contributions would therefore be the same for this group of employers whether or not the state adopts a 5.4 percent maximum tax rate. Although total contributions would be unchanged, a larger share of total contributions would go to the federal government if the state does not adopt a maximum state tax rate of 5.4 percent. In Alaska, many fish processors are in this group of employers.

High Wage Employers

Under Alaska's current maximum tax rate of 3.8 percent, employers paying annual average wages of at least $10,000 would earn sufficient federal tax credits to offset the loss of tax credits on wages below $7,000. That is, there would be no net loss of federal tax credits--and no additional federal taxes owed--by these employers even if the state does not adopt a 5.4 percent maximum tax rate. If the state does adopt a 5.4 percent maximum tax rate, the amount of state contributions owed would depend on the tax base adopted by the state and the tax rate assigned to the employer.

For those employers paying annual average wages between $7,000 and $10,000, total contributions can decline as wages increase. Between those levels of earnings, the gain in federal tax credit may exceed the higher taxes owed to the state. (See attached table.)

Impact on the Equity of the State Program

Alaska faces no significant technical problems in adopting a 5.4 percent state tax rate; our objections to the 1985 TEFRA revisions focus on the damage to Alaska's "user pay" philosophy of financial support for unemployment compensation. As the attached table shows, adoption of a 5.4 percent state tax rate will redistribute the tax burden among Alaska employers.

Alaska expended a good deal of effort to develop a contribution system that fits the needs of the state. In Alaska, many high-wage occupations tend to be seasonal, which allows employees in those occupations to collect unemployment compensation despite their high earnings. By raising the tax base while lowering tax rates, Alaska has been able to redistribute program costs so that employers in high-wage, seasonal industries contribute approximately as much as employees in those industries draw in unemployment compensation.

Adoption of a 5.4 percent state tax rate without a corresponding reduction in the tax base would cause Alaska to collect contributions that are un-

necessary. Alaska's benefit payment account is adequate and our contribution system is designed to protect the financial integrity of the fund in the future. Alaska has accepted the responsibility of providing adequate funds for unemployment compensation and currently collects a maximum tax over twice as large as the $378 annual contribution that the federal revisions attempt to encourage. Unless adoption of a 5.4 percent state tax rate is accompanied by a corresponding reduction in the state tax base, potential employer contributions at the maximum rate would increase by 42 percent to nearly $1,100 per employee per year. In order to avoid this unnecessary drain on the state economy, Alaska may be forced to reduce its tax base.

A reduced tax base is objectionable not only because it implies acceptance of the federal view that tax effort can be measured by tax rates instead of by tax rates and tax base in combination, but also because a reduced tax base would introduce serious problems of equity. The above discussion mentioned that the tax base can be used to redistribute the tax burden among employers. A lower tax base in Alaska would disturb the balance we have achieved in this area.

In addition, a reduction in the state tax base would disturb the balance between benefit eligibility and taxes paid. Unless the tax base is equal to the amount of wages that are used to compute the amount of weekly compensation a claimant may receive, the system is unbalanced. If the tax base exceeds the earnings used to determine benefit eligibility, taxes are being paid on wages that cannot contribute to claimants' compensation. If the tax base is set at a level below the amount of earnings used to determine benefit eligibility, compensation is being paid on wages that have no corresponding tax liability.

If the Alaska Employment Security Act had been revised to ensure a maximum tax rate of 5.4 percent in 1983 under the current rate formula, adequate collections would have been obtained at a tax base of $13,400. Alaska's benefit schedule currently reaches a maximum at $16,000 in annual earnings and the state is preparing legislation to extend the schedule to $20,200, which is the 1983 state tax base. The options for designing a benefit schedule that peaks at $13,400 in annual earnings are not attractive to the state.

Impact on Program Costs

The costs associated with the decision to adopt a 5.4 percent state tax rate are difficult to estimate because there are many options and the cost of each option may change over time. One approach is to examine the effects of retaining the current law. Under this approach, it is clear that some employers will lose federal tax credits and will therefore have greater federal tax liability if a 5.4 percent maximum state tax rate is not adopted. This option could drain an additional $2 million per year from employers in Alaska. The additional contributions would go entirely to the federal government.

If Alaska does adopt a 5.4 percent state tax rate, any additional contributions would go to the state trust fund rather than to the federal govern-

ment. There are several options that could maintain total state collections at the current level, but all of the options redistribute the tax burden among Alaska employers. In summary, failure to adopt a 5.4 percent maximum state tax rate will redistribute the tax burden among employers and increase total contributions, while the impact of adopting a 5.4 percent maximum state tax rate may be limited to a redistribution of the tax burden.

OPTIONS FOR ACTION

Under current federal law a "no action" option would cost Alaska employers an estimated $2 million per year in increased contributions to the federal government. Unless it can be shown that a "no action" option is preferable to the distortion that would be introduced by adopting a 5.4 percent state tax rate, failure to act is obviously not an economically attractive option.

Another option is to work to enact a change in federal law that will recognize Alaska's tax collection efforts and will revise the criteria for obtaining federal tax credits. This option is clearly preferable to the "no action" alternative, but there is limited time to enact revised legislation before the scheduled implementation date of 1985.

Prior to the implementation date, the state may wish to examine alternatives that meet the requirements of the law to determine which alternative introduces the least amount of distortion to the present system. State action in this direction need not preclude attempts to revise the federal criteria. Some options for state action are discussed below.

Include Employee Contributions in the Definition of Tax Effort

Alaska is one of three states in which employees contribute to the unemployment insurance system. In Alaska, employees provide 18 percent of the contributions to the state trust fund. Despite this significant support, the Federal Unemployment Tax Act does not recognize employee contributions as a part of Alaska's tax effort for purposes of determining normal federal tax credits. The Act does, however, include employee contributions in the definition of "employer contribution rate" for purposes of determining federal tax credits in those states that have insolvent state trust funds and have outstanding advances under Title XII of the Social Security Act.

If employee contributions were included for normal FUTA tax credit purposes, the impact of increasing Alaska's maximum tax rate to 5.4 percent would be diminished by about one-third. State action to consolidate employer and employee contributions might face a legal challenge if the employee contribution were then interpreted as a deduction from employees' paychecks for the purpose of paying employers' taxes. A better approach toward the goal of achieving recognition of employee contributions is to push for a revision of federal law so that the rules concerning employee contributions are applied consistently. Whatever the approach on this issue, action taken to ensure recognition of employee contributions can be used in combination with, rather than as a substitute for, other actions discussed below.

Assign the Maximum Rate only to Delinquent Employers

Federal law may allow full federal tax credits to employers in those states that charge a 5.4 percent rate to some or all delinquent employers, even if no other employers are charged that rate. Section 3302(b) of the Federal Unemployment Tax Act (FUTA) states that all employers in a state may be eligible for full federal tax credits if the maximum state tax rate is at least 5.4 percent (after 1984) and any reduced tax rates meet the criteria of Section 3303. The provision allows employers to claim federal tax credits each year as if they had been subject under state law to "the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 5.4 percent, whichever rate is lower." (Emphasis added.)

Section 3303 of FUTA discusses criteria for assigning reduced contribution rates. That provision says that for a pooled benefit payment account such as exists in Alaska, a "taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by State law" if reduced tax rates are assigned solely "on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk."

The implication of these provisions is that all employers could be assigned a standard tax rate of 5.4 percent, with reductions from that rate assigned to non-delinquent employers on the same basis as is currently accepted by the Secretary of Labor for rate assignments in Alaska. The 5.4 percent tax rate would then be the standard rate and any reductions from that rate would be based on an accepted experience rating system. The fact that some employers would be ineligible for reduced tax rates because of their delinquent status is irrelevant; the law does not require states to grant reduced rates, it requires only that no reduced rates be granted unless they are based solely on employers' experience with respect to unemployment or other factors bearing a direct relationship to unemployment risk. This option appears to meet the legal criteria for obtaining the additional tax credits allowed under the Federal Unemployment Tax Act.

Add a Rate Class with a 5.4 Percent Rate

Addition of a rate class to Alaska's experience rating system is a potential solution to the problem of assigning a 5.4 percent state tax rate. As an example, rate class 20 could be redefined to include employers whose payroll consists of 4.99 percent of total statewide payroll instead of the current 5 percent.[4] Employers with the remaining .01 percent of total

[4] Alaska's experience rating system currently includes 20 rate classes, each containing five percent of total statewide payroll. Starting with employers with the best unemployment experience, employers are placed in rate class 1 (lowest tax rate) until five percent of total statewide payroll is accounted for. The next-best-ranked employers are placed in rate class 2 until it also contains employers whose total payroll equals five percent of total statewide payroll. This continues through all 20 rate classes.

statewide payroll would then be assigned to (the new) rate class 21. Employers in that rate class would be assigned a contribution rate of 5.4 percent. This alternative would probably affect fewer employers than the option discussed above, particularly if delinquent employers were no longer assigned the highest tax rate on the rate schedule.

The above options would introduce minimal distortion to the current program, but their legal support should be examined before implementing them. Other options involving adjustments to the state tax base could ensure a state tax rate of 5.4 percent while maintaining secure legal standing. The most attractive option is to work toward a revision of federal law; that option would cause no distortion and would leave no grounds for legal challenge.

RECOMMENDED REVISIONS TO FEDERAL LAW

This paper has shown that tax effort can be measured only by considering both the amount of wages subject to tax and the tax rate applied to those wages. The 1985 TEFRA revisions focus only on tax rates and therefore penalize those states that have increased their tax efforts by increasing the state tax base. Incorporation of provisions similar to those adopted recently in Public Law 98-21 would substantially alleviate this penalty.

Public Law 98-21 revised the formula for computing the tax effort of states that have outstanding advances from the federal government. The revised formula recognizes the role of the state tax base in determining tax effort and may grant additional credit to employers in states which have a tax base higher than the federal tax base.

If a similar provision were applied to the tax credits available to those states without insolvent state trust funds, the penalties (in the form of lost federal tax credits) scheduled to take effect in 1985 would be decreased, but a problem would still exist. The problem relates to the amount of tax effort that is required in a state. States with liberal benefit provisions obviously need a greater tax effort than states with stringent eligibility requirements and/or low levels of unemployment compensation.

The level of tax effort that is adequate for a state is easy to determine; if total revenue to a state trust fund equals or exceeds benefit payments in the long-run, tax effort in that state is adequate. Determination of the tax base and tax rates used to produce the necessary revenue is the responsibility of the states. When states fail to accept that responsibility, federal action should be taken. The number of states with insolvent trust funds indicates that federal action is needed now. This paper has shown, however, that the 1985 TEFRA revisions fail to address the solvency problem where it needs to be addressed.

A provision that bases federal tax credits on adequacy of contributions rather than simply on maximum tax rates would be fair to all states and would allow the flexibility for state action that is necessary in a true partnership. We strongly urge that federal law be revised to reflect the principles of equity and flexibility.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

March 14, 1984

The Honorable Richard Eliason
Chairman, Senate Labor and
Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

This is in reply to the questions asked by the Senate Labor and Commerce Committee on March 13 concerning SB 525, the unemployment insurance bill.

Question: What will be the total cost to employers and employees if we raise maximum benefits from $156 to $198 per week?

As indicated during the hearing, the employer rates are projected to decline after 1984 (even with an increase in benefits); however, the rates will not go down as fast when benefits are raised. The tax base is also expected to increase somewhat. The projected tax base figures were compiled by the Research and Analysis section of the Department and reflect an approximate increase of 2½ percent annually. The net result is projected as:

Year	Tax Base	Maximum Employer Tax Rate w/o/incr.	Maximum Employer Tax Rate w/incr.	Employee Tax Rate w/o/incr.	Employee Tax Rate w/incr.	Total Cost of Increase To Employers	Total Cost of Increase to Employees
1985	$22,600	4.08%	4.08%	.6%	.6%	$ 0	$ 0
1986	23,000	3.34	4.02	.5	.6	3.7 million	.8 million
1987	23,600	3.70	4.03	.5	.6	7.1 million	1.5 million
1988	24,500	3.42	3.90	.5	.5	10.3 million	2.3 million

Question: What sections of the bill are conformity items with the Federal Government?

Sections 8 and 11 are conformity items. Sections 2 and 3, while not strictly conformity items, are necessary to have our law relate to the federal FUTA law and save employers in this state between $1.5 and $2.0 million annually in increased FUTA taxes.

07-G9LH

Question: Do you have information on firms affected by Sections 2 and 3 of the bill?

Yes, the enclosed listing identifies the industry make-up of the 163 firms potentially eligible for the 21st rate class. If this law change had been in effect currently, it would have affected 163 employers in 1983 for a total increase of $2,800, or an average of $17 per employer. In 1984, it would not have affected any employers in the state.

I hope this answers the questions posed by your committee. We will respond to the query from Senator Pettyjohn concerning tax base period calculations in a separate memorandum. If you need additional information, please contact me.

Sincerely,

Jim Robison

Jim Robison
Commissioner

Enclosures

FIRMS POTENTIALLY ELIGIBLE FOR A "21ST RATE CLASS"

Major Industry Division	Number of Employers
Agric. Forestry Fisheries	7
Mining	4
Construction	51
Food Processing	4
Wood Products	1
Transp-Commun-Public Util.	9
Wholesale Trade	10
Retail Trade	15
Finance Insur-Real Estate	10
Services	49
Government	1
Unspecified	2
	163

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE
BILL/RESOLUTION NO: HCS CSSB 525 (L&C)
TITLE: "An Act relating to Unemployment Insurance."
AGENCY AFFECTED: Department of Labor
Page 2

The following assumptions were made in preparing the forecasted costs:

1. State employment will continue to increase through FY 1986. Thereafter, state employment will level off with consolidation of administrative jobs and belt tightening being offset by jobs based on increased population.

2. There is no wage increase for calendar year 1984. The wages through FY 1986 reflect the recent agreement with APEA. A 5 percent yearly increase continues throughout the remainder of the forecast period.

3. As provided in this bill, the maximum weekly benefit amount paid for unemployment insurance claims will increase from $156 to $188, effective October 1, 1984.

As a result, the State of Alaska would be required to pay more in its personal service benefit costs for unemployment insurance. The total amount of the increased costs (which would affect all Departments in the State) is projected from past experience and a computerized modeling technique. The estimated increase in the average payment using this method is 12.7%. This increase would not occur immediately in FY '85, because claimants are paid for an entire year at the rates in effect when they first claim benefits. The total effect of the increase would not be felt until FY '87.

LEG:A:4

QUESTIONS:

1. HOW MUCH MONEY DOES THE STATE AND EMPLOYERS IN ALASKA STAND TO LOSE IF THIS BILL DOES NOT PASS ? WHY ?

2. HOW ID YOU ARRIVE AT THE 3.3 PERCENT FIGURE ? (THE UNEMPLOYMENT INSURANCE FUND IS 3.3% OF THE STATES TOTAL WAGES)

3. WHY DID THE FED'S DECIDE TO CUT OUT CERTAIN EDUCATIONAL INSTITUTION WORKERS FOR WEEKLY UNEMPLOYMENT BENEFITS ?

4. WILL THIS NEW SECTION CREATING A BENEFIT PROGRAM ALLOW THOSE PEOPLE TO DRAW UNEMPLOYMENT WITHOUT CAUSING FEDERAL CONFORMITY PROBLEMS ?

5. HOW MANY PEOPLE ARE EFFECTED BY THIS CHANGE ?

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST
BILL/Resolution No.: CSSB 525
Title: "An Act relating to Unemployment Insurance"
Sponsor: Senate Labor/Commerce
Requestor: Senate Finance
Date of Request: April 25, 1984

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Social Services
BRU, Program or Subprogram(s) Affected: Employment Security, Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		5.0				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	5.0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS		5.0				
OTHER						
TOTAL	0	5.0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:
Federal funds will be requested to fund reprogramming of automated programs. [125 hours x $40 per hour.]

ANALYSIS: Attach a separate page for analysis

Prepared By: John M. Shay, Jr. Phone: 465-2712
Division: Employment Security Division Date:
Approved by Commissioner: Jim Robison Date: 4/25/84
Agency: Labor
LFG:A:5
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget

LABOR

MEMORANDUM State of Alaska

TO: Ken Johnson
Administrative Assistant
Representative Cowdery's Office

DATE: May 10, 1984

FILE NO:

TELEPHONE NO: 465-2700

FROM: Eileen Plate
Special Assistant
to the Commissioner
Department of Labor

SUBJECT: CS for SB 525

This will confirm our telephone conversation and your request for additional information.

1. The UI Trust Fund currently has a balance of $148 million.

2. Sections 10 and 13 of the UI bill, CS for SB 525, are conformity items with the Federal Unemployment Tax Act (FUTA). The additional cost to Alaska for not remaining in conformity with FUTA is the loss of $21 million in Administrative funds to the State for operation of the Unemployment Insurance (UI) and Job Service programs; $86.4 million in increased FUTA taxes to all employers in the state; and loss of $4.8 million in benefit payments for their Extended Benefits program. The total cost would be $112.2 million.

   Attached is a copy of a letter from the U.S. Department of Labor regarding the conformity requirements of Section 10.

3. Sections 2 and 3, which are not strictly conformity items, would cost the employers in this state an additional $2 million annually if not passed. Attached is a paper that was prepared on this subject in cooperation with the House Research Agency. On page 4 of the paper, the affect on employers is detailed. On page 7 the options are listed--we elected to propose the option that would have the least affect on Alaskan employers.

If Sections 2 and 3 had been in effect for 1984, there would have been no impact on employers. This is because of the requirement that employers with the same payroll decline percentage must be placed in the lower rate class rather than splitting the group. In 1983 there would have been 163 employers affected, for a total of $2,800 (or $17 per employer).

If you need any additional information on CS for SB 525, please contact me at 465-2700 or Jack Shay at 465-2712.

Attachments (2)

MEMORANDUM State of Alaska

TO: Ken Johnson
Administrative Assistant
Representative Cowdery's Office

DATE: May 14, 1984

FILE NO:

TELEPHONE NO: 465-2700

FROM: Eileen Plate
Special Assistant
to the Commissioner
Department of Labor

SUBJECT: House CS for
CS for SB 525

This will confirm our telephone conversation and your request for additional information.

1. The UI Trust Fund currently has a balance of $148 million.

2. Sections 11 and 14 of the UI bill, House CS for CS for SB 525 (L&C), are conformity items with the Federal Unemployment Tax Act (FUTA). The additional cost to Alaska for not remaining in conformity with FUTA is the loss of $21 million in Administrative funds to the State for operation of the Unemployment Insurance (UI) and Job Service programs; $86.4 million in benefit payments for their Extended Benefits program. The total cost would be $112.2 million.

   Attached is a copy of a letter from the U.S. Department of Labor regarding the conformity requirements of Section 11.

3. Sections 2 and 3, which are not strictly conformity items, would cost the employers in this state an additional $2 million annually if not passed. Attached is a paper that was prepared on this subject in cooperation with the House Research Agency. On page 4 of the paper, the affect on employers is detailed. On page 7 the options are listed--we elected to propose the option that would have the least affect on Alaskan employers.

If Sections 2 and 3 had been in effect for 1984, there would have been no impact on employers. This is because of the requirement placed in the lower rate class rather than splitting the group. In 1983 there would have been 163 employers affected, for a total of $2,800 (or $17 per employer).

If you need any additional information, please contact me at 465-2700 or Jack Shay at 465-2712.

Attachments (2)

MAY 15, 1984

TO: JOHN

FROM: KEN

RE: L & C COMMITTEE HEARINGS (OPENING REMARKS)

THERE ARE FOUR BILLS ON SCHEDULED TO BE HEARD IN COMMITTEE TODAY. BECAUSE OF THE COMPLEXITY OF THE FIRST BILL TO COME BEFORE THE COMMITTEE, WE MAY NOT BE ABLE TO HEAR ALL THIS LEGISLATION TODAY. IF WE ARE NOT FINISHED WITH THIS LEGISLATION TODAY, IT IS MY INTENTION TO RECESS UNTIL TOMORROW MORNING AT 8:15. WE WILL CONTINUE THE PROCESS UNTIL THE COMMITTEE HAS COMPLETED THE WORK NECESSARY ON THESE BILLS.

THE FIRST PIECE OF LEGISLATION TO HEARD IS SB 525, "AN ACT RELATING TO UNEMPLOYMENT INSURANCE." THE MAIN PURPOSE OF THIS BILL IS TO BRING THE STATES UNEMPLOYMENT INSURANCE LAWS IN TO CONFORMITY WITH FEDERAL LAWS. IT ALSO WOULD INCREASE WEEKLY UNEMPLOYMENT BENEFITS AND CALLS FOR A NEW METHOD OF CALCULATING THE UNEMPLOYMENT TAX THAT EMPLOYERS PAY. THAT IS JUST A BRIEF OUTLINE FOR A VERY COMPLEX BILL. I WOULD NOW ASK THE DEPARTMENT OF LABOR TO COME FORWARD TO GO THROUGH THIS BILL WITH THE COMMITTEE.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST HCS
Bill/Resolution No.: CSSB 525 (L&C)
Title: "An Act relating to Unemployment Insurance"
Sponsor: Senate Labor/Commerce
Requestor: House Labor & Commerce
Date of Request: May 14, 1984

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Social Services
BRU, Program or Subprogram(s) Affected: Employment Security, Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		5.0				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	5.0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS		5.0				
OTHER						
TOTAL	0	5.0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:
Federal funds will be requested to fund reprogramming of automated programs. [125 hours x $40 per hour.]

ANALYSIS: Attach a separate page for analysis

Prepared By: John W. Shay, Jr. Phone: 465-2712
Division: Employment Security Division Date: 5/24/84
Approved by Commissioner: Robert W. Jordan for Jim Robison Date: 5/24/84
Agency: Labor
LEG:A:5
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST — HCS for
Bill/Resolution No.: CSSB 525 (L&C)
Title: "An Act relating to Unemployment Insurance"
Sponsor: Senate Labor/Commerce
Requestor: House Labor & Commerce
Date of Request: May 14, 1984

FISCAL DETAIL
Agency Affected: All
Program Category Affected: All
BRU, Program or Subprogram(s) Affected: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		169.1	463.3	518.6	522.4	526.6
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		169.1	463.3	518.6	522.4	526.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		126.8	347.5	389.0	391.8	395.0
FEDERAL FUNDS		11.8	32.4	36.3	36.6	36.9
OTHER		30.5	83.4	93.3	94.0	94.7
TOTAL		169.1	463.3	518.6	522.4	526.6

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Personal Service benefits would increase for all agencies based on the projected increase in unemployment insurance paid to ex-state employees and seasonal employees.

ANALYSIS: Attach a separate page for analysis

Prepared By: John W. Shay, Jr — Phone: 465-2712
Division: Employment Security Division — Date: 5/14/84
Approved by Commissioner: for Jim Robison — Date: 5/14/84
Agency: Labor

LEG:A:4
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE
BILL/RESOLUTION NO: HCS CSSB 525 (L&C)
TITLE: "An Act relating to Unemployment Insurance."
AGENCY AFFECTED: Department of Labor

The following assumptions were made in preparing the forecasted costs:

1. State employment will continue to increase through FY 1986. Thereafter, state employment will level off with consolidation of administrative jobs and belt tightening being offset by jobs based on increased population.

2. There is no wage increase for calendar year 1984. The wages through FY 1985 reflect the recent agreement with APEA. A 5 percent yearly increase continues throughout the remainder of the forecast period.

3. As provided in this bill, the maximum weekly benefit amount paid for unemployment insurance claims will increase from $156 to $188, effective October 1, 1984.

As a result, the State of Alaska would be required to pay more in its personal service benefit costs for unemployment insurance. The total amount of the increased costs (which would affect all Departments in the State) is projected from past experience and a computerized modeling technique. The estimated increase in the average payment using this method is 12.7%. This increase would not occur immediately in FY '85, because claimants are paid for an entire year at the rates in effect when they first claim benefits. The total effect of the increase would not be felt until FY '87.

LEG:A:4

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST HCS
Bill/Resolution No.: CSSB 525
Title: "An Act relating to Unemployment Insurance. . ."
Sponsor: Sen. Labor & Commerce
Requestor: House Labor & Commerce
Date of Request: 5/14/84

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Social Services
BRU, Program or Subprogram(s) Affected: Employment Security, Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	33.7	89.8	93.9	97.2	102.6	108.4
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	16.9	57.3	50.1	53.1	56.3	59.7
400 SUPPLIES	1.0	2.8	3.0	3.2	3.4	3.6
500 EQUIPMENT		5.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS	600.0	2,000.0	2,100.0	2,100.0	2,100.0	2,100.0
800 MISCELLANEOUS						
TOTAL OPERATING	651.6	2,154.9	2,247.0	2,253.5	2,262.3	2,271.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	651.6	2,154.9	2,247.0	2,253.5	2,262.3	2,271.7
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	651.6	2,154.9	2,247.0	2,253.5	2,262.3	2,271.7

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: John W. Shay, Jr. Phone: 465-2712
Division: Employment Security Division Date:

Approved by Commissioner: Robert W. Sandan for Jim Robison Date: 5/15/84
Agency: Labor

LEG:B:14
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE
BILL/RESOLUTION NO: HCS CSSB 525 (L&C)
TITLE: "An Act relating to Unemployment Insurance."
AGENCY AFFECTED: Department of Labor
Page 2

This bill would require the Department of Labor to pay unemployment insurance benefits to qualifying persons between school terms. Two costs would be associated with this bill, the actual costs of the benefits paid and the administrative costs to run the program.

The estimated benefits to be paid in Fiscal Year 1985 are calculated as follows:

Number of Eligible Claimants	$ 1,400
Average Weekly Benefit Amount	x 135
	$ 189,000
Average Length of Claim	x 10 wks
	$1,890,000
Adjustment for Increase in Average Weekly Benefit Amount from $135 to $150	+ 110,000
Total Benefits Fiscal Year 1985	$2,000,000

The estimated benefits to be paid in fiscal years 1986 - 1989 are as follows:

Number of Eligible Claimants	$ 1,400
Average Weekly Benefit Amount	x 150
	$ 210,000
Average Length of Claim	x 10 wks
Total	$2,100,000

Administration costs to run this program would include the salaries of eight seasonal Unemployment Insurance Specialist I's for four months each. Contractual and Supply costs associated with these positions would include postage and forms, as well as normal expenses. One-time expenses would include $10,000 in Contractual in Fiscal Year 1985 to complete automation of the claims processing function, and $5,000 in Fiscal Year 1985 to purchase equipment for this function.

In preparing the cost estimate for benefits to be paid the following assumptions were made:

1. An effective date of May 22, 1984.
2. The average weekly benefit amount would increase from $135 to $150 on October 1, 1984.
3. No increase in claims would be seen from Fiscal Year 1985 - 1989.
4. There would be no further increase in benefit amount from Fiscal Year 1985 - 1989.

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE
BILL/RESOLUTION NO: HCS CSSB 525 (L&C)
TITLE: "An Act relating to Unemployment Insurance."
AGENCY AFFECTED: Department of Labor
Page 3

In preparing the cost estimates for administrative costs the following assumptions were made:

1. An effective date of May 22, 1984.
2. An annual inflation rate of six percent.

LEG:B:14

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST
Bill/Resolution No.: CSSB 525(Fin)
Title: "An Act relating to Unemployment Insurance"
Sponsor: Senate Labor/Commerce
Requestor: Senate Finance
Date of Request: April 25, 1984

FISCAL DETAIL
Agency Affected: All
Program Category Affected: All
BRU, Program or Subprogram(s) Affected: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		169.1	463.3	518.6	522.4	526.6
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		169.1	463.3	518.6	522.4	526.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		126.8	347.5	389.0	391.8	395.0
FEDERAL FUNDS		11.8	32.4	36.3	36.6	36.9
OTHER		30.5	83.4	93.3	94.0	94.7
TOTAL		169.1	463.3	518.6	522.4	526.6

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Personal Service benefits would increase for all agencies based on the projected increase in unemployment insurance paid to ex-state employees and seasonal employees.

ANALYSIS: Attach a separate page for analysis

Prepared By: John W. Shay, Jr. Phone: 465-2712
Division: Employment Security Division Date: 4/25/84
Approved by Commissioner: Clark Robinson Date: 4/25/84
Agency: Labor

LEG:A:4
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

All
12/1/83

The following assumptions were made in preparing the forecasted costs:

1. State employment will continue to increase through FY 1986. Thereafter, state employment will level off with consolidation of administrative jobs and belt tightening being offset by jobs based on increased population.

2. There is no wage increase for calendar year 1984. The wages through FY 1986 reflect the recent agreement with APEA. A 5 percent yearly increase continues throughout the remainder of the forecast period.

3. As provided in this bill, the maximum weekly benefit amount paid for unemployent insurance claims will increase from $156 to $188, effective October 1, 1984.

As a result, the State of Alaska would be required to pay more in its personal service benefit costs for unemployment insurance. The total amount of the increased costs (which would affed all Departments in the State) is projected from past experience and a computerized modeling technique. The estimated increase in the average payment using this method is 12.7%. This increase would not uccur immediately in FY '85, because claimants are paid for an entire year at the rates in effect when they first claim benefits. The total effect of the increase would not be felt unitl FY '87.

HCS FOR CS FOR SB 525 (L&C)

BILL ANALYSIS

Section 1. This is a "housekeeping" amendment which would make a technical change to the training and building fund provision so that unobligated money in the training and building fund could be held an additional 30 days past the end of the fiscal year. The law currently requires that any unobligated money over $100,000 in the training and building fund must lapse to the unemployment trust fund on the last day of the fiscal year. This money is obligated in appropriations bills prior to the end of the fiscal year, but the bills are often not signed until after the end of the fiscal year. The money is therefore not technically obligated until after the money has already lapsed back to the unemployment trust fund. The proposed amendment solves this "accounting" problem by holding the money in the training and building fund until the appropriation is signed.

Sections 2 and 3. The Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248) amended the Federal Unemployment Tax Act (FUTA) to increase the gross FUTA tax on employers from 3.5 percent to 6.2 percent. It also increased the additional credit against the FUTA tax for contributions to a state unemployment fund from 2.7 percent to 5.4 percent. These amendments are effective January 1, 1985. Because of the language of the FUTA, all employers in the state cannot be guaranteed the full FUTA credit of 5.4 percent unless the state law includes a maximum (standard) state tax rate of at least 5.4 percent.

Section 2 of the bill amends AS 23.20.170 to enact a standard rate of 5.4 percent. Rates below 5.4 percent would continue to be granted under AS 23.20.290.

Section 3 of the bill amends AS 23.20.290 by adding a 21st rate class comprised of employers with the highest quarterly decline quotients whose cumulative payroll is .01 percent of the total payroll in the state. This small minority of employers would receive a rate not less than 5.4 percent. The FUTA requires that the 5.4 percent rate be actually assessed at least one employer in the state, in order for all employers in the state to be guaranteed the maximum additional FUTA credit of 5.4 percent. This amendment meets the requirements of the FUTA with the least distortion to the present rate structure.

Section 4. This section amends AS 23.20.290(e) to include interest earned on the unemployment trust fund in the benefit cost rate computation. Unemployment tax contributions are computed as a percentage of the benefit cost rate, under a formula designed to recover all outlays from the fund. Interest earnings are not currently shown as income to the fund. Unless corrected, this will continue to cause higher than necessary taxes.

Section 5. This section complements the amendment made to AS 23.20.290(e) under sec. 4 of the bill. It amends AS 23.20.290(f) to provide for a negative fund solvency adjustment (in effect, a fund solvency credit) when the unemployment trust fund reaches a certain level of adequacy, defined as a reserve rate (ratio of fund balance to total state wages) of at least 3.3 percent.

Section 6. This section amends the benefit schedule in AS 23.20.350(d) to provide a maximum UI weekly benefit amount of $188, not counting dependents allowance. This will provide approximately 60 percent of claimants with replacement of 50 percent of their average weekly wages. Federal benefit adequacy guidelines suggest that a state's benefit schedule should provide 50 percent wage replacement for at least 80 percent of claimants. However, Alaska's liberal eligibility provisions make application of the federal guidelines too costly. The benefit schedule was amended in 1980 to provide a maximum weekly benefit of $150. This schedule replaced 50 percent of wages for approximately two-thirds of claimants, but wage inflation since 1980 has steadily eroded this level of wage replacement. Although a small increase of $6 was approved in 1982, only about 56 percent of claimants receive 50 percent wage replacement under the current schedule. The proposed schedule would increase costs to the trust fund by about 12.7 percent.

Sections 7 and 8. These two sections would change the requirements for the receipt of dependents allowance. The amendments do not change the amount of the allowance.

Under the current statute, an individual claiming dependents allowance must certify (and be able to prove) that he or she is providing more than 50 percent of the dependents' support. The dependents must be claimed when the claimant first files for benefits, and the number of dependents cannot be changed during the benefit year unless the claimant acquires an additional dependent by birth or adoption. These two features of the present law -the "primary support" requirement and the requirement that dependents must be claimed at the beginning of the benefit year -- are not necessary for the administration of the dependents provision, and they may frustrate its purpose.

In households where both parents work, the children are jointly supported. However, under the "primary support" requirement only one parent may claim dependents in the household, even though the other parent may be providing a larger percentage of his or her wages for support of the children. The proposed changes would pay dependents allowance to either parent having physical custody of the child. The same dependent could not be claimed by both parents, but a parent could claim any dependents in the household which are not being claimed by the other parent. The "primary support" requirement has been retained as an alternative, so that a non-custodial parent may qualify for the dependents allowance. In other words, "dependent" has been redefined to mean one who is either in the physical custody of the claimant or dependent on the claimant for more than 50 percent of support. However, to claim a dependent over 18 years of age the claimant would still be required to show primary support, the same as in the current law.

The proposed changes would also allow a claimant to add dependents (up to a limit of three) for any reason while drawing regular benefits during his benefit year. For example, a claimant whose wife is claiming their two children would not be able to claim the children when he first files his claim. However, he would be able to claim the children after his wife's benefit year ends, for the remainder of his own benefit year. Under the current law, this claimant would be unable to claim the dependents for his entire benefit year.

Section 9. This section establishes an interim benefits program to pay benefits to employees of educational institutions who would have their regular unemployment benefits reduced or denied under the changes proposed in sec. 11 of this bill. Section 11 adds a new subsection (h) to AS 23.20.381 to disqualify employees

other than instructional, research, and administrative employees during the period between academic years or terms. This change is required in all state laws by Public Law 98-21. The interim benefits program would pay these employees the difference between their regular amount and the amount they would receive under AS 23.20.381(h). The administrative and benefit costs of interim benefits must be financed from the general fund, because financing the benefits from the unemployment trust fund would constitute noncompliance with Public Law 98-21.

Section 10. This section amends AS 23.20.362(c) by adding severance and termination payments to the list of income which is deducted from UI benefits. Under the provision as it now stands, wages in lieu of dismissal notice and payments for accrued vacation, sick leave, and holidays are deducted dollar for dollar from UI benefits payable. These payments are treated differently from regular wage payments, which are deducted under AS 23.20.360 at the rate of $.75 for every $1 earned for the week in excess of $50. The vacation, sick, and holiday pay, and wages in lieu of notice, unlike regular wage payments, do not show any new attachment to the labor market, but are paid on for these payments is justifiable on the basis that unemployment insurance should not be paid for a week if the claimant is already receiving a "wage replacement" for that week based on his previous work. However, because of the language of the provision, "severance" and "termination" pay are not deductible, even though the rationale for deducting them is the same as for the other "wage replacement" payments.

Section 11. AS 23.20.381(e) currently disqualifies an individual working in an instructional, research, or principal administrative capacity in an educational institution, during the period between two academic years or terms, or during a period of paid sabbatical leave. This provision is required in all state laws for conformity with Sec. 3304 (a)(6)(A) of the Federal Unemployment Tax Act (FUTA).

The FUTA has now been amended by Public Law 98-21 to extend the disqualification to:

1. All employees of educational institutions.

2. Employees of "educational service agencies" serving in educational institutions.

3. Any established vacation period or holiday recess.

These changes are required in all state laws to avoid denial of certification for the FUTA tax offset credit and administrative grants.

Section 12. Section 202 of the Federal State Extended Unemployment Compensation Act previously required the indefinite disqualification of an extended benefit claimant who did not actively engage in seeking work, regardless of the reason the claimant did not seek work. This requirement has been relaxed by P.L. 98-21. A state is now permitted to apply regular state able and available provisions if the extended benefit claimant failed to seek work because he was hospitalized or on jury duty. This is entirely optional, but we recommend enactment of conforming legislation to take advantage of the relaxation of federal requirements.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST HCS
Bill/Resolution No.: CSSB 525 (L&C)
Title: "An Act relating to Unemployment Insurance"
Sponsor: Senate Labor/Commerce
Requestor: House Labor & Commerce
Date of Request: May 14, 1984

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Social Services
BRU, Program or Subprogram(s) Affected: Employment Security, Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		5.0				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	5.0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS		5.0				
OTHER						
TOTAL	0	5.0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:
Federal funds will be requested to fund reprogramming of automated programs. [125 hours x $40 per hour.]

ANALYSIS: Attach a separate page for analysis

Prepared By: John W. Shay, Jr. Phone: 465-2712
Division: Employment Security Division Date: 5/16/84
Approved by Commissioner: Jim Robison Date: 5/16/84
Agency: Labor
LEG:A:5
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HCS for CSSB 525 (L&C)
Title: "An Act relating to Unemployment Insurance"
Sponsor: Senate Labor/Commerce
Requestor: House Labor & Commerce
Date of Request: May 14, 1984

FISCAL DETAIL
Agency Affected: All
Program Category Affected: All
BRU, Program or Subprogram(s) Affected: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		169.1	463.3	518.6	522.4	526.6
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		169.1	463.3	518.6	522.4	526.6
CAPITAL						
REVENUE						

FUNDING. (Thousands of Dollars)

GENERAL FUND		126.8	347.5	389.0	391.8	395.0
FEDERAL FUNDS		11.8	32.4	36.3	36.6	36.9
OTHER		30.5	83.4	93.3	94.0	94.7
TOTAL		169.1	463.3	518.6	522.4	526.6

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:
Personal Service benefits would increase for all agencies based on the projected increase in unemployment insurance paid to ex-state employees and seasonal employees.

ANALYSIS: Attach a separate page for analysis

Prepared By: John W. Shay, Jr. Phone: 465-2712
Division: Employment Security Division Date:
Approved by Commissioner: Robert W. Jordan fo Jim Robison Date:
Agency: Labor

LEG:A:4
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

HCS FOR CS FOR SB 525 (L&C)

BILL ANALYSIS

Section 1. This is a "housekeeping" amendment which would make a technical change to the training and building fund provision so that unobligated money in the training and building fund could be held an additional 30 days past the end of the fiscal year. The law currently requires that any unobligated money over $100,000 in the training and building fund must lapse to the unemployment trust fund on the last day of the fiscal year. This money is obligated in appropriations bills prior to the end of the fiscal year, but the bills are often not signed until after the end of the fiscal year. The money is therefore not technically obligated until after the money has already lapsed back to the unemployment trust fund. The proposed amendment solves this "accounting" problem by holding money in the training and building fund until the appropriation is signed.

Sections 2 and 3. The Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248) amended the Federal Unemployment Tax Act (FUTA) to increase the gross FUTA tax on employers from 3.5 percent to 6.2 percent. It also increased the additional credit against the FUTA tax for contributions to a state unemployment fund from 2.7 percent to 5.4 percent. These amendments are effective January 1, 1985. Because of the language of the FUTA, all employers in the state cannot be guaranteed the full FUTA credit of 5.4 percent unless the state law includes a maximum (standard) state tax rate of at least 5.4 percent.

Section 2 of the bill amends AS 23.20.170 to enact a standard rate of 5.4 percent. Rates below 5.4 percent would continue to be granted under AS 23.20.290.

Section 3 of the bill amends AS 23.20.290 by adding a 21st rate class comprised of employers with the highest quarterly decline quotients whose cumulative payroll is .01 percent of the total payroll in the state. This small minority of employers would receive a rate not less than 5.4 percent. The FUTA requires that the 5.4 percent rate be actually assessed at least one employer in the state, in order for all employers in the state to be guaranteed the maximum additional FUTA credit of 5.4 percent. This amendment meets the requirements of the FUTA with the least distortion to the present rate structure.

Section 4. This section amends AS 23.20.290(e) to include interest earned on the unemployment trust fund in the benefit cost rate computation. Unemployment tax contributions are computed as a percentage of the benefit cost rate, under a formula designed to recover all outlays from the fund. Interest earnings are not currently shown as income to the fund. Unless corrected, this will continue to cause higher than necessary taxes.

Section 5. This section complements the amendment made to AS 23.20.290(e) under sec. 4 of the bill. It amends AS 23.20.290(f) to provide for a negative fund solvency adjustment (in effect, a fund solvency credit) when the unemployment trust fund reaches a certain level of adequacy, defined as a reserve rate (ratio of fund balance to total state wages) of at least 3.3 percent.

Section 6. This section amends the benefit schedule in AS 23.20.350(d) to provide a maximum UI weekly benefit amount of $188, not counting dependents allowance. This will provide approximately 60 percent of claimants with replacement of 50 percent of their average weekly wages. Federal benefit adequacy guidelines suggest that a state's benefit schedule should provide 50 percent wage replacement for at least 80 percent of claimants. However, Alaska's liberal eligibility provisions make application of the federal guidelines too costly. The benefit schedule was amended in 1980 to provide a maximum weekly benefit of $150. This schedule replaced 50 percent of wages for approximately two-thirds of claimants, but wage inflation since 1980 has steadily eroded this level of wage replacement. Although a small increase of $6 was approved in 1982, only about 56 percent of claimants receive 50 percent wage replacement under the current schedule. The proposed schedule would increase costs to the trust fund by about 12.7 percent.

Sections 7 and 8. These two sections would change the requirements for the receipt of dependents allowance. The amendments do not change the amount of the allowance.

Under the current statute, an individual claiming dependents allowance must certify (and be able to prove) that he or she is providing more than 50 percent of the dependents' support. The dependents must be claimed when the claimant first files for benefits, and the number of dependents cannot be changed during the benefit year unless the claimant acquires an additional dependent by birth or adoption. These two features of the present law -the "primary support" requirement and the requirement that dependents must be claimed at the beginning of the benefit year -- are not necessary for the administration of the dependents provision, and they may frustrate its purpose.

In households where both parents work, the children are jointly supported. However, under the "primary support" requirement only one parent may claim dependents in the household, even though the other parent may be providing a larger percentage of his or her wages for support of the children. The proposed changes would pay dependents allowance to either parent having physical custody of the child. The same dependent could not be claimed by both parents, but a parent could claim any dependents in the household which are not being claimed by the other parent. The "primary support" requirement has been retained as an alternative, so that a non-custodial parent may qualify for the dependents allowance. In other words, "dependent" has been redefined to mean one who is either in the physical custody of the claimant or dependent on the claimant for more than 50 percent of support. However, to claim a dependent over 18 years of age the claimant would still be required to show primary support, the same as in the current law.

The proposed changes would also allow a claimant to add dependents (up to a limit of three) for any reason while drawing regular benefits during his benefit year. For example, a claimant whose wife is claiming their two children would not be able to claim the children when he first files his claim. However, he would be able to claim the children after his wife's benefit year ends, for the remainder of his own benefit year. Under the current law, this claimant would be unable to claim the dependents for his entire benefit year.

Section 9. This section establishes an interim benefits program to pay benefits to employees of educational institutions who would have their regular unemployment benefits reduced or denied under the changes proposed in sec. 11 of this bill. Section 11 adds a new subsection (h) to AS 23.20.381 to disqualify employees

other than instructional, research, and administrative employees during the period between academic years or terms. This change is required in all state laws by Public Law 98-21. The interim benefits program would pay these employees the difference between their regular amount and the amount they would receive under AS 23.20.381(h). The administrative and benefit costs of interim benefits must be financed from the general fund, because financing the benefits from the unemployment trust fund would constitute noncompliance with Public Law 98-21.

Section 10. This section amends AS 23.20.362(c) by adding severance and termination payments to the list of income which is deducted from UI benefits. Under the provision as it now stands, wages in lieu of dismissal notice and payments for accrued vacation, sick leave, and holidays are deducted dollar for dollar from UI benefits payable. These payments are treated differently from regular wage payments, which are deducted under AS 23.20.360 at the rate of $.75 for every $1 earned for the week in excess of $50. The vacation, sick, and holiday pay, and wages in lieu of notice, unlike regular wage payments, do not show any new attachment to the labor market, but are paid on for these payments is justifiable on the basis that unemployment insurance should not be paid for a week if the claimant is already receiving a "wage replacement" for that week based on his previous work. However, because of the language of the provision, "severance" and "termination" pay are not deductible, even though the rationale for deducting them is the same as for the other "wage replacement" payments.

Section 11. AS 23.20.381(e) currently disqualifies an individual working in an instructional, research, or principal administrative capacity in an educational institution, during the period between two academic years or terms, or during a period of paid sabbatical leave. This provision is required in all state laws for conformity with Sec. 3304 (a)(6)(A) of the Federal Unemployment Tax Act (FUTA).

The FUTA has now been amended by Public Law 98-21 to extend the disqualification to:

1. All employees of educational institutions.

2. Employees of "educational service agencies" serving in educational institutions.

3. Any established vacation period or holiday recess.

These changes are required in all state laws to avoid denial of certification for the FUTA tax offset credit and administrative grants.

Section 12. Section 202 of the Federal State Extended Unemployment Compensation Act previously required the indefinite disqualification of an extended benefit claimant who did not actively engage in seeking work, regardless of the reason the claimant did not seek work. This requirement has been relaxed by P.L. 98-21. A state is now permitted to apply regular state able and available provisions if the extended benefit claimant failed to seek work because he was hospitalized or on jury duty. This is entirely optional, but we recommend enactment of conforming legislation to take advantage of the relaxation of federal requirements.

Section 13. This amendment to AS 23.20.505 addresses circumstances under which workers on "R and R" might qualify as "unemployed" and thus be potentially eligible for benefits under the Act. Under current Sec. 505 a person is "unemployed" for a week in which he performs no service and receives no wages. This allows potential abuse by individuals who are fully employed but receive "R and R" for a week (or more) as part of their regular work schedule. For example, an individual may work 60 hours per week for two weeks and then receive a week off. This "two weeks on, one week off" schedule may continue indefinitely. This individual is technically unemployed under Sec. 505 during his week off. But we do not believe it is correct to pay benefits when the employment relationship has not been severed and the individual is actually fully employed, i.e., working an average of at least 40 hours per week.

Section 14. AS 23.20.526(a) was amended in 1982 by adding paragraph (22) to exclude from UI coverage certain corporate officers who control at least 25 percent of corporate stock. Subparagraph (D) of paragraph (22) specifies that the corporate officer must agree to noncoverage. The U.S. Department of Labor now believes that subparagraph (D) constitutes a waiver of benefit rights. This raises an issue of conformity with Sec. 303(a)(1) of the Social Security Act, which is interpreted as forbidding any waiver, assignment, pledge, or encumbrance of a right to unemployment compensation. (Such a waiver would also be contrary to AS 23.20.395).

This conformity issue could result in the withholding of administrative grants to Alaska. The proposed repeal of subparagraph (D) would remove the "waiver", resulting in an outright exclusion of coverage for these corporate officers and resolving the conformity problem.

MAY 15, 1984

TO: JOHN

FROM: KEN

RE: L & C COMMITTEE HEARINGS (OPENING REMARKS)

THERE ARE FOUR BILLS ON SCHEDULED TO BE HEARD IN COMMITTEE TODAY. BECAUSE OF THE COMPLEXITY OF THE FIRST BILL TO COME BEFORE THE COMMITTEE, WE MAY NOT BE ABLE TO HEAR ALL THIS LEGISLATION TODAY. IF WE ARE NOT FINISHED WITH THIS LEGISLATION TODAY, IT IS MY INTENTION TO RECESS UNTIL TOMORROW MORNING AT 8:15. WE WILL CONTINUE THE PROCESS UNTIL THE COMMITTEE HAS COMPLETED THE WORK NECESSARY ON THESE BILLS.

THE FIRST PIECE OF LEGISLATION TO HEARD IS SB 525, "AN ACT RELATING TO UNEMPLOYMENT INSURANCE." THE MAIN PURPOSE OF THIS BILL IS TO BRING THE STATES UNEMPLOYMENT INSURANCE LAWS IN TO CONFORMITY WITH FEDERAL LAWS. IT ALSO WOULD INCREASE WEEKLY UNEMPLOYMENT BENEFITS AND CALLS FOR A NEW METHOD OF CALCULATING THE UNEMPLOYMENT TAX THAT EMPLOYERS PAY. THAT IS JUST A BRIEF OUTLINE FOR A VERY COMPLEX BILL. I WOULD NOW ASK THE DEPARTMENT OF LABOR TO COME FORWARD TO GO THROUGH THIS BILL WITH THE COMMITTEE.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST HCS
Bill/Resolution No.: CSSB 525
Title: "An Act relating to Unemployment Insurance. . . "
Sponsor: Sen. Labor & Commerce
Requestor: House Labor & Commerce
Date of Request: 5/14/84

FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Social Services
BRU, Program or Subprogram(s) Affected: Employment Security, Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	33.7	89.8	93.9	97.2	102.6	108.4
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	16.9	57.3	50.1	53.1	56.3	59.7
400 SUPPLIES	1.0	2.8	3.0	3.2	3.4	3.6
500 EQUIPMENT		5.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS	600.0	2,000.0	2,100.0	2,100.0	2,100.0	2,100.0
800 MISCELLANEOUS						
TOTAL OPERATING	651.6	2,154.9	2,247.0	2,253.5	2,262.3	2,271.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	651.6	2,154.9	2,247.0	2,253.5	2,262.3	2,271.7
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	651.6	2,154.9	2,247.0	2,253.5	2,262.3	2,271.7

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: John W. Shay, Jr. Phone: 465-2712
Division: Employment Security Division Date:
Approved by Commissioner: for Jim Robison Date: 5/15/84
Agency: Labor

LEG:B:14
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE
BILL/RESOLUTION NO: HCS CSSB 525 (L&C)
TITLE: "An Act relating to Unemployment Insurance."
AGENCY AFFECTED: Department of Labor
Page 2

This bill would require the Department of Labor to pay unemployment insurance benefits to qualifying persons between school terms. Two costs would be associated with this bill, the actual costs of the benefits paid and the administrative costs to run the program.

The estimated benefits to be paid in Fiscal Year 1985 are calculated as follows:

Number of Eligible Claimants	$ 1,400
Average Weekly Benefit Amount	x 135
	$ 189,000
Average Length of Claim	x 10 wks
	$1,890,000
Adjustment for Increase in Average Weekly Benefit Amount from $135 to $150	+ 110,000
Total Benefits Fiscal Year 1985	$2,000,000

The estimated benefits to be paid in fiscal years 1986 - 1989 are as follows:

Number of Eligible Claimants	$ 1,400
Average Weekly Benefit Amount	x 150
	$ 210,000
Average Length of Claim	x 10 wks
Total	$2,100,000

Administration costs to run this program would include the salaries of eight seasonal Unemployment Insurance Specialist I's for four months each. Contractual and Supply costs associated with these positions would include postage and forms, as well as normal expenses. One-time expenses would include $10,000 in Contractual in Fiscal Year 1985 to complete automation of the claims processing function, and $5,000 in Fiscal Year 1985 to purchase equipment for this function.

In preparing the cost estimate for benefits to be paid the following assumptions were made:

1. An effective date of May 22, 1984.
2. The average weekly benefit amount would increase from $135 to $150 on October 1, 1984.
3. No increase in claims would be seen from Fiscal Year 1985 - 1989.
4. There would be no further increase in benefit amount from Fiscal Year 1985 - 1989.

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE
BILL/RESOLUTION NO: HCS CSSB 525 (L&C)
TITLE: "An Act relating to Unemployment Insurance."
AGENCY AFFECTED: Department of Labor
Page 3

In preparing the cost estimates for administrative costs the following assumptions were made:

1. An effective date of May 22, 1984.
2. An annual inflation rate of six percent.

LEG:B:14

Charges made to School Districts for UI Benefits Paid to Claimants

	QTR. ENDING June 83	QTR. ENDING Sept 83
Galena City S.D. (503320)	$ 4,017.97	7,756.31
St Mary's S.D. (512311)	3,912.71	2,644.08
Bering Strait SD (512320)	20,890.95	51,440.85
Juneau City SD (980340)	1,018.35	18,776.48
Yukon Koyukuk S.D. (513962)	18,672.47	19,608.47
Fbks North Star (521230)	46,016.65	146,143.02
Tanana City School D. (566942)	10.83	2,057.76
Craig City S.D (980153)	5,912.90	4,496.86
Haines Borough SD (980170)	3,695.59	2,246.12
Hydaburg City S.D (980188)	3,889.60	8,753.42
Kodiak Is. S.D (980706)	8,060.21	16,330.98
Dillingham City SD (980714)	4,239.41	3244.82
MatSu Borough Schools (980722)	17,244.09	20,141.01
Lower Kuskokwim SD (980765)	42,973.94	102,619.12
North Slope Boro SD (980773)	24,624.21	30,363.07
Kuspuk SD (980838)	7,031.04	17,643.37
Chatham SD (980846)	8,978.84	14,122.12
Railbelt SD (980854)	3,565.60	6,565.92
Lake & Penn S.D (980870)	11,005.12	13,971.85
Valdez City Schools (980889)	7,477.83	7,179.50
Iditarod Area S.D. 980897)	10,397.34	7,985.14
Yakutat City S.D (980900)	2,524.15	5962.14
Pribilof S.D (980927)	568.35	41.92
Bristol Bay Boro SD (980021)	939.61	103.26
Anch School D. (980013)	124,840.65	480,900.63
Kenai Penn. SD (980200)	41,569.25	105,753.15
Ketch Gateway SD (980226)	1,197.05	7445.95

Nenana City Pub Schools (980269)	2138.08	2339.34
Petersburg SD (980277)	565.03	337.44
Skagway City SD (980285)	1081.97	7331.24
Southwest Region Schools (980293)	2719.56	115.86
Wrangell Public Schools (980307)	4009.11	9091.81
Lower Yukon S.D. (980356)	29 478.11	41 223.13
Nome Public Schools (980366)	1,448.67	1973.08
Hoonah Pub Schools (980374)	3236.71	5923.92
Copper River S.D (980382)	1418.24	4011.55
NW Artic SD. (980412)	26,398.27	79,681.70
AK Gateway Schools (980439)	8,012.10	5428.92
Annette Island S.D (980454)	4458 38	18,270.47
Delta/Greely SD (980480)	6565.55	14,420.96
Sitka Boro SD (980498)	491.01	6163.03
Southeast Is SD (980501)	4431.46	7047.85
Kake City SD		975.97
Aleutian Reg Sch.D. (980447)		1309.55
	June 30, 1983	Sept 30, 198
Totals.	$536,727.15	$1,309,963.14

GRAND TOTAL $1,846,690.29

Section 13. This amendment to AS 23.20.505 addresses circumstances under which workers on "R and R" might qualify as "unemployed" and thus be potentially eligible for benefits under the Act. Under current Sec. 505 a person is "unemployed" for a week in which he performs no service and receives no wages. This allows potential abuse by individuals who are fully employed but receive "R and R" for a week (or more) as part of their regular work schedule. For example, an individual may work 60 hours per week for two weeks and then receive a week off. This "two weeks on, one week off" schedule may continue indefinitely. This individual is technically unemployed under Sec. 505 during his week off. But we do not believe it is correct to pay benefits when the employment relationship has not been severed and the individual is actually fully employed, i.e., working an average of at least 40 hours per week.

Section 14. AS 23.20.526(a) was amended in 1982 by adding paragraph (22) to exclude from UI coverage certain corporate officers who control at least 25 percent of corporate stock. Subparagraph (D) of paragraph (22) specifies that the corporate officer must agree to noncoverage. The U.S. Department of Labor now believes that subparagraph (D) constitutes a waiver of benefit rights. This raises an issue of conformity with Sec. 303(a)(1) of the Social Security Act, which is interpreted as forbidding any waiver, assignment, pledge, or encumbrance of a right to unemployment compensation. (Such a waiver would also be contrary to AS 23.20.395).

This conformity issue could result in the withholding of administrative grants to Alaska. The proposed repeal of subparagraph (D) would remove the "waiver", resulting in an outright exclusion of coverage for these corporate officers and resolving the conformity problem.

SB

532

3AAC26.070. Standards for Prompt, Fair and Equitable Settlements Applicable to All Insurers. (a) An insurer or a person designated by the insurer to act on its behalf involved in the settlement of a claim must, within 15 days or the time frame specified in the insurance contract, after receiving a properly executed proof of loss or other evidence of loss acceptable to the insurer from a first party claimant, advise the claimant of the acceptance or denial of the claim.

(b) A claim denial must be in writing and a copy or the capability of reproducing its text must be included in the claim file.

(c) A claim denial based on a specific policy provision, condition or exclusion must include, in the written denial, reference to that specific provision, condition, or exclusion.

(d) If an insurer or a person designated by the insurer to act on its behalf needs more time to determine whether the claim of a first party claimant should be accepted or denied, notification must be given to the first party claimant within 15 working days after the receipt of the proof of loss giving the reason more time is needed. 45 days from the date of the initial notification and every 45 days thereafter while the investigation remains incomplete, written notification must be provided to the claimant stating the reason additional time is necessary to complete the investigation.

(e) An insurer or a person designated by the insurer to act on its behalf may not fail to settle a claim for first party claimant on the grounds that responsibility for payment should be assumed by others, except as may be expressly provided otherwise by the provisions of the insurance policy issued by the insurer.

(f) If negotiations for settlement of a claim continues directly with a claimant who is neither an attorney nor represented by an attorney to a point in time when the claimant's rights may be affected by a statute of limitations or a policy time limit, written notification must be provided to the claimant stating that the time limit may be expiring and may affect the claimant's rights. Notice must be given to first party claimants not less than 30 days before, and to third party claimants not less than 60 days before, the date on which the insurer believes the time limit may expire.

(g) A statement may not be made that indicates the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time, unless the statement is given for the purpose or notifying the third party claimant of the provision of a relevant statute of limitation.

(h) If an insurer has a reasonable basis, supported by specific information available for inspection by the division of insurance, for suspecting that a first party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this section. However, the insurer must, within a reasonable time for full investigation and after receipt of a properly executed proof of loss, advise the claimant of the acceptance or denial of the claim. (Eff. / / , Reg.)

Authority: AS21.06.090
AS21.36.125
AS21.36.350

Sec. *43.20.031. Taxable income of residents; deductions; exemptions.* (a) *[Repealed, § 10 ch 1 SSSLA 1980.]*

(b) *[Repealed, § 10 ch 1 SSSLA 1980.]*

(c) In computing the tax under this chapter, the taxpayer is not entitled to deduct any taxes based on or measured by net income.

(d) Banks and savings and loan associations chartered by the federal government or the state are exempt from income tax under this chapter.

(e) An affiliated group of corporations may make or the commissioner may require them to make a consolidated return for the taxable year in place of separate returns. For purposes of calculating the amount of tax payable by the group under a consolidated filing, 26 U.S.C. 1501 — 1552 (Internal Revenue Code), as amended, apply.

(f) *[Repealed, § 10 ch 1 SSSLA 1980.]*

(g) *[Repealed, § 10 ch 1 SSSLA 1980.]*

(h) *[Repealed, § 10 ch 1 SSSLA 1980.]*

(i) A corporation which is a member of a group of unitary corporations which collectively has income from business activity taxable both inside and outside the state, or income from other sources both inside and outside the state, shall determine its income from sources in this state by use of the combined method of accounting. (§ 5 ch 70 SLA 1961; am §§ 3 — 5 ch 125 SLA 1976; am § 8 ch 73 SLA 1977; am § 6 ch 133 SLA 1977; am § 1 ch 8 SLA 1978; am § 235 ch 100 SLA 1980; am §§ 14 — 17 ch 113 SLA 1980; am § 10 ch 1 SSSLA 1980; am § 9 ch 2 SSSLA 1980)

Cross references. — For legislative findings and purpose of the third and fourth 1980 amendments, see § 1, ch. 1, SSSLA 1980, and § 1, ch. 2, SSSLA 1980, in the Temporary and Special Acts; for disclosure of contributions, see AS 24.45.121; for tax exemption for permanent fund dividends, see AS 43.23.090.

The second and fourth 1980 amendments affected subsections (a) and (h) repealed by the third 1980 amendment, deleted "or combined" following "make a consolidated" in the first sentence of subsection (e), and added subsection (i).

The third 1980 amendment repealed subsections (a), (b) (f), (g), and (h).

Sec. *43.20.033. Taxable income of fiduciary. [Repealed, § 10 ch 1 SSSLA 1980.]*

Sec. *43.20.035. Taxable income of nonresidents and part-year residents. [Repealed, § 10 ch 1 SSSLA 1980.]*

Sec. 43.20.036. Federal tax deductions and credits. (a) For purposes of calculating the income tax payable under this chapter, the taxpayer may not apply as a credit against his tax liability the foreign tax credit allowed as to federal taxes under 26 U.S.C. 33 (Internal Revenue Code).

(b) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as a credit against tax liability the

license. 1960 Op. Att'y Gen., No. 27.

AS 43.70.110 and this section make no provision for the exemption from the license requirement of a religious corporation which is doing business. 1960 Op. Att'y Gen., No. 25.

A religious corporation receiving rents from the renting of an apartment or apartments must obtain an Alaska business license as a condition precedent to engaging in such business. 1960 Op. Att'y Gen., No. 25.

The state may revoke the license of a collection agency which does not have a proper bond on file with the tax commission. 1960 Op. Att'y Gen., No. 27.

A guide to a workable procedure for license revocation is found in chapter 2 of the Alaska Administrative Procedure Act. 1960 Op. Att'y Gen., No. 27.

NOTES TO DECISIONS

A license confers no right of property. Thlinket Packing Co. v. Harris & Co., 5 Alaska 471 (1916).

It merely authorizes the holder to carry on a certain business, but does not grant to the holder any place of business, any more than the issuance of a saloon license grants to the holder a building in which to conduct a saloon, or the issuance of a mercantile license, a building in which to conduct a store. Columbia Salmon Co. v. Berg, 5 Alaska 538 (1916).

Purpose of tax. — Although this section requires a license for the "privilege" of engaging in a business in Alaska, this language does not render it invalid nor destroy the legislative intent that the purpose of the tax is to raise revenue, and not to regulate any business. Territory of Alaska v. Journal Printing Co., 15 Alaska 676, 135 F. Supp. 169 (D. Alaska 1955).

Sec. 43.70.030. Levy and computation of license fee. (a) The license fee for each business is $25.

(b) The license fee for each national bank and state bank, trust company and savings and loan association is seven percent of its net income. Net income means the taxable income of each taxpayer before net operating loss deduction and special deductions, computed as required under the Internal Revenue Code of the United States and includes all other income, including income from federal, state or municipal obligations. Each of these taxpayers required to make a return under the provisions of the Internal Revenue Code shall at the same time file with the department a return setting out the amount of tax due under this chapter, and other information for the purpose of carrying out the provisions of this chapter which the department requires. Each of these taxpayers shall also at the same time file a true and correct copy of the tax return which it has filed with the Internal Revenue Service. A taxpayer filing under this subsection shall use the same tax year as the taxpayer uses for federal income tax purposes. Any approved extension of time to file the taxpayer's federal income tax return automatically extends the time for filing under this chapter. Any agreement which a taxpayer enters into with the Internal Revenue Service which extends the statute of limitations for any federal income tax return will apply to returns filed under this chapter. The department may, in its discretion, grant an extension of time to file or an extension of the statute of limitations independent of federal action. Every taxpayer shall notify the department in writing, within 90 days, of any alteration in, or modification of its federal income tax return and

of a recomputation of tax or determination of deficiency. For purposes of applying the statute of limitations, this notification constitutes a separate return, and failure to file this notification will have the same effect as the failure to file a return under this title.

(c) The license for the privilege of taking orders through use of catalogs and by mail order offices in the state is the same as set out in this chapter for business generally.

(d) The fee of $25 applies to all of the provisions of this section, and shall accompany the application. The balance is due and payable on the last day of the taxpayer's tax year and shall be paid before the 15th day of the third month following the end of the tax year, except that the time for filing the return may be extended as provided in (b) of this section. To enable accurate determination of the balance of the tax due at the end of each year, each person to whom this chapter applies shall keep records, give statements under oath, and make returns which the department requires. Returns are made under penalty of perjury. (§ 5 ch 43 SLA 1949; am § 1 ch 128 SLA 1955; am § 1 ch 101 SLA 1960; am § 1 ch 68 SLA 1973; am § 1 ch 50 SLA 1975; am § 3 ch 144 SLA 1978)

NOTES TO DECISIONS

Tax imposed on state obligations and bonds. — To the extent that all federal obligations are subject to the business license tax, including those obligations afforded a specific tax exemption by Congress, subsection (b) of this section must equally impose the tax on state obligations and bonds, which are otherwise tax exempt pursuant to specific state tax exemptions, in order to avoid any unlawful discrimination against federal securities. National Bank v. State, Dep't of Revenue, Sup. Ct. Op. No. 2480 (File No. 5482), 642 P.2d 811 (1982).

The legislature intended to define the term "net income" broadly for business license tax calculation purposes. National Bank v. State, Dep't of Revenue Sup. Ct. Op. No. 2480 (File No. 5482), 642 P.2d 811 (1982).

The "all other income" category in subsection (b) is interpreted as an attempt by the legislature to reach those types of income, such as bond interest, which are not otherwise subject to federal income taxation. National Bank v. State, Dep't of Revenue, Sup. Ct. Op. No. 2480 (File No. 5482), 642 P.2d 811 (1982).

Alaska State Housing Authority and Alaska Housing Finance Corporation bonds are not "state obligations" for purposes of subsection (b) of this section. National Bank v. State, Dep't of Revenue, Sup. Ct. Op. No. 2480 (File No. 5482), 642 P.2d 811 (1982).

Alaska State Housing Authority and Alaska Housing Finance Corporation bond interest falls within the meaning of the phrase "all other income" in subsection (b) of this section and is to be considered as "net income" of the banks for purposes of determining their business license tax liability pursuant to subsection (b). National Bank v. State, Dep't of Revenue, Sup. Ct. Op. No. 2480 (File No. 5482), 642 P.2d 811 (1982).

The purpose of excluding "insurance businesses" from the coverage of subsection (a) by virtue of the definition in AS 43.70.110(1) is apparently to avoid taxing these businesses twice, since insurers are subject to a premiums tax imposed by AS 21.09.210. Northern Adjusters, Inc. v. Department of Revenue, Sup. Ct. Op. No. 2332 (File No. 5128), 627 P.2d 205 (1981).

Adjusters. — Because adjusters are not "insurers" subject to the premiums tax, they should not be viewed as "insurance businesses" exempt from the general license tax. Northern Adjusters, Inc. v. Department of Revenue, Sup. Ct. Op. No. 2332 (File No. 5128), 627 P.2d 205 (1981).

BILL SHEFFIELD
GOVERNOR

hb 532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 21, 1984

The Honorable Jalmar Kerttula
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to amend AS 43, the Revenue and Taxation Code, by repealing AS 43.20.031(d) and AS 43.70.030(b).

This bill repeals AS 43.20.031(d), which exempts banks and savings and loan associations from taxation under AS 43.20, the corporate income tax chapter. It also repeals AS 43.70.030(b), which taxes banks, trust companies, and savings and loan associations under AS 43.70, the Business License Act.

Currently, banks and savings and loan associations are specifically exempted from the corporate income tax under AS 43.20 because of federal restrictions which required states to tax national banks and savings and loan associations separately from other corporations. Those federal restrictions no longer exist. Therefore, we may now tax banks under AS 43.20 along with all other corporate taxpayers, and that is what this bill will accomplish.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No:
Title: State taxation of national banks
Sponsor: Governor
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Department of Revenue
Program Category Affected: Collection and Management
BRU, Program of Subprogram(s) Affected: Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL	-	-	-	-	-	-
400	SUPPLIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	-	-	-	-	-
	TOTAL OPERATING	-	-	-	-	-	-
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-	-	-	-	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	-	-	-	-	-	-

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Maureen O'Brien Maureen O'Brien Phone: 465-2320
Division: Audit Division Date: March 20, 1984

Approved by Commissioner: Robert Hartig Date: 3/20/84
Agency: Revenue

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Currently banks are required to file returns and pay tax under a statute separate from all other corporations (AS 43.70). This results in significant administrative and legal problems. The Department of Revenue therefore recommends that banks be taxed under the same income tax statutes as other corporations (AS 43.20).

Although state and municipal interest is currently taxable under AS 43.70 and would not be subject to tax under AS 43.20, we estimate that requiring banks to file under AS 43.20 rather than AS 43.70 will result in no loss of revenue to the State. The Department's position is that under IRC sec. 265(2), which is adopted by reference in AS 43.20.021(a), no deduction is allowed for expenses and interest incurred or continued to purchase or carry obligations the interest on which is exempt from tax. This includes not only expenses and interest related to tax exempt state and municipal interest income, but also expenses and interest related to tax exempt U.S. interest income. Therefore, the total amount of nondeductible expenses under AS 43.20 will be close to the amount of nontaxable income.

SB

546

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB546
Title: Auto Service Corps.

Sponsor: Labor & Commerce
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Econ Dev
Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected:
Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: John W. George, Deputy Director Phone: 465-2515
Division: Insurance Date: 5/3/84

Approved by Commissioner: Richard A. Lyon Date: 5/3/84
Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

SCR

18

M E M O R A N D U M

DATE: 7 March 1984

TO: Representative Rick Uehling

FROM: John Geary

RE: SCR 18

You requested that I research SCR 18, a Senate resolution by Sen. Vic Fischer to encourage Small Businesses in the State of Alaska.

The bottomline is to create a task force to assess state policy in contracting, local hire, and small business advocacy and to recommend measures that will promote, assist and assure that small business get a fair shake in state funded construction projects.

The Governor is requested to appoint the Attorney General to recommend measures available to the state to make sure the said small businesses get a reasonable portion of the state-funded construction projects.

SCR 18

Alaska State Legislature

Representative John Ringstad
District 20-B
P.O. Box 1848
Fairbanks, Alaska 99707
(907) 456-8336

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4998

House of Representatives

February 22, 1984

TO: Representative John Cowdery

FROM: Representative John Ringstad

RE: NFIB, (National Federation of Independent Business)

Attached, please find a copy of a letter from the NFIB, and a copy of their 1983 State Ballot survey results on various issues for your information. Gary L. Jenkins, Director of Governmental Relations/Alaska, (NFIB), will be in touch with you on these issues in the near future.

JCR/atb

NFIB® National Federation of Independent Business

The Guardian of Small Business

February 13, 1984

The Honorable John Ringstad
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Ringstad:

Small business continues to be the largest generator of new jobs in the United States, however, the number of jobs which are created often are significantly effected by state legislative actions. To ensure that legislators have the benefit of knowing how existing law and proposed legislation affects small business, the National Federation of Independent Business has been working with, not only the Alaska Legislature, but state legislatures nationwide for several years.

In Alaska, NFIB currently has a membership in excess of 3,600 which means that we usually represent a significant majority of the retail and service businesses in each city in Alaska. Each year we send a ballot to all of our members requesting their input on issues of current interest in Alaska. This ballot permits each member to express their feelings on these issues and gives me direction regarding which issues should be pursued legislatively. I do not take a position on an issue for NFIB unless the members have voted on it and a majority favor the position being taken.

Enclosed for your information is a copy of our 1983 State Ballot showing the vote of the membership on the various issues. The issues which received strong support are ones which I will be discussing with legislators during this and subsequent legislative sessions.

If I can provide you any additional information on NFIB or if you would like to know our position on a particular issue, feel free to contact me.

Very truly yours,

Gary L. Jenkins, Director
Governmental Relations/Alaska

NFIB/ALASKA
Legislative Office
P.O. Box 194
Auke Bay, AK 99821
907/586-4100

NFIB
National Federation
of Independent Business

1984 Alaska
STATE BALLOT

Dear NFIB Member:

This Ballot is solicited by NFIB Research and Education Foundation to gather information pertaining to small business issues in your state.

Your answers are valuable and will enhance the survey.

Please return the entire Ballot. Thank you.

Very truly yours,

John E. Sloan, Jr., President
NFIB Research and Education Foundation

GENERAL BUSINESS

Interest Rates

1. Should interest rate ceilings be repealed on: (vote on each)

a. Bank loans of $25,000 or less

32% Favor (1) 60% Oppose (2) 8% Undecided (3) (11)

b. Savings and loan association loans of $25,000 or less

34% Favor (1) 58% Oppose (2) 8% Undecided (3) (12)

c. Retail installment contracts

36% Favor (1) 54% Oppose (2) 10% Undecided (3) (13)

d. Retail open-ended charge accounts

34% Favor (1) 56% Oppose (2) 10% Undecided (3) (14)

e. Credit card revolving accounts

33% Favor (1) 58% Oppose (2) 9% Undecided (3) (15)

f. State chartered credit unions

35% Favor (1) 55% Oppose (2) 10% Undecided (3) (16)

g. Small loan finance company loans of $10,000 or less

33% Favor (1) 58% Oppose (2) 9% Undecided (3) (17)

BACKGROUND: HB 246, presently in the Senate Labor and Commerce Committee proposes to remove all limitations on all types of credit in Alaska. The measure would permit each financial institution and all businesses extending credit to charge whatever interest rate they wish, subject only to competition of the marketplace and negotiation with each individual customer.

Current law limits banks and savings and loan associations to a maximum interest rate of 5% over the federal discount rate in effect at the time of the loan on any loan of $25,000 or less. There are no interest rate limitations on loans in excess of $25,000. During the past few months, the federal discount rate has been 8.5%, thereby setting the maximum allowable interest rate at 13.5%.

A retail business selling merchandise on a retail installment contract is presently limited to a maximum interest rate of 10% per year on the first $1,000 of credit extended, and 8% on credit in excess of $1,000. However, for retail businesses as well as credit card companies extending open-ended revolving charge accounts, the maximum interest rate is 18% per year on the first $1,000 of credit extended and the federal discount rate plus 5% on credit in excess of $1,000. A state chartered credit union is presently limited to 15% or 5% over the federal discount rate, whichever is higher on loans of any amount. Small loan finance companies can now levy a maximum interest rate of 36% per year on the first $850 of credit extended and 24% on credit up to $10,000.

Proponents of the removal of all interest rate limitations argue that many financial institutions and businesses lost money on their credit transactions during the period of very high interest rates and, further, the limits are no longer necessary. If the limitations were removed, the marketplace, i.e., competition for the financing, would set the rates at reasonable levels in line with the risks inherent in the particular credit transaction.

Opponents argue that Alaska does not have a well developed marketplace and there are many communities where no competition exists either for banking or retail credit. The removal of all limits would permit the charging of unreasonably high rates. Further, it has also been pointed out that in the case of consumer loans and small business loans under $25,000, the marketplace seems to react very slowly when interest rates are falling in general. For example during the first few months in 1983 in California, where there are no interest rate limitations, interest rates being charged on small loans by banks were running at 20% to 25%, while rates in Alaska were about 14%.

Interest Rates

2. Should interest rates on balances of $1,000 or less that are limited to a maximum, such as the 18% for business credit or credit card companies, be modified so the maximum rate could be increased with the federal discount rate, once the federal discount rate reached a pre-set level?

39% Favor (1) 52% Oppose (2) 9% Undecided (3) (18)

BACKGROUND: Proponents of this concept feel that businesses extending financing and credit should not be so limited in the rates they charge that they lose money; therefore, the limitations should be allowed to rise when interest rates are generally high. It has been proposed that the maximum rate on accounts with balances of $1,000 or less be set at 18%, or 6% over the federal discount rate, whichever is higher.

Opponents argue that the federal discount rate does not necessarily indicate the cost of funds to financial institutions or businesses. A variety of other factors affect the cost of funds to a particular entity. They argue, therefore, that it is more appropriate to remove all limitations and let market conditions establish the rates.

Bad Check Penalties

3. Do you favor or oppose increased civil and/or criminal penalties as an effective deterrent to the writing of bad checks?

95% Favor (1) 4% Oppose (2) 1% Undecided (3) 19

BACKGROUND: It is well established that bad checks are a problem that every business must deal with to some degree. However, the question has been raised whether the laws of Alaska are presently adequate to deal with the problem. It has been suggested that either or both the civil or criminal penalties should be made stronger to attempt to reduce the impact of this problem.

Bad Check Civil Penalties

4. Should legislation be adopted to require that bad-check writers repay not only the face value of the check and any court costs incurred by the receiver but also civil damages of $100 (minimum) or triple the amount of the check?

86% Favor (1) 10% Oppose (2) 4% Undecided (3) 19

BACKGROUND: Law enforcement officials frequently do not pursue those who write bad checks for small amounts. Thus, the only deterrent to writing a bad check is the receiver's (merchant) collection efforts. Checks written for small amounts, which together may represent a deep cut in a business's profit, frequently cost more to collect than they are worth.

If the merchant was allowed to collect from the bad-check writer a minimum of $100 or triple the amount of the check as damages, in addition to the base value of the check and any court costs incurred, there would be a real incentive for the merchant to collect and a deterrent to bad-check writing.

Check Information

5. Should financial institutions be required to number checks on new accounts beginning at #101 and display on the face of the check the month and year the account was opened?

41% Favor (1) 49% Oppose (2) 10% Undecided (3) 21

5A. Should banks be allowed to disclose to merchants the bank account information of those who issue checks which are returned because of insufficient funds? Such information might include account status, current address, phone number, and history of returned checks.

66% Favor (1) 33% Oppose (2) 1% Undecided (3) 23

BACKGROUND: In the United States, approximately 400,000 worthless checks are written every day. Eighty percent of those checking accounts are six months old or less. Numerical listing and date of account opening would alert merchants to new accounts and to take care in deciding whether to accept those checks. Additionally, several states have given financial institutions permission to disclose account information to either law enforcement officials or merchants who receive a worthless check.

Opponents of the numbering system believe it would create problems for individuals and businesses who for continuity purposes want to continue to number checks from where the old account left off.

LABOR

Mandatory Overtime Wages

6. Should existing law be repealed which requires a business with four or more employees to pay overtime to an employee who works more than 8 hours in one day, but does not work over 40 hours per week?

73% Favor (1) 24% Oppose (2) 3% Undecided (3) 23

BACKGROUND: Most small businesses require that a particular job be accomplished within a certain period. This may require an employee to work more than 8 hours on a particular day. However, the employee is given time off on other days of the week so as not to work more than 40 hours that particular week. Proponents of a change say that law is particularly unfair to smaller businesses whose workload is heavy at certain times and slack on other days of the week. This flexibility of worker time should not impose an additional financial burden on smaller businesses.

Opponents to changing the law argue that employees working more than 8 hours in any one day should be given extra compensation in the form of overtime pay, whether they worked voluntarily or were required to do so by their employer. They feel daily overtime pay should be independent of the requirement to pay overtime to an employee who works more than 40 hours a week.

GOVERNMENT

Permanent Fund Income

7. Should the unused portion of the income from the Permanent Fund not allocated to the Dividend Program be authorized for the following?

a. The Longevity Bonus Program for the elderly

41% Favor (1) 51% Oppose (2) 8% Undecided (3) 24

Municipal Assistance Program

24% Favor (1) 66% Oppose (2) 10% Undecided (3) 23

BACKGROUND: During the 1983 Legislative Session bills were introduced which would require that part of the income of the Permanent Fund be held to finance the Longevity Bonus program and/or finance the municipal revenue sharing program. In the past, funding for such programs has been from the state's General Fund.

Proponents of using the income from the Permanent Fund to provide funds for these programs contend that this would not violate the intent of the Permanent Fund financing activities to benefit the maximum number of residents of the state. They argue that programs like the municipal assistance program are helping all communities of the state directly and thus benefit the residents of the various communities indirectly by reducing local taxation and providing needed services.

Opponents argue that the Legislature is merely looking for new sources to fund the expensive programs they have created the past few years which they do

not want reduced in levels of funding, now that General Fund revenues are declining. Obviously, the most enticing source for funds is the Permanent Fund. They strongly argue that the income of the Permanent Fund should be kept for the original purposes established when the program was created and not used to fund other programs of the Legislature. They state that the Legislature should be required to fund all programs of the state from General Fund revenues or from revenues other than the Permanent Fund.

Government Competition

8. Does the State of Alaska maintain operations which are in direct competition with your business?

29%(1) YES 56%(2) NO 15%(3) DON'T KNOW (26)

BACKGROUND: Past Alaska State Ballots have asked whether the state should desist from activities which directly compete with private enterprise. The membership has always strongly supported this concept. However, the question has been raised about how much competition there actually is. This question is intended to determine the present level of competition by state agencies.

Answer "Yes" only if you are specifically aware of significant areas of state competition in your type of business. Answer "No" if you are reasonably certain that the state does not compete with your business. If you "don't know", please so indicate. If you are aware of specific areas of competition, please list them in the Comments section of this Ballot.

Interest Payment On Overdue Bills

9. Do you favor or oppose legislation to require local governments to pay interest on their unpaid bills after 30 days?

92%(1) Favor 5%(2) Oppose 3%(3) Undecided (27)

BACKGROUND: During 1983, legislation was nearly enacted which would mandate state agencies to pay interest on bills not paid within 30 days of receipt of invoice. It has been suggested that the prior legislation should have been applicable to local governments as well as state agencies. The problem of local governments not paying bills on time should be addressed in future legislation.

Opponents of prompt pay say that local governments frequently need to have extended periods to pay their bills and should not be penalized with interest that amounts to taxpayer dollars.

Equal Access to Justice

10. Should the state enact legislation authorizing courts to require state agencies to reimburse reasonable attorney fees and court costs to small businesses who prevail over an agency in civil actions relating to alleged violations of governmental regulations?

96%(1) Favor 2%(2) Oppose 2%(3) Undecided (28)

BACKGROUND: Aggressive agency regulatory enforcement frequently result in what is considered unwarranted fines and citations. The intent of the proposed act is to remedy the imbalance of power and legal resources between government and small businesses by giving small business the means to challenge if their position is justified.

Proponents of this legislation believe that making agencies responsible for attorney fees and court costs will discourage unnecessary actions against small businesses and reduce bureaucratic interference with business. Costs and fees would be reimbursed from the agency's operating budget if the courts finds an agency acted unreasonably in pressing a claim or punitive action against a small business.

Opponents say such legislation will unduly tie the hands of regulators. (Please use the Comment section to cite instances where you paid a fine in order to avoid the cost of litigation.)

COMMENTS: _____

NFIB

National Federation
of Independent Business

Research and Education Foundation
150 West 20th Avenue, San Mateo, CA 94403

1984 ALASKA STATE BALLOT

MAKE YOUR VOICE HEARD

VOTE YOUR STATE BALLOT

Place
Stamp
Here

1984 ALASKA

Mail To:

NFIB

National Federation of Independent Business
Research and Education Foundation
150 West 20th Avenue
San Mateo, CA 94403

Alaska State Legislature

Senate Committee on State Affairs

Vic F[illegible]her, Chair • Pouch V
Juneau, Alaska 99811
(907) 465-4954

Official Business

February 28, 1984

To: Rep. John Cowdery, Chair, and Members
House Labor and Commerce Committee

From: Senator Vic Fischer

Re: SCR 18 - relating to small business development

During the 1982 interim, the Senate State Affairs Committee conducted an investigation into the effects of state contracting procedures on small, minority and female owned businesses in Alaska.

In the course of that study, and through subsequent testimony before recent committee hearings on small business development in Alaska, it's become apparent that problems facing minorities and women are basically the same as those facing all small Alaska-owned businesses.

Besides the obvious problems associated with high costs, extreme weather, lack of infrastructure, and vast distances, small businesses face major problems in dealing with the state, particularly on state funded construction projects.

The state has no comprehensive policy of support and advoc[illegible] small business development. We don't even having a working defina[illegible] "small" business that realistically reflects the kind of "m[illegible] pop" operations most of us think of when we think of "small".

State construction projects are contracted in a manner that, often as not, preclude any Alaska-owned business from successfull bidding, at least as a prime contractor. That leaves Alaskans in the position of competing for sub-contracts, usually with a large "outside" prime.

Lack of technical assistance, inability to secure adequate bonding, credit or financing, and an impossibly tight cash flow, makes successful competition for a sub-contract extremely difficult for small local businesses. Meanwhile the concrete continues to be poured and Alaskans continue to stand in the cold while someone else reaps the benefits of state funded construction projects.

It will take a push from both the legislative and executive branch to end this policy of "benign neglect" and take an active lead in assuring that small Alaska-owned businesses benefit from state capitol projects. I believe SCR 18 is a step in that direction.

SCR 18 asks the Governor to address these concerns through several measures including appointing a task force to assess state policy in contracting, local hire, and small business advocacy and to recommend measures that will:

- emphasize and promote small business development and maintenance

- assist in securing adequate sources of bonding, credit, and loans for small, Alaska-owned businesses

- specify, modify and contract state-funded construction projects in a manner to assure a reasonable portion of the work is performed by small, Alaska-owned businesses

Further, SCR 1 asks the Governor to direct the Attorney General to investigate and recommend measures available to the state to assure that a reasonable portion of state-funded construction and procurement dollars be contracted through small Alaska-owned businesses, consistent with provisions of the United States and state of Alaska's constitution.

Encouraging small business development in Alaska is the single most effective thing the state can do to provide for new industry and a stable economic base, opportunities for future growth to Alaska's young people, a diversified economy, and jobs for Alaskans.

More than that, the state benefits greatly from local businesses with strong community, family, and cultural committments to Alaska. That business community, with proper nurturing, can maintain and strengthen the overall economy, mobilize the states full productive capacity, and preserve and expand the competition basic to our free enterprise system.

SCR 18 passed the Senate unanimously earlier this session. I hope it finds such favor in the House and appreciate your consideration of the bill in committee.

/gb

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE
SENATOR VIC FISCHER, CHAIRMAN
POUCH V, JUNEAU 99811
(907) 465-4954

DRAFT

Senate State Affairs Committee
1982 interim report

EFFECTS OF STATE CONTRACTING PROCEDURES ON SMALL AND MINORITY-OWNED ALASKAN BUSINESSES

TABLE OF CONTENTS

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE
SENATOR VIC FISCHER, CHAIRMAN
POUCH V, JUNEAU 99811
(907) 465-4954

Senate State Affairs Committee
1982 Interim Report

EFFECTS OF STATE CONTRACTING PROCEDURES ON SMALL AND MINORITY-OWNED ALASKAN BUSINESSES

During the 1982 interim, the Senate State Affairs committee investigated the effects of state construction contracting procedures on small and minority-owned business in Alaska. This is a report on that effort.

Specifically, the committee examined an interagency agreement between the state Department of Transportation and Public Facilities (DOTPF) and the Alaska State Commission on Human Rights (ASCHR) affecting minority owned businesses contracting with the state.

The following report includes a review of that agreement, description of development and transmittal of a polling questionnaire, an analysis of the results, and recommendations based on suggestions and information received during the course of administering the questionnaire.

ASCHR/DOTPF AGREEMENT

In 1980 the ASCHR entered into an agreement with DOTPF to increase participation of minority owned businesses in contracting for state funded capital projects.

DOTPF agreed to take affirmative action in insuring minority owned business had an equitable chance to successfully bid state funded projects. Included in the agreement were provisions requiring that DOTPF:

- create the position of Minority Business Enterprise officer in DOTPF
- Prepare and distribute a policy and procedure memorandum outlining the scope and authority of the MBE officer
- charge the MBE officer with responsibility for developing and implementing an affirmative action plan
- identify and certify MBE's
- require successful prime contract bidders to submit proof of having contacted MBE's as subcontractors (when they intend to subcontract) for information and to solicit bids
- be responsible for notifying and informing minority owned businesses of contracting bids and procedures
- establish, print, maintain, update and distribute a MBE directory

DOTPF and ASCHR also agreed on goals for assuring a reasonable percent of total state construction dollars were contracted to minority owned businesses. Those goals required that 7.5% of total construction dollars for projects under $100,000, not subject to competitive bid, to be contracted through MBE's in FY 1981 (the first year of the agreement), 11.5% in FY 1982, and 15% in FY 1983. Identical percentage goals were agreed upon for total subcontracting dollars on wholly state funded construction projects.

These goals were not considered quotas, and terms of the agreement provided that justified failure by DOTPF to meet these goals would not be considered to be a breach of the agreement.

The agreement further required that ASCHR actively monitor DOTPF's compliance and required DOTPF to provide adequate and accurate records to enable the Commission to document their compliance.

This agreement represented final resolution of a complaint originally filed with the Commission in December, 1978. After several months of negotiations between agencies, it was finalized and went into effect for the first time in 1980.

By June of 1982, a quest editorial in the Anchorage Times by E. Louis Overstreet, charged that DOTPF had not complied with the agreement. He based this charge on an "unreleased report" that "documents the failure of DOTPF to live up to the provision of an agreement it entered into with the Alaska Human Right commission in February 1980".

Shortly after that editorial appeared, a constituent delivered a copy of the ASHRC file charging DOTPF with non-compliance to the Senate State Affairs Committee. That constituent requested the committee to review the effectiveness of the agreement in increasing minority business participation and to find out why the ASCHR was "suppressing" a report of non-compliance under the "cover" of confidentiality.

The committee formally requested a compliance report from the ASCHR. ASCHR, however, was statutorily prevented from meeting the committees request due to terms of the agreement with DOTPF* and restrictions under state law (AS 18.80.115).

The ASCHR subsequently filed an action in superior court charging DOTPF with non-compliance on October 14, 1982. However, until they had exhausted conciliation efforts, and met the time provisions for filing and rebuttal laid out in the agreement, they were prevented from disclosing any information about DOTPF's compliance or non-compliance.

---

* Part III, paragraph 4, of the agreement states: "Whether or not a breach of this agreement has occurred shall be determined by the superior court. Prior to filing an action seeking any such determination by the superior court, the parties agree to maintain strict confidentiality regarding any alleged breach and any conciliation efforts".

Because of the confidentiality restrictions, the committee was unable to enlist the help of the Commission or the Department in determining compliance with and effectiveness of the agreement. At the time they were asked to investigate, it was impossible to predict whether there had been compliance, how long conciliation efforts may take or, indeed, if they were being pursued at all.

The Committee met the same restriction and frustration the minority business community faced when asking for swift and affirmative state action in increasing opportunities to participate in state funded construction projects. In addition, as the committee of oversite, Senate State Affairs was vitally interested in how seriously state agencies complied with agreements made with the Commission.

In order to independently determine the effectiveness of this agreement, the committee prepared and distributed a questionnaire to prime and subcontractors relating to state construction contract award procedures, specifically as they apply to minority owned businesses and the DOTPF/ASCHR agreement.

Following is a description of that questionnaire, an analysis of the results, and recommendations based on suggestions and information received during the course of administering the questionnaire.

QUESTIONNAIRE DESCRIPTION AND METHOD

Two questionnaires were prepared by Committee staff with help from minority businesses, DOTPF's Minority Business Enterprises officer, the Minority Business Assistance Center, and the ASCHR Systemic Discrimination Unit. One was directed to prime contractors, the other to minority owned businesses eligible to subcontract a DOTPF project. (Copies of questionnaire are attached).

Committee staff obtained a list of bid applicants for DOTPF construction projects from 1980 to 1982 and were able to compile a mailing list from that information. When it could be determined, only successful bidders for DOTPF contracts were sent prime contractor questionnaire.

A mailing list for minority owned business was compiled from a directory provided by DOTPF's Minority Business Enterprise officer, the Minority Business Assistance Center, and other constituent sources. Each was sent a Minority Business Enterprise questionnaire.

In addition to returned questionnaires, some recipients phoned or wrote to the committee to provide additional comments or suggestions regarding state contracting procedures and small or minority owned businesses. Copies of that correspondence is available on request.

The two questionnaires covered a time period from June of 1980 through June of 1982 (the same time period as ASCHR's affirmative action agreement with DOTPF), and limited themselves to state funded construction projects.

Besides specific contracting information, contractors were also asked to provide suggestions and recommendations for legislation (or no legislation), to address the philosophical and public policy considerations of minority business set aside programs, and, in some cases, to provide business and personal history (residency, years in business, etc.)

Each questionnaire was accompanied by a Senate State Affairs Committee cover letter explaining the purpose of oversite on the DOTPF/ASCHR agreement. The committee requested return of the questionnaires within two weeks of transmittal and enclosed a self addressed, stamped envelope in an attempt to increase timely participation in the polling process.

STATISTICAL ANALYSIS OF QUESTIONNAIRES

Prime Contractor Questionnaire:

- 436 questionnaires mailed, 49 returned = 11.2% return rate
- nearly half the respondents claimed to have been a successful DOTPF contractor during the time period covered.
- 20% claimed not to be aware of the MBE Directory, 25% didn't use the directory to locate sub-contractor, and nearly half said the "maintained their own list" for locating sub-contractors.
- significant number of respondents were not aware that a MBE contact form was required as part of a DOTPF bid package.
- 36% of respondents said they have never been contracted by DOTPF regarding minority owned businesses and state contracting.
- most prime contractors felt DOTPF was making a serious effort in assuring MBE's adequate opportunity to bid state construction contracts.
- 20 % of prime contractors said they were philosophically opposed to minority owned set aside or advocacy programs and that current MBE programs should be eliminated.
- 18% of respondents felt no legislative action was necessary.

Subcontractor Questionnaire:

- 450 mailed out, 58 returned = 12.9% return rate
- 79% of the respondents were certified as MBE's (12 in 1982, 17 in 1981, 11 in 1980)

- Over half the respondents indicated no awareness of MBE officer services
- over half claimed never to have received bid information from DOTPF.
- 28% of respondents had subcontracted on DOTPF projects.
- 33% of respondents claimed to have been contacted by prime contractors
- 67% of respondents claimed never to have been contacted by prime contractors
- of the successfully bid contracts, most were less than $100,000.
- less than half of the respondents knew about the MBE contact form requirement.
- a majority of likely construction project bidders said they had problems getting bonding and credit.
- over half the respondents businesses have been operating in Alaska for over 3 years with half of those over five years.
- over half the respondents have lived in Alaska over 10 years with over half of them having lived here more than 20 years.

The general questions in the minority business questionnaire addressed and identified problems preventing small Alaskan owned businesses from successfully bidding on state funded construction contracts. A discussion of those problems follows.

PROBLEMS IDENTIFIED

In the last ten years, billions of dollars have been allocated for state funded construction contracts. The sudden explosion of construction, coupled with the size and scope of many projects, has placed small and minority owned Alaskan businesses at a tremendous disadvantage in successfully bidding for contracts.

Besides the "normal" problems with Alaskan-based businesses (high cost of labor and transportation, vast distances, little infrastructure etc.), small and minority owned businesses face special problems.

Minority owned businesses are usually small businesses (under $1 million dollars in gross revenues per fiscal year) and are often unable to get bonding, loans or credit, for large-scale contracts. In

addition, they are often unaware of bidding procedures or notices, and are out of the mainstream of the contracting "network".

A brief review of DOTPF construction contract awards from 1978 through 1982 illustrates the problem well. While nearly 50% of the awards are in amounts under $1 million dollars, they represent less than a third of total contract dollars. The vast majority of total construction dollars go to a relative handful of contracts over $1 million dollars.

Most large-scale construction projects are awarded to out-of-state contractors. Even the existing state statute giving a bidders preference to Alaskan-based business, is not sufficient to overcome the competitive edge large, national or international companies have in bidding state funded construction contracts.

Since most of these prime contractors tend to subcontract to other "outside" companies, small and minority owned Alaskan businesses are excluded from taking advantage of the massive input of state dollars into capital projects.

The executive branch has attempted to address this issue through the ASCHR/DOTPF agreement but, so far, has been unable to insure that a reasonable portion of state funded construction dollars remain in Alaska through contracting with small and minority owned businesses.

LEGISLATIVE RECOMMENDATIONS

Specific statutes need addressed by the legislature, to assure a reasonable opportunity for Alaskan owned small businesses to participate in the current flood of state funded construction projects.

Following are recommendation for legislation based on information obtained from the questionnaires:

1. Establish an Alaska Small Business Administration under the Department of Commerce and Economic Development (DCED), modeled after the federal program that would: a) define small businesses for the purpose of this administration, b) provide a source of credit and bonding for Alaska based small businesses, c) promote and advocate for small business development and maintenance in Alaska.

2. Create a statewide office of minority business enterprises in the Department of Commerce and Economic Development, to aide, advocate and support small, minority owned businesses in Alaska.

3. Define "small" Alaskan-based businesses to realistically reflect the average assets and capabilities of existing contractors. Defining "small" as a business having under $2 million dollars in gross revenues for the year preceeding application for certification under an Alaskan small business administration, appears, from the questionnaire, to be a reasonable definition for Alaska.

4. Give adequate bidder preference to Alaska-based businesses that are small and/or minority owned. The current 5% bidders preference should be raised to a 15% preference to small, Alaskan based businesses. The 15% preference should require that the low bidder receive the contract if they re-submit a bid within 10% of the next lowest bid submitted.

5. Require prime contractors and joint ventures to award no less than 50% of total subcontract dollars to small or minority owned Alaskan businesses identified and certified by the Department of Commerce and Economic Development.

6. Include women, Viet Nam veterans and other economically disadvantaged classes of Alaskans in minority status for the purpose of these contracting considerations.

7. Require that no less than 30% of state funded construction contracts be awarded in amounts under $1 million dollars with half of those in amounts under $250,000.

8. Pass a legislative resolution calling upon the Governor to create a task force to address state policy in contracting, local hire, and small business advocacy. Require that the executive, judicial, and legislative branch, as well as other working Alaskans, are included in the task force to assure full representation.*

9. Require surety bonders to keep adequate records to document why businesses are denied credit or bonding.

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* Court decisions on the jurisdiction and authority of states to limit employment and contracting opportunities to residents or "protected" classes of citizens have been many and varied. A U.S. supreme court decision, issued in February 1983, upheld a Boston Mayor's Executive Order requiring that 50% of wages paid on city funded or administered construction projects be limited to Boston residents.

Based on the findings of that decision, Senate Bill 174, was introduced in the Alaska legislature on March 10, 1983, by Senator Joe Josephson. SB 174 requires that, when a construction project is wholly funded by state money and the state or an agency of the state is signatory to the contract, worker hours on a craft-by-craft basis must be performed at least 50% by bona fide state residents.

SB 174 adopts the specific language of the U.S. Supreme Court decision and replaces AS 36.10.010 in an attempt to strengthen Alaska hire preference laws to meet anticipated court challenges.

While not directly affecting small and minority business contracting, it appears that the Boston decision puts Alaska "back in the residency business". Alaska's authority to grant bidder preferences to resident owned small businesses, for instance, is strengthened by the supreme courts decision.

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

To: Alaskan Contractors (Prime Contractor Questionnaire)

From: Senator Vic Fischer, Chair
Senate State Affairs Committee

Date: September 29, 1982

Re: Minority business contracting

In the last five years, massive amounts of public dollars have gone to the State Department of Transportation and Public Facilities (DOTPF) for statewide construction projects.

It is the intent of the legislature that all Alaskan businesses are assured an equal chance to bid on and participate in state funded capital projects.

In order to assure this, the State Human Rights Commission entered into an agreement with DOTPF in June of 1980 to increase participation of minority owned small businesses in state construction contracting.

As the committee of oversite for the Human Rights Commission, the Senate State Affairs Committee is vitally interested in how seriously state agencies comply with agreements made with the Commission. We cannot determine this without your help.

The enclosed questionnaire was prepared by the Committee to help determine just how effective that agreement has been. Direct information from you is the only way to verify or refute the success of this agreement. Your response will be greatly appreciated.

The scope of this questionnaire includes contracts and sub-contracts involving minority owned businesses from June 1980 to June 1982. It does not include female owned businesses nor projects paid through federal, municipal or private funds.

The purpose of the agreement is to help, not hinder, your efforts to include small minority owned businesses in subcontracting procedures. We need to know if you think it has been successful and where you feel the system could be improved.

Please return this questionnaire by ~~October 15~~ 22 to Senator Vic Fischer, Chair, Senate State Affairs Committee, 1024 W 6th Avenue, Suite 204-C, Anchorage, Alaska 99501. We have enclosed a self-addressed, stamped envelope for your convenience. For further information call Ginger Baim, in my office, at 278-3654.

COMPANY NAME: _____

ADDRESS: _____

PHONE: _____

1. Did you submit a bid on any contracts for DOTPF projects from June 1980 through June 1982? _____Yes _____No.

2. Have you subcontracted any work for DOTPF from June 1980 to June 1982? _____Yes _____No.

List firms you have subcontracted with on DOTPF projects from June 1980 to June 1982.

1._____ 4._____

2._____ 5._____

3._____ 6._____

(Please list additional firms on space provided at the end of this questionnaire.)

3. Are you aware of the MBE Directory prepared by DOTPF's Office of Minority Business Enterprises (OMBE) _____Yes ____No.

4. When did you become aware of this directory? _____

5. Did you refer to the MBE Directory when looking for subcontractors? ____Yes ____No.

6. Is the MBE Directory adequate for your needs? ____Yes ____No.
What would you like done to improve its usefulness to you?

_____

_____

_____

7. How else do you contact MBE's? _____

_____

Do you maintain your own list? ____Yes ____No.

8. Are you familiar with the MBE contact form provided by DOTPF?
____Yes ____No.

9. Are you aware that in order for DOTPF to approve a subcontract, a completed MBE contact form (25 A 329) must be submitted? ___Yes ___No.

10. Has DOTPF, to your knowledge, ever approved a subcontract without a completed MBE contact form? ___Yes ___No. (If yes, please provide additional information at the end of this questionnaire).

11. How many times did DOTPF contact you regarding MBE's from June 1980 to June 1982? _____ Was the contact adequate to fully inform you of the subcontracting requirements? _____Yes _____No. Do you know the contact person within DOTPF to call for further information about minority business contracting? _____Yes _____No.

12. From your personal experience, how serious do you perceive DOTPF to be in pursuing methods to assure adequate involvement of MBE's in state contracting? _____Very serious _____Serious enough _____ Not serious _____ "whitewash" _____.

Comments?_____

_____

_____

13. What would you like to see DOTPF do to help contractors comply with MBE contact requirements?

_____

_____

_____

14. What would you like to see the legislature do to help assure all small Alaskan businesses an equal chance to bid on and participate in state funded construction projects? _____

_____

_____

_____

15. When bidding on a project for which you intend to subcontract, what problems would it present to you should DOTPF require evidence of having contacted a MBE as part of your bid package?_____

_____

_____

_____

16. Please provide any other comments on these questions:

Space for additional comments on previous questions:

Alaska State Legislature

Senate Committee on State Affairs
Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

SUBCONTRACTOR QUESTIONNAIRE

To: Minority Business subcontractors

From: Senator Vic Fischer, Chair
Senate State Affairs Committee

Vic Fischer

Date: September 29, 1982

Re: MBE contracting on state funded projects.

In June of 1980 the state Human Rights Commission entered into an agreement with the Department of Transportation and Public Facilities (DOTPF) to increase participation of minority owned businesses in contracting for state funded capital projects.

As the committee of oversight on the Human Rights Commission, the Senate State Affairs Committee is vitally interested in how seriously state agencies comply with agreements made with the Commission. We cannot do this without your help.

The enclosed questionnaire was prepared by the Committee to help determine just how effective this agreement has been. Direct information from you is the only way to verify or refute information about compliance with that agreement.

The purpose of the agreement was to help, not hinder, efforts to include small minority owned businesses in subcontracting procedures. We need to know if you think it has been successful and where you feel the system could be improved.

Please return this questionnaire by October 15 to: Senator Vic Fischer, Chair, Senate State Affairs Committee, 1024 W 6th Avenue, Suite 204-C, Anchorage, Alaska 99501. We have enclosed a self-addressed, stamped envelope for your convenience. For further information call Ginger Baim, in my office, at 278-3654.

COMPANY NAME: _____

ADDRESS: _____

PHONE: _____

1. List the date your business was certified as a minority or female owned business by the state Department of Transportation and Public Facilities (DOTPF), Office of Minority Business Enterprises (OMBE).

_____

2. What services are you aware of being performed by DOTPF's OMBE.

1._____

2._____

3._____

3. How many times during the last year has your firm received information on contracting activity from DOTPF? _____
Was that information presented in a timely and understandable manner to you? _____Yes _____No. (Space is provided at the end of this questionnaire for additional comments).

4. Have you contacted DOTPF on your own? _____Yes _____No

If yes, under what circumstances, for what purpose, when etc.

_____

_____

_____

_____

5. Did you contract on a DOTPF project from June 1980 through June 1982? _____Yes _____No. If yes, was DOTPF or the prime contractor aware that you are a minority owned business? _____Yes _____No.

6. List all prime contractors that have requested subcontract bids from your firm from June 1980 through June 1982.

1._____ 3._____

2._____ 4._____

5._____ 6._____

(List additional firms on space provided at end of questionnaire)

7. List the jobs you have performed on DOTPF projects and their contract value amount.

	Contracts	Amounts	Year
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

(Use additional space at end of questionnaire if necessary)

8. Are you aware that DOTPF cannot approve a subcontract until a MBE has been contacted and a completed contact form submitted? _____Yes _____No.

9. Are you aware of any subcontracts approved by DOTPF that did not contain the required MBE contact form?_____Yes _____No

10. Is obtaining bonding a problem? _____Yes _____No

11. Is getting lines of credit at local financial institutions a problem? ____Yes ____No Comments?

_____

_____

_____

12. How long have you been in business? _____

13. How long have you lived in Alaska? _____

14. What do you feel are the major obstacles to your company's success in Alaska?

_____

_____

_____

15. What would you like to see the legislature do to address the problem of minority business access to state contracting jobs, particularly through DOTPF?

Any other comments:

Name and Phone number of person filling out questionnaire:

MARCH 8, 1984

TO: JOHN

FROM: KEN

RE: SCR 18

IF THE GOVERNOR WERE TO IMPLEMENT THE REQUEST MADE IN THIS RESOLUTION, A STATE TASK FORCE WOULD BE APPOINTED. ITS PURPOSE WOULD BE TO PROMOTE SMALL BUSINESS DEVELOPMENT AND MAINTENANCE IN ALASKA.

SMALL BUSINESSES OPERATING IN ALASKA TODAY ARE PLAGUED BY A NUMBER PROBLEMS. I BELIEVE THE INTENTION OF THIS RESOLUTION IS TO SEEK THE ADMINISTRATIONS ASSISTANCE IN ESTABLISHING POLICY THAT WILL AIDE AND PROMOTE SMALL BUSINESS IN ALASKA.

QUESTIONS:

1. IN A REPORT FROM THE SENATE STATE AFFAIRS COMMITTEE IT WAS RECOMMENDED THAT THE LEGISLATURE ADDRESS SOME NEEDED STATUTE CHANGES THAT WOULD HELP SMALL BUSINESS. CAN YOU PERHAPS DEFINE THOSE REGULATIONS AND UPDATE THE STATUS OF ANY LEGISLATION THAT MIGHT AMEND THEM ?

2. HOW HAS THE DEPARTMENT OF COMMERCE REACTED TO THE SUGGESTION OF ESTABLISHING AN ALASKA SMALL BUSINESS ADMINISTRATION ?

3. HOW MUCH MONEY DO YOU THINK IT WOULD COST TO OPERATE THE OFFICES OF THE SMALL BUSINESS ADMINISTRATION AND THE MINORITY BUSINESS ENTERPRISES ?

4. HOW WOULD YOU DEFINE SMALL BUSINESS ?

5. HAS THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES IMPROVED ITS CONTRACTING RECORD SINCE THE SENATE STATE AFFAIRS RELEASED ITS REPORT ?

6. WHY DO YOU THINK THERE WAS SUCH A LOW NUMBER OF RESPONSES TO THE COMMITTEE'S QUESTIONAIRE ?