

H B

4

1

POSITION PAPER
House Bill No. 4 am
March 1, 1983

House Bill 4 - "An Act relating to insurance requirements in State construction projects (AS 36.90).

This act relates to what has commonly been called "wrap-up" insurance programs. This is where the owner of the project provides for the insurance rather than each separate contractor and subcontractor on a project. This approach has been used on large construction projects.

The act, as it is presently written, simply prohibits entirely the use of such wrap-up insurance on State construction contracts. Such prohibition would apply to any and all construction contracts of any State executive, legislative, or judicial branch agency, as well as the Alaska Power Authority, the University of Alaska, and the Alaska State Housing Authority. In short, this bill simply bans the process.

Insurance costs of all types can approach eight percent of a construction project's total cost. The range of cost impact can vary greatly from project to project. By the use of wrap-up insurance on large construction projects, savings in the range of one to two percent of project costs have been reported.

There are both expressed advantages and disadvantages of wrap-up programs.

Advantages:

1. Reduced costs to the owner of the project. Mass buying gives the owner leverage with insurance companies/insurance groups. Dividends and refunds return to the owner.
2. Concurrent and uniform coverage for the owner, contractor and all subcontractors. Reduced administrative requirements and costs.
3. Coordinated claims control, investigation and settlement. Eliminates coverage disputes which reduces litigation between parties. Coordinated safety programs.
4. Greater potential to help promote the use of minority contractors because wrap-up makes insurance available to those who might no otherwise be able to get it.

Disadvantages:

1. Contractors prefer to deal with their insurance agent.
2. Contractors contend that they will lose the benefit of good work experience records.
3. Laborers contend that there is a lesser interest in safety and that wrap-up tends to make the contractor "not care" about safety.
4. Insurance brokers object because they are deprived of a specific client when that client is involved in a wrap-up.

None of the disadvantages or advantages are to be taken lightly and should be reviewed.

While the proposed act would ban the use of wrap-up insurance entirely, the department proposes that a better course is to preserve the State's option to utilize wrap-up where there is a documented case for doing so. To prohibit the use of such a practice, with the potential cost benefits, would not be in the best interests of the State. Planning of major capital projects should consider all measures to reduce costs.

On a large project such as Susitna, for example, with a \$5 billion price tag the potential savings are large. Further, with falling revenue, need to ration available dollars, and to get the project done, all potential cost savings should at least be considered.

However, the department recognizes a duty to assure that procedures are used so that all parties are treated equitably.

Suggested revisions to the legislation, and the "Letter of Intent", should:

1. Require specific written findings, before contract/project initiation, that demonstrate that the use of wrap-up on a particular project is cost-effective.

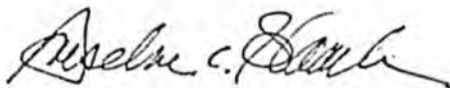
This finding should be approved by an agency board where it is involved, ie. Alaska Power Authority, and be approved by the Director of the Office of Management and Budget or some other Commissioner as chosen by the Governor on a case-by-case basis.

2. Wrap-up insurance should be considered on projects of \$100 million or greater size. At this point the materiality of potential savings is important.
3. The determination to use wrap-up insurance should be on a case-by-case basis.
4. The State's self-insurance program should not be used to avoid risk.

We will be conducting a comprehensive study on wrap-up in the next year to develop both better information and specific procedures to assure that any subsequent use, if it arises, follows good procedure.

The rationale of this position is that as a matter of policy the State should preserve its options where significant cost factors are involved prior to the bidding/bargaining-process. The State has an interest in this subject and the proper resolution of wrap-up insurance. In the Susitna project, for example, it involves \$5 billion of the public's money, debt guarantees, etc. Saving even \$50-100 million on such a project is someone else's road, bridge, school, dock, etc.

The department recognizes that past problems on some projects have resulted in a negative perception of wrap-up. However, the potential savings are significant and should be considered. The objective is to use wrap-up insurance only where necessity warrants, but having no tool at all simply assures that the issue is not further addressed.



Anselm Staack, Deputy Commissioner



Lisa Rudd, Commissioner

Letter of Intent, House Bill 4 am

Planning of major capital additions or improvements should, in the public interest, consider all measures to reduce costs. Application of overall insurance coverage procedures during project construction can produce benefits to both the entity, the contractor, and the public.

House Bill 4 am, as amended, would provide a means to assure that major capital projects are constructed in a cost efficient manner, but without the state intruding into the prerogatives of private businesses.

Owner provided insurance would only be considered after specific written findings demonstrate this alternative to be the most cost effective; and should only be considered on projects of \$1.00 million or greater. Any finding relating to the cost-effectiveness of owner provided insurance must be approved by the executive head or board of the contracting agency and, in addition, by the director of the Office of Management and Budget.

It is the purpose and intent that owner purchased insurance not interfere where private contractors clearly show that they already are providing the lowest cost for insurance.

82D1/0209-1

2/22/83

I. REQUEST

Bill/Resolution No. H.B. 4

Title An act relating to insurance requirements in State construction projects.

Requested by Labor & Commerce

Date 2/9/83

II. FISCAL DETAIL

Department of Commerce, Alaska Power Authority

Agency Affected Department of Administration, Division of Risk Management

Program Category Affected Alaska Power Authority, Division of Risk Management

BRU, Program, Or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						

TOTAL

See analysis below.

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)
 Passage of H.B. 4 would limit the Alaska Power Authority's (APA) option to control the insurance on Susitna and other major hydro projects. The APA should be in a position to decide on a project-by-project basis whether the general contractor or the APA will provide insurance depending on a variety of factors including cost. This legislation would limit contractual bidding options of the APA and DOT/PF for projects of \$50 million and greater where the insurance costs are often between 4 - 7% of total project cost. The APA presently is considering projects of 5 - 6 billion dollars. The impact of this legislation will not fall in one or two fiscal years, but will be spread over the next 10 - 15 years. Research reveals that average savings per project amounts to 2% of construction costs if the owner controls the insurance.

IV. DATE 2/9/83

PREPARED BY John Haywood
 AGENCY Administration/Risk Management

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

PHONE 465-2180

1512

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 4

Title An Act relating to insurance requirements in State construction projects

Requested by Representative Martin Date 1/17/83

II. FISCAL DETAIL

Agency Affected Division of Insurance

Program Category Affected Public Protection

BRU, Program, Or Subprogram(s) Affected Division of Insurance

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

IV. DATE

1/24/83

PREPARED BY EWE Edward W. Eboch, Deputy Commissioner
AGENCY Commerce & Economic Development

Original: Legislative Finance

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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

February 7, 1983

POSITION PAPER

RE: HB 4

SPONSOR: Representative Martin

Program Effects on Bill

Further defines insurance requirements for State funded construction contracts.

Comments

Two years ago, the Legislature considered legislation which would establish a bond fund for local, private contractors, allowing them to compete for local bush jobs which were generated by State grants. Currently, performance bonds are required and most local contractors do not have the cash and/or liquid assets to secure them. For local projects that go out for bid, this automatically eliminates these local contractors from bidding on these projects. This fact is also reflected in the recent Rural Development Council publication, "Distribution of Economic Benefits of Rural Capital Construction Funding."

This bill, as drafted, would establish, as statute, State policy which would preclude consideration of a bond fund.

If economic development and job creation are to remain as driving forces within the current administration, legislation should be sought that would encourage - not discourage - local bush businesses, especially in what are shaping up as leaner and leaner coming capital construction years.

The proposed legislation would also discourage seeking acceptable alternatives to performance bonding which might be pursued in rural areas.



STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 4 Date on Bill: 1/17/83
 Title: Insurance requirements/State construction projects
 Sponsor: Martin
 Requestor: House Community & Regional Affairs Committee

1. Estimated fiscal impacts on: Department of Community & Regional Affairs

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total								

b. Revenues:

-0- -0-

Revenue								
---------	--	--	--	--	--	--	--	--

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

This bill adds to the definition of insurance requirements for contractors on State funded construction projects. The proposed change is procedural only and would result in no fiscal impact upon this Department

3. Assumptions:

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Richard Rainery *RR*

Phone: 465-4703

Division: Commissioner's Office

Date: 2/10/83

Approved by Commissioner: *Martin*

Date: 2/18/83

Department: Community & Regional Affairs

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/8/83

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 36.90 is amended by adding a new section to read:

Sec. 36.90.005. INSURANCE REQUIREMENTS IN CONSTRUCTION CONTRACTS.

(a) Except as provided subsection b, in requesting bids and awarding construction contracts a state agency may not require a contractor to obtain workers' compensation, general liability, or other required insurance from a particular insurer, agent, or broker.

(b) A state agency may agree to provide insurance for a contractor who is awarded a state construction contract, only if:

(1) the executive head or board of the contracting agency determines, in writing, that the cost to the state will be less than that incurred if comparable insurance coverage was obtained by each independent contractor and subcontractor; and

(2) the Director of the Office of Management and Budget approves the finding described in Paragraph 2.

(c) A state agency may not use the State of Alaska's self insurance to provide insurance under this section.

(d) In this section, "state agency" means a department, institution, board, commission, division, authority, or other administrative unit of state government, including the University of Alaska. "State agency" does not include municipal corporations, political subdivisions, service districts, or school districts.

* Section 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

Anselm Staack's
Dept Admin,
proposed
amendment +
letter of intent -

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*Section 1. AS 36.90 is amended by adding a new section to read:

Sec. 36.90.005. INSURANCE REQUIREMENTS IN CONSTRUCTION CONTRACTS.

(a) A state agency may agree to provide insurance to protect the owner and contractors who are awarded a construction contract, only if:

(1) an independent professional consulting firm as defined in Section (4) and selected as specified in AS 36.98 has provided the following:

(i) an unbiased professional evaluation of insurance options; and

(ii) insurance and safety specifications to be incorporated into the bid documents; and

(iii) specifications for brokerage and insurance services selection; and

(2) the Department Commissioner or Board of the Contracting Agency determines after evaluation of the consultants report that the cost to the state will be less and the benefits greater than if comparable insurance coverages were obtained by each contractor and subcontractor; and

(3) the Director of the Office of Management and Budget concurs with the decision described in section (2).

(4) the professional consulting firm specified in Section (1) must meet the following criteria:

(i) be a member in good standing of the Institute of Risk Management Consultants or a similar professional group; and

(ii) have had prior management experience with owner controlled insurance programs which experience shall be documented by the consultant providing a copy of a prior insurance alternatives analysis; and

(iii) neither the consulting firm nor any individual working for the firm are to have any vested interest in the particular outcome to ensure a fair appraisal of the alternatives.

(b) In this section, "state agency" means a department, institution, board, commission, division, authority, or other administrative unit of state government, including the University of Alaska. "State agency" does not include municipal corporations, political subdivisions, service districts, or school districts.

*Section 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

Brought
by lobbyist
3/18/83

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 36.90 is amended by adding a new section to read:

Sec. 36.90.005. INSURANCE REQUIREMENTS IN CONSTRUCTION CONTRACTS. (a) Except as provided subsection b, in requesting bids and awarding construction contracts a state agency may not require a contractor to obtain workers' compensation, general liability, or other required insurance from a particular insurer, agent, or broker.

(b) A state agency may agree to provide insurance for a contractor who is awarded a state construction contract, only if:

(1) the executive head or board of the contracting agency determines, in writing, that the cost to the state will be less than that incurred if comparable insurance coverage was obtained by each independent contractor and subcontractor; and

(2) the governor or the governor's designee approves the finding described in Paragraph 1.

(c) A state agency may not use the State of Alaska's self-insurance to provide insurance under this section. Normal and reasonable deductible amounts on insurance policies, as the contracting agency determines to be appropriate, are not considered as self-insurance within the prohibition described in this subsection.

(d) In this section, "state agency" means a department, institution, board, commission, division, authority, or other administrative unit of state government, including the University of Alaska.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

TO SENATE 11-2011/COMM. 3-7-83

Proposed, never took action



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Regarding June 15, 1982 prior legislation

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

that had similar
lang as HB 4

Dear Mr. President:

Under art. II, sec. 15, of the Alaska Constitution, I have vetoed Conference Committee Substitute for Senate Bill 831, relating to insurance; and providing for an effective date. While there is some merit to the "housekeeping" portions of the bill, sec. 3, which would prohibit the State from using so-called "wrap-up" insurance programs, could cost the state large sums of money and, at the same time, serve no public purpose.

The Alaska Power Authority and the Division of Risk Management predict that the Alaska Power Construction Program, APCOP, can realize substantial savings in the costs of constructing APA power projects. As the Tyee project is the first one constructed under this program, more will be known on actual cost savings and safety implications when that project is completed. The Power Authority, nevertheless, is planning to secure the services of an independent insurance consulting firm to evaluate wrap-up programs, and to make recommendations as to whether the Authority should continue to use the APCOP approach.

Section 3 of the bill prohibits the state from requiring a contractor to obtain insurance from a particular insurer, agent or broker or to agree to provide insurance to a contractor who is awarded a state construction contract. I do not find this prohibition in the best interest of the state. If, after receiving the independent evaluation of wrap-up programs it appears wise to submit corrective legislation, I will do so.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay S. Hammond".

Jay S. Hammond
Governor

12:05 P.M.
4-5-82
JAY S. HAMMOND, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

(906) 465-2600

POUCH 0 - JUNEAU 99811

April 5, 1982

last year

The Honorable Terry Martin
Chairman, Labor & Commerce Committee
State House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Martin:

I was quite surprised at the hasty action taken by the House Labor and Commerce Committee in passing out CSSB 831(L&C) on Friday afternoon. As you know, there were a number of persons, including some from the private insurance industry, who wished to provide testimony, but were unable to do so. In essence, the only testimony received was from the Associated General Contractors, and a few State agencies.

The subject of insurance coverage on large construction projects, such as those undertaken by the Alaska Power Authority, deserves extremely careful scrutiny. It is quite possible that the use of so-called "wrap-up" insurance programs, which would be prohibited by CSSB 831(L&C), could save the State many hundreds of millions of dollars over the next two decades. As you know, the Alaska Power Authority has on the books over \$15 billion (nominal) in projects, including the proposed two dams of the Susitna River project. This latter project alone is estimated to cost at least \$13.6 billion (nominal). In projects of this size, consolidating project coverage into a single "wrap-up" program could potentially return to the State several percentage points of the total project costs. If we are forced to use conventional means, such as required by your bill, this cost-saving approach will be prohibited.

Projects on APA's drawing boards represent the largest, single capital investment the State of Alaska will probably ever make. Regardless of the source of funds for these projects, be it the State treasury or the bond market, it is absolutely essential that the APA Board of Directors and its staff examine rigorously every possible means of economizing. The amounts of funds involved is so enormous that each minute fraction of total project costs that can be saved represents millions, and perhaps hundreds of millions of dollars.

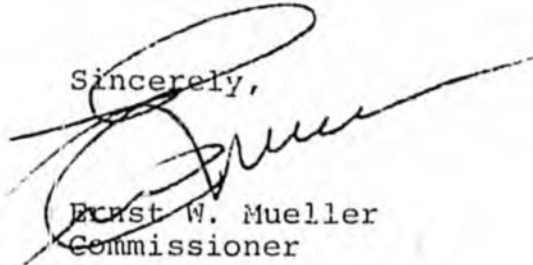
The Honorable Terry Martin

2

April 5, 1982

If the Board continues to be hamstrung in its attempts to seek innovative cost-saving approaches in this program, I fear that projects costs could well escalate in a manner similar to that experienced by the Washington Public Power Supply System. A review of that program indicates that its astronomical cost overruns are due, in large part, on poor construction management by the board and its staff, and misrepresentation and errors by its contractors, compounded by a lack of diligence in seeking cost efficiencies. It's bad enough to be less than diligent in programs of this magnitude, but to be prevented by law from being so is doubly dangerous.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ernst W. Mueller', is written over the typed name and title.

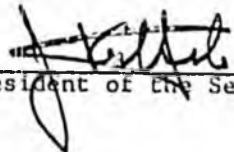
Ernst W. Mueller
Commissioner

cc: Sue Greene
John Haywood
Eric Yould

Authentication

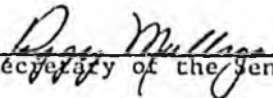
The following officers of the Legislature certify that the attached enrolled bill, CONFERENCE CS FOR SENATE BILL NO. 831, consisting of 2 pages, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.

Passed by the Senate May 20, 1982



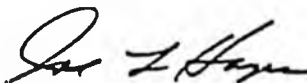
President of the Senate

ATTEST:



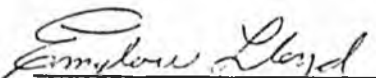
Secretary of the Senate

Passed by the House May 19, 1982



Speaker of the House

ATTEST:

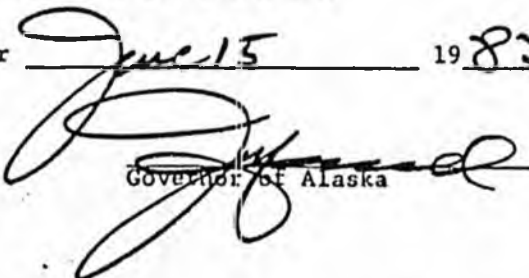


Chief Clerk of the House

ACTION BY GOVERNOR

Vetoed

~~Approved~~ by the Governor

June 15 1982


Governor of Alaska

1 (2) agree to provide insurance to a contractor who is awarded
2 a state construction contract.

3 (b) As used in this section "instrumentality of the state" means
4 a state department or agency in the legislative, judicial, or executive
5 branch, and includes such agencies as the Alaska Power Authority, the
6 University of Alaska, and the Alaska State Housing Authority.

7 * Sec. 4. AS 21.09.220, 21.09.230, and 21.09.240 are repealed.

8 * Sec. 5. Section 5 of this Act takes effect immediately in accordance
9 with AS 01.10.070(c).

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

AN ACT

Relating to Insurance; and providing for an effective date.

* Section 1. AS 21.09.260 is amended to read:

Sec. 21.09.260. VIOLATIONS - PENALTIES. An insurer violating the provisions of AS 21.09.250 [AS 21.09.220 - 21.09.250] is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500 for each violation. In the event of conviction the insurance director may suspend or revoke the license of the insurer, but violation shall not invalidate the insurance contract.

* Sec. 2. AS 21.54 is amended by adding a new section to read:

Sec. 21.54.055. DISCLOSURE OF EMPLOYEE CLAIMS PROHIBITED. An insurer providing employee group or blanket disability insurance to an employer or to trustees of a fund established by an employer may not disclose diagnostic information concerning an employee that relates to the employee's claim unless the employee authorizes the disclosure in writing;

* Sec. 3. AS 36 is amended by adding a new chapter to read:

CHAPTER 94. MISCELLANEOUS PROVISIONS.

Sec. 36.94.010. INSURANCE REQUIREMENTS IN CONSTRUCTION CONTRACTS.
(a) In requesting bids and awarding state construction contracts an instrumentality of the state may not

(1) require a contractor to obtain workers' compensation, general liability, or other required insurance from a particular insurer, agent, or broker;



LAWS OF ALASKA

1982

Source

Chapter No.

CCSSB 831

AN ACT

Relating to insurance; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

HB 4 TITLE & SPONSOR SUMMARY

14:40 5/22/84 PAGE 1 OF 3

AMENDED TITLE:

AN ACT RELATING TO INSURANCE REQUIREMENTS IN STATE CONSTRUCTION PROJECTS, AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: MARTIN.

CO-SPONSORS: FURNACE, GRUSSENDORF.

CURRENT STATUS: 2/07/83 IN (S) LABOR & COM REFERRAL: FINANCE

HB 4 HOUSE ACTION

14:40 5/22/84 PAGE 2 OF 3

DATE SEQ PAGE

LEGISLATIVE ACTION

01/17/83	01	0018	FIRST READING -- COMMITTEE REPORTS
01/26/83	02	0108	L&C -- DP06
01/26/83	03	0108	F/NOTE EQUALS ZERO
02/04/83	04	0175	SECOND READING
02/04/83	05	0175	ADVANCED TO 3RD READING BY UNAN CONSENT
02/04/83	06	0175	THIRD READING
02/04/83	07	0175	PASSED BY DIV 33-00-02
02/04/83	08	0176	EFFECTIVE DATE VOTE SAME AS PASSAGE
XXXX	XX	XX	XXX XXX XXX

HB 4 SENATE ACTION

14:40 5/22/84 PAGE 3 OF 3

DATE SEQ PAGE

LEGISLATIVE ACTION

02/07/83	09	0139	FIRST READING -- COMMITTEE REPORTS LABOR & COMMERCE FINANCE RULES
XXXX	XX	XX	XXX XXX XXX

Check SB168

A M E N D M E N T

Offered in the SENATE

By Eliason

To: SB 168

Page 4, after line 10: insert a new section to read:

"* Sec. 7. AS 44.83 is amended by adding a new section to read:

Sec. 44.83.192. INSURANCE REQUIREMENTS IN CONSTRUCTION CONTRACTS. In requesting bids and awarding construction contracts under this chapter the authority may not require a contractor to obtain workers' compensation, general liability, or other required insurance from a particular insurer, agent, or broker and may not agree to provide insurance to a contractor who is awarded a construction contract."

Renumber succeeding sections accordingly.

ALASKA POWER AUTHORITY

334 WEST 5th AVENUE - ANCHORAGE, ALASKA 99501

Phone: (907) 277-7641
(907) 276-0001

TELECOPIED 4/20/83

April 20, 1983

Senator Richard Eliason
Alaska State Legislature
Pouch V (Mail Stop 3100)
Juneau, Alaska 99811

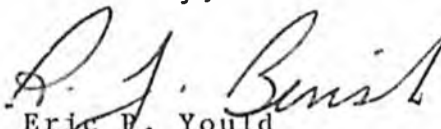
Dear Senator Eliason:

Per your request of April 20, 1983, the following brief comments regarding HB 4 are stated below:

1. The Power Authority is neutral with regard to HB 4.

2. In the event that a major Power Authority project such as Susitna becomes ready to construct, the Power Authority would conduct an in-depth cost/benefit analysis of the wrap-up option and present such findings to the Administration and the Legislature for their consideration.

Sincerely,


Eric P. Yould
Executive Director (for)

EPY:kjs

cc: APA Board of Directors

May 4, 1982

Juneau Republican Club Luncheon

Speech by Representative Terry Martin

2ND ANNUAL "WHO'S KIDDING WHOM" AWARD

Good afternoon and welcome to the second annual "Who's kidding whom?" award banquet. Last year when I was privileged to speak before you, I, in jest, suggested a certain unit of the University of Alaska should receive a special award for their imagination and innovation by increasing their "student head count" so as to justify larger requested appropriations. After studying the situation in more detail it became obvious that they truly deserved special recognition. Consequently, two months later the Tanana Valley Community College became the first recipient of the "Who's Kidding Whom?" award.

This year there are many deserving State Entities. It is really hard to single one out for the reward that so many rightly deserve. During the current session, friends and acquaintances have suggested various government agencies, special interest groups and even private entities that, surely, should, at least, be nominated for this coveted award. Before announcing the finalists, it is my pleasure to make a special "Charley Brown Wisy-Washy Commerotive" to the Silver Anniversary Commission for their definite action, rescind action, action, rescind action, Who's on first?, handling of the Alaska 1984 Contract controversy.

The nominees for the coveted and cherished "Who's Kidding Whom?" award are: (1) The Department of Transportation and Public Facilities for its great sensitivity, common sense, and concern for the morale and well being of their loyal employees by dumping 51 of them as a publicity stunt during the budget process. (2) The House Minority ranks high for their consistent and perpetual inconsistency. Even though they work diligently to stall and delay every piece of legislation, they condemn the Majority for both not doing anything and for actually doing something over their parliamentary tricks.

(3) Another group that received a nomination are those individuals who most often seem to misuse the good intention of our workers compensation program. This group is recognizable as being male, age 21-26, less than 4 months on the job and 44% of whom claim lower back pain. (4) Alaska 84 birthday party planners rate high for this award. Need I say more? And number (5). How about LaTouche Island for its progress in meeting the basic needs of its residents?

This year's winner is--- A surprise entry from the private sector--THE RED CABBAGE BUNCH and their front organizations, the Alaska Power Authority and the Division of Risk Management, Department of Administration, State of Alaska. Every agency, entity or organization should take note of them. The Seattle based Red Cabbage Bunch and their affiliated Alaskan group, The Corsair Connection, have secured the absolute greatest, most magnificent, stupendous sole source, sweetheart contract of all time. A conservative estimate of the worth of this little, sole source gem is \$700,000,000. Peanuts, you say. I don't, but the Red Cabbage Bunch does, because their plans for expanding this small contract make the \$700,000,000 insignificant when compared to what they have planned for additions, modifications and extensions to their little sweetheart.

Where, I'm sure you're wondering, could anyone find \$700,000,000 or so just lying around begging to be wrapped up into a nice little sole source contract? THAT'S IT! With the true inspiration and foresight reminiscent of the great robber barons of yesteryear they created a quasi-"wrap up" insurance program for all construction administered by the Alaska Power Authority. Do you have any idea how much the insurance premiums for the Contractors building the 8 billion or so dollars of hydro-electric projects comes to? I don't know for sure, but it is a megabuck or two. Wouldn't you love to have a monopoly which would guarantee you every cent of those premiums? I would, but, alas, we're too late. The Red Cabbage Bunch gobbled it all up.

So what if construction Contractors don't like it. Does it really matter that no public interest is being served by this alleged "wrap

up"? Who cares if the cost of the electricity goes up substantially? How about the insurance companies who would have provided real insurance at a much lower cost? Crybabies, that's all they are. If they had any imagination at all they would have joined the bunch, at the State of Alaska's expense, to plan all of this at the Red Cabbage Restuarant, Marion at Western, in downtown Seattle. Incredible?

You disbelieve? Let me quote from an internal document of the group, dated December 14, 1981, so you can understand a little of what is going on. I would appreciate if all of the previous nominees would take careful notes if they wish to mount a serious challenge in the future. QUOTE "Last month our brokerage appointment for the State of Alaska was extended...to the Alaska Power Authority. This newly formed division of the state is responsible for \$8,000,000,000 of hydro-electric construction during the next ten years." "We...have been notified that the existing arrangement will continue for some time, as the state perceives this arrangement as politically advantageous as well as workable professionally." Now it starts getting interesting. "We have already secured one contract to review documents, and are faced with the possiblity of billing another \$100,000 on a fee basis for a preliminary consultation on this program."

Anybody want to bet who they recommended and what they recommended for a program? QUOTE "...the State of Alaska is particularly sensitive to the issue of using "outside firms." "...we are still viewed, or should I perhaps say suspected, as being "outsiders." In arranging this construction program the legislature has specifically instructed the Alaska Power Authority that preference be given to Alaskan firms. We have therefore been instructed to utilize Alaskan insurance companies with whom we have negotiated a fronting arrangement which we back by reinsurance." For those of you unfamiliar with this type of arrangement, it merely means, what you give with the right hand, you quickly take back with the left. To further quote; "We have also been asked to develop a presence in Alaska under the trade style of APCOP, an acronym for the Alaska Power Construction Project. THE INTENT OF THIS TRADE NAME AND ALASKA PRESENCE IS TO ALLCW THE ALASKA POWER AUTHORITY TO

PROMOTE THE PROGRAM AS AN ALASKA VENTURE." Doesn't it warm the cockles of your heart to know the Alaska Power Authority goes to such great lengths and such pains to deceive you while they disregard the law?

Actually, as the truth unfolds and is beginning to be known, the Alaska Power Authority is nothing more than a dupe of the Risk Management Division of the Department of Administration. Risk Management has arranged for this wonderful scam to be foisted on the unsuspecting public. Of course, the public would not be deceived by such an obvious ruse and the sheer magnitude of the scheme would, obviously, bring those stalwart guardians of the public, our Alaska press corps, to expose this wonderful "wrap up" to the full light of day. They would never be taken in by such a clumsy scheme and obvious "trade style."

Unfortunately, they have. Allow me to digress a moment for a special presentation to the Alaska press corps and all of its investigative reporters. For excellence, perseverance and in-depth investigative reporting, the Alaska press corps is hereby awarded the first annual "We've Been Had" award. To demonstrate how much they truly deserve this award, let me quote a few Headlines and articles. QUOTE, from The Frontiersman, Wasilla, November 19, 1981; "ALASKA FIRMS TO HANDLE HYDRO PROJECT INSURANCE, RISK SERVICES". The Alaska Business Newsletter of November 20, 1981; "ALASKAN COMPANIES WILL PROVIDE HYDRO PROJECT'S INSURANCE." Alaska from the Inside, November 18, 1981; "NEW INSURANCE PROGRAM TO PROVIDE IN-STATE SERVICES TO HYDRO PROJECTS." Not only does the list go on and on, the articles themselves would appear to have been written by the Public Relations firm hired by "the Alaska Power Authority to promote the program as an Alaska venture."

In conclusion, to say that this group broke a few laws, circumvented numerous rules and/or regulations, completely ignored competitive bidding procedures would be an understatement. It is also accurate to include the fact that they made a mockery out of Alaska hire and preference laws, destroyed the ability of Alaskan Contractors to use their good experience ratings in bidding on these projects, almost

guaranteed that all of the contracts would be given to outside companies, which, unfortunately, means that very few Alaskans would ever be allowed to work on one of the projects. All I can say is that the Executive Director of Risk Management and the Red Cabbage Bunch of Seattle, Washington have really gone to extremes to win the 2nd annual "who's Kidding Whom" award.

HB4-1983

TESTIMONY BY DICK PITTENGER
HOUSE LABOR & COMMERCE COMMITTEE

March 31, 1982

Mr. Chairman, Committee Members, my name is Dick Pittenger and I am representing the Alaska Chapter, Associated General Contractors of America. Our Chapter consists of approximately 675 construction related firms engaged in Alaska construction. On behalf of this membership, I have been instructed to inform you that the Chapter strongly opposes the APA "wrap-up" insurance program known as APCOP.

Nationally, the A.G.C. has been opposed to wrap-up insurance programs for many years. To give you an idea of the strength of A.G.C.'s traditional opposition, I have for you a copy of the resolution passed at the national A.G.C. convention held in March of 1964. This stand was again expressed at the March 1982 convention in Houston.

At this time I would like to direct my comments to the APA's "wrap-up" insurance program. My comments will consist of some questions and some statements of items of concern.

1. What is the statute or regulation that permits the APA to enter private industry and write a wrap-up insurance program?

2. When and why did the APA decide to institute this program? I consider the timing important because to my knowledge all bids on the Tyee project did, in fact, include insurance. Was it caused by a contractor problem in procuring insurance?
3. Why did the APA not notify the public of their intent, in particular the A.G.C., prior to imposing the program on the Tyee project?
4. Statements have been made that the principal reason for this program was to save money for the Alaska rate payer. While I question this as a statement of fact, I must ask why is it now stated the wrap-up insurance program will only apply to projects of over \$50 million?
5. One of the contractor's competitive tools is removed under these conditions. If the project is bid net of insurance, then the contractor's safety program and its affect on the cost of insurance cannot come into play. As a result a good contractor with an experience factor of less than .50 is treated the same as a contractor who has an experience modifier well in excess of 100 percent of book cost for the workers comp. insurance. Additionally, this latter contractor probably is also paying a higher rate for the remainder of his insurance due to poor safety practices. It would appear that in the majority of cases the company with the better safety record

would, in fact, submit a lower bid due to his significant cost savings on insurance; thus providing a savings to the owner. This APCOP penalizes the safety conscious contractor.

6. I am concerned for the safety of the work force on projects working under wrap-up programs for the following reasons:

- a. My understanding is that the APA will assume the experience factor of the contractor. This would mean that the contractor would not be held to account for any accidents occurring on the job by his own insurance company.
- b. The APA would improve their own safety program and safety technicians on the job site, thus eliminating the company's prerogative to use his people and proven program.
- c. I question the ability of the APA to insure proper procedures for the protection of people and equipment. This, then, makes me question the amount of the resulting savings.

At this point I will only summarize some of the other disadvantages of this type program.

Disadvantages

1. Owner control programs are disliked by most contractors since the contractors feel they are being coerced into the program. In addition, they may lose some purchasing power in their own continuing insurance program. Many feel that expensive administration and accounting practices are placed upon them. As a result, the contractor may not give the owner 100% of the insurance reduction.

2. While proponents of the owner control program might state that simpler administration is an advantage, the administration of many programs indicate administration is a disadvantage. While many plans are well conceived, the projects can last for many years. Due to turnover of employees of the owner, insurance agent and company, continuity of administration can easily be broken.

3. Usually, the insurance carrier will not be obligated to continue coverage beyond a reasonable notice of cancellation. As a result, the owner may have trouble replacing coverage, perhaps even renewing coverage, if such coverage is cancelled or expires prior to the end of the project. Since the owner assumes the obligation of furnishing coverage, he also assumes an open ended cost. As a result, he may have to bear unexpected rate increases either due to market conditions or increases in benefits.

4. The insurance company and insurance agent are representing many insureds whose interests may be diverse. As a result, a conflict of interest may arise during their efforts to serve all parties.
5. Claims control can become a substantial problem. If an adequate agreement is not established between the servicing insurance company and the owner, claims servicing can deteriorate which can cause a substantial increase in expected claims cost thereby increasing cost of the overall program.
6. Substantial accounting problems for the development and prorating of insurance cost can arise. This includes developing exposures for the year-end premium audits.
7. The bidding of the project can become very complicated since the contractors must submit one bid with insurance and another without. In addition, some very good and competitive contractors may decline to bid at all if an owner control program is to be utilized.
8. Any new insurance approach involves some legal uncertainty which must be evaluated carefully. Many states have declined to approve "wrap up" programs. While they have tolerated owner control programs, most keep an eagle eye on these

programs to be sure that all technicalities of their jurisdictions are met. In addition, substantial liability could be created by the owner failing to provide proper or required insurance for his contractors.

One false step in the administration of the program could cause substantial legal difficulties either with a state board of insurance or a contractor.

9. It is usually advisable that the auto liability and general liability be written with one carrier since there are many gray areas between the two. However, under most owner control programs, the auto liability is normally written by the contractor's standard insurance carrier. As a result, substantial coverage questions can arise which can result in lengthy and expensive debates between the insurance carriers involved.
10. Since most programs are tied to losses, it may be five or six years after the termination of the project before the cost of the insurance program is determined.
11. Since there may be an interchange of contractor employees from one job site to the owner control job site, some questions may arise as to what insurance policy covers the employees.

12. The owner will become involved in many of the insurance disputes that normally take place between the general contractor and their subcontractors.

13. While the humanitarian benefits of a competent safety program are desirable, most contractors are motivated by the cost reductions which arise out of reduced claims. Contractors must weigh the cost of a safety program against the benefits derived. The indirect cost of a good safety program include higher wages, higher equipment costs, and oftentimes, lost production. If the contractor is not responsible for the ultimate insurance cost, he may cut certain corners which will reduce operating cost but increase claims cost substantially.

14. Usually, the general contractor is charged with the safety program of the job. However, with the assumption of the owner control program, the owner may become responsible for all or a portion of the safety program. With recent federal legislation and court cases, this opens up a new vista of liability to the owner.

15. Another era of substantial uncertainty is at what point should the owner control program be terminated. Many projects are now being completed without "tenant improvements." These improvements are let either by change order or separate

contracts. This construction work can continue indefinitely after the completion of the project. A substantial problem can arise when an effort is made to determine what premium cost should be added to the contract to represent the contractor's insurance cost to be provided under his normal program.

The best incentive for risk control lies with lower insurance costs. That is why self-insurance programs and group insurance programs work so well. Hard work is rewarded.

While APCOP is designed for lower insurance costs, it will result in just the opposite. We do not want the State government through APCOP to interfere with the contractor and his relationship with his insurance company.

The A.G.C. has traditionally objected to government intervention into the private sector, whether it be construction or insurance. We will continue to oppose APCOP and similar programs. Simply put, Government has no business in business. We request the immediate elimination of APCOP.

Thank you.

RESOLUTION

PRESERVATION OF THE CONTRACTOR'S RIGHT
TO SELECT HIS OWN INSURER

WHEREAS, the historical relationship between the contractor, his surety, and his insurer is one based on mutual trust and confidence, built up over years of experience and association, the Associated General Contractors opposes any bidding or contractual procedure that would interfere with this relationship, and

WHEREAS, the Federal government, its departments and agencies, and other awarding authorities, both public and private, have recognized the equity of this traditional system of the contractor selecting the insurer, agent or broker to provide surety bonds and to insure the contractor's obligations under any applicable Workmen's Compensation Law and such other insurable interests as are the contractor's responsibility under the construction contract, and

WHEREAS, political subdivisions of some states are interfering with the contractor's selection of insurance company, agent or broker and arbitrarily requiring the contractor to accept the owner's designation of the insurer, agent or broker of the contractor's Workmen's Compensation Insurance and Primary Comprehensive Liability Insurance, and

WHEREAS, the public interest is best served by the award to the lowest responsible bidder, which system traditionally provides centralized management at the lowest composite cost, and

WHEREAS, any attempt by the owner to interfere with the contractor's relationship with his insurer adds administrative expense and other cost adjustments that must be included in the bid price, and

WHEREAS, controlled insurance plans seriously disrupt normal job management procedures, especially by breaking the continuity of the contractor's safety program with the resulting greater risk of loss of life and injury to his workmen, and consequently reducing job efficiency and increasing costs, to the detriment of the workmen, the owner, and the public.

NOW, THEREFORE, BE IT RESOLVED that the Associated General Contractors, assembled in its 45th Annual Convention on March 1-5, 1964, condemns and vigorously opposes any attempt to interfere with the contractor's traditional right to select his insurer, agent or broker as a practice more costly to the owner, most damaging to the welfare of the construction industry and its workmen, and contrary to the public interest.



Alaska Timber Insurance Exchange

111 Stedman St., Suite 201
Ketchikan, Alaska 99901
(907) 225-9451

February 17, 1983

Honorable Richard Eliason
Alaska State Senator
Pouch V State Capitol Building
Juneau, Alaska 99811

Dear Senator Eliason:

Thanks for the call giving us the opportunity to appear before your committee to express our opinions on HB 4. At this time, we plan to send George Erickson, Alaska Timber Insurance Exchange Claims Manager, to be our spokesman. This letter is mailed in case of bad weather or other possible change in plans prohibits his attending the meeting on February 22.

Sincerely,

Donald A. Bell
President

ALASKA TIMBER MANAGEMENT CORPORATION

DAB/mjh
cc: George Erickson



Alaska Timber Insurance Exchange

111 Stedman St., Suite 201
Ketchikan, Alaska 99901
(907) 225-9451

February 16, 1983

Honorable Richard Eliason
Alaska State Senator
Pouch V State Capitol Building
Juneau, Alaska 99811

Dear Senator Eliason:

Thank you for inviting representatives of Alaska Loggers Association and Alaska Timber Insurance Exchange to express their opinions on House Bill #4 or similar legislation.

Background information on this subject, as we understand it, is the Alaska Power Authority, Division of Risk Management, Carroon & Black/Dawson and Company, and Marsh McLennan put together this package program reportedly to save the State money on the hydro power projects. It is interesting to note that prior to this alliance the Seattle newspaper reported that Carroon & Black/Dawson & Company was being sued by Marsh & McLennan because they had hired several key employees from Marsh McLennan who in turn brought customer information with them. The suit was dropped about the time this deal was put together.

In 1980 the Alaska Loggers Association started a reciprocal insurance company, the Alaska Timber Insurance Exchange. This company is a workmen's comp carrier and insures only its members who are domiciled in Alaska. It is truly an Alaska owned and operated company.

In September 1981, the Tye Lake Hydro Project was awarded. The contractor named was Southeast Harrison Western of Ketchikan and Denver. This was a small drilling company, Southeast Drilling, owned by Warren Olson of Ketchikan, who had fronted for Harrison Western of Denver and thus obtained the prime contract. They continued their membership in ALA, joined our radio network, and were interested in our workmen's comp program until they realized they were required to participate in the Division of Risk Management Program.

Alaska Timber Insurance Exchange

Honorable Richard Eliason
February 16, 1983
Page 2

Erickson Sky Crane, who did the helicopter logging on the Tyee job, joined Alaska Loggers Association in May 1982. They expressed an interest in the Alaska Timber Insurance Exchange until they were informed their bid included workmen's comp insurance and they were required to participate in the State program.

An operator in Petersburg, Spring Valley, obtained a small subcontract on the Tyee project. He needed employees for this short term job, 3 months, so he hired the complete crew of The Mill, a member of Alaska Loggers in Petersburg who participated in the ALA workmen's comp, pension, and group insurance programs. When The Mill people went on Spring Valley payroll they discontinued their workmen's comp premiums, this disqualified the eligible employees to participate in the ALA pension, and health and welfare programs.

Seley, Inc., has been a member of ALA since he went in business as Seley Float Construction in 1976. This year he obtained a subcontract to do some right-of-way logging on the Tyee Hydro job. At the time he signed the contract, he was unable to obtain any proof of insurance so he elected to retain his coverage through Alaska Timber Insurance Exchange. He paid his premium; we have paid the claims which were submitted, and of course plan to pay any others which may develop. He has now contacted the ATIE and wants a refund of his premium on a large payroll.

It would be interesting to know how this happened. How much Corroon & Black/Dawson & Company, Marsh McLennan and Company, and the other carriers involved in this program are making. It would also be interesting to know how the insurance carriers involved were selected.

We are informed by Donald P. Koch, Chief of Market Surveillance for the State of Alaska Department of Commerce & Economic Development, the current NCCI rate for Code 2702 (the logging rate) is \$39.22 per hundred dollars of payroll. It would seem the insurance carriers covering these hydro projects would be required to pay the rate established by the governing department. At the same time, Alaska Timber Insurance Exchange, because of its affiliation with Alaska Loggers Association on their 25 years

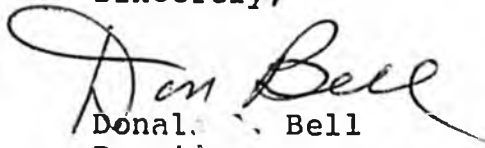
Alaska Timber Insurance Exchange

Honorable Richard Eliason
February 16, 1983
Page 3

experience with workmen's comp insurance for loggers, had established a rate of \$20.30. We wonder what rate is actually being charged for coverage in this Alaska Power Authority and Division of Risk Program.

It is our opinion the State of Alaska should stay out of the private insurance business.

Sincerely,



Donald Bell
President

ALASKA TIMBER MANAGEMENT CORPORATION

DAB/mjh
cc: Senator Ziegler

shattuck & grummett, inc.

ESTABLISHED 1898

insurance · bonds

301 SEWARD STREET

JUNEAU, ALASKA 99801

CURTIS G. SHATTUCK
ALLEN D. SHATTUCK
ROGER E. SHATTUCK, C.E.C.U.

MICHAEL A. GRUMMETT
ROGER GRUMMETT
NANCY L. BURNS

February 23, 1983

Senator Richard Eliason
Chairman
Senate Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill 4

Dear Senator Eliason:

As per the request of Senator Mulcahy following my testimony before the Senate Labor and Commerce Committee on February 22, attached is my testimony in written form.

In addition, testimony following mine questioned the legality of wrap-up insurance. The committee may be interested in knowing that the various parties involved in the Tyee Lake Project obtained briefs from numerous legal firms. Wrap-up insurance was also reviewed by the Attorney General's Office and further investigations were made by Legislative Budget and Audit, Department of Administration Internal Auditor, meetings were held with the Division of Insurance, there was a pre-hearing conference before the Workers' Compensation Board, and legislative subpoenas were issued during the 1982 legislative session. To the best of my knowledge, there were no legal actions brought nor were there any findings that the use of wrap-up insurance is illegal. Further, use of wrap-up insurance on large construction projects has been a common practice since the end of World War II throughout the United States (including the Alyeska Project) which would certainly indicate that in fact there are no legal problems.

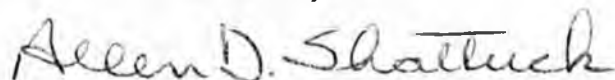
Senator Richard Eliason
February 23, 1983
Page Two

Finally, the Committee may be interested in one additional piece of information regarding safety which was not available to us prior to the Committee hearing. We have now been able to review documents from the Department of Labor generated as a result of D.O.S.H. inspections on the various hydro electric projects. A review of the inspections on Tyee Lake, Green Lake, Solomon Gulch, Swan Lake and Terror Lake reveals that the Tyee Lake Project (which is the only project using wrap-up insurance) appears to have the best safety record and is the only one that has had no "serious violations."

If the Committee has any questions or would like us to provide documentation on the various aspects of wrap-up insurance, please let me know. Thank you in advance for your consideration of my comments.

Sincerely,

SHATTUCK & GRUMMETT, INC.



Allen D. Shattuck

ADS/ce

cc: Senator Bob Mulcahy

TESTIMONY ON HOUSE BILL 4
PRESENTED TO THE SENATE LABOR AND COMMERCE COMMITTEE
FEBRUARY 23, 1983

My name is Allen Shattuck and I am President of Shattuck & Grummett Insurance here in Juneau. Our firm has contracted to serve as local insurance liaison on the Tye Lake Hydro Project. Our duties include administrative functions and working with the contractors and Pacific Marine Insurance Company on a daily basis. One of our functions is to obtain the payroll reports from the contractors which are then forwarded to Pacific Marine Insurance Company for providing required statistical data to the National Council on Compensation Insurance.

Unfortunately, House Bill 4 has become a very emotional issue. Certain proponents of the legislation have repeated several "myths" on a regular basis to the extent that these "myths" are accepted in some circles as gospel. My purpose here today is to attempt to dispel these myths and provide you with some facts.

Myth #1 - Wrap-up insurance does not allow contractors the benefit and competitive bidding advantage of experience modifications on their workers' compensation coverage which has been earned through good safety practices. These savings would then be passed on to the State.

Fact - Many of the bidders on the major hydro electric projects are newly formed joint ventures. Newly formed joint ventures do not qualify for an experience modification and the experience modification factor which is applied to their premium is therefore 1.00.

Fact - On several of the projects where the low bidder was not a joint venture, specifically Swan Lake and Green Lake, the low bidder has a 1.22 experience modification. In other words, their workers' compensation premiums are surcharged 22% as a result of past adverse loss experience.

Myth #2 - There is no safety incentive to the contractors when wrap-up insurance is utilized since losses on the project do not affect their experience modification.

Fact - The payroll and accident statistics are being reported to the National Council on Compensation Insurance in accordance with their requirements and also as required by the Division of Insurance. The net result is that a poor safety record on the Tye Lake Project will indeed affect their future experience modifications.

Myth #3 - Wrap-up insurance programs do not provide cost savings.

Fact - We have prepared estimates of "manual" insurance premiums for the Tyee Lake Project based on estimated project cost of \$100,000,000 and arrived at estimated premiums of just under \$7.9 million. The "go in" rate on the Tyee Project is 4.25% which using the same project base would develop a premium of \$4.25 million. With the project approximately 40% complete and based on losses to date, we are now projecting that the net ultimate cost of insurance on the Tyee Lake Project will be approximately 3% or \$3,000,000 again using the \$100,000,000 project base. From the above, you can readily see that there is a projected savings of approximately \$4.9 million or nearly 5% of the total project cost.

In closing, I would like to comment that the legislation which you are considering today is a very complex, highly emotional issue. House Bill 4 in its present form is extremely dangerous special interest legislation since it would take away the State's option to use a proven management tool which can result in very substantial savings. You just heard me mention that projected savings on the Tyee Project are approximately 5% of project cost and it becomes readily apparent that on a project the size of Susitna, we could be talking savings of hundreds of millions of dollars. It would therefore appear only prudent that the State at least have the option of considering the use of wrap-up insurance on future projects.



Alaska Timber Insurance Exchange

111 Stedman St., Suite 201
Ketchikan, Alaska 99901
(907) 225-9451

December 15, 1982

Honorable Robert Ziegler
Alaska State Senator
307 Bawden Street
Ketchikan, Alaska 99901

Dear Senator Ziegler:

Is it possible for you to request an audit of the workmen's comp program established by the Alaska Power Authority and the Division of Risk Management, Department of Administration. The reasons for this request are outlined in the following recitations.

Several years ago, the Seattle newspaper reported Marsh McLennan was suing Corroon & Black/Dawson & Company for hiring several members of their staff. The next thing I heard on the subject was in January of this year when I learned that the hydro projects were going to require contractors to carry workmen's comp insurance as part of their contract with the Alaska Power Authority. This program was put together by Corroon & Black/Dawson & Company, Marsh McLennan, the Division of Risk Management, and the Alaska Power Authority. This program, referred to by Representative Terry Martin as the Red Cabbage Bunch, is probably the reason Marsh & McLennan dropped its law suit against Corroon & Black/Dawson & Company.

In 1980 the Alaska Loggers Association started a Reciprocal Insurance Company, the Alaska Timber Insurance Exchange. This company is a workmen's comp carrier and insures only its members who are domiciled in Alaska. It is truly an Alaska owned and operated company.

In September 1981, the Tye Lake Hydro Project was awarded. The contractor named was Southeast Harrison Western of Ketchikan and Denver. This was a small drilling company, Southeast Drilling, owned by Warren Olson of Ketchikan, who had fronted for Harrison

Alaska Timber Insurance Exchange

Senator Robert Ziegler
December 15, 1982
Page 2

Western of Denver and thus obtained the prime contract. They continued their membership in ALA, joined our radio network, and were interested in our workmen's comp program until they realized they were required to participate in the Division of Risk Management Program.

Erickson Sky Crane, who did the helicopter logging on the Tyee job, joined Alaska Loggers Association in May 1982, obtained a sub contract from a sub contractor, Spring Valley owned by Chuck Oliver also of Petersburg. To obtain the job the mill employees had to go on Spring Valley's payroll. Spring Valley is not a member of ALA. This resulted in the mill dropping out of the ALA workmen's comp program for the period. In addition the mill provided health and welfare and pension coverage for their employees. The employees lost their pension credits and could have lost the continuity of health and welfare coverage; however, we elected to place them on a self pay basis for the period.

Seley, Inc., has been a member of ALA since he went in business as Seley Float Construction in 1976. This year he obtained a sub contract to do some right-of-way logging on the Tyee Hydro job. At the time he signed the contract, he was unable to obtain any proof of insurance so he elected to retain his coverage through Alaska Timber Insurance Exchange. He paid his premium, we have paid the claims which were submitted, and of course plan to pay any others which may develop. He has now contacted the ATIE and wants a refund of his premium on a large payroll.

It is our opinion, the State Legislators and the Governor would like to know how this happened, how much Corroon Black/Dawson and Company, Marsh McLennan and Company, and all the other companies are making on this State sponsored program.

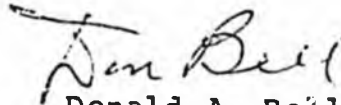
In closing, I am submitting a copy of a letter from the Department of Labor which shows the rate for workmen's comp insurance that the Alaska Power Authority is required to charge. This is considerably higher than the rate of Alaska Timber Insurance

Alaska Timber Insurance Exchange

Senator Robert Ziegler
December 15, 1982
Page 3

Exchange, which was developed by 25 years of experience in the logger's workmen's comp program. How can the Alaska Power Authority require our members to pay a higher rate as outlined in Don Koch's letter which outlines the established rate by the Department of Labor? If they are not paying the established rate, are they breaking the law?

Sincerely,



Donald A. Bell
President

ALASKA TIMBER MANAGEMENT CORPORATION

DAB/mjh

cc: Governor Bill Sheffield
Senator Richard Eliason
Representative Terry Martin
ATIE Board of Governors
ALA Directors
Mike Thomas
Dick Mattei

November 15, 1982

Mr. Donald A. Bell
President
Alaska Timber Exchange
Management Corporation
111 Stedman St., Ste. 201
Ketchikan, Alaska 99901

Dear Mr. Bell:

Re: Worker's Compensation - Tye
Hydroelectric Project

Thank you for your letter dated November 3, 1982.

Sorry for the delay in response. I have been out of the office with travel and illness. We do not have a deviation filing from Pacific Marine on the Alaska Power Authority program for the Tye Hydroelectric project. This means that Pacific Marine must adhere to the rules, rates and rating plans of the National Council on Compensation Insurance (NCCI).

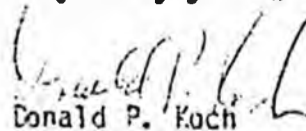
The current NCCI rate for Code 2702 is \$39.22 per \$100.00 of payroll. Aside from the Alaska Timber Exchange, only two carriers have specifically filed logging deviations. Alaska National Insurance Company has filed a 40% reduction and Industrial Indemnity of Alaska has filed a 23.75% reduction. The carriers may view these particular filings as obsolete in view of the filing dates but no withdrawal has been filed.

Three carriers have recently filed an across the board downward rate deviation of 15% which will also apply to Classification Code 2702 on policies written after the effective date. This gives these companies an effective rate for 2702 of \$33.34 per \$100.00 of payroll after the effective date noted below. These companies are:

Argonaut Insurance Company, effective August 15, 1982.
Pacific Marine Insurance Company, effective October 15, 1982.
Motor Vehicle Insurance Company, effective November 6, 1982.

The fact that Pacific Marine has filed an across the board deviation would not impact the hydroelectric project rates until the policies are renewed. They must continue to use the National Council rate on those policies issued before the effective date of their new deviation. If you have any additional questions, please let me know.

Very truly yours,


Donald P. Koch

Chief of Market Surveillance

mattei-webber, inc.

November 23, 1982

Mr. Donald A. Bell, President
Alaska Timber Insurance Exchange
111 Stedman Street
Ketchikan, Alaska 99901

Re: Tyee Hydroelectric Project
Workers' Compensation

Dear Don:

This is in response to your request of November 19, 1982 regarding 2702 rates.

What Don Koch is saying is that Pacific Marine must charge a rate of \$39.22 for classification 2702 on all policies issued prior to October 15, 1982, and \$33.34 on all policies that are either effective or renew after October 15, 1982.

If a policy was issued prior to October 15, 1982, the full NCCI rate of \$39.22 must apply until that policy's expiration.

Since Pacific Marine's policy for Tyee has an effective date prior to October 15, 1982, they must use the rate of \$39.22 until the policy(ies) expire(s).

Also, Pacific Marine must charge full rates on all other classifications on this policy, until it renews.

The ATIE's 2702 rate for the same period is \$20.14 or about 49% off of the full rate and 15% off full rates on all other classifications.

Regards,



Richard F. Mattei

PACIFIC MARINE

PAC MAR

RFM/sek

ATIE
ALASKA Timber Insurance Exchange

CODE
2702

BEFORE
10-15-82

39.22

20.14

AFTER
10-15-82

33.34

20.14

AFTER
1-1-83

\$18.10



Alaska Timber Insurance Exchange

111 Stedman St., Suite 201
Ketchikan, Alaska 99901
(907) 225-9451

February 1, 1983

Honorable Bill Sheffield
Governor State of Alaska
Pouch A State Capitol Building
Juneau, Alaska 99811

Dear Governor Sheffield:

It is reported that House Bill Number 4, an act relating to insurance requirements in State construction projects, is approved by the House Labor and Commerce Committee and is expected to pass the House without much difficulty.

You are requested to put the Administration's stamp of approval on this legislation and to aid in its passage by the Alaska State Senate.

This will take the Division of Risk Management and Alaska Power Authority out of the private insurance business.

Sincerely,

Donald A. Beil
President

ALASKA TIMBER MANAGEMENT CORPORATION

DAB/mjh

cc: Directors of ALA
Board of Governors, ATIE
Senator Bob Ziegler
Senator Dick Eliason
Al Anderson

Sithe 12-30-82

Dear Dick:

Enclosed are the two pieces I told you about this morning on phone. One is copy of speech by Rep. Terry Martin & other is copy of letter Don Koch to Don Bell. The penciled in rates at top of Koch's letter is ATIE rates for members 82. ATIE will pay back in Feb, refunds on \$ ~~pay~~ paid in, between 19 & 21%, using 20%. The true cost to members is the RA rate. I object for two reasons, one, this group is pulling some of ATIE members out of AHHA ^{see Bell to Fiegley letter} & the people of Alaska ^{are} ~~to~~ getting screwed over by the Red Cabbage Bunch.

Don Brown

STATE OF ALASKA

JAY S. HARRISON, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

FOUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2515

November 15, 1982

Mr. Donald A. Bell
President
Alaska Timber Exchange
Management Corporation
191 S. Edman St., Ste. 201
Juneau, Alaska 99901

2702 Logging	20.30	16.24
2703 Mechanic	6.60	5.28
5507 Road Const	11.74	9.39
7047 Workboat	17.88	14.30
8810 Clerical	.71	
9078		
2710 Sawmill	14.93	11.94
7421 Aircraft	13.62	10.89

Dear Mr. Bell:

Re: Worker's Compensation - Tye
Hydroelectric Project

Thank you for your letter dated November 3, 1982.

Sorry for the delay in response. I have been out of the office with travel and illness. We do not have a deviation filing from Pacific Marine on the Alaska Power Authority program for the Tye Hydroelectric project. This means that Pacific Marine must adhere to the rules, rates and rating plans of the National Council on Compensation Insurance (NCCI).

The current NCCI rate for Code 2702 is \$39.22 per \$100.00 of payroll. Aside from the Alaska Timber Exchange, only two carriers have specifically filed logging deviations. Alaska National Insurance Company has filed a 40% reduction and Industrial Indemnity of Alaska has filed a 23.75% reduction. The carriers may view these particular filings as obsolete in view of the filing dates but no withdrawal has been filed.

Three carriers have recently filed an across the board downward rate deviation of 15% which will also apply to Classification Code 2702 on policies written after the effective date. This gives these companies an effective rate for 2702 of \$33.34 per \$100.00 of payroll after the effective date noted below. These companies are:

- Argonaut Insurance Company, effective August 15, 1982.
- Pacific Marine Insurance Company, effective October 15, 1982.
- Motor Vehicle Insurance Company, effective November 6, 1982.

The fact that Pacific Marine has filed an across the board deviation would not impact the hydroelectric project rates until the policies are renewed. They must continue to use the National Council rate on those policies issued before the effective date of their new deviation. If you have any additional questions, please let me know.

Very truly yours,

Donald P. Koch
Chief of Market Surveillance

other rates also

11/15/82

May 4, 1982

Juneau Republican Club Luncheon

Speech by Representative Terry Martin

*very important when
considering CSSB 831*

*File: APA/Risk Mgt
Audit*

2ND ANNUAL "WHO'S KIDDING WHOM" AWARD

Good afternoon and welcome to the second annual "Who's kidding whom?" award banquet. Last year when I was privileged to speak before you, I, in jest, suggested a certain unit of the University of Alaska should receive a special award for their imagination and innovation by increasing their "student head count" so as to justify larger requested appropriations. After studying the situation in more detail it became obvious that they truly deserved special recognition. Consequently, two months later the Tanana Valley Community College became the first recipient of the "Who's Kidding Whom?" award.

This year there are many deserving State Entities. It is really hard to single one out for the reward that so many rightly deserve. During the current session, friends and acquaintances have suggested various government agencies, special interest groups and even private entities that, surely, should, at least, be nominated for this coveted award. Before announcing the finalists, it is my pleasure to make a special "Charley Brown Wishy-Washy Comerotive" to the Silver Anniversary Commission for their definite action, rescind action, action, rescind action, Who's on first?, handling of the Alaska 1984 Contract controversy.

The nominees for the coveted and cherished "Who's Kidding Whom?" award are: (1) The Department of Transportation and Public Facilities for its great sensitivity, common sense, and concern for the morale and well being of their loyal employees by dumping 51 of them as a publicity stunt during the budget process. (2) The House Minority ranks high for their consistent and perpetual inconsistency. Even though they work diligently to stall and delay every piece of legislation. They condemn the Majority for both not doing anything and for actually doing something over their parliamentary tricks.

(3) Another group that received a nomination are those individuals who most often seem to misuse the good intention of our workers compensation program. This group is recognizable as being male, age 21-26, less than 4 months on the job and 44% of whom claim lower back pain. (4) Alaska 84 birthday party planners rate high for this award. Need I say more? And number (5). How about LaTouche Island for its progress in ~~meeting~~ the basic needs of its residents?

This year's winner is--- A surprise entry from the private sector--THE RED CABBAGE BUNCH and their front organizations, the Alaska Power Authority and the Division of Risk Management, Department of Administration, State of Alaska. Every agency, entity or organization should take note of them. The Seattle based Red Cabbage Bunch and their affiliated Alaskan group, The Corsair Connection, have secured the absolute greatest, most magnificent, stupendous sole source, sweetheart contract of all time. A conservative estimate of the worth of this little sole source gem is \$700,000,000. Peanuts, you say. I don't, but the Red Cabbage Bunch does, because their plans for expanding this small contract make the \$700,000,000 insignificant when compared to what they have planned for additions, modifications and extensions to their little sweetheart.

Where, I'm sure you're wondering, could anyone find \$700,000,000 or so just lying around begging to be wrapped up into a nice little sole source contract? THAT'S IT! With the true inspiration and foresight reminiscent of the great robber barons of yesteryear they created a quasi-"wrap up" insurance program for all construction administered by the Alaska Power Authority. Do you have any idea how much the insurance premiums for the Contractors building the 8 billion or so dollars of hydro-electric projects comes to? I don't know for sure, but it is a megabuck or two. Wouldn't you love to have a monopoly which would guarantee you every cent of those premiums? I would, but, alas, we're too late. The Red Cabbage Bunch gobbled it all up.

So what if construction Contractors don't like it. Does it really matter that no public interest is being served by this alleged "wrap

up"? Who cares if the cost of the electricity goes up substantially? How about the insurance companies who would have provided real insurance at a much lower cost? Crybabies, that's all they are. If they had any imagination at all they would have joined the bunch, at the State of Alaska's expense, to plan all of this at the Red Cabbage Restuarant, Marion at Western, in downtown Seattle. Incredible?

You disbelieve? Let me quote from an internal document of the group, dated December 14, 1981, so you can understand a little of what is going on. I would appreciate if all of the previous nominees would take careful notes if they wish to mount a serious challenge in the future. QUOTE "Last month our brokerage appointment for the State of Alaska was extended...to the Alaska Power Authority. This newly formed division of the state is responsible for \$8,000,000,000 of hydro-electric construction during the next ten years." "We...have been notified that the existing arrangement will continue for some time, as the state perceives this arrangement as politically advantageous as well as workable professionally." Now it starts getting interesting. "We have already secured one contract to review documents, and are faced with the possibility of billing another \$100,000 on a fee basis for a preliminary consultation on this program."

Anybody want to bet who they recommended and what they recommended for a program? QUOTE "...the State of Alaska is particularly sensitive to the issue of using "outside firms." "...we are still viewed, or should I perhaps say suspected, as being "outsiders." In arranging this construction program the legislature has specifically instructed the Alaska Power Authority that preference be given to Alaskan firms. We have therefore been instructed to utilize Alaskan insurance companies with whom we have negotiated a fronting arrangement which we back by reinsurance." For those of you unfamiliar with this type of arrangement, it merely means, what you give with the right hand, you quickly take back with the left. To further quote; "We have also been asked to develop a presence in Alaska under the trade style of APCOP, an acronym for the Alaska Power Construction Project. THE INTENT OF THIS TRADE NAME AND ALASKA PRESENCE IS TO ALLOW THE ALASKA POWER AUTHORITY TO

PROMOTE THE PROGRAM AS AN ALASKA VENTURE." Doesn't it warm the cockles of your heart to know the Alaska Power Authority goes to such great lengths and such pains to deceive you while they disregard the law?

Actually, as the truth unfolds and is beginning to be known, the Alaska Power Authority is nothing more than a dupe of the Risk Management Division of the Department of Administration. Risk Management has arranged for this wonderful scam to be foisted on the unsuspecting public. Of course, the public would not be deceived by such an obvious ruse and the sheer magnitude of the scheme would, obviously, bring those stalwart guardians of the public, our Alaska press corps, to expose this wonderful "wrap up" to the full light of day. They would never be taken in by such a clumsy scheme and obvious "trade style."

Unfortunately, they have. Allow me to digress a moment for a special presentation to the Alaska press corps and all of its investigative reporters. For excellence, perseverance and in-depth investigative reporting, the Alaska press corps is hereby awarded the first annual "We've Been Had" award. To demonstrate how much they truly deserve this award, let me quote a few headlines and articles. QUOTE, from The Frontiersman, Wasilla, November 19, 1981; "ALASKA FIRMS TO HANDLE HYDRO PROJECT INSURANCE, RISK SERVICES". The Alaska Business Newsletter of November 20, 1981; "ALASKAN COMPANIES WILL PROVIDE HYDRO PROJECT'S INSURANCE." Alaska from the Inside, November 18, 1981; "NEW INSURANCE PROGRAM TO PROVIDE IN-STATE SERVICES TO HYDRO PROJECTS." Not only does the list go on and on, the articles themselves would appear to have been written by the Public Relations firm hired by "the Alaska Power Authority to promote the program as an Alaska venture."

In conclusion, to say that this group broke a few laws, circumvented numerous rules and/or regulations, completely ignored competitive bidding procedures would be an understatement. It is also accurate to include the fact that they made a mockery out of Alaska hire and preference laws, destroyed the ability of Alaskan Contractors to use their good experience ratings in bidding on these projects, almost

guaranteed that all of the contracts would be given to outside companies, which, unfortunately, means that very few Alaskans would ever be allowed to work on one of the projects. All I can say is that the Executive Director of Risk Management and the Red Cabbage Bunch of Seattle, Washington have really gone to extremes to win the 2nd annual "who's Kidding Whom" award.

shattuck & grummett, inc.

ESTABLISHED 1894

insurance · bonds

301 SEWARD STREET

JUNEAU, ALASKA 99801

CURTIS G. SHATTUCK

MELN D. SHATTUCK

RONALD R. SHATTUCK, C.E.C.U.

MICHAEL A. GRUMMETT

ROBERT GRUMMETT

NANCY L. HUNTS

May 4, 1983

Shelia Peterson
Administrative Aide
c/o Senator Richard Elison
Chairman
Senate Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill 4

Dear Shelia:

Since I will be out of town during the hearings on May 10 on the captioned bill, I would appreciate your reading this letter into the record.

I would like to suggest that the committee delay action on this bill until the next session of the legislature since the Tye Lake Project should be completed by then and the final wrap-up insurance costs can therefore be determined fairly accurately. There are not any projects which will be commencing during the interim that would be logical candidates for a wrap-up insurance program so there does not appear to be any urgency for passage of House Bill 4.

The key question as pertains to House Bill 4 is whether or not wrap-up insurance programs can in fact provide a savings for the State of Alaska. You will probably recall that my testimony before the committee on February 22 indicated that we had prepared estimates of "conventional" insurance premiums for the Tye Lake Project based on estimated project cost of \$100,000,000 and arrived at estimated

Shelia Peterson
May 4, 1983
Page Two

premiums of just under 7.9 million dollars. The "go in" rate on the Tye Project for the wrap-up insurance is 4.25% which using the same project cost would develop a premium of 4.25 million dollars. The project is now over 50% complete and based on losses to date, we are currently projecting that the net ultimate cost of insurance on the Tye Lake wrap-up project will be substantially less than the 4.25% go in rate and that a substantial return will be made to the Alaska Power Authority. In other words, it appears at this time that in fact the wrap-up insurance will produce a substantial savings.

It therefore seems prudent to delay any decision that would eliminate the States option to use wrap-up insurance techniques until the next session when the costs of the Tye Program can be more accurately determined and a factual comparison made as to the potential savings which can be obtained from the wrap-up concept.

Also, as per the earlier request of Senator Mulcahy, attached is a copy of my February 22 testimony for your reference.

Thank you in advance for your consideration of my comments.

Sincerely,

SHATTUCK & GRUMMETT, INC.



Allen D. Shattuck

ADS/ce

TESTIMONY ON HOUSE BILL 4
PRESENTED TO THE SENATE LABOR AND COMMERCE COMMITTEE
FEBRUARY 23, 1983

My name is Allen Shattuck and I am President of Shattuck & Grummett Insurance here in Juneau. Our firm has contracted to serve as local insurance liaison on the Tye Lake Hydro Project. Our duties include administrative functions and working with the contractors and Pacific Marine Insurance Company on a daily basis. One of our functions is to obtain the payroll reports from the contractors which are then forwarded to Pacific Marine Insurance Company for providing required statistical data to the National Council on Compensation Insurance.

Unfortunately, House Bill 4 has become a very emotional issue. Certain proponents of the legislation have repeated several "myths" on a regular basis to the extent that these "myths" are accepted in some circles as gospel. My purpose here today is to attempt to dispel these myths and provide you with some facts.

Myth #1 - Wrap-up insurance does not allow contractors the benefit and competitive bidding advantage of experience modifications on their workers' compensation coverage which has been earned through good safety practices. These savings would then be passed on to the State.

Fact - Many of the bidders on the major hydro electric projects are newly formed joint ventures. Newly formed joint ventures do not qualify for an experience modification and the experience modification factor which is applied to their premium is therefore 1.00.

Fact - On several of the projects where the low bidder was not a joint venture, specifically Swan Lake and Green Lake, the low bidder has a 1.22 experience modification. In other words, their workers' compensation premiums are surcharged 22% as a result of past adverse loss experience.

Myth #2 - There is no safety incentive to the contractors when wrap-up insurance is utilized since losses on the project do not affect their experience modification.

Fact - The payroll and accident statistics are being reported to the National Council on Compensation Insurance in accordance with their requirements and also as required by the Division of Insurance. The net result is that a poor safety record on the Tye Lake Project will indeed affect their future experience modifications.

Myth #3 - Wrap-up insurance programs do not provide cost savings.

Fact - We have prepared estimates of "manual" insurance premiums for the Tye Lake Project based on estimated project cost of \$100,000,000 and arrived at estimated premiums of just under \$7.9 million. The "go in" rate on the Tye Project is 4.25% which using the same project base would develop a premium of \$4.25 million. With the project approximately 40% complete and based on losses to date, we are now projecting that the net ultimate cost of insurance on the Tye Lake Project will be approximately 3% or \$3,000,000 again using the \$100,000,000 project base. From the above, you can readily see that there is a projected savings of approximately \$4.9 million or nearly 5% of the total project cost.

In closing, I would like to comment that the legislation which you are considering today is a very complex, highly emotional issue. House Bill 4 in its present form is extremely dangerous special interest legislation since it would take away the State's option to use a proven management tool which can result in very substantial savings. You just heard me mention that projected savings on the Tye Project are approximately 5% of project cost and it becomes readily apparent that on a project the size of Susitna, we could be talking savings of hundreds of millions of dollars. It would therefore appear only prudent that the State at least have the option of considering the use of wrap-up insurance on future projects.



Alaska Timber Insurance Exchange

111 Stedman St., Suite 201
Ketchikan, Alaska 99901
(907) 225-9451

February 16, 1983

Honorable Richard Eliason
Alaska State Senator
Pouch V State Capitol Building
Juneau, Alaska 99811

Dear Senator Eliason:

Thank you for inviting representatives of Alaska Loggers Association and Alaska Timber Insurance Exchange to express their opinions on House Bill #4 or similar legislation.

Background information on this subject, as we understand it, is the Alaska Power Authority, Division of Risk Management, Carroon & Black/Dawson and Company, and Marsh McLennan put together this package program reportedly to save the State money on the hydro power projects. It is interesting to note that prior to this alliance the Seattle newspaper reported that Carroon & Black/Dawson & Company was being sued by Marsh & McLennan because they had hired several key employees from Marsh McLennan who in turn brought customer information with them. The suit was dropped about the time this deal was put together.

In 1980 the Alaska Loggers Association started a reciprocal insurance company, the Alaska Timber Insurance Exchange. This company is a workmen's comp carrier and insures only its members who are domiciled in Alaska. It is truly an Alaska owned and operated company.

In September 1981, the Tye Lake Hydro Project was awarded. The contractor named was Southeast Harrison Western of Ketchikan and Denver. This was a small drilling company, Southeast Drilling, owned by Warren Olson of Ketchikan, who had fronted for Harrison Western of Denver and thus obtained the prime contract. They continued their membership in ALA, joined our radio network, and were interested in our workmen's comp program until they realized they were required to participate in the Division of Risk Management Program.

Alaska Timber Insurance Exchange

Honorable Richard Eliason
February 16, 1983
Page 2

Erickson Sky Crane, who did the helicopter logging on the Tye job, joined Alaska Loggers Association in May 1982. They expressed an interest in the Alaska Timber Insurance Exchange until they were informed their bid included workmen's comp insurance and they were required to participate in the State program.

An operator in Petersburg, Spring Valley, obtained a small subcontract on the Tye project. He needed employees for this short term job, 3 months, so he hired the complete crew of The Mill, a member of Alaska Loggers in Petersburg who participated in the ALA workmen's comp, pension, and group insurance programs. When The Mill people went on Spring Valley payroll they discontinued their workmen's comp premiums, this disqualified the eligible employees to participate in the ALA pension, and health and welfare programs.

Seley, Inc., has been a member of ALA since he went in business as Seley Float Construction in 1976. This year he obtained a subcontract to do some right-of-way logging on the Tye Hydro job. At the time he signed the contract, he was unable to obtain any proof of insurance so he elected to retain his coverage through Alaska Timber Insurance Exchange. He paid his premium; we have paid the claims which were submitted, and of course plan to pay any others which may develop. He has now contacted the ATIE and wants a refund of his premium on a large payroll.

It would be interesting to know how this happened. How much Corroon & Black/Dawson & Company, Marsh McLennan and Company, and the other carriers involved in this program are making. It would also be interesting to know how the insurance carriers involved were selected.

We are informed by Donald P. Koch, Chief of Market Surveillance for the State of Alaska Department of Commerce & Economic Development, the current NCCI rate for Code 2702 (the logging rate) is \$39.22 per hundred dollars of payroll. It would seem the insurance carriers covering these hydro projects would be required to pay the rate established by the governing department. At the same time, Alaska Timber Insurance Exchange, because of its affiliation with Alaska Loggers Association on their 25 years

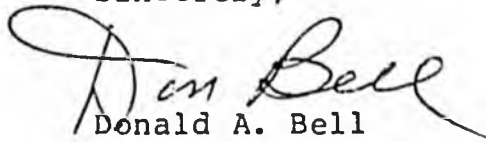
Alaska Timber Insurance Exchange

Honorable Richard Eliason
February 16, 1983
Page 3

experience with workmen's comp insurance for loggers, had established a rate of \$20.30. We wonder what rate is actually being charged for coverage in this Alaska Power Authority and Division of Risk Program.

It is our opinion the State of Alaska should stay out of the private insurance business.

Sincerely,



Donald A. Bell
President

ALASKA TIMBER MANAGEMENT CORPORATION

DAB/mjh

cc: Senator Ziegler

HARTIG, RHODES, NORMAN, MAHONEY & EDWARDS

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

717 K STREET

ANCHORAGE, ALASKA 99501

TELEPHONE: (907) 274-3576

TELECOPIER: (907) 277-4352

TELEX: (090) 25-404

CABLE: "NORTH"

ROBERT L. HARTIG (1928-1980)

JAMES D. RHODES
JOHN K. NORMAN
ROBERT J. MAHONEY
G. KENT EDWARDS
BERNARD J. DOUGHERTY
MICHAEL W. SHARON
ROGER H. BEATY
EDGAR R. LOCKE
C. WALTER EBELL
SPENCER C. SNEED
MELVIN M. STEPHENS, II
ROBERT C. BRINK
L. ANDREW ROBINSON
RAY D. GARDNER
WEY W. SHEA
JAMES P. RICHMOND

FEB 4 1983

January 26, 1982

KODIAK OFFICE
202 CENTER AVENUE
P. O. BOX 503
KODIAK, ALASKA 99615
(907) 486-3143

C. WALTER EBELL
MELVIN M. STEPHENS, II

VALLEY OFFICES
ALASKA BANK OF COMMERCE BLDG.
P. O. BOX 900
PALMER, ALASKA 99645
(907) 745-5031

MAIN STREET
P. O. BOX 1510
WASILLA, ALASKA 99687
(907) 375-6060

L. ANDREW ROBINSON

REPLY TO:

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

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

Dear Mr. Speaker:

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

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

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

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

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

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

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

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

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

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

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

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

AS 44.83.020 declares the Alaska Power Authority:

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

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

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

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

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

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

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

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

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

Insurance brokers are required to be licensed by virtue of AS 21.27.040. This fact, creates an argument that the insurance expertise provided by Marsh and McLennan-Corroon & Black/Dawson & Co., falls into the professional service exclusion of AS 37.05.230(1) and, was not subject to the competitive bidding requirements until the enactment of the "Professional Service Contract" statutes in Title 36 effective July 22, 1982, which provide in AS 36.98.080(2):

'Professional Services' means professional, technical, or consultant services that are predominantly intellectual in character and that

- (a) include analysis, evaluation, prediction, planning or recommendation; and
- (b) result in the production of a report of the completion of a task.

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

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

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

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

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

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

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

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

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

Hon. Joe L. Hayes, Speaker
Alaska House of Representatives
Ref: File No: 4306-2
January 26, 1983 Page -8-

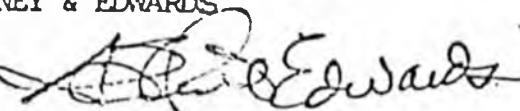
attorney work-product. Dissemination of this letter and attachments may waive the related privileges and we would request that you contact us prior to making the letter and attachments available to others. In the meantime, we will await your further instructions as to whatever action, if any, you wish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

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

Sincerely,

HARTIG, RHODES, NORMAN,
MAHONEY & EDWARDS

BY:



G. Kent Edwards

GKE:WWS:ndv
Enclosures

2/4/83 - Empire

Tyee costs to be studied

By MARK BAUMGARTNER
Empire Staff Reporter

State Rep. Ron Wendte, D-Ketchikan, this week asked the House Labor and Commerce Committee to review actions by the Alaska Power Authority to see if it can learn what caused huge cost overruns on the Tyee Hydroelectric Project.

Three factors went into Wendte's decision to seek the review, he said Thursday. His interest in APA's handling of Tyee was kindled at the first Labor and Commerce Committee hearing of the session when "allegations" of improprieties by APA in the award of contracts for the project were made, he said.

Later, he heard Sen. Arliss Sturgulewski, R-Anchorage, describe Tyee's financial situation as "out of hand," because the project is expected to cost about three times the original \$40 million estimate, he said.

More recently, Wendte said, he learned of the Petersburg city council's decision

not to buy Tyee power at the price APA said it might cost. The council said at the rates APA is offering the power, Tyee would double Petersburg's electric rates.

Wendte hopes the committee, chaired by Rep. Walt Furnace, R-Anchorage, will review "how APA handled its role" as developer of the project.

Tyee is scheduled to be producing electricity by early 1984.

Wendte said his interest in the matter is twofold. First, the Tyee project is in his district, and the project's financing affects the electric bills of his constituents.

He's also concerned, he said, of the implications APA's management of Tyee has on the proposed Susitna dams.

"If this happens on a \$100 million project I think we ought to look at a project for \$4.5 billion, or whatever," he said of Susitna.

The Senate is also expected to take a close look at APA later this month. Sen. Vic Fischer's State Affairs Committee has

scheduled hearings starting Feb. 24 on the Susitna project in relation to what has happened with Tyee, according to a Fischer aide.

Wendte said he expects legislation to be introduced in the House of Representatives and in the Senate to appropriate money to complete Tyee. The state has spent \$82 million to date, but needs an estimated \$30-50 million before the project is producing electricity.

APA has recommended raising that money through bond sales. If that's done, consumers of Tyee's power will pay off that debt through their rates. Based on the assumption bonds would be sold to complete the project APA estimated it would cost Petersburg and Wrangell utilities about 17.5 cents per kilowatt hour to buy Tyee power.

Petersburg's utility estimates another 10 cents per kwh would have to be added to that to cover administrative and distribution costs.