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STATE OF ALASKA THE LEGISLATURE

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JUNEAU, ALASKA 99811
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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	3/12/85	1:30 pm
" "	3/14/85	1:00 pm
" "	3/15/85	1:30 pm
" "	4/1/85	1:30 Am
" "	4/2/85	7 pm

COMMITTEE REPORT
HOUSE

4/4

(7)

FURTHER: FINANCE

2/8/35

Date: _____

The Committee on JUDICIARY has had HB 62

"An Act relating to the payment of prevailing wages and the payment of overtime under public construction contracts."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 62 (Good) same title
 new title
- and recommends it do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

W. A. Hill

Mr. [unclear]

W. D. Taylor

Ed [unclear]

[unclear]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[unclear]

W. A. Hill
CHAIRMAN

Alaska State Legislature




House of Representatives House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

Letter of Intent

HB 62

It was the intent of the House Judiciary Committee in amending AS 36.95.010(3) in Sec. 10 of CSHB 62 (Jud) that the definition of "public construction" and "public works" does not include financing provided by entities such as the Alaska Housing Finance Corporation, the Alaska Industrial Development Authority and similar entities which are not purchasing improvements for the use of the state, a political subdivision of the state or a regional school board.


M.M. Miller, Chairman
House Judiciary Committee

AMENDMENT TO CS FOR HB 62 (L&C)

By Representative Gruenberg

Page 1, lines 21 and 22

Strike language and replace with:

(b) The provisions in this section shall be included in all contracts for public construction in the state and are so included as a matter of law.

A M E N D M E N T

Clocksia
By the Judiciary Committee

Offered in the Judiciary Committee

TO: CSHB 62 (L&C)

Page 2, line 13, after "AS" insert "36.05.010 or"

Page 5, lines 23 - 24, after "board" delete a.i material and insert:

" , when financed in whole or in part with public funds, or when financed with funds obtained by pledge of any contract of a public agency to make a loan, grant, or annual contribution, and regardless of whether title to the improvements is in a public agency; the terms do not include manufacturing, furnishing of materials, or servicing and maintenance work"

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 62 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the payment of prevailing wages
7 and the payment of overtime under public construction
8 contracts."

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

10 * Section 1. AS 36.05 is amended by adding a new section to read:

11 Sec. 36.05.015. OVERTIME REQUIREMENTS. (a) Notwithstanding the
12 provisions of AS 23.10.060(1), (17), and (18), a contractor or subcon-
13 tractor contracting for any part of a public construction contract
14 that requires or involves the employment of laborers, mechanics, or
15 field surveyors may not require or permit a laborer, mechanic, or
16 field surveyor to work more than eight hours a day or more than 40
17 hours in a week during that employment unless the laborer, mechanic,
18 or field surveyor receives compensation for all work in excess of
19 eight hours a day or 40 hours a week at a rate of pay not less than
20 one and one-half times the employee's basic rate of pay.

21 (b) This section applies to all contracts for public construc-
22 tion in the state. The provisions of (a) of this section shall be set
23 out in all contracts to which this section applies.

24 * Sec. 2. AS 36.05.030(a) is amended to read:

25 (a) The Department of Labor has the authority to determine the
26 prevailing wage, and whether or not this chapter is being violated.
27 The department may when necessary for the enforcement of this chapter

28 (1) conduct investigations and hold hearings concerning
29 wages;

1 (2) compel the attendance of witnesses and the production
2 of books, papers and documents;

3 (3) adopt [PROMULGATE] regulations;

4 (4) take an assignment of a wage claim for the full amount
5 to which the employee is entitled under this chapter;

6 (5) seek recovery of wages for all persons on a public
7 construction project to whom wages are due under this chapter, regard-
8 less of whether a wage claim has been filed.

9 * Sec. 3. AS 36.05.060 is repealed and reenacted to read:

10 Sec. 36.05.060. CIVIL PENALTY. (a) A person who violates the
11 terms of an injunction or restraining order issued under AS 36.05.115
12 is subject to a civil penalty of not more than \$25,000 for each vio-
13 lation.

14 (b) In an action brought under AS 36.05.115, if the court finds
15 that a person has violated a provision of this chapter, a civil penal-
16 ty of not more than \$5,000 for each violation may be imposed. For
17 each day the violation exists, a separate penalty may be imposed.

18 * Sec. 4. AS 36.05.070(a) is amended to read:

19 (a) The advertised specifications for a public construction
20 contract exceeding \$2,000 to which the state or a political subdivi-
21 sion of the state is a party that [WHICH] requires or involves the
22 employment of mechanics, laborers, or field surveyors must [SHALL]
23 contain a provision stating the minimum prevailing wages to be paid
24 various classes of laborers, mechanics, or field surveyors and re-
25 quiring that the rate of wages [SHALL] be adjusted to the wage rate
26 for each pay period applicable under AS 36.05.010.

27 * Sec. 5. AS 36.05.070(c) is amended to read:

28 (c) A contract for public works in the state or a political
29 subdivision must [SHALL] contain provisions that

1 (1) the contractor or [HIS] subcontractors of the contrac-
2 tor shall pay all employees unconditionally and not less than once a
3 week;

4 (2) wages may not be less than those stated in the adver-
5 tised specifications, regardless of the contractual relationship
6 between the contractor or subcontractors and laborers, mechanics, or
7 field surveyors;

8 (3) the scale of wages to be paid shall be posted by the
9 contractor in a prominent and easily accessible place at the site of
10 the work;

11 (4) if the state or political subdivision is notified by
12 the Department of Labor that wages have not been paid as required
13 under AS 36.05.010 - 36.05.015, the state or [A] political subdivision
14 shall withhold so ~~of~~ of the [ACCRUED] payments due the contractor as
15 is necessary to ~~pay~~ to laborers, mechanics, or field surveyors em-
16 ployed by the contractor or subcontractors the difference between

17 (A) the rates of wages required to be paid by the
18 contract and this chapter [TO BE PAID LABORERS, MECHANICS, OR
19 FIELD SURVEYORS ON THE WORK], and

20 (B) the rates of wages in fact received [BY LABORERS,
21 MECHANICS OR FIELD SURVEYORS].

22 * Sec. 6. AS 36.05.070 is amended by adding new subsections to read:

23 (d) If the state or political subdivision withholds payment
24 under (c)(4) of this section, it shall pay the amount withheld to the
25 Department of Labor for disbursement directly to the laborers, mechan-
26 ics, or fields surveyors who have not been paid the rates of wages
27 required by the contract and this chapter.

28 (e) The provisions in (c) of this section are considered includ-
29 ed in all contracts for public construction in the state or political

1 subdivisions of the state.

2 * Sec. 7. AS 36.05 is amended by adding a new section to read:

3 Sec. 36.05.075. APPRENTICES. An apprentice in a craft appren-
4 ticeship program that has been approved in writing by the commissioner
5 of labor, or that has been registered as a bona fide apprenticeship
6 program by the Bureau of Apprenticeship and Training, United States
7 Department of Labor, must be paid at least at the rate set by the
8 United States Department of Labor for an apprentice in that craft. An
9 employee listed on a payroll at an apprentice wage rate who is not in
10 a registered apprenticeship program must be paid at the minimum pre-
11 vailing wage rate for that work classification.

12 * Sec. 8. AS 36.05.090 is repealed and reenacted to read:

13 Sec. 36.05.090. BARRING CONTRACT VIOLATORS. (a) If a person
14 violates a provision of this chapter, the Department of Labor may
15 initiate a proceeding to bar the person from bidding on or participat-
16 ing in future public construction contracts in the state. The pro-
17 ceeding shall be in accordance with AS 44.62.330 - 44.62.640.

18 (b) If, under (a) of this section, the Department of Labor bars
19 a person from bidding on or participating in a future public con-
20 struction contract, it shall distribute to the departments and
21 agencies of the state and to the political subdivisions of the state
22 the name of the person. A person who has been barred and a firm,
23 corporation, partnership, or association in which the person has an
24 interest may not work as a contractor or subcontractor on a public
25 construction contract for the state or a political subdivision during
26 the period established in the decision.

27 (c) A person may not be barred under (a) of this section for
28 more than three years as a result of a single proceeding.

29 * Sec. 9. AS 36.05 is amended by adding a new section to read:

1 Sec. 36.05.115. ENFORCEMENT. (a) The attorney general may,
2 when requested by the Department of Labor, enforce the provisions of
3 this chapter.

4 (b) The attorney general may petition the superior court to

5 (1) enjoin an act or practice that violates a provision of
6 this chapter or a regulation adopted under it;

7 (2) order payment of wages from the employer or surety;

8 (3) enjoin a person found in violation of this chapter from
9 continuing to work on an existing public construction contract; and

10 (4) impose a civil penalty under AS 36.05.060.

11 (c) If the court enjoins a person from further work on an exist-
12 ing public construction contract, the state or political subdivision
13 may complete the work, and the person and the person's sureties are
14 liable for the reasonable completion costs exceeding the original
15 amount of the contract.

16 (d) Enforcement action under this section may be taken indepen-
17 dently of or in addition to action taken under AS 36.05.090.

18 * Sec. 10. AS 36.95.010(3) is amended to read:

19 (3) "public construction" or "public works" means the
20 on-site field surveying, erection, rehabilitation, alteration, exten-
21 sion or repair, including painting or redecorating of buildings,
22 highways or other improvements to real property under contract for the
23 state, a political subdivision of the state, or a regional school
24 board, when financed in whole or in part with public funds, or when
25 financed with funds obtained by pledge of any contract of a public
26 agency to make a loan, grant, or annual contribution, and regardless
27 of whether title to the improvements is in a public agency; the terms
28 do not include manufacturing, furnishing of materials, or servicing
29 and maintenance work;

* Sec. 11. AS 36.05.030(b) and AS 36.10.020 are repealed.

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Bill No. House Bill No. 62

Date January 18, 1985

Title "An Act relating to the payment of prevailing wages and the payment of overtime under public construction contracts."


Contact: Robert Landau
465-2700
Robert Bacolas
465-4870

In addition to making a number of minor statutory changes, House Bill 62 establishes or clarifies several important provisions concerning wages and hours of work on public construction contracts, as follows:

1. Section 1 of the bill requires payment of time-and-a-half compensation to a worker for work in excess of eight hours a day or forty hours a week, thus eliminating any question that employees on public construction contracts have the same overtime protections afforded all employees in the state under AS 23.10.060.
2. Section 2 allows the Department of Labor to accept assignment of wage claims under the chapter and to pursue claims on behalf of a class of employees, whether or not a wage assignment has been filed. The Department often uncovers violations of AS 36.05 but, under existing law, is arguably precluded from collecting wages due on behalf of employees who have not requested its assistance. The amendment to AS 36.05.030(a) remedies that problem.
3. Section 6 provides that, even if a public construction contract does not set out conditions that AS 36.05.070(c) requires to be included, these conditions are considered included in the contract. This precludes an employer from avoiding compliance with the chapter when a government agency fails to incorporate AS 36.05.070(c) in the public construction contract.
4. Section 8 authorizes the Department of Labor to bar persons who have failed to comply with the overtime and prevailing wage requirements of the chapter from being awarded public construction contracts for up to three years. These persons would, of course, be entitled to the full protection of the Administrative Procedure Act.
5. Sections 3 and 9 authorize the Attorney General to seek injunctive relief and civil penalties in the Superior Court for failure to comply with AS 36.05. Under existing AS 36.05.060, violation of the chapter is a misdemeanor but this enforcement mechanism has not been effective because of the nature of the penalty and the higher standard of proof required in criminal cases.

The Department of Labor supports passage of House Bill 62. It will not have a fiscal impact on the Department.

APPROVED:


Jim Robison, Commissioner
Department of Labor

Introduced: 2/16/55
Referred: Labor & Commerce,
Judiciary and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 62

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the payment of prevailing wages
7 and the payment of overtime under public construction
8 contracts."

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

10 * Section 1. AS 36.05 is amended by adding a new section to read:

11 Sec. 36.05.015. OVERTIME REQUIREMENTS. (a) Notwithstanding the
12 provisions of AS 23.10.060(17) and (18), a contractor or subcontractor
13 contracting for any part of a public construction contract which
14 requires or involves the employment of laborers, mechanics, or field
15 surveyors may not require or permit a laborer, mechanic, or field
16 surveyor to work more than eight hours a day or more than 40 hours in
17 a week during that employment unless the laborer, mechanic, or field
18 surveyor receives compensation at a rate of pay not less than one and
19 one-half times that employee's basic rate of pay for all work in
20 excess of eight hours a day or 40 hours a week.

21 (b) The provisions in this section are considered included in
22 all contracts for public construction in the state.

23 * Sec. 2. AS 36.05.030(a) is amended to read:

24 (a) The Department of Labor has the authority to determine the
25 prevailing wage and whether or not this chapter is being violated.
26 The department may when necessary for the enforcement of this chapter

27 (1) conduct investigations and hold hearings concerning
28 wages;

29 (2) compel the attendance of witnesses and the production

- 1 of books, papers and documents;
- 2 (3) adopt [PROMULGATE] regulations;
- 3 (4) take an assignment of a wage claim for the full amount
- 4 to which the employee is entitled under this chapter;
- 5 (5) seek recovery of wages for all persons on a public
- 6 construction project to whom wages are due under this chapter, regard-
- 7 less of whether a wage claim has been filed.

8 * Sec. 3. AS 36.05.060 is repealed and reenacted to read:

9 Sec. 36.05.060. CIVIL PENALTY. (a) A person who violates the

10 terms of an injunction or restraining order issued under AS 36.05.115

11 is subject to a civil penalty of not more than \$25,000 for each vio-

12 lation.

13 (b) In an action brought under AS 36.05.115, if the court finds

14 that a person has violated a provision of this chapter, a civil pena-

15 lty of not more than \$5,000 for each violation may be imposed. For

16 each day the violation exists, a separate penalty may be imposed.

17 * Sec. 4. AS 36.05.070(a) is amended to read:

18 (a) The advertised specifications for a public construction

19 contract exceeding \$2,000 to which the state or a political subdivi-

20 sion of the state is a party which requires or involves the employment

21 of mechanics, laborers, or field surveyors must [SHALL] contain a

22 provision stating the minimum prevailing wages to be paid various

23 classes of laborers, mechanics, or field surveyors and that the rate

24 of wages must [SHALL] be adjusted to the wage rate for each pay period

25 applicable under AS 36.05.010.

26 * Sec. 5. AS 36.05.070(c) is amended to read:

27 (c) A contract for public works in the state or a political

28 subdivision must [SHALL] contain provisions that

29 (1) the contractor or his subcontractors shall pay all

1 employees unconditionally and not less than once a week;

2 (2) wages may not be less than those stated in the adver-
3 tised specifications, regardless of the contractual relationship
4 between the contracto. or subcontractors and laborers, mechanics, or
5 field surveyors;

6 (3) the scale of wages to be paid must [SHALL] be posted by
7 the contractor in a prominent and easily accessible place at the site
8 of the work;

9 (4) if the state or political subdivision is notified by
10 the Department of Labor that wages have not been paid as required
11 under AS 36.05.010 -- 36.05.015, the state or [A] political subdivi-
12 sion shall withhold so much of the [ACCRUED] payments due the contrac-
13 tor as is necessary to pay to laborers, mechanics, or field surveyors
14 employed by the contractor or subcontractors the difference between

15 (A) the rates of wages required to be paid by the
16 contract and AS 36.05.010 -- 36.05.115 [TO BE PAID LABORERS,
17 MECHANICS, OR FIELD SURVEYORS ON THE WORK], and

18 (B) the rates of wages in fact received [BY LABORERS,
19 MECHANICS, OR FIELD SURVEYORS].

20 * Sec. 6. AS 36.05.070 is amended by adding new subsections to read:

21 (d) If the state or political subdivision withholds payment
22 under (c)(4) of this section, it shall pay the amount withheld to the
23 Department of Labor for disbursement directly to the laborers, mechan-
24 ics, or fields surveyors who have not been paid the rates of wages
25 required by the contract and AS 36.05.010 -- 36.05.115.

26 (e) The provisions in (c) of this section are considered includ-
27 ed in all contracts for public construction in the state or political
28 subdivisions of the state.

29 * Sec. 7. AS 36.05 is amended by adding a new section to read:

1 Sec. 36.05.075. APPRENTICES. An apprentice in a craft appren-
2 ticeship program that has been approved in writing by the commissioner
3 of labor, or that has been registered as a bona fide apprenticeship
4 program by the Bureau of Apprenticeship and Training, United States
5 Department of Labor, must be paid at least at the rate set by the
6 United States Department of Labor for an apprentice in that craft. An
7 employee listed on a payroll at an apprentice wage rate who is not in
8 a registered apprenticeship program must be paid at the minimum pre-
9 vailing wage rate for that work classification.

10 * Sec. 8. AS 36.05.090 is repealed and reenacted to read:

11 Sec. 36.05.090. BARRING CONTRACT VIOLATORS. (a) If a person
12 violates a provision of this chapter, the Department of Labor may
13 initiate a proceeding to bar that person from bidding on or partici-
14 pating in future public construction contracts in the state. The
15 proceeding must be in accordance with the Administrative Procedure Act
16 (AS 44.62.330 -- 44.62.640).

17 (b) If, under (a) of this section, the Department of Labor bars
18 a person from bidding on or participating in a future public con-
19 struction contract, it shall distribute to the departments and
20 agencies of the state and to the political subdivisions of the state
21 the name of the person. No person who has been barred and no firm,
22 corporation, partnership, or association in which the person has an
23 interest may work as a contractor or subcontractor on a public con-
24 struction contract for the state or a political subdivision during the
25 period established in the decision.

26 (c) A person may not be barred under (a) of this section for
27 more than three years as a result of a single proceeding.

28 * Sec. 9. AS 36.05 is amended by adding a new section to read:

29 Sec. 36.05.115. ENFORCEMENT. (a) The attorney general may,

1 when requested by the Department of Labor, enforce the provisions of
2 this chapter.

- 3 (b) The attorney general may petition the superior court to
4 (1) enjoin an act or practice which violates a provision of
5 this chapter or a regulation adopted under it;
6 (2) order payment of wages from the employer or surety;
7 (3) enjoin a person found in violation of this chapter from
8 continuing to work on an existing public construction contract; and
9 (4) impose a civil penalty under AS 36.05.060.

10 (c) If the court enjoins a person from further work on an exist-
11 ing public construction contract, the state or political subdivision
12 may complete the work, and the person and his or her sureties are
13 liable for the reasonable completion costs exceeding the original
14 amount of the contract.

15 (d) Enforcement action under this section may be taken indepen-
16 dently of or in addition to action taken under AS 36.05.090.

17 * Sec. 10. AS 36.95.010(3) is amended to read:

18 (3) "public construction" or "public works" means the
19 on-site field surveying, erection, rehabilitation, alteration, exten-
20 sion or repair, including painting or redecorating of buildings,
21 highways or other improvements to real property under contract for the
22 state, a political subdivision of the state, or a regional school
23 board; the terms do not include regular maintenance or scheduled
24 maintenance for the preservation of existing property or facilities;

25 * Sec. 11. AS 36.05.030(b) and AS 36.10.020 are repealed.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 15, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that clarifies the applicability of overtime compensation statutes to work performed on public contracts, and that imposes sanctions for a contractor's failure to comply with those statutes.

The bill requires payment of time-and-a-half compensation to a worker for work in excess of eight hours a day or 40 hours a week, thus eliminating any question that employees on public construction contracts have the same overtime protections afforded all employees in the state under AS 23.10.060.

In addition to making several minor statutory changes, the bill also establishes or clarifies four other important provisions relating to the enforcement of the provisions of AS 36.05, concerning wages and hours of labor on public contracts. First, sec. 2 of the bill allows the Department of Labor to accept assignment of wage claims under the chapter and to pursue claims on behalf of a class of employees whether or not a wage assignment has been filed. The department often uncovers violations of AS 36.05, but, under existing law, is arguably precluded from collecting wages due on behalf of employees who have not requested its assistance. The amendment to AS 36.05.030(a) avoids that problem.

Second, sec. 6 of the bill provides that even if a public construction contract does not set out conditions that AS 36.05.070(c) requires to be included, these conditions are considered included in the contract. This precludes an employer from avoiding compliance with the chapter when a government agency fails to incorporate AS 36.05.070(c) in the public construction contract.

SECTIONAL ANALYSIS - HB 62: An Act relating to the payment of prevailing wages and the payment of overtime under public construction contracts," by House Rules at the Request of the Governor; analysis by House L & C Staff.

Section 1 Clarifies current law that employees on public construction contracts have the same overtime protections afforded all other employees in the State; by requiring payment of time and a half compensation to a worker for any work over 8 hours a day or 40 hours a week. AS 23.10.060 lists exemptions to this general position; the Dept. of Labor would like to eliminate 3 of those exemptions, (1) dealing with employers employing fewer than 4 employees; and (17) and (18), dealing with flexible wages; to allow fairer competition in the competitive bid process on public construction contracts. AS 23.10.060 (1) was not included in the original bill, so a Committee Substitute would have to be proposed to cover this addition.

All public construction contracts are considered to have these provisions included, whether actually stated or not. This requirement is already found elsewhere in this Chapter, under AS 36.10.080 relating to employment preference.

Section 2 Continues the authority of the Department of Labor to determine the prevailing wage, and expands the Department's ability to pursue claims on behalf of employees, even if a wage assignment has not been filed.

Currently, an employee must file a claim within 90 days or else sue the contractor; with a wage assessment, the Department can pursue claims for 2 years on behalf of a claimant or a class of claimants. Further, under this section, they will have the power to pursue claims against subcontractors outside of the State of Alaska and into any other state we have reciprocal agreements with on this issue (some 20 states in all, mostly the western States).

Section 3 Penalty for violation of the Wages and Hours of Labor Chapter of Title 36 (Public Contracts) is changed from a misdemeanor of \$100min to \$1,000max and 10 to 90 days; to a civil penalty of \$25,000 for certain violations and for up to \$5,000 per day for other violations.

Currently, violators have to be charged and investigated under criminal procedures, where the standard of proof is higher; with this change, the matter becomes easier to pursue as a civil penalty, with the process going through the Attorney General's Office, and the procedures for this are set out in further detail in Section 9.

Section 4 The word "must" in legal terms is used to give direction to inanimate objects; "shall" is used to direct people to do things, so the change is technical only.

The minimum wage for the state is \$3.85; for the feds; \$3.35. However, the minimum prevailing wage is set by the State

Dept. of Labor according to region of the State & craft, in accordance with procedures spelled out in administrative regulations.

Section 5 Requires that the Dept. of Labor notifies the state or political subdivision to withhold payments to a contractor up to whatever is needed to pay to workers any difference between their actual wages and the wages they are required by law to receive.

Since the Dept. of Labor already requires that a contractor submit a certified weekly payroll to the Dept. which then gets surveyed and monitored, the Department is in a much better position to detect violations than a state or political subdivision, as well as initial subsequent action. This section formally recognizes what is common current practice.

Section 6 Requires that when a state or political subdivision withholds payment to the contractor in accordance with Section 5, the amount withheld shall be paid to the Dept. of Labor for disbursement to the workers; and further states that this payment process is considered to be in the language of all public construction contracts, whether it is explicitly stated or not.

Section 7 Apprentices registered in an approved program must be paid at the federal minimum wage rate for apprentices. If the apprentice is not in an approved program, the contractor must pay the apprentice at the minimum prevailing wage.

This section discourages contractors from listing all of their workers as apprentices in order to pay them lower wages.

Section 8 Gives the power to the Dept. of Labor to initiate proceedings to debar a person from bidding on construction contracts for up to three years.

Currently, any violators are referred to the Attorney General's office and the case has to be pursued in the courts. This change gives the Dept. of Labor authority to actively investigate a case through an administrative hearing process, under the Administrative Procedures Act, which still protects violators through a detailed due process procedure.

Section 9 Adds a new section to current law, which spells out the procedure by which violators under Section 3 are referred by the Department of Labor to the Attorney General's office, and the subsequent procedures followed by the A. G.'s office in pursuing a statute violation through the courts.

Section 10 Provides definitions; basically clarifying that this bill applies to public construction contracts, not regular maintenance activities.

Third, sec. 8 of the bill authorizes the Department of Labor to bar persons who have failed to comply with the overtime and prevailing-wage requirements of the chapter from being awarded public construction contracts for up to three years. These persons would be entitled to the full protection of the Administrative Procedure Act (AS 44.62).

Fourth, secs. 3 and 9 of the bill authorize the attorney general to seek injunctive relief and civil penalties in the superior court for failure to comply with AS 36.05. Under existing AS 36.05.060, violation of the chapter is a misdemeanor. This enforcement mechanism has not been effective because of the nature of the penalty and the standard of proof required in criminal cases.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield". The signature is written in dark ink and is positioned above the typed name and title.

Bill Sheffield
Governor

REQUEST

Bill/Resolution No.: _____
Title: "An Act relating to payment of prevailing wages....."
Sponsor: Rules Committee
Requestor: Rules Committee
Date of Request: _____

FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety-Wage and Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert J. Barajas, Sr. Phone: 465-4870
Division: Labor Standards & Safety Date: 1/10/85
Approved by Commissioner: Jim Robinson Date: 1/10/85
Agency: Labor

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

HB 62

Bill No. House Bill No. 62

Date January 18, 1986

Title "An Act relating to the payment of prevailing wages and the payment of overtime under public construction contracts."

Contact: Robert Landay
465-2700
Robert Bacolas
465-4270

In addition to making a number of minor statutory changes, House Bill 62 establishes or clarifies several important provisions concerning wages and hours of work on public construction contracts, as follows:

1. Section 1 of the bill requires payment of time-and-a-half compensation to a worker for work in excess of eight hours a day or forty hours a week, thus eliminating any question that employees on public construction contracts have the same overtime protections afforded all employees in the state under AS 23.10.060.
2. Section 2 allows the Department of Labor to accept assignment of wage claims under the chapter and to pursue claims on behalf of a class of employees, whether or not a wage assignment has been filed. The Department often uncovers violations of AS 36.05 but, under existing law, is arguably precluded from collecting wages due on behalf of employees who have not requested its assistance. The amendment to AS 36.05.030(a) remedies that problem.
3. Section 6 provides that, even if a public construction contract does not set out conditions that AS 36.05.070(c) requires to be included, these conditions are considered included in the contract. This precludes an employer from avoiding compliance with the chapter when a government agency fails to incorporate AS 36.05.070(c) in the public construction contract.
4. Section 8 authorizes the Department of Labor to bar persons who have failed to comply with the overtime and prevailing wage requirements of the chapter from being awarded public construction contracts for up to three years. These persons would, of course, be entitled to the full protection of the Administrative Procedure Act.
5. Sections 3 and 9 authorize the Attorney General to seek injunctive relief and civil penalties in the Superior Court for failure to comply with AS 36.05. Under existing AS 36.05.060, violation of the chapter is a misdemeanor but this enforcement mechanism has not been effective because of the nature of the penalty and the higher standard of proof required in criminal cases.

The Department of Labor supports passage of House Bill 62. It will not have a fiscal impact on the Department.

APPROVED:



Jim Robison, Commissioner
Department of Labor

POSITION PAID BY Department of Labor

Analysis supplied by:
Associated General
Contractors.

ANALYSIS OF HB-62

MAJOR CHANGES

- ** Section 1 (pg. 1, ln 11) - Adds a new section which requires overtime of 1-1/2 for over 8 hours per day or 40 hours per week.
- ** Section 2 (pg.2, ln. 3) - Adds new subsections which allow DOL to take wage assignment and to seek recovery for wages regardless of whether a wage claim has been filed.
- ** Section 3 (pg. 2, ln. 9) - Changes nature of penalty from criminal misdemeanor to civil penalty.
- ** Section 9 (pg. 4, ln. 11) - Establishes a procedure from barring a person who violates this chapter from working as a contractor or subcontractor for the State or a political subdivision for up to three years.

APPROACH

- (1) AGC has not had time to assess and discuss all of the proposed changes in HB62.
- (2) AGC is opposed to new language which purports to include the provisions of Title 36 in all contracts for public construction in the state regardless of whether the contract agency includes the provisions in the job specifications. Existing law requires that the advertised specifications for public construction include various provisions for Title 36 (36.05.070(a)). If the specifications fail to include the required provisions, a contractor should not be held liable for the consequences. Accordingly, we suggest the following:
 - (a) Delete 36.05.015(b) proposed in HB 62 Section 1, pg.1, ln. 21.
 - (b) Delete 36.05.070(e) proposed in HB 62 Section 6, pg.3, ln. 26
 - (c) Add the following new section:
AS 36.05.085. Failure of a State or political subdivision of the State to include the provisions required by this chapter within a contract shall relieve the contractor or subcontractor of any liability for violation of this chapter. The State or political subdivision of the State which fails to include the provisions required by this chapter within a contract for public construction, results in prevailing wages not being paid to laborers mechanics; or field surveyors is responsible to those laborers, mechanics or surveyors for payment of wages in accordance with this chapter.

HB 62

DRAFT

PROPOSED COMMITTEE SUBSTITUTE FOR HB 62, "An Act Relating to the payment of prevailing wages and the payment of overtime under public construction contracts," requested by the Department of Labor

- 1) Section 1 of HB 62 is amended to include AS 23.10.060 (1) as follows:

Section 36:05.015. OVERTIME REQUIREMENTS. (a) Notwithstanding the provisions of AS 23.10.060 (1), (17), and (18), etc.

The affected subsection (1) reads as follows:

This section does not apply with respect to:

(1) an employee employed by an employer employing less than four employees in the regular course of business, as regular course of business is defined by regulations of the commissioner.

The effect of the amendment would be that in regards to public construction bids only, employers would not be exempted just because they had fewer than 4 employees; otherwise, for certain types of contracts, "mom and pop" operations would have a competitive bid advantage.

A M E N D M E N T

OFFERED IN THE HOUSE:

BY: HOUSE LABOR & COMMERCE

To: _____ HOUSE BILL No. 62 _____

SENATE BILL No. _____

PAGE: 1 _____

LINE: 12 _____

After "060" insert "(1)" so that line 12 will read;


"Provisions of AS 23.10.060(1), (17) and (18), a
contractor or subcontractor"

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: House Labor and Commerce Committee

FROM: Scott A. Burgess 
Executive Director

DATE: February 4, 1985

SUBJECT: HB 62 - Prevailing Wages and Overtime

On behalf of the Alaska Municipal League it is difficult to comment in favor or in opposition to the bill; however, by request of the Committee and because of testimony provided by the Associated General Contractors (AGC) I feel I must.

"Local Construction: Local governments should have autonomy to administer local construction projects. Title 36, the Public Contracts Code, should be amended to permit local governments to establish their own notice, reporting, and prevailing wage requirements for local construction." (AML 1985 Policy Statement, p.4)

It is difficult to comment then on the amendment to Title 36 proposed in Title 36 when the League opposes the basic premise of the Statute or "Little Davis-Bacon". This opposition is founded not only on the League's philosophy of local government option but, in this case, more specifically, on the reality that the requirements of Title 36 prevent putting local people to work and training them on projects in their community. Because the prevailing rates are set on "Anchorage or urban wages", a contractor has no incentive to hire or train locally. The only alternative is for a community to carry out the project by "force account" which has also been under attack by the AGC. A Mini-Cabinet on Little Davis-Bacon was formed last year to investigate the problems local governments are having but the group headed by the Department of Labor has been inactive.

With Title 36 objections stated, HB 62 seems straight-forward except for two issues: (1) interest on retainage [AS 36.90.001]; and (2) contractor liability opposed by AGC. AS 36.90.001, which the League also opposes, requires the local government to pay interest on any fees they retain. Under Section 5 of HB 62, does or would the local government be required to pay interest on the amount withheld? The League hopes not.

Secondly, the Department of Labor's intent of HB 62 is to make sure the employee is paid for work performed without waiting for a wage claim and legal action; therefore, the bill would make it clear in the law that overtime is to be paid at the prevailing rate (not a legal issue but a clarification, presumably) by the contractor regardless of individual contract specifications. The law imposes that responsibility for an employee's wages directly on the direct employer, the contractor who bids

and is awarded the contract, not the client, the State or a local government. The law is to close a loophole and the amendments proposed by AGC would leave that loophole open. The Department of Labor puts the immediate liability on the contractor so an employee gets paid rather than the contracting agency because the latter (1) may not be responsible and (2) may not have the funds without a subsequent legislative appropriation. My understanding is that the liability language does not absolve the contracting agency ultimately but, as is the case now, that is a private contractual issue to be resolved in the courts between the contractor and the contracting agency. In the meantime, the employee is paid.

Whether prevailing wage rates apply on a project; e.g., not maintenance is subject to interpretation. Clarification can be requested by the contractor or the contracting agency; however, making the contracting agency/local government liable because of oversights of not quoting voluminous State statutory requirements does not seem fair, nor will it meet the intent of the proposed bill. The League also opposes any substitute of the penalty language of AS 36.10.090 of "Resident Hire".

Therefore, the requirements of HB 62 and overtime at the prevailing wage is properly the responsibility of the contractor, regardless of whether it is stated in the contract. The League opposes any responsibility, shared or otherwise, being shifted to local governments as suggested by the AGC.

Thank you for the opportunity to comment and the League urges the Committee to look into the deterrents to local hire and training of Title 36, and offers its willingness to assist the Committee to seek solutions. In the meantime, any more onerous amendments to Title 36 or restrictions to force accounts should be opposed.

BRIEFING PAPER ON FORCE ACCOUNTING

"Force Accounting" is the term commonly used to describe the performance of public construction or repair work by a government agency using its regular employees or hiring additional employees rather than contracting out the work to a private contractor. In essence, a government agency or political subdivision using the force account method is acting as its own general contractor, although on some projects it may subcontract certain parts of the work or hire a project management contractor to supervise the work.

Force account construction work has been interpreted as being exempt from both State and Federal prevailing wage laws. Accordingly, the Department of Labor does not conduct any enforcement acting on Force Account projects.

Because of the large number of public works projects in Alaska and the variety of government agencies and political subdivisions administering these projects, it has been very difficult to determine exactly how much public construction work in the state is being done on a force account basis.

The use of Force Accounting by government agencies, political subdivisions, and non-governmental recipients of State grant funds has become a controversial issue in recent years. Because Force Accounting does not involve the hiring of a private contractor to perform the actual construction work, State and Federal prevailing wage laws normally do not apply to Force Account projects. In Alaska, municipalities, cities, villages, unincorporated communities, and even nonprofit corporations receiving State grants have used Force Accounting on public construction projects as a way of reducing labor costs,

promoting local hire, and generally attaining greater control and responsibility over a public works project. The use of Force Accounting has been criticized by contractors, labor unions, and others who have argued that "contracting out" public construction work to the private sector is usually the most efficient, economical, and risk-free method of performing public works construction.

As a result of the controversy surrounding the use of Force Accounting, particularly on construction projects financed in part or whole by State grants, an informal task force was organized in November 1984 to address the issue. The task force included representatives from various State agencies, local governments, contractor groups, organized labor, and other interested parties. At the outset, there was considerable support for the proposition that on pass-through grants for construction, the State agency passing through the grant funds should exercise greater approval and oversight authority over the use of Force Accounting by grant recipients. It was disclosed that new procedures for the controlling and monitoring of State grant funds are being prepared by an interdepartmental grant management review committee coordinated by the Office of Management and Budget.

On the central question of Force Accounting vs. contracting out public construction work, the task force participants were unable to reach a consensus solution. Local governments and political subdivisions that have used Force Accounting successfully to reduce construction costs and promote local hire desire to continue doing so (and, in some cases, expand the size of their force account projects), whereas contractors and labor unions contend

February 1, 1985

that competitive bidding continues to be the best way to prevent favoritism and assure timely completion of public works construction at the lowest price and highest quality.

Alaska Department of Labor

February 1, 1985

HB 62 ADDITIONAL FILE CONTENTS Feb. 6, 1985

- 1) Draft CS for HB 62 (same as amendment, pg. 1, line 12, insert (1) after .060.
- 2) Additional information from Alaska Economic Trends, supplied by Associated General Contractors
- 3) Written response to additional Committee questions by the Department of Commerce

SUPPLEMENTAL OUTLINE HB 62

- 1) Position Paper in response to AGC -- Dept. of Labor
(also includes requested statistics on number of cases, etc.)
- 2) Summary of Dept. of Labor Enforcement Actions for AS 36.05
(supplied by Associated General Contractors)
- 3) Position Paper -- Municipal League
- 4) Briefing Paper on Force Accounting -Dept. of Labor, Feb. 1, 85
- 5) Amendment to HB 62 passed in Committee on January 25, 1985
- 6) Bill summary -- Legislative Reporting Service

HB 62 FILE CONTENTS

- 1) Sectional Analysis -- Committee Staff
- 2) Transmittal Letter from Governor
- 3) Fiscal Note -- Dept. of Labor
- 4) Position Paper -- Dept. of Labor
- 5) Position Paper -- Associated General Contractors
- 6) Proposed Committee Substitute

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

February 6, 1985

The Honorable Mike Navarre
Chairman
Labor and Commerce Committee
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Navarre:

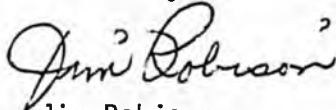
This is in response to the question posed at the February 4 hearing on House Bill 62, concerning the proportion of the work force affected by the provisions of AS 36.05.

In 1984, total nonagricultural wage and salary employment in Alaska averaged 223,600 ; construction employment averaged 20,100 (9.0% of total employment); and estimated public construction employment averaged 6,600 (3 percent of total employment and one third of construction employment).

In 1984, the Department initiated 480 enforcement actions on public construction projects to remedy wage deficiencies on behalf of 1072 employees. These employees represented 16% of the estimated number of workers employed on public construction projects. It should also be pointed out that these numbers do not reflect the Department's involvement on projects where contractors voluntarily complied when we advised them of wage deficiencies.

Thank you.

Sincerely,



Jim Robison
Commissioner

JANUARY 1985
ALASKA ECONOMIC TRENDS

Alaska Department of Labor Bill Sheffield, Governor, State of Al

ECONOMIC OUTLOOK



LABOR FORCE BY REGION AND CENSUS DIVISION

	Labor Force			Unemployment			Rate			Employment		
	P	R	11/83	P	R	11/83	P	R	11/83	P	R	11/83
	11/84	10/84		11/84	10/84		11/84	10/84		11/84	10/84	
Alaska Statewide	240992	243698	228543	25288	23284	23130	10.5	9.6	10.1	215704	220414	205413
Anchorage/MatSu Region ...	128354	128622	118958	1122	9853	9304	8.7	7.7	7.8	117232	118764	109654
Anchorage	115475	116107	106979	9107	8349	7487	7.9	7.2	7.0	106368	107758	99492
Matanuska-Susitna	12879	12515	11979	2015	1509	1817	15.6	12.1	15.2	10864	11006	10162
Gulf Coast Region	25763	27066	25016	3182	3352	3315	12.4	12.4	13.3	22581	23714	21701
Cordova	1350	1399	1300	141	130	138	10.4	9.3	10.6	1209	1269	1162
Kenai	13217	13851	12975	1711	1768	1818	12.9	12.8	14.1	11505	12083	11057
Kodiak	5866	6270	5637	710	855	682	12.1	13.6	12.1	5156	5415	4955
Seward	1886	1933	1846	276	242	298	14.6	12.5	16.1	1610	1691	1548
Valdez	3444	3613	3358	344	357	379	10.0	9.9	11.3	3100	3256	2979
Interior Region	32613	32621	30876	4969	4167	4529	15.2	12.9	14.7	27644	28454	26347
Fairbanks	26608	26704	25227	4076	3512	3752	15.3	13.2	14.9	22532	23192	21475
Southeast Fairbanks	2648	2617	2481	388	291	327	14.7	11.1	13.2	2260	2326	2154
Upper Yukon	813	780	769	139	86	127	17.1	11.0	16.5	674	694	642
Yukon-Koyukuk	2544	2520	2399	366	278	323	14.4	11.0	13.5	2178	2242	2076
Northern Region	10895	10965	11163	775	735	985	7.1	6.7	8.8	10120	10230	10178
Barrow-North Slope	2888	2911	2989	158	152	244	5.5	5.2	8.2	2730	2759	2745
Kobuk	3431	3440	3503	290	265	344	8.5	7.7	9.8	3141	3175	3159
Nome	4576	4614	4671	327	318	397	7.1	6.9	8.5	4249	4296	4274
Southeast Region	32066	32736	31339	4324	4177	3920	13.5	12.8	12.5	27742	28559	27419
Angoon	418	458	398	51	80	35	12.2	17.5	8.8	367	378	363
Haines	1142	1096	1088	206	132	163	18.0	12.0	15.0	936	964	925
Juneau	11301	11624	11042	1230	1257	1089	10.9	10.8	9.9	10071	10367	9953
Ketchikan	6983	7358	6564	1147	1350	796	16.4	18.3	12.1	5836	6008	5768
Outer Ketchikan	890	860	847	203	152	168	22.8	17.7	19.8	687	708	679
Prince of Wales	1552	1567	1524	268	246	255	17.3	15.7	16.7	1284	1321	1269
Sitka	4494	4535	4511	426	347	490	9.5	7.7	10.9	4068	4188	4021
Skagway	1648	1597	1758	291	200	417	17.7	12.5	23.7	1357	1397	1341
Wrangell-Petersburg	3638	3641	3607	502	413	507	13.8	11.3	14.1	3136	3228	3100
Southwest Region	11301	11688	11191	916	995	1077	8.1	8.5	9.6	10385	10693	10114
Aleutian Islands	2921	3036	2924	97	128	174	3.3	4.2	6.0	2824	2908	2750
Bethel	3678	3824	3618	374	422	400	10.2	11.0	11.1	3304	3402	3218
Bristol Bay Borough	409	457	408	36	53	45	8.8	12.1	11.0	373	381	363
Bristol Bay	1519	1547	1500	124	111	142	8.2	7.2	9.5	1395	1436	1358
Kuskokwim	1011	1021	993	110	94	116	10.9	9.2	11.7	901	927	877
Wade Hampton	1763	1823	1748	175	187	200	9.9	10.3	11.4	1588	1636	1548

P/=Preliminary 1983 Benchmark

R/=Revised

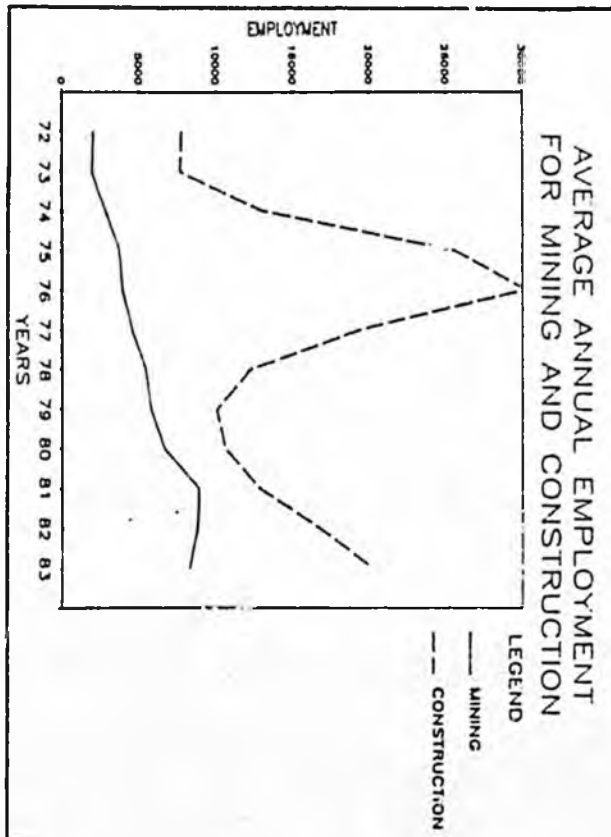
Federal guidelines require the use of unrounded labor data, adjusted to be consistent with the Current Population Survey (CPS) in formulas used to allocate federal funds. Comparisons between different time periods are not as meaningful as other time series published by the Alaska Department of Labor, because Alaska's CPS sample size is inadequate to accurately indicate monthly changes in level. The sampling errors are random in nature, meaning that the unemployment rates, in any given month, are as likely to be high as frequently as they are low. The official definitions of unemployment, currently in place, exclude anyone who has made no attempt to find work in the four week period up to and including the week that includes the twelfth of each month. Most economists feel that Alaska's bush localities have proportionately more of these discouraged workers.

**ALASKA
HOURS AND EARNINGS
FOR
SELECTED INDUSTRIES 1 2**

	Average Hourly Earnings			Average Weekly Hours			Average Weekly Earnings		
	p'	r'	10 83	p	r'	10 83	p	r'	10 83
	10 84	9 84	10 83	10 84	9 84	10 83	10 84	9 84	10 83
Mining	\$24.21	\$23.64	\$23.94	49.8	50.4	50.3	\$1205.66	\$1191.46	\$1204.18
Contract Construction	24.53	24.87	24.98	43.4	45.6	41.5	1064.60	1134.07	1036.67
Manufacturing	15.19	12.13	15.01	31.2	36.5	31.4	473.93	442.75	471.31
Food & Kindred Products	9.31	8.36	8.72	22.8	34.6	21.5	212.27	289.26	187.48
Lumber & Paper Products	17.69	16.89	18.52	34.3	36.0	40.1	606.77	608.04	742.65
Trans. Comm. & Utilities	15.77	15.85	16.37	37.3	38.7	37.1	588.22	613.39	607.33
Trade	10.71	10.82	10.11	34.8	35.3	35.7	372.71	381.95	360.93
Wholesale	12.99	13.58	12.08	38.1	39.6	39.4	494.92	577.77	475.95
Retail	9.79	9.63	9.28	33.7	33.7	34.3	329.92	324.53	318.30
Fin.-Insurance & Real Estate	-	-	-	-	-	-	400.81	388.72	359.56

- 1- Prepared in cooperation with the Bureau of Labor Statistics, U.S. Department of Labor
- 2- Excludes eating and drinking establishments

AVERAGE HOURS AND EARNINGS SERIES: Averages are based on data for full and part time production workers (manufacturing) and nonsupervisory workers (nonmanufacturing) and are for gross earnings and hours paid, including overtime pay and hours.



Average Annual Employment in
Mining and Construction

(907)-465-2700

March 13, 1985

LSS 1-1B

X LLR 1-1

The Honorable M. M. Miller
Chairman
Judiciary Committee
Pouch V
Juneau, Alaska 99811

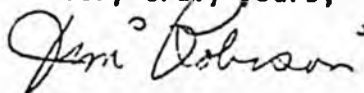
Dear Representative Miller:

Following are the Department's answers to questions raised in the committee hearing on March 11, 1985, with respect to the term "Maintenance", in Section 10 of the Bill.

Under The Federal scheme of Public Contracts, there are three (3) laws that address contracting procedures and rates of pay. These three (3) acts are: The Davis Bacon Act (Construction); the MacNamara-O'Hara Act (Service Contract); and the Walsh-Healy Act (Manufacturing). The State unfortunately, has only a Construction Act, AS 36.05. We have consistently had problems with grants being passed to Municipalities for local road and other small construction projects. Most of these contracts are let as maintenance contracts when in fact they are construction contracts. We have consistently had to use the Attorney General's office to re-enforce our determination on the difference between the two (2) types of work, because there is no clear cut definition in our regulations.

It has been our experience that State Agencies and Municipalities have been letting contracts for snow removal and street ^{cleaning} surveying and have required the payment of prevailing wages. We cannot enforce the terms of such contracts because this type of work is maintenance not construction. The agencies are dismayed because they cannot determine on their own what is maintenance and what is construction. We now have enough experience and legal interpretation upon which to delineate the difference between the two. It is essential that maintenance be included in the statute so that the Department will have the authority to define it in regulation.

Very truly yours,



Jim Robison
Commissioner
Department of Labor

bcc: Bob Bacolas

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907)-465-2700

March 13, 1985

The Honorable M. M. Miller
Chairman
Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Miller:

Following are the Department's comments on the Associated General Contractors' (AGC) proposed amendments to House Bill 62.

While it appears that, for the most part, the AGC supports House Bill 62, it proposes to delete AS 36.05.015(b) and 36.05.070(e) on the grounds that contractors should be relieved of having to pay prevailing wage rate deficiencies where the contracting agency has neglected to include the prevailing wage provisions in the specifications for bidding or in the contract. In place of these two subsections, the AGC proposes an amendment that would hold the contracting agency exclusively liable for prevailing wage rate deficiencies if the required provisions have not been included in the contract.

Although the Department of Labor would support an amendment expressly requiring the contracting agency to include the prevailing wage provisions in all public construction contracts, we would strongly oppose any legislation that would allow a contractor to be relieved of liability under the chapter where the required provisions have been omitted from the contract. Exempting contractors from prevailing wage liability in such situations would be inequitable to Alaskan workers, since their only remedy for prevailing wage violations would be against the contracting agency which might be unable or unwilling to pay the wage deficiencies. We believe that contractors and contracting agencies share a joint responsibility for ensuring that workers are properly paid on public works projects, and that both entities should remain legally liable for the payment of wage deficiencies. In cases where the contracting agency has negligently failed to include the required prevailing wage stipulations, we also believe that the contractor would have legal recourse against the agency or political subdivision.

It is also important to note that the proposed language objected to by AGC is not new. Similar language is already contained in AS 36.10.080 and 23.10.060. In fact, most of House Bill 62 merely codifies existing Department interpretations.

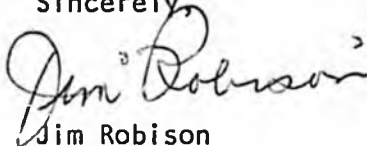
March 13, 1985

The Department further submits that the majority of contractors doing business in Alaska are well aware that prevailing wage requirements apply to public works projects. However, not all contracting agencies and political subdivisions have recognized that this language must be included in bid specifications and in contracts. This has been particularly true of the small community, village, unincorporated community, or non-profit organization that receives a pass-through grant. To allow contractors to escape liability just because a contracting agency or grantee has inadvertently omitted the prevailing wage requirements would be inconsistent with the intent of the prevailing wage law.

In 1984, the Department initiated 480 enforcement actions on public construction projects to remedy wage deficiencies on behalf of 1,072 employees, and collected \$1,157,666 on behalf of these employees. These employees represented 16% of the estimated number of workers employed on public construction projects. It should also be pointed out that these numbers do not reflect the Department's involvement on projects where contractors voluntarily complied when we advised them of wage deficiencies.

Thank you.

Sincerely,



Jim Robison
Commissioner
Department of Labor

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907)-465-2700

March 13, 1985

The Honorable M. M. Miller
Chairman
Judiciary Committee
Pouch V
Juneau, Alaska 99811


Dear Representative Miller:

Following are the Department's answers to questions raised in the committee hearing on March 11, 1985, with respect to the term "Maintenance", in Section 10 of the Bill.

Under The Federal scheme of Public Contracts, there are three (3) laws that address contracting procedures and rates of pay. These three (3) acts are: The Davis Bacon Act (Construction); the MacNamara-O'Hara Act (Service Contract); and the Walsh-Healy Act (Manufacturing). The State unfortunately, has only a Construction Act, AS 36.05. We have consistently had problems with grants being passed to Municipalities for local road and other small construction projects. Most of these contracts are let as maintenance contracts when in fact they are construction contracts. We have consistently had to use the Attorney General's office to re-enforce our determination on the difference between the two (2) types of work, because there is no clear cut definition in our regulations.

It has been our experience that State Agencies and Municipalities have been letting contracts for snow removal and street surveying and have required the payment of prevailing wages. We cannot enforce the terms of such contracts because this type of work is maintenance not construction. The agencies are dismayed because they cannot determine on their own what is maintenance and what is construction. We now have enough experience and legal interpretation upon which to delineate the difference between the two. It is essential that maintenance be included in the statute so that the Department will have the authority to define it in regulation.

Very truly yours,



Jim Robison
Commissioner
Department of Labor

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

January 30, 1985

The Honorable Mike Navarre
Chairman
Labor and Commerce Committee
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Navarre:

Following are the Department's comments on the Associated General Contractors' (AGC) proposed amendments to House Bill 62.

While it appears that, for the most part, the AGC supports House Bill 62, it proposes to delete AS 36.05.015(b) and 36.05.070(e) on the grounds that contractors should be relieved of having to pay prevailing wage rate deficiencies where the contracting agency has neglected to include the prevailing wage provisions in the specifications for bidding or in the contract. In place of these two subsections, the AGC proposes an amendment that would hold the contracting agency exclusively liable for prevailing wage rate deficiencies if the required provisions have not been included in the contract.

Although the Department of Labor would support an amendment expressly requiring the contracting agency to include the prevailing wage provisions in all public construction contracts, we would strongly oppose any legislation that would allow a contractor to be relieved of liability under the chapter where the required provisions have been omitted from the contract. Exempting contractors from prevailing wage liability in such situations would be inequitable to Alaskan workers, since their only remedy for prevailing wage violations would be against the contracting agency which might be unable or unwilling to pay the wage deficiencies. We believe that contractors and contracting agencies share a joint responsibility for ensuring that workers are properly paid on public works projects, and that both entities should remain legally liable for the payment of wage deficiencies. In cases where the contracting agency has negligently failed to include the required prevailing wage stipulations, we also believe that the contractor would have legal recourse against the agency or political subdivision.

It is also important to note that the proposed language objected to by AGC is not new. Similar language is already contained in AS 36.10.080 and 23.10.060. In fact, most of House Bill 62 merely codifies existing Department interpretations.

January 30, 1985

The Department further submits that the majority of contractors doing business in Alaska are well aware that prevailing wage requirements apply to public works projects. However, not all contracting agencies and political subdivisions have recognized that this language must be included in bid specifications and in contracts. This has been particularly true of the small community, village, unincorporated community, or non-profit organization that receives a pass-through grant. To allow contractors to escape liability just because a contracting agency or grantee has inadvertently omitted the prevailing wage requirements would be inconsistent with the intent of the prevailing wage law.

Finally, to clarify a question raised at the committee hearing, during calendar year 1984, the Department initiated 480 enforcement actions for violations of AS 36.05, involving 1,072 workers, and collected \$1,157,666 in prevailing wage rate deficiencies for these employees.

Sincerely,



for Jim Robison
Commissioner

JR:cm
02901

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

February 6, 1985

The Honorable Mike Navarre
Chairman
Labor and Commerce Committee
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Navarre:

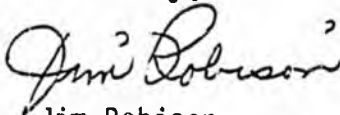
This is in response to the question posed at the February 4 hearing on House Bill 62, concerning the proportion of the work force affected by the provisions of AS 36.05.

In 1984, total nonagricultural wage and salary employment in Alaska averaged 223,600 ; construction employment averaged 20,100 (9.0% of total employment); and estimated public construction employment averaged 6,600 (3 percent of total employment and one third of construction employment).

In 1984, the Department initiated 480 enforcement actions on public construction projects to remedy wage deficiencies on behalf of 1072 employees. These employees represented 16% of the estimated number of workers employed on public construction projects. It should also be pointed out that these numbers do not reflect the Department's involvement on projects where contractors voluntarily complied when we advised them of wage deficiencies.

Thank you.

Sincerely,



Jim Robison
Commissioner

H B 62

Summary of AS 36 Activity
June 1, - November 30, 1983

Total enforcement: 200
Resident Hire: 76
Wage related: 124

Total workers assisted: 366
Resident Hire: 319
Wage related: 547

Total dollars recovered: \$535,340.30

The information included in this report was gathered from the audits of 12,040 payrolls for the projects covered. These projects employed an average of 12,361 laborers, mechanics and field surveyors each month.

(The department is approximately 4-6 months behind in their work).

From
Rear King

H B 62

Summary of AS 36 Activity
June 1, - November 30, 1983

Total enforcement: 200
Resident Hire: 76
Wage related: 124

Total workers assisted: 866
Resident Hire: 319
Wage related: 547

Total dollars recovered: \$535,340.30

The information included in this report was gathered from the audits of 12,040 payrolls for the projects covered. These projects employed an average of 12,361 laborers, mechanics and field surveyors each month.

(The department is approximately 4-6 months behind in their work).

From
Rear Ring

INTRODUCTION OF BILLS (House), (cont'd)

Youth Hostel
Loan Fund
(establishing)

HOUSE BILL NO. 61, by Reps. M. M. Miller, Duncan and Jenkins. Establishes the Youth Hostel Loan Fund in the Dept. of Natural Resources to be administered by the Director of the Division of Parks. The Director may make loans to fund qualified organizations for the purchase, construction, or renovation of youth hostels if the organization agrees to maintain the specific guidelines established by the American Youth Hostel Association. Loans not to exceed \$100,000, at an interest rate of 2.5% to be repaid within a 25 year period. During the first five years of the loan payments would be for interest only. Does not provide for an effective date (takes effect 90 days after Governor signs bill).

Introduced January 16 and referred to the House Special Committee on State Loans, Resources, then Finance.

Payment of
Wages and
Overtime
(public
contracts)

HOUSE BILL NO. 62, by the Rules Committee by Request of the Governor. Relates to the payment of prevailing wages and the payment of overtime under public construction contracts. See letter from Governor. Does not provide for an effective date (takes effect 90 days after Governor signs bill).

Introduced January 16 and referred to Labor & Commerce, Judiciary, then to Finance.

In his message transmitting the bill to the House, Governor Sheffield stated:

Under the authority of art. III, sec. 13, of the Alaska Constitution, I am transmitting a bill that clarifies the applicability of overtime compensation statutes to work performed on public contracts, and that imposes sanctions for a contractor's failure to comply with those statutes.

The bill requires payment of time-and-a-half compensation to a worker for work in excess of eight hours a day or 40 hours a week, thus eliminating any question that employees on public construction contracts have the same overtime protections afforded all employees in the state under AS 23.10.060.

In addition to making several minor statutory changes, the bill also establishes or clarifies four other important provisions relating to the enforcement of the provisions of AS 16.05, concerning wages and hours of labor on public contracts. First, sec. 2 of the bill allows the Department of Labor to accept assignment of wage claims under the chapter and to pursue claims on behalf of a class of employees whether or not a wage assignment has been filed. The department often uncovers violations of AS 16.05, but, under existing law, is arguably precluded from collecting wages due on behalf of employees who have not requested its assistance. The amendment to AS 16.05.030(a) avoids that problem.

Second, sec. 4 of the bill provides that even if a public construction contract does not set out conditions that AS 16.05.070(c) requires to be included, these conditions are considered included in the contract. This precludes an employer from avoiding compliance with the chapter when a government agency fails to incorporate AS 16.05.070(b) in the public construction contract.

Third, sec. 8 of the bill authorizes the Department of Labor to bar persons who have failed to comply with the overtime and prevailing-wage requirements of the chapter from being awarded public construction contracts for up to three years. These persons would be entitled to the full protection of the Administrative Procedure Act (AS 44.62).

Fourth, secs. 3 and 9 of the bill authorize the attorney general to seek injunctive relief and civil penalties in

INTRODUCTION OF BILLS (House), (cont'd)

HB 62, (cont'd)

the superior court for failure to comply with AS 36.05. Under existing AS 36.05.060, violation of the chapter is a misdemeanor. This enforcement mechanism has not been effective because of the nature of the penalty and the standard of proof required in criminal cases.

Plumbing Code
(revising)

HOUSE BILL NO. 63, by the Rules Committee by Request of the Governor. Revises current plumbing code. See accompanying letter. Does not provide effective date (takes effect 90 days after Governor signs bill).

Introduced January 16 and referred to Labor & Commerce.

In his message transmitting the bill to the House, Governor Sheffield stated:

Under the authority of art. III, sec. 13, of the Alaska Constitution, I am transmitting a bill relating to the plumbing code. The International Association of Plumbing and Mechanical Officials revises its minimum standards for the installation of plumbing every three years to incorporate technological advances. The 1985 edition contains the most recent revisions. The standards for the installation of solar energy are new, and the spa and hot tub standards have not previously been adopted in Alaska (the minimum standards for swimming pools were formerly included in the Uniform Plumbing Code). The 1979 code currently in effect in Alaska is outdated, and adoption of the 1985 version would bring Alaska's minimum standards into conformity with those adopted and used by the industry nationwide.

This bill also removes an anomalous provision that commands the Department of Labor to adopt the specific publications that constitute the plumbing code. The current statute leaves no discretion in the department as to whether to adopt or as to what to adopt. Thus the current adoption language is useless and the actions of the department in going through the formal adoption procedures are unnecessary. Under the amendment in the bill, the statute will simply declare what constitutes the plumbing code. This is the approach already employed for the electrical code, for example; see AS 13.60.550. Any publicity value that department adoption might have could be achieved through simpler means.

Elevator Safety
Standards
(revising)

HOUSE BILL NO. 64, by the Rules Committee by Request of the Governor. Revises elevator safety standards (see accompanying letter). Does not provide effective date (takes effect 90 days after Governor signs bill).

Introduced January 16 and referred to State Affairs.

In his letter transmitting the bill to the House Governor Sheffield stated:

Under the authority of art. III, sec. 13, of the Alaska Constitution, I am transmitting a bill relating to elevator safety standards. The American Society of Mechanical Engineers revises the safety code for installation and operation of elevators and escalators every three years to incorporate technical advances, and in 1984 it revised the 1981 code. Current state law, which adopts the 1981 version, is therefore outdated, and should be amended to bring Alaska's minimum standards into conformity with those accepted and used by the industry nationwide.

SECTIONAL ANALYSIS - HB 62: An Act relating to the payment of prevailing wages and the payment of overtime under public construction contracts," by House Rules at the Request of the Governor; analysis by House L & C Staff.

Section 1 Clarifies current law that employees on public construction contracts have the same overtime protections afforded all other employees in the State; by requiring payment of time and a half compensation to a worker for any work over 8 hours a day or 40 hours a week. AS 23.10.060 lists exemptions to this general position; the Dept. of Labor would like to eliminate 3 of those exemptions, (1) dealing with employers employing fewer than 4 employees; and (17) and (18), dealing with flexible wages; to allow fairer competition in the competitive bid process on public construction contracts. AS 23.10.060 (1) was not included in the original bill, so a Committee Substitute would have to be proposed to cover this addition.

All public construction contracts are considered to have these provisions included, whether actually stated or not. This requirement is already found elsewhere in this Chapter, under AS 36.10.080 relating to employment preference.

Section 2 Continues the authority of the Department of Labor to determine the prevailing wage, and expands the Department's ability to pursue claims on behalf of employees, even if a wage assignment has not been filed.

Currently, an employee must file a claim within 90 days or else sue the contractor; with a wage assessment, the Department can pursue claims for 2 years on behalf of a claimant or a class of claimants. Further, under this section, they will have the power to pursue claims against subcontractors outside of the State of Alaska and into any other state we have reciprocal agreements with on this issue (some 20 states in all, mostly the western States).

Section 3 Penalty for violation of the Wages and Hours of Labor Chapter of Title 36 (Public Contracts) is changed from a misdemeanor of \$100min to \$1,000max and 10 to 90 days; to a civil penalty of \$25,000 for certain violations and for up to \$5,000 per day for other violations.

Currently, violators have to be charged and investigated under criminal procedures, where the standard of proof is higher; with this change, the matter becomes easier to pursue as a civil penalty, with the process going through the Attorney General's Office, and the procedures for this are set out in further detail in Section 9.

Section 4 The word "must" in legal terms is used to give direction to inanimate objects; "shall" is used to direct people to do things, so the change is technical only.

The minimum wage for the state is \$3.85; for the feds; \$3.35. However, the minimum prevailing wage is set by the State

Dept. of Labor according to region of the State & craft, in accordance with procedures spelled out in administrative regulations.

Section 5 Requires that the Dept. of Labor notifies the state or political subdivision to withhold payments to a contractor up to whatever is needed to pay to workers any difference between their actual wages and the wages they are required by law to receive.

Since the Dept. of Labor already requires that a contractor submit a certified weekly payroll to the Dept. which then gets surveyed and monitored, the Department is in a much better position to detect violations than a state or political subdivision, as well as initial subsequent action. This section formally recognizes what is common current practice.

Section 6 Requires that when a state or political subdivision withholds payment to the contractor in accordance with Section 5, the amount withheld shall be paid to the Dept. of Labor for disbursement to the workers; and further states that this payment process is considered to be in the language of all public construction contracts, whether it is explicitly stated or not.

Section 7 Apprentices registered in an approved program must be paid at the federal minimum wage rate for apprentices. If the apprentice is not in an approved program, the contractor must pay the apprentice at the minimum prevailing wage.

This section discourages contractors from listing all of their workers as apprentices in order to pay them lower wages.

Section 8 Gives the power to the Dept. of Labor to initiate proceedings to debar a person from bidding on construction contracts for up to three years.

Currently, any violators are referred to the Attorney General's office and the case has to be pursued in the courts. This change gives the Dept. of Labor authority to actively investigate a case through an administrative hearing process, under the Administrative Procedures Act, which still protects violators through a detailed due process procedure.

Section 9 Adds a new section to current law, which spells out the procedure by which violators under Section 3 are referred by the Department of Labor to the Attorney General's office, and the subsequent procedures followed by the A. G.'s office in pursuing a statute violation through the courts.

Section 10 Provides definitions; basically clarifying that this bill applies to public construction contracts, not regular maintenance activities.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 15, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that clarifies the applicability of overtime compensation statutes to work performed on public contracts, and that imposes sanctions for a contractor's failure to comply with those statutes.

The bill requires payment of time-and-a-half compensation to a worker for work in excess of eight hours a day or 40 hours a week, thus eliminating any question that employees on public construction contracts have the same overtime protections afforded all employees in the state under AS 23.10.060.

In addition to making several minor statutory changes, the bill also establishes or clarifies four other important provisions relating to the enforcement of the provisions of AS 36.05, concerning wages and hours of labor on public contracts. First, sec. 2 of the bill allows the Department of Labor to accept assignment of wage claims under the chapter and to pursue claims on behalf of a class of employees whether or not a wage assignment has been filed. The department often uncovers violations of AS 36.05, but, under existing law, is arguably precluded from collecting wages due on behalf of employees who have not requested its assistance. The amendment to AS 36.05.030(a) avoids that problem.

Second, sec. 6 of the bill provides that even if a public construction contract does not set out conditions that AS 36.05.070(c) requires to be included, these conditions are considered included in the contract. This precludes an employer from avoiding compliance with the chapter when a government agency fails to incorporate AS 36.05.070(c) in the public construction contract.

Third, sec. 8 of the bill authorizes the Department of Labor to bar persons who have failed to comply with the overtime and prevailing-wage requirements of the chapter from being awarded public construction contracts for up to three years. These persons would be entitled to the full protection of the Administrative Procedure Act (AS 44.62).

Fourth, secs. 3 and 9 of the bill authorize the attorney general to seek injunctive relief and civil penalties in the superior court for failure to comply with AS 36.05. Under existing AS 36.05.060, violation of the chapter is a misdemeanor. This enforcement mechanism has not been effective because of the nature of the penalty and the standard of proof required in criminal cases.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CS HB62 (I&C)
 Title: "An Act relating to payment of prevailing wages..."
 Sponsor: Governor
 Requestor: House Judiciary
 Date of Request: 3-7-85

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Public Protection
 BRU, Program or Subprogram(s) Affected: Labor Standards & Safety
Wage and Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS Attach a separate page if necessary

Prepared By: *RJ Bacolas* Robert J. Bacolas, Sr. Phone: 465-4870
 Division: Labor Standards & Safety Date: 3-8-85
 Approved by Commissioner: *Jim Robison* Jim Robison Date: 3-8-85
 Agency: Labor

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Bill No. Committee Substitute for House Bill 62 (L&C)

Date March 11, 1985

Title "An Act relating to the payment of prevailing wages and the payment of overtime under public construction contracts."


Contact: Robert Landau
465-2700
Robert Bacolas
465-4870

In addition to making a number of minor statutory changes, this bill establishes or clarifies several important provisions concerning wages and hours of work on public construction contracts, as follows:

1. Section 1 of the bill requires payment of time-and-a-half compensation to a worker for work in excess of eight hours a day or forty hours a week. This incorporates provisions of the applicable federal law into Alaska's law and thereby codifies the Department's present interpretations and practices with respect to the payment of overtime on public construction projects.
2. Section 2 allows the Department of Labor to accept assignment of wage claims under the chapter and to pursue claims on behalf of a class of employees, whether or not a wage assignment has been filed. The Department often uncovers violations of AS 36.05 but, under existing law, is arguably precluded from collecting wages due on behalf of employees who have not requested its assistance. The amendment to AS 36.05.030(a) remedies that problem.
3. Section 6 provides that, even if a public construction contract does not set out conditions that AS 36.05.070(c) requires to be included, these conditions are considered included in the contract. This precludes an employer from avoiding compliance with the chapter when a government agency fails to incorporate AS 36.05.070(c) in the public construction contract.
4. Section 8 authorizes the Department of Labor to bar persons who have failed to comply with the overtime and prevailing wage requirements of the chapter from being awarded public construction contracts for up to three years. These persons would, of course, be entitled to the full protection of the Administrative Procedure Act.
5. Section 3 and 9 authorize the Attorney General to seek injunctive relief and civil penalties in the Superior Court for failure to comply with AS 36.05. Under existing AS 36.05.060, violation of the chapter is a misdemeanor but this enforcement mechanism has not been effective because of the nature of the penalty and the higher standard of proof required in criminal cases.

The Department of Labor supports passage of the Committee Substitute for House Bill 62. It will not have a fiscal impact on the Department.

APPROVED:


Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

REQUEST

Bill/Resolution No.:
Title: "An Act relating to payment of prevailing wages....."
Sponsor: Rules Committee
Requestor: Rules Committee
Date of Request:

FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety-wage and Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
 Division: Labor Standards & Safety Date: 1/10/85
 Approved by Commissioner: Jim Robertson Date: 1/10/85
 Agency: Labor

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Bill No. House Bill No. 52

Date January 10, 1964

Title "An Act relating to the payment of prevailing wages and the payment of overtime under public construction contracts."


Committee Robert Linder
465-2700
Robert Santos
465-2770

In addition to making a number of other statutory changes, House Bill 52 establishes or clarifies several important provisions concerning wages and hours of work on public construction contracts, as follows:

1. Section 1 of the bill requires payment of time-and-a-half compensation to a worker for work in excess of eight hours a day or forty hours a week, thus eliminating any question that employees on public construction contracts have the same overtime protections afforded all employees in the state under AS 23.10.050.
2. Section 2 allows the Department of Labor to accept assignment of wage claims under the chapter and to pursue claims on behalf of a class of employees, whether or not a wage assignment has been filed. The Department often uncovers violations of AS 36.05 but, under existing law, is arguably precluded from collecting wages due on behalf of employees who have not requested its assistance. The amendment to AS 36.05.030(a) remedies that problem.
3. Section 6 provides that, even if a public construction contract does not set out conditions that AS 36.05.070(c) requires to be included, these conditions are considered included in the contract. This precludes an employer from avoiding compliance with the chapter when a government agency fails to incorporate AS 36.05.070(c) in the public construction contract.
4. Section 8 authorizes the Department of Labor to bar persons who have failed to comply with the overtime and prevailing wage requirements of the chapter from being awarded public construction contracts for up to three years. These persons would, of course, be entitled to the full protection of the Administrative Procedure Act.
5. Sections 3 and 9 authorize the Attorney General to seek injunctive relief and civil penalties in the Superior Court for failure to comply with AS 36.05. Under existing AS 36.05.050, violation of the chapter is a misdemeanor but this enforcement mechanism has not been effective because of the nature of the penalty and the higher standard of proof required in criminal cases.

The Department of Labor supports passage of House Bill 52. It will not have a fiscal impact on the Department.

APPROVED:


 Robert Linder, Commissioner
 Department of Labor

1 1964 JAN 14 10 10 AM

Analysis supplied by:
Associated General
Contractors.

ANALYSIS OF HB-62

MAJOR CHANGES

- ** Section 1 (pg. 1, ln 11) - Adds a new section which requires overtime of 1-1/2 for over 8 hours per day or 40 hours per week.
- ** Section 2 (pg.2, ln. 3) - Adds new subsections which allow DOL to take wage assignment and to seek recovery for wages regardless of whether a wage claim has been filed.
- ** Section 7 (pg. 2, ln. 9) - Changes nature of penalty from criminal misdemeanor to civil penalty.
- ** Section 9 (pg. 4, ln. 11) - Establishes a procedure from barring a person who violates this chapter from working as a contractor or subcontractor for the State or a political subdivision for up to three years.

APPROACH

- (1) AGC has not had time to assess and discuss all of the proposed changes in HB62.
- (2) AGC is opposed to new language which purports to include the provisions of Title 36 in all contracts for public construction in the state regardless of whether the contract agency includes the provisions in the job specifications. Existing law requires that the advertised specifications for public construction include various provisions for Title 36 (36.05.070(a)). If the specifications fail to include the required provisions, a contractor should not be held liable for the consequences. Accordingly, we suggest the following:
 - (a) Delete 36.05.015(b) proposed in HB 62 Section 1, pg.1, ln. 21.
 - (b) Delete 36.05.070(e) proposed in HB 62 Section 6, pg.3, ln. 26
 - (c) Add the following new section:

AS 36.05.085. Failure of a State or political subdivision of the State to include the provisions required by this chapter within a contract shall relieve the contractor or subcontractor of any liability for violation of this chapter. The State or political subdivision of the State which fails to include the provisions required by this chapter within a contract for public construction, results in prevailing wages not being paid to laborers mechanics; or field surveyors is responsible to those laborers, mechanics or surveyors for payment of wages in accordance with this chapter.

DRAFT

PROPOSED COMMITTEE SUBSTITUTE FOR HB 62, "An Act Relating to the payment of prevailing wages and the payment of overtime under public construction contracts," requested by the Department of Labor

- 1) Section 1 of HB 62 is amended to include AS 23.10.060 (1) as follows:

Section 36:05.015. OVERTIME REQUIREMENTS. (a) Notwithstanding the provisions of AS 23.10.060 (1), (17), and (18), etc.

The affected subsection (1) reads as follows:

This section does not apply with respect to:

(1) an employee employed by an employer employing less than four employees in the regular course of business, as regular course of business is defined by regulations of the commissioner.

The effect of the amendment would be that in regards to public construction bids only, employers would not be exempted just because they had fewer than 4 employees; otherwise, for certain types of contracts, "mom and pop" operations would have a competitive bid advantage.

POSITION PAPER OF
ALASKA CHAPTER
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
ON
CSHB 62 (L&C)
ACT RELATING TO PAYMENT OF PREVAILING WAGES
AND PAYMENT OF OVERTIME UNDER PUBLIC
CONSTRUCTION CONTRACTS



The Alaska Chapter, Associated General Contractors of America, Inc. (A.G.C.) represents more than 900 companies, including most of the general contracting companies engaged in Alaska's commercial construction.

The A.G.C. agrees with the Department of Labor on the majority of the bill. But A.G.C. is opposed to new language which purports to include the provisions of Title 36 in all contracts for public construction in the state regardless of whether the contract agency includes the provisions in the job specifications. Existing law requires that the advertised specifications for public construction include various provisions for Title 36 (36.05.070(a)). If the specifications fail to include the required provisions, a contractor should not be held liable for the consequences. Accordingly, we support the following:

- (1) Delete 36.05.015(b), Section 1, Page 1, Line 21.
- (2) Delete 36.05.070(e), Section 6, Page 3, Line 27.
- (3) Add the following new section:

AS 36.05.085. Failure of a State or political subdivision of the State to include the provisions required by this chapter within a contract shall relieve the contractor or subcontractor of any liability for violation of this chapter.

The State or political subdivision of the state which fails to include the provisions required by this chapter within a contract for public construction, results in prevailing wages not being paid to laborers, mechanics or field surveyors is responsible to those laborers, mechanics or surveyors for payment of wages in accordance with this chapter.



SKILL
RESPONSIBILITY
INTEGRITY

THE ALASKA CHAPTER
**ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.**

BOX 4-2800 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 511-5354
TELEX 25-394



3201 SPENARD ROAD
ANCHORAGE
RICHARD M. PITTENGER
MANAGER

March 18, 1985

Honorable M. M. Miller, Chairman
Judiciary Committee
House of Representatives
Pouch V
Juneau, AK 99811

RE: House Bill 62

Dear Representative Miller:

The following represent A.G.C.'s reply to Commissioner Robison's March 13, 1985 letter addressing House Bill 62.

House Bill 62 is promoted as a housekeeping bill by the Department of Labor and, in some respects, this is true. There are other provisions in HB 62 that significantly affect the involvement of the Department of Labor in the prosecution of wage claims, and dramatically alter the penalty for violations of Chapter 36.05.

The A.G.C. is not opposed to equal and fair enforcement of laws, and to the extent that HB 62 will allow more effective enforcement, the measure is acceptable. We strongly believe that the existing enforcement and any proposed enforcement procedures should be fair. A.G.C.'s proposed deletion to the language proposed in AS 36.05.015(b) and AS 36.05.070(e) are based on principles of fundamental fairness.

The Division states: "We would strongly oppose any legislation that would allow a contractor to be relieved of liability under the chapter where the required provisions have been omitted from the contract." Instead, the Department recommends joint responsibility between the contracting agency and the contractor for the payment of prevailing wages.

It is interesting to note the manner in which the Department presents the notion of joint responsibility. The reason the Department wants to have the contractor liable is because: "Contracting agencies might be unable or unwilling to pay the wage deficiencies." Yet, as an apparent assurance to the contractors, the Department notes: "In cases where the contracting agency has negligently failed to include the required prevailing wage stipulation, we also believe that the contractor would have legal recourse against the agency or political subdivision." The logic contained in this formula is fascinating. It boils down to the simple fact that under the Department's proposal there is not a shared responsibility. It is solely the responsibility of the contractor and his easily accessible performance and payment bond.

M. M. Miller
March 18, 1985
Page Two

Contractors bid jobs based on specifications contained in contracts. They also must be aware of more laws and regulations than most other businessmen. Awareness of laws of general application are acceptable, i.e., minimum wage laws contained in AS 23.10.060; however, requiring the awareness of laws of special application which are dependent upon determinations outside the scope of the contractor's control is unreasonable. For example, must a contractor make the determination whether the addition of a new roof and the exterior repainting of an Abused Women's Shelter for an unincorporated community is "public" construction, "private" construction, or "regular maintenance or scheduled maintenance for the preservation of existing property or facilities."

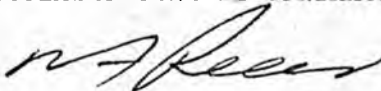
The A.G.C. submits that the contracting agency is in the position to make the necessary determination of whether Chapter 36.05 applies. If the contracting agency is in doubt, the DOL can be contacted for assistance. The contractor's responsibility for the payment of prevailing wages should be limited to the requirements contained in the specifications for the job. This is the situation for all federal projects at the present time.

The federal Davis-Bacon Act, after which Alaska Chapter 36.05 is modeled, is contractual in nature. The obligation to pay the prevailing wage arises totally out of the contract between the contractor and the contracting agency. The Davis-Bacon Act avoids the unfair and confusing problems created by provisions like existing AS 36.05.010 and proposed AS 36.05.015(b) and AS 36.05.070(e). The Davis-Bacon Act simply requires that: "the advertised specifications for every contract in excess of \$2,000, to which the United States or the District of Columbia is a party, for construction, [etc.] . . . shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics"

We urge this committee to delete the provisions contained in House Bill 62 proposing new language identified as AS 36.05.015 (b) and 36.05.070 (e) and insert new provisions which relieve a contractor from liability for violating the chapter if not included in the job specifications.

Sincerely,

ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS



William L. Reeves
/85

cc: Jim Robison, Commissioner, Department of Labor
A.G.C. Board of Directors